



FSMA_2017_06-02 of 24/02/2017

Alternative Investment Funds Notification of marketing of AIFs managed by non-EEA AIFMs to professional investors in Belgium Art. 42 AIFMD¹

Scope:

This Communication is addressed to:

- alternative investment fund managers established in the European Economic Area ('EEA') who intend to market, to professional investors in Belgium, units or shares of non-EEA AIFs which they manage, including non-EEA feeder AIFs; and to
- alternative investment fund managers not established in the European Economic Area who intend to market, to professional investors in Belgium, units or shares in AIFs which they manage.

This form should be filled out by non- European Economic Area ("non-EEA") Alternative Investment Fund Managers ("AIFM") wishing to market units or shares of Alternative Investment Funds ("AIF") in Belgium. The information provided in this notification letter should not be ambiguous. The form should be sent to the following address: e-notification.passporting2@fsma.be

1. Type of notification

- Initial notification
- Amendments to information already provided in an initial notification.

2. AIFM

Name and company number	
Registered address	
e-mail address	

¹ Art. 42 of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010; articles 497 to 499 of the Belgian AIFM Law of 19 April 2014.

3. AIFs to be marketed in Belgium

Name of the AIF to be marketed	Name of the compartment(s) to be marketed ² (if applicable)	AIF home State	AIF Legal form ³	Name of the master AIF (if applicable) ⁴	Are the master AIF and the feeder AIF managed by the same manager? ⁴ (Y/N)	Home State of the master AIF (if applicable) ⁴	Is the master AIF marketed in the European Economic Area? ⁴ (Y/N)

² If the AIF takes the form of an umbrella AIF with multiple compartments, AIFMs should only indicate the name of the compartments of the umbrella AIF notified for marketing.

³ Common fund, unit trust, investment company, partnership, other.

⁴ Only if the fund to be marketed is a feeder fund.

4. Private placement

The units or shares of the AIFs marketed in Belgium cannot constitute a public offer within the meaning of the Belgian AIFM Law. Please confirm

- which of the exception criteria in the table below apply/applies, resulting in the offer being considered as private;
- the exact location (document and page) in the documentation attached to this form containing the information regarding such exception.

Exception criteria	Document and page
<input type="checkbox"/> offers of securities directed exclusively at professional investors within the meaning of the Directive 2004/39/EC (MiFID)	
<input type="checkbox"/> offers of securities directed at fewer than 150 natural or legal persons who are not professional investors In this case, please specify the measures taken by the manager to ensure that the units or shares of the AIFs will not be marketed to more than 149 investors.	
<input type="checkbox"/> offers of securities, other than units of open-ended undertakings for collective investment, which require a total consideration of at least EUR 100,000 per investor and per category of securities	
<input type="checkbox"/> offers of units of open-ended undertakings for collective investment that require a total consideration of at least EUR 250,000 per investor and per category of securities;	
<input type="checkbox"/> offers of securities, other than units of open-ended undertakings for collective investment, with a denomination per unit of at least EUR 100,000;	
<input type="checkbox"/> offers of securities for a total consideration within the European Economic Area of less than EUR 100,000 calculated over a period of 12 months.	

5. Documentation and information to be provided

5.1 Please attach

- the rules or instruments of incorporation of the AIF;
- a description of, or any information on, the AIF available to investors;
- for each AIF the AIFM intends to market, the information in Annex 1 to this form;
- the statement in Annex 2 to this form, duly completed and signed on behalf of the AIFM.

5.2 For AIFM reporting purposes:

5.2.1 Please specify the names of the 2 persons authorized to file the necessary reporting.

Surname	First name	Telephone number	Email address	Company*
1.				
2.				

* If reporting is outsourced to a third party, please indicate the full name of this third party.

5.2.2 Please specify the following information regarding the AIFs marketed in Belgium

Compartment / AIF Name	Amount of assets under management?	Does the AIF make substantial use of leverage (>300%) (YES or NO)	Is the AIF an unleveraged AIF which, in accordance with its core investment policy, invests in non-listed companies and issuers in order to acquire control? (YES or NO)

5.2.3 Please indicate if you wish to send the reporting:

- by encoding (manual data entry); or
- by uploading a XML file.

Annex 1 - Specific information regarding each AIF to be marketed

Please specify for each element where it can be found in the attached documents (document and page).

