

Chapter 10

Operating on a cross-border basis



10.5 National private placement

Application

10.5.1 **G** This section applies to the following types of *AIFM* that intend to market an *AIF* in the *UK*:

- (1) a *full-scope UK AIFM* of:
 - (a) a *feeder AIF* that is a *UK AIF* or an *EEA AIF*, the *master AIF* of which is managed by a *non-EEA AIFM* or is a *non-EEA AIF*; and
 - (b) a *non-EEA AIF*;
- (2) a *full-scope EEA AIFM* of:
 - (a) a *feeder AIF* that is a *UK AIF* or an *EEA AIF*, the *master AIF* of which is managed by a *non-EEA AIFM* or is a *non-EEA AIF*; and
 - (b) a *non-EEA AIF*;
- (3) a *small non-EEA AIFM* of:
 - (a) a *UK AIF*;
 - (b) an *EEA AIF*; and
 - (c) a *non-EEA AIF*; and
- (4) an *above-threshold non-EEA AIFM* of:
 - (a) a *UK AIF*;
 - (b) an *EEA AIF*; and
 - (c) a *non-EEA AIF*.

Introduction

10.5.2 **G** *AIFMD* permits *EEA States* to allow the *marketing* in their territory only of the types of *AIF* set out in **FUND 10.5.1 G**, subject to certain conditions. This has been implemented in the *UK* by Part 6 (Marketing) of the *AIFMD UK regulation*. In accordance with these provisions, an *AIFM* of the type set out in **FUND 10.5.1 G** may *market* an *AIF* in the *UK* providing it has notified the *FCA* of its intention to *market*, it meets the relevant conditions in the *AIFMD UK regulation* and the *FCA* has not suspended or revoked the *AIFM*'s entitlement to *market* the *AIF*. The *AIFM* is entitled to *market* the *AIF* as soon as a notification containing all of the required information has been sent to the *FCA*.

Marketing under article 36 of AIFMD

10.5.3 **G** In accordance with regulation 57 (Marketing under Article 36 of the directive) of the *AIFMD UK regulation*, a *full-scope UK AIFM* and a *full-scope EEA AIFM* may market the following types of *AIF* in the *UK* by submitting a notification to the *FCA* in the form in **■ FUND 10 Annex 1 D**:

- (1) a *feeder AIF* that is a *UK AIF* or an *EEA AIF*, the *master AIF* of which is managed by a *non-EEA AIFM* or is a *non-EEA AIF*; and
- (2) a *non-EEA AIF*.

10.5.4 **G** To allow the *AIFM* to comply with regulation 57(4), the notification includes a statement from the *AIFM* confirming that the following conditions are met:

- (1) subject to (2), the *AIFM* complies with the requirements of *AIFMD* in respect of that *AIF*;
- (2) the *AIFM* is not required to comply with the requirements of article 21 (Depositaries) of *AIFMD* provided the *AIFM*:
 - (a) ensures that one or more entities, other than the *AIFM*, are appointed to carry out the duties in article 21(7) to (9) of *AIFMD*; and
 - (b) informs the *FCA* about the identity of each entity;
- (3) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the *FCA* and the supervisory authorities of the relevant third country to ensure an efficient exchange of information that enables the *FCA* to carry out its duties in accordance with *AIFMD*; and
- (4) the third country where the *non-EEA AIF* is established is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force (FATF).

10.5.5 **G** (1) As a result of *marketing* an *AIF* in the *UK*, a *full-scope UK AIFM* is required to comply with:

- (a) all of **■ FUND 3**, except certain sections of **■ FUND 3.11** (Depositaries) (as set out in **■ FUND 3.11.33R** (AIFM of a non-EEA AIF)) and **■** (Marketing in the home Member State of the AIFM); and
- (b) such other provisions of the *FCA Handbook* that apply to a *full-scope UK AIFM* of a *UK AIF*.

(2) A *full-scope UK AIFM* managing a *non-EEA AIF* that is not marketed should note that the *rules* it needs to comply with will change in relation to that *AIF* as a result of the *AIF* being marketed (see **■ FUND 10.4.3 G** for details of the rules that apply to a *full-scope UK AIFM* managing, a *non-EEA AIF* that is not marketed). In particular, an *AIFM* will be subject to the annual report requirements in **■ FUND 3.3** (Annual report of an AIF) and some of the depositary provisions in **■ FUND 3.11** (Depositaries) (as set out in **■ FUND 3.11.33 R** (AIFM of a non-EEA AIF)).

Marketing of AIFs managed by small third-country AIFMs

10.5.6 **G** In accordance with regulation 58 (Marketing of AIFs managed by small third country AIFMs) of the *AIFMD UK regulation*, a *small non-EEA AIFM* may market an AIF in the UK managed by it by submitting a notification to the FCA in the form set out in **FUND 10 Annex 1 D**.

10.5.7 **G** To allow the *AIFM* to comply with the requirements of regulation 58(2), the notification includes a statement from the *AIFM* confirming that the following conditions are met:

- (1) the *AIFM* is the person responsible for complying with the implementing provisions relating to the *marketing* of the *AIF* (as explained in **FUND 10.5.8 G**); and
- (2) the *AIFM* is a *small non-EEA AIFM*.

