

Definition of Marketing for AIFM across Europe

| Country | National Private Placement Regime |
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| Belgium | <p><i>Definition of Marketing:</i> Interpreted narrowly; marketing is not generally deemed to have taken place until final offering and subscription documents are distributed. Pre-marketing communications – clearly structured as such and marked as drafts that do not mention specific funds – are not considered marketing.</p> <p><i>Prerequisite to Marketing:</i> Written approval of the Belgian regulator is required prior to any marketing. A detailed written application form is required, and the Belgian FSMA generally grants approval within one month.</p> <p><i>Points to Note:</i> When marketing a feeder fund, AIFMD regulatory reporting must also be submitted in relation to the master fund, even though that master fund is not itself marketed in the E.U. AIFMD reports are submitted through Belgium’s online reporting portal, FIMIS.</p> |
| Denmark | <p><i>Definition of Marketing:</i> Fairly wide interpretation; initial meetings or roadshow discussions prior to the possibility of investors committing to subscriptions are not considered marketing. This requires, however, that the AIF not yet be established and that the PPM, prospectus or other similar documents not yet be produced. Distribution of draft offering or subscription materials will be interpreted as marketing.</p> <p><i>Prerequisite to Marketing:</i> Written approval of the Danish FSA is required prior to any marketing.</p> <p><i>Points to Note:</i> A non-E.U. AIFM wishing to market an AIF in Denmark must appoint a depositary to carry out certain functions for that AIF – so called “depositary lite.” Previously, the Danish FSA accepted AIFMD regulatory reporting via email, but starting in Q4 2015, all reporting must be completed via the FIONA Online portal.</p> |
| Finland | <p><i>Definition of Marketing:</i> Fairly wide interpretation; if the purpose of a communication intended to include offering of units in a fund is to conclude a binding commitment, the communication will be considered marketing. Delivery of offering documentation is considered marketing, but soft circling activities in which professional investors’ readiness or potential is being evaluated are exempted. Initial meetings and roadshows are not considered marketing to professional investors. If non-professional investors are targeted, then marketing encompasses any activity to promote investment.</p> <p><i>Prerequisite to Marketing:</i> Written approval of the Finnish FSA is required prior to any marketing. It can take from one to six months from submission of the application to obtain permission. There are large variations in processing times without any apparent reason.</p> <p><i>Points to Note:</i> AIFMD reports are submitted via email to the Finnish FSA (FIN-FSA).</p> |

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| France | <p><i>Definition of Marketing:</i> Interpreted very widely; marketing is any presentation of a fund's shares or units to solicit investment. This includes advertising, door-to-door sales, cold calling or advice. Premarketing activities are generally considered to be marketing.</p> <p><i>Prerequisite to Marketing:</i> Written approval of the French regulator is required prior to any marketing. In practice, this is relatively difficult to obtain.</p> <p><i>Points to Note:</i> AIFMD reports are submitted through France's online reporting portal, Extranet GECO.</p> |
| Germany | <p><i>Definition of Marketing:</i> Any activity aimed at encouraging investment in a fund is considered marketing. However, this requires that the relevant fund has already launched, that the offering documents are finalized or that the fund already has a specific name.</p> <p><i>Prerequisite to Marketing:</i> Written approval of the German Federal Financial Supervisory Authority (BaFin) is required before marketing may commence in Germany. The approval process and its duration vary depending on the fund structure and on the type of investor targeted in Germany.</p> <p><i>Points to Note:</i> A non-E.U. AIFM wishing to market an AIF in Germany must appoint a depositary to carry out certain functions for that AIF – so-called “depositary lite.” AIFMD reports are submitted through Germany's online reporting portal, the MVP Portal.</p> |
| Ireland | <p><i>Definition of Marketing:</i> In the absence of any regulatory guidance on the matter, it is prudent to interpret the definition of marketing broadly. Any activity aimed at encouraging investment in a fund, regardless of whether the fund is formed or whether only draft documents are available, should be considered marketing.</p> <p><i>Prerequisite to Marketing:</i> Written approval of the Central Bank of Ireland is required prior to any marketing.</p> <p><i>Points to Note:</i> AIFMD reports are submitted through Ireland's online reporting portal, Online Reporting System.</p> |
| Luxembourg | <p><i>Definition of Marketing:</i> Interpreted narrowly; marketing is not deemed to include the circulation of draft documents where the documents cannot be used by prospective investors to subscribe or commit to subscribe. Advertisements, road shows and distance marketing will similarly not be considered marketing where the materials provided cannot be used to commit to a subscription.</p> <p><i>Prerequisite to Marketing:</i> A simple notification to the Luxembourg regulator (CSSF) is required. It is advisable to wait until the day after the notification is filed prior to commencing marketing in Luxembourg.</p> <p><i>Points to Note:</i> There is a requirement to appoint a third-party service provider to file AIFMD regulatory reports with the Luxembourg regulator. An AIFM cannot file reports itself directly with the regulator. When marketing a feeder fund, AIFMD regulatory reporting must also be submitted in relation to</p> |