Information (Art. 23 AIFMD)	Document and page
a) a description of the investment strategy and objectives of the AIF	
information on where any master AIF is established and where the underlying funds are established if the AIF is a fund of funds	
a description of the types of assets in which the AIF may invest, the techniques it may employ and all associated risks, any applicable investment restrictions, the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the associated risks, any restrictions on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the AIFM are entitled to employ on behalf of the AIF;	
b) a description of the procedures by which the AIF may change its investment strategy or investment policy, or both;	
c) a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgments in the territory where the AIF is established;	
d) the identity of the AIFM, the AIF's depositary, auditor and any other service providers and a description of their duties and the investors' rights;	
e) a description of how the AIFM is complying with the requirements of Article 9(7) AIFMD;	
f) a description of any delegated management function as referred to in Annex I by the AIFM and of any safe-keeping function delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegations;	
g) a description of the AIF's valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets in accordance with Article 19 AIFMD;	
h) a description of the AIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with investors;	
i) a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors;	
j) a description of how the AIFM ensures a fair treatment of investors and, whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment, the type of investors who obtain such preferential treatment and, where relevant, their legal or economic links with the AIF or AIFM;	
k) the latest annual report referred to in Article 22 AIFMD;	
l) the procedure and conditions for the issue and sale of units or shares;	
m) the latest net asset value of the AIF or the latest market price of the unit or share of the AIF, in accordance with Article 19 AIFMD;	
n) where available, the historical performance of the AIF;	
o) the identity of the prime broker and a description of any material arrangements of the AIF with its prime brokers and the way the conflicts of interest in relation thereto are managed and the provision in the contract with the depositary on the possibility of transfer and reuse of AIF assets, and information about any transfer of liability to the prime broker that may exist;	
p) description of how and when the information required under paragraphs 4 and 5 of Article 23 AIFMD will be disclosed.	

Annex 2 - Statement by the AIFM

I, (full name and function in the AIFM),
duly authorized representative of(full name of the AIFM),
hereby confirm

- that the AIFM complies with the following articles of the Belgian AIFM Law of 19 April 2014:
 - Articles 60 and 61 (annual report of the AIFs marketed in Belgium);
 - Articles 63 to 66 (reporting to the FSMA);
 - Articles 68 to 72 (information obligation to the investors);
 - Articles 76 to 82 (important holding of control of a non-listed company or an issuer);
- that the information contained in the application form and attached to this file is accurate and complete.

Done at(location), this (date)

Signature:

The relevant articles of the Belgian AIFM Law of 19 April 2014

Article 60

An AIFM shall, for each of the EU AIFs it manages and for each of the AIFs it markets in the European Economic Area, make available an annual report for each financial year no later than six months following the end of the financial year. The annual report shall be provided to unit-holders on request. The annual report shall be made available to the FSMA and, where applicable, to the competent authorities of the AIF's home Member State.

Where the AIF is required to make public an annual financial report in accordance with Directive 2004/109/EC, only the additional information referred to in Article 61, § 1 [*below*] needs to be provided to unit-holders on request, either separately or as an additional part of the annual financial report. In the latter case, the annual financial report shall be made public no later than four months following the end of the financial year.

Article 61

§ 1. The annual report shall comprise at least the following information:

- 1° a balance sheet or a statement of assets and liabilities;
- 2° an income and expenditure account for the financial year;
- 3° a report on the activities of the financial year;
- 4° any material changes in the information referred to in Article 68 that took place during the financial year covered by the report;
- 5° the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the AIFM to its staff, the number of beneficiaries and, where relevant, carried interest paid by the AIF;
- 6° the aggregate amount of remuneration broken down by senior management and members of staff of the manager whose actions have a material impact on the risk profile of the AIF.

§ 2. Where an AIF has, individually or jointly, acquired control over a non-listed company, it shall include the information referred to in Article 81, § 2 in its annual report.

§ 3. The accounting information given in the annual report shall be prepared in accordance with the accounting standards of the home Member State of the AIF or in accordance with the applicable legal or regulatory provisions of the third country where the AIF is established, and in accordance with the accounting rules laid down in the AIF rules or instruments of incorporation.

§ 4. As regards AIFs governed by Belgian law, the accounting information given in the annual report shall be audited by one or more statutory auditors in accordance with the provisions of the Companies Code. Article 141 of the Companies Code shall not apply.

As regards foreign AIFs, the accounting information given in the annual report shall be audited by one or more persons empowered by law to audit accounts in accordance with Directive 2006/43/EC.

The report by the auditor as referred to in the first paragraph, or by the person empowered to audit the accounts as referred to in the second paragraph, including any qualifications, shall be reproduced in full in the annual report.

By way of derogation from the preceding paragraphs, AIFMs marketing non-EEA AIFs may nevertheless subject their annual report to an audit that meets the international accounting standards in force in the country where the AIF in question has its registered office. In specific cases, the FSMA may also require that the annual report be subjected to an audit that meets the accounting standards in force in a Member State.

b. Information obligations in respect of the FSMA

[...]

