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AIFMD

A Practical Comparison of Reporting Under AIFMD versus Form PF

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Europe's Alternative Investment Fund Managers Directive (AIFMD) is in full effect and the consolidated AIFMD reporting template – commonly referred to as "Annex IV" – is now final. Although some fund managers have already filed Annex IV, the vast majority will do so in January 2015, for the reporting period ending on December 31, 2014. There were efforts to harmonize Annex IV and Form PF and this update to "A Practical Guide to AIFMD Reporting for Non-E.U. Fund Managers: Reporting Under AIFMD versus Form PF," The Hedge Fund Law Report, Vol. 6, No. 20 (May 16, 2013), provides a useful side-by-side comparison of reporting under the two forms.

Firms should take note that even where this comparison highlights similarities between the two forms, there are still certain nuances that could trip up filers. For example, a nearly identical question asked on both forms – whether the fund cleared any transaction directly through a CCP – might be answered "no" on Form PF but "yes" on Annex IV because the forms apply a different interpretation of the term "directly". Filers should still review applicable guidance in order to correctly interpret each question and properly calculate the answers.

General Filing Obligations

Unlike fully authorized EEA managers that only need to file Annex IV with their home regulator, non-EEA managers that are relying on national private placement regimes to market their funds in Europe will be required to make an Annex IV filing with the local regulator in each jurisdiction in which they have registered to market a fund. Where different funds are marketed in different jurisdictions, the filings will need to be tailored accordingly. Indeed, there is a possibility that filings for the same fund will differ from jurisdiction to jurisdiction.

Structure of the Forms

Both forms include firm-level and fund-level sections. Form PF has seven sections, based on size and strategy of the manager and the funds. Hedge funds, liquidity funds, and private equity funds each have additional sections designated just for them. *Who*

Files Which Sections – Form PF

Section	Who Files
1a	All "private fund advisers": Complete for the firm
1b	All "private fund advisers": Complete for each private fund
1c	All "private fund advisers": Complete for each fund
2a	"Large hedge fund advisers" (i.e., > $1.5 billion in "hedge fund AUM") ge fund AUM"): Complete for the firm, but only aggregating information about each hedge fund
2b	"Large hedge fund advisers": Complete for each "qualifying hedge fund" (i.e., > $500 million NAV)
3	"Large liquidity fund advisers" (i.e., > $ 1 billion in "combined money market and liquidity fund AUM"): Complete for each liquidity fund
4	"Large private equity advisers" (i.e., > $2 billion in "private equity fund AUM"): Complete for each private equity fund

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Annex IV was published as a spreadsheet, with four sections (i.e., four spreadsheet tabs). There are no separate sections for hedge funds, liquidity funds or private equity funds (although there are a few questions that are specific to fund strategy); instead, the form is presented in a "one size fits all" format.

The section titles in Annex IV correlate to certain articles in the AIFMD, which dictate the types of funds (AIFs) in respect of which firms (AIFMs) are to complete a particular section. The sections are titled AIFM file 24(1), AIF file 24(1), AIF file 24(2), and AIF file 24(4).

It should be noted that AIFM file 24(1) and AIF file 24(1) also apply to smaller AIFMs that are otherwise exempt from AIFMD under Article 3 of the Directive. These AIFMs are commonly referred to as "Registered AIFMs" (i.e., registered as exempt) while all other EEA-AIFMs are commonly referred to as "Authorized AIFMs." Although generally exempt from the requirements of AIFMD, Registered AIFMs must still complete minimum reporting obligations. The two 24(1) sections are also titled "3(3)(d)," indicating that the sections are to be completed by Registered AIFMs.