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| | <p>the master fund, even though that master fund is not itself marketed in the E.U., where both the master and the feeder fund have the same AIFM.</p> |
| Malta | <p><i>Definition of Marketing:</i> In the absence of any regulatory guidance on the matter, it is prudent to interpret the definition of marketing broadly. Whether activities fall within the definition of marketing is determined by the Malta Financial Services Authority on a case-by-case basis, and the regulator is granted wide discretion in making determinations. Advertisements, seminars, meetings and circulars are all likely to be regarded as marketing.</p> <p><i>Prerequisite to Marketing:</i> Simple notification to the Malta Financial Services Authority. AIFMs should wait for confirmation of receipt of the notification before commencing marketing.</p> <p><i>Points to Note:</i> AIFMD reports are submitted through Malta’s online reporting portal, the Licence Holder Portal.</p> |
| Netherlands | <p><i>Definition of Marketing:</i> Interpreted widely; marketing includes newspaper advertisements or advertisements on Dutch websites, as well as other media directed at residents and the act of referring potential investors to agents of the AIFM. Furthermore, arrangements for payment to a third party marketing the AIF could themselves be considered marketing. However, the circulation of draft fund documents where it is as yet impossible to subscribe is not considered marketing.</p> <p><i>Prerequisite to Marketing:</i> A relatively straightforward notification to the Dutch regulator is required. It is advisable to wait until the day after the notification is filed prior to commencing marketing in the Netherlands.</p> <p><i>Points to note:</i> The Dutch regulator is not yet in a position to accept non-E.U. AIFMs’ regulatory reporting. The Dutch Central Bank will send a letter to each non-E.U. AIFM marketing an AIF in the Netherlands to inform them when such reporting will be due. In the meantime, no enforcement action will be taken against non-E.U. AIFMs for failing to report. When AIFMD regulatory reporting from non-E.U. AIFMs is required, reports will be submitted via the e-Line DNB online portal.</p> |
| Norway | <p><i>Definition of Marketing:</i> Interpreted very widely; any communication or marketing efforts, including so-called “soft marketing,” regarding a potential investment may be regarded as marketing.</p> <p><i>Prerequisite to Marketing:</i> Written approval of the Norwegian FSA is required prior to any marketing. At present it takes six to nine months for the Norwegian FSA to process applications to market.</p> <p><i>Points to note:</i> The Norwegian FSA has not yet begun accepting AIFMD regulatory reporting. It is expected that the first reports will be due for the period ended December 31, 2015.</p> |
| Sweden | <p><i>Definition of Marketing:</i> Interpreted widely; marketing is considered to take place by simply referring to the relevant fund. However, the preparatory works for the Swedish Act implementing AIFMD in Sweden express the view that marketing is not possible until the fund actually exists. Activities</p> |

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| | <p>conducted before the fund vehicle falls within the definition of an AIF should not be considered marketing in Sweden.</p> <p><i>Prerequisite to Marketing:</i> Written approval of the Swedish regulator is required prior to any marketing. A detailed written application form is required, which the Swedish FSA aims to process within 60 days.</p> <p><i>Points to Note:</i> When marketing a feeder fund whose master fund is also a non-E.U. fund, there is no need to submit AIFMD regulatory reporting at the master fund level. AIFMD reports are submitted through the Swedish FSA's online reporting portal, Periodic Reporting.</p> |
| United Kingdom | <p><i>Definition of Marketing:</i> Interpreted narrowly; marketing is not generally deemed to take place until formal offering and subscription documents have been distributed.</p> <p><i>Prerequisite to Marketing:</i> Simple notification to the Financial Conduct Authority; no need to await acknowledgement or approval.</p> <p><i>Points to Note:</i> When marketing a non-E.U. feeder fund whose master fund is also a non-E.U. fund, there is no need to submit AIFMD regulatory reporting at the master fund level. AIFMD reports are submitted through the FCA's online reporting portal, GABRIEL.</p> |

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