Article 63

Each AIFM shall report regularly to the FSMA on the principal markets and instruments in which it trades for the account of the AIFs it manages.

It shall provide information about the principal instruments in which it trades, the markets of which it is a member or where it trades actively, and about the principal positions and most important concentrations of each of the AIFs it manages.

Article 64

AIFMs shall, for each EU AIF they manage and each AIF they market in the European Economic Area, provide the FSMA with information concerning the following:

- 1° the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
- 2° any new arrangements for managing the liquidity of the AIF;
- 3° the current risk profile of the AIF and the risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and other risks, including operational risk;
- 4° information on the main categories of assets in which the AIF invested; and
- 5° the results of the stress tests conducted in accordance with Article 47, § 2, 2° and Article 48, § 1.

Article 65

Upon request, the AIFM shall submit to the FSMA each quarter a detailed list of all AIFs which it manages.

Article 66

AIFMs which employ leverage on a substantial basis shall make available to the FSMA information about the overall level of leverage employed by each AIF it manages, a break-down between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives and the extent to which the AIF's assets have been reused under leveraging arrangements.

That information shall include the identity of the five largest sources of borrowed cash or securities for each of the AIFs managed by the AIFM, and the amounts of leverage received from each source for each of those AIFs.

For AIFMs established in third countries, the reporting obligations referred to in this article are limited to the EU AIFs they manage, and the third-country AIFs that are marketed within the European Economic Area.

[...]

Article 68

§ 1. AIFMs shall, for each of the EU AIFs that they manage and for each of the AIFs that they market in the European Economic Area, make available to the AIF's unit-holders before they invest in the AIF, in accordance with the AIF rules or instruments of incorporation, the following information, as well as any material changes thereto:

- 1° a description of the investment strategy and objectives of the AIF, information on where any master AIF is established and where the underlying funds are established if the AIF is a fund of funds, a description of the types of assets in which the AIF may invest, the techniques it may employ and all associated risks, any applicable investment restrictions, the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the associated risks, any restrictions on the use of leverage, any collateral and asset reuse arrangements, and the maximum level of leverage which the AIFM is entitled to employ on behalf of the AIF;
- 2° a description of the procedures by which the AIF may change its investment strategy or investment policy, or both;
- 3° a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgments in the territory where the AIF is established;
- 4° the identity of the AIFM, the AIF's depositary, auditor and any other service providers, as well as a description of their duties and the unit-holders' rights;
- 5° a description of how the AIFM is complying with the requirements of Article 22, § 5;
- 6° a description of any management tasks as referred to in Article 3, 41° that the AIFM has delegated and of any safe-keeping function delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegations;
- 7° a description of the AIF's valuation procedure and of the pricing methodology for valuing assets, including the methods used in hard-to-value assets in accordance with Articles 49 and 50;
- 8° a description of the AIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with unit-holders;
- 9° a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by unit-holders;
- 10° a description of how the AIFM ensures a fair treatment of unit-holders and, whenever a unit-holder obtains preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment, the types of unit-holders who obtain such preferential treatment and, where relevant, their legal or economic links with the AIF or AIFM;
- 11° the latest annual report;
- 12° the procedure and conditions for the issue and sale of units;
- 13° the latest net asset value of the AIF or the latest market price of the unit of the AIF, in accordance with Articles 49 and 50;
- 14° where available, the historical performance of the AIF;

15° the identity of the prime broker, a description of any material arrangements with the prime brokers and the way the conflicts of interest in relation thereto are managed, the provision in the contract with the depositary on the possibility of transfer and reuse of AIF assets, and information about any transfer of liability to the prime broker that may exist;

16° a description of how and when the information required under Articles 71 and 72 will be disclosed.

§ 2. The King may, by a decree issued upon the recommendation of the FSMA, extend all or some of the requirements regarding the Key Investor Document that apply to public AIFs to the non-public AIFs referred to in this chapter whose units are marketed to retail investors.

Moreover, in accordance with the conditions set out in these provisions, the application of the decrees and regulations issued pursuant to Articles 30*bis* and 45, § 2 of the Law of 2 August 2002 may be extended by the FSMA or by the King to non-public AIFs whose units are marketed to retail investors.

Article 69

The AIFM shall inform unit-holders before they invest in the AIF of any arrangement made by the depositary to contractually discharge itself of liability in accordance with Article 58, § 2. The AIFM shall also inform unit-holders without delay of any changes with respect to depositary liability.