Section 24(4) is to be completed in respect of AIFs that "employ leverage on a substantial basis," which is when exposure as calculated according to the commitment method (which is described in more detail in the Commission Delegated Regulation implementing the AIFMD (the Regulation)) exceeds three times net asset value. Although an extra section seems cumbersome, in reality it should not be. Section 24(4) has just one question that is not already included in section 24(2) (the five largest sources of borrowed cash or securities (short positions)). AIFs in respect of which section 24(4) is completed may skip the duplicative questions listed in 24(2).

In addition to the Annex IV form, AIFMs must, on request, provide regulators with a list of the AIFs that they manage (pursuant to Article 24(3)).

Who Files Which Sections – Annex IV

Section	Who Files (EEA AIFMs)	Who Files (Non-EEA AIFMs)
AIFM file 24(1)	All AIFMs Complete for the firm	All AIFMs Complete for the firm, but only aggregating AIFs marketed into jurisdiction
AIF file 24(1)	All AIFMs Complete for each AIF managed	All AIFMs Complete for each AIF marketed into jurisdiction
AIF file 24(2)	All AIFMs, except Registered AIFMs Complete for each EEA AIF managed and each AIF marketed in EEA	All AIFMs Complete for each AIF marketed into jurisdiction
AIF file 24(4)	All AIFMs, except Registered AIFMs Complete for each AIF that is "substantially leveraged"	All AIFMs Complete for each AIF that is "substantially leveraged" and that is marketed into jurisdiction

"Marketing" and the Master-Feeder Issue

There is an anomaly in AIFMD with regard to the reporting of master-feeder fund structures. For Form PF, filers have the option of reporting on master and feeder funds separately or aggregating the information and submitting one filing on behalf of the master and feeder funds within the structure. For AIFMD, however, each fund must be reported on separately. The effects of this are different for EEA and non-EEA AIFMs.

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For EEA AIFMs, this rule creates a problem for just one section of the form: section 24(2), which AIFMs are to complete for EEA funds and funds marketed in the EEA. In a master-feeder structure, generally it is the feeder fund that is marketed but it is the master fund that has holdings. Thus, for section 24(2) an EEA AIFM might find itself unable to answer much of the questions because it is filing the section for just the feeder fund.

For non-EEA AIFMs, the issue exists for the entire form, not just one section. Non-EEA AIFMs file Annex IV in accordance with Article 42 of the AIFMD, which instructs that non-EEA AIFMs file Annex IV only in respect of AIFs that are marketed into the EEA. Thus, for a master-feeder structure, Annex IV is filed for just the feeder fund.

ESMA recognized the problem but is unable to create reporting obligations beyond the scope set forth in the AIFMD. Member State regulators, however, may require additional information beyond the requirements of the AIFMD. On October 1, 2013 ESMA published an Opinion wherein it suggested that Member State regulators could require AIFMs to report information on a master fund if a feeder fund is being reported on and the funds have the same AIFM. The ESMA Opinion specifically addressed the master-feeder problem with regard to EEA AIFMs and the reporting of section 24(2), but did not address the master-feeder problem with regard to non-EEA AIFMs and the reporting of all sections of Annex IV. Regardless, individual Member State regulators have the authority to require such information from both EEA AIFMs and non-EEA AIFMs. As such, AIFMs must look to the Member States to which they are reporting to determine whether the reporting of the master fund is required for them.

Reporting Frequency and Deadlines

When determining the filing frequency and reporting deadlines for a firm or fund it is important to note that Form PF reporting is based on a firm's fiscal year while Annex IV reporting is based on the calendar year. Further, to determine the size of a firm or fund, a manager must calculate "Regulatory AUM" (RAUM) in accordance with instructions in Form PF and "Total AUM" in accordance with instructions in AIFMD. For Form PF, a firm's filing frequency is determined by the firm's size and strategy, with large hedge fund advisers and large liquidity fund advisers filing quarterly and all other firms filing annually. The size of the fund itself does not affect the filing frequency. Filing deadlines are likewise dictated by the firm's size and strategy. Large hedge fund advisers have a 60-day reporting deadline, large liquidity fund advisers have a 15-day reporting deadline, and all other advisers have a 120-day reporting deadline. A firm could have multiple filing frequencies and reporting deadlines. For example, a firm can be a large hedge fund adviser and a large private equity fund adviser, filing quarterly for certain sections of the form and annually for others.