10.5.8 **G** As a result of *marketing* an *AIF* in the UK, a small non-EEA AIFM is required to provide the FCA with information on:

- (1) the main instruments in which the *AIFM* trades; and
- (2) the principal exposures and most important concentrations of the *AIFs* it manages.
in accordance with SUP 16.18 (AIFMD reporting).

Marketing under article 42 of the directive

10.5.9 **G** In accordance with regulation 59 (Marketing under article 42 of the directive) of the *AIFMD UK regulation*, an *above-threshold non-EEA AIFM* may market a UK AIF, an EEA AIF or a non-EEA AIF in the UK managed by it by submitting a notification to the FCA in the form in **FUND 10 Annex 1 D**.

10.5.10 **G** To allow the *AIFM* to comply with the requirements of regulation 59(2), the notification includes a statement from the *AIFM* confirming that the following conditions are met:

- (1) the *AIFM* is the person responsible for complying with the implementing provisions relating to the *marketing* of the *AIF* (see **FUND 10.5.11 G**);
- (2) the *AIFM* complies with the requirements of articles 22 to 24 *AIFMD* in so far as such provisions are relevant to the *AIFM* and the *AIF* to be marketed;
- (3) if applicable, the *AIFM* complies with Part 5 (AIFs which acquire control of non-listed companies and issuers) of the *AIFMD UK regulation* in relation to the *AIF* to be marketed;
- (4) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between:
 - (a) the FCA and, if applicable, the *competent authorities* of the other EEA State where the *AIF* is established; and

(b) the supervisory authorities of the country where the *non-EEA AIFM is established* and, if applicable, of the country where the *non-EEA AIF is established*,

to ensure an efficient exchange of information that enables the *FCA* to carry out its duties in accordance with *AIFMD*; and

(5) the third country where the *non-EEA AIF is established* is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force (FATF).

10.5.11 **G** As a result of *marketing* an *AIF* in the *UK*, an *above-threshold non-EEA AIFM* is required to comply with:

(1) the requirements that apply to a *full-scope UK AIFM* in **FUND 3.2** (Investor information), **FUND 3.3** (Annual report of an *AIF*) and **FUND 3.4** (Reporting obligations to the *FCA*) in so far as such provisions are relevant to the *AIFM* and the *AIF*; and

(2) if applicable, Part 5 (*AIFs* which acquire control of non-listed companies and issuers) of the *AIFMD UK regulation*.

10.5.11A **G**

(1) (a) A provision of **FUND 3.2** (Investor Information), **FUND 3.3** (Annual report of the *AIF*) or **FUND 3.4** (Reporting obligations to the *FCA*) will not be relevant to an *above-threshold non-EEA AIFM* and the *AIF* it *markets*, if it relates to another provision to which the *AIFM* is not subject.

(b) For example, the *AIFM* does not need to comply with **FUND 3.2.2R (5)** because it is not subject to the professional negligence requirements in *IPRU(INV) 11.3.11G* (Professional negligence).

(2) (a) However, the *AIFM* should comply with the substance of the provisions of **FUND 3.2** (Investor Information), **FUND 3.3** (Annual report of the *AIF*) or **FUND 3.4** (Reporting obligations to the *FCA*) to the extent that these are relevant to the *AIFM* and the *AIF*.

(b) For example:

(i) the *AIFM* should make the latest net asset value of the *AIF* or latest market price of the *unit* or *share* of the *AIF* available to investors before they invest, but it does not need to do so in line with **FUND 3.9** (Valuation), because it is not subject to these provisions; and

(ii) the *AIFM* should include information in its annual report in relation to the *remuneration* paid by the *AIFM* to its staff as set out in **FUND 3.3.5R (5)** and **FUND 3.3.5R (6)**, but it does not need to do so in line with the requirements in **SYSC 19B**, because it is not subject to those provisions.

(3) An *AIFM* should comply with the provisions in **FUND 3.3** (Annual report of the *AIF*) in relation to the first financial year end date of the *AIF* following the *AIFM's* notification to the *FCA* of its intention to *market* the *AIF* in the *UK*.

10.5.11B **G** An *above-threshold non-EEA AIFM* should report on a quarterly basis to the FCA the information in ■ FUND 3.4.2R, ■ FUND 3.4.3R and (if applicable) ■ FUND 3.4.5R for each *AIF* that is not *marketed* in the UK if:

- (1) that *AIF* is a *master AIF* managed by the *AIFM*;
- (2) the *AIFM* markets the *feeder AIF* of that *master AIF* in the UK; and
- (3) the *AIFM* is subject to quarterly reporting under article 110 of the *AIFMD level 2 regulation* (see ■ SUP 16.18.4EU) for the *feeder AIF*.

Further guidance on marketing an AIF

10.5.12 **G** Further *guidance* on marketing an *AIF* can be found in ■ PERG 8.37 (AIFMD marketing).

Provision of key information document in accordance with the PRIIPs Regulation

10.5.13 **G** An *AIFM* that makes an *AIF* available to *retail clients* in the *United Kingdom* will need to draw up a *key information document* in accordance with the *PRIIPs Regulation*.