Type	Frequency	Deadline
Large Hedge Fund Adviser (> $1.5 billion "hedge fund AUM")	Quarterly	60 days after fiscal quarter-end
Large Liquidity Fund Adviser (>$1.0 billion "combined money market and liquidity fund AUM")	Qarterly	15 days after fiscal quarter-end
All other Private Fund Advisers (> $150 million RAUM) (including "large private equity advisers")	Annually	120 days after fiscal year-end

Reporting frequency for Annex IV is determined by the size of the firm as well as the size of the fund, whether a fund utilizes leverage, and the

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strategy of the fund. Accordingly, an AIFM might have multiple filing frequencies. For example, an AIFM might file on a half-yearly basis but have an AIF in respect of which it must file on a quarterly basis.

Reporting frequency and deadlines – Annex IV

Type	Frequency
AIFM managing a portfolio of AIFs > €1 billion AUM	Quarterly
AIFM managing a portfolio of AIFs < € 1 billion AUM *but* > €100 million (including any assets acquired through the use of leverage) *or* > €500 million (if the portfolio of AIFs consists of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF)	Half-yearly *but* Quarterly for each AIF whose AUM, including any assets acquired through the use of leverage, exceeds €500 million
AIFM managing a portfolio of AIFs either < €100 million (including any assets acquired through the use of leverage) *or* < €500 million (if the portfolio of AIFs consists of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF)	Annually
All AIFMs	Annually for each unleveraged AIF which, in accordance with its core investment policy, invests in non-listed companies and issuers in order to acquire control
Reporting Deadlines: The reporting deadline is the same for all AIFMs: "one month" after the end of the reporting period, except that for funds of funds the deadline is extended by 15 days.	

Instructions

Form PF comes with general instructions at the beginning of the form, some question-specific instructions throughout the form, and a glossary at the end of the form. The only other place a firm needs to look for guidance is the SEC Form PF FAQ webpage, which is periodically updated.

Annex IV, however, is presented in spreadsheet format and does not include a set of instructions or a glossary. Instead, a filer must take guidance from several sources of information, including the AIFMD (2011/61/EU), the Regulation (No 231/2013), the ESMA guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD, the ESMA IT technical guidance, and ESMA Q&A, as well as any Member State-specific rules, guidance and Q&A materials. This can be a difficult exercise because the questions on the form do not state which sources of information are applicable to that question – filers are simply expected to know. We expect this process to become more intuitive as filers get into their filing cycles.

Information Reported

Because the two forms are laid out differently, it is easier to compare the forms by subject matter rather than on a question-by-question basis. As mentioned in the introduction to this paper, this is a general comparison and it is incumbent upon filers to look at guidance for each question – including guidance from specific Member States – to interpret the questions and determine the correct calculations for each answer.

Assumptions - Both forms allow for assumptions, but Annex IV allows for assumptions at both the firm level and at the fund level. This is particularly useful for AIFMD because reporting at the fund level is decoupled from reporting at the firm level. Since a report in respect of a fund could be filed independently of the firm, a separate set of assumptions are needed at the fund level.

Information about the filing – Annex IV requires certain information about the filing itself at both the firm and the fund level, such as the reporting period, the Member State to which the AIFM is reporting, the version of the XML Schema Definition (XSD) used to generate the filing, the date and time the filing was created, and AIFM and AIF content codes and reporting codes which determine the sections to be filed. Form PF only asks for the filing type (e.g., whether the submission is for an annual or quarterly filing). Information that determines which sections should be completed is already known by the regulator based on a firm's Form ADV filing.

Information about the firm – Both forms require the name and certain identifying codes of the firm, and both forms ask for the firm's AUM, although different calculations are used. For Form PF, RAUM is reported in U.S. Dollars and is broken out by strategy. It is essentially the asset side of the balance sheet, thus omitting short positions. For Annex IV, "Total AUM" is reported in Euro as well as the base currency of the firm. It is calculated using the value of all assets without deducting liabilities. Derivatives are converted into the equivalent position in the underlying assets of the derivative using specific conversion methodologies that are set forth in Annex II of the Regulations, and then the absolute value of the position is used. One item that Annex IV requires, but which is not necessary for Form PF, is a listing of the five principal markets in which the firm trades as well as the five principal instruments in which it trades. Finally, one requirement that Form PF has, but Annex IV does not, is the name and signature of an authorized representative of the firm.

Information about the fund – Both forms require the name and certain identifying codes of the fund, and both forms ask for the fund's AUM, applying the same calculations as used at the firm level. Fund-level identifying information that is required under Annex IV, but not Form PF, includes share class identification codes, a list of prime brokers for the fund, and the jurisdictions of the three main funding sources for the fund. While Form PF does not ask about the prime brokers of the fund, such information can be obtained from Form ADV. Both forms ask about investment strategy, but Form PF asks for investment strategy of just hedge funds, while Annex IV requires a breakdown of strategy for funds that have primarily hedge fund, private equity, real estate, funds of funds, or "other" strategies. Additionally, there is some variation between the hedge fund strategy types provided by each form.

Instruments traded and individual exposures – Annex IV asks for main instruments in which the fund trades, principal exposures by asset type, and principal markets where the fund trades. Both forms require the reporting of portfolio concentration, exposure by asset type, turnover, and exposure by geography.

Market Risk – Both forms have questions about market risk. However, Form PF only requires the reporting of VaR if it is already regularly calculated for the fund, and then provides other risk metrics and market factors for a filer to designate as relevant. Annex IV requires the reporting of certain risk metrics, such as "Net Equity Delta," "Net DV01," and "Net CS01." Annex IV also requires expected annual investment return/IRR in normal market conditions.

Counterparty Risk – Both forms require information on trading and clearing mechanisms, top five counterparty exposures, collateral for counterparty exposure, rehypothecation of collateral, and direct clearing through a CCP. As with other questions, these questions require a careful reading to understand the nuances between the two forms.

Liquidity Risk (Portfolio Liquidity, Financing Liquidity, and Investor Liquidity) – Both forms require information on portfolio liquidity, financing liquidity, and investor liquidity, including the value of unencumbered cash, and borrowings and cash financing available to the fund. Both forms require information on investor liquidity and restrictions placed on investor redemptions, as well as information on investor concentration broken out by investor group—although the group categories are different. Form PF asks about side pockets, while Annex IV asks additional questions about special arrangements (which includes side pockets).

Borrowing and exposure risk – Form PF requires borrowing data as of the end of each month in the reporting period, but Annex IV requires data as of the end of the reporting period. Annex IV asks about securities borrowed to short and the five largest sources of borrowed cash or securities (short positions). Annex IV also asks for leverage – calculated via gross and commitment methods as set forth in the Regulation – and Form PF does not.

Operational and other risk aspects – Both forms ask for the number of open positions and performance. Annex IV asks for change in NAV and a monthly reporting of subscriptions/redemptions. Finally, Annex IV asks for a reporting of stress tests (to the extent they are required to be conducted). Form PF does not have such a requirement, but does require the reporting of market factors if relevant to the portfolio.

Summary

Although there is much overlap between Annex IV and Form PF, and much of the same raw data can be used to calculate answers for many of the questions on both forms (approximately ninety percent of the raw data is the same), there are many distinctions and filers must tread carefully when calculating answers. AIFMs reporting into more than one jurisdiction must pay particular attention, as local guidance from Member States can vary and will affect each filing of the AIFM.

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