Article 70

Where the AIF is required to publish a prospectus in accordance with Directive 2003/71/EC or with national law, only such information referred to in Article 68 which is in addition to that contained in the prospectus needs to be disclosed separately or as additional information in the prospectus.

Article 71

AIFMs shall, for each of the EU AIFs they manage and for each of the AIFs that they market in the European Economic Area, periodically disclose to unit-holders information on:

- 1° the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
- 2° any new arrangements for managing the liquidity of the AIF;
- 3° the current risk profile of the AIF and the risk management systems employed by the AIF to manage those risks.

Article 72

AIFMs managing EU AIFs employing leverage or marketing in the EEA AIFs employing leverage shall, for each such AIF, disclose on a regular basis:

- 1° any changes to the maximum level of leverage which the AIFM may employ on behalf of the AIF, as well as any right to reuse collateral or any guarantee granted under the leveraging arrangement;
- 2° the total amount of leverage employed by that AIF.

[...]

Article 76

§ 1. This point applies to

- a) AIFMs managing one or more AIFs which either individually or jointly on the basis of an agreement aimed at acquiring control, acquire control of a non-listed company in accordance with Article 77;
- b) AIFMs cooperating with one or more other AIFMs on the basis of an agreement pursuant to which the AIFs jointly managed by those AIFMs acquire control of a non-listed company.

§ 2. This point does not apply where the non-listed companies concerned are:

- 1° companies that employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million or a balance sheet total not exceeding EUR 43 million;
- 2° for special purpose vehicles with the purpose of purchasing, holding or administrating real estate.

§ 3. Without prejudice to paragraphs 1 and 2, Article 79, § 1 shall also apply to AIFMs managing AIFs that acquire a non-controlling participation in a non-listed company.

§ 4. Articles 80, §§ 1, 2 and 3, 82 and 83 shall also apply to AIFMs managing AIFs that acquire control of issuers. For the purposes of those Articles, paragraphs 1 and 2 of this Article shall apply *mutatis mutandis*.

Article 77

§ 1. Without prejudice to Article 3, 55°, for the purpose of this Subsection, for non-listed companies, control shall mean more than 50% of the voting rights of the company.

When calculating the percentage of voting rights held by the AIF, in addition to the voting rights held directly by that AIF, the voting rights of the following shall be taken into account, subject to control as referred to in the first paragraph being established:

- 1° a company controlled by the AIF; and
- 2° a natural or legal person acting in its own name but on behalf of the AIF or on behalf of a company controlled by the AIF.

The percentage of voting rights shall be calculated on the basis of all the shares to which voting rights are attached even if the exercise thereof is suspended.

§ 2. Notwithstanding Article 3, 55°, for the purposes of Articles 80, §§ 1, 2 and 3, 82 and 93, control over issuers shall be determined in accordance with Article 5, paragraph 3, of Directive 2004/25/EC.

Article 78

This point B shall apply subject to the conditions and restrictions set out in Article 6 of Directive 2002/14/EC.

This point B shall apply notwithstanding Articles 514 to 516 of the Companies Code, the Law of 2 May 2007 on disclosure of major holdings, and regulations adopted pursuant to those legal provisions, as well as any stricter provisions under Belgian law governing the acquisition of holdings in non-listed companies.

b. Notification of the acquisition of major holdings and control of non-listed companies or issuers.

Article 79

- § 1. When an AIF acquires, disposes of or holds shares of a non-listed company, the AIFM managing that AIF shall notify the FSMA of the percentage of voting rights of the non-listed company held by the AIF any time when that percentage reaches, exceeds or falls below the thresholds of 10%, 20%, 30%, 50% and 75%.
- § 2. When an AIF acquires, individually or jointly, control over a non-listed company pursuant to Articles 76, § 1 and 77, the AIFM managing the AIF shall notify the following of the acquisition of control:
- 1° the company;
 - 2° the shareholders of which the identities and addresses are available to the AIFM or can be made available by the non-listed company or through a register to which the AIFM has or can obtain access; and
 - 3° the FSMA.
- § 3. The notification required under paragraph 2 shall contain the following additional information:
- 1° the resulting situation in terms of voting rights;
 - 2° the conditions subject to which control was acquired, including information about the identity of the different shareholders involved, any natural person or legal entity entitled to exercise voting rights on their behalf and, if applicable, the chain of companies through which the voting rights are effectively held;
 - 3° the date on which control was acquired.
- § 4. In its notification to the non-listed company, the AIFM shall request the statutory governing body of the company to inform the employees' representatives or, where there are none, the employees themselves, without delay of the acquisition of control by the AIF managed by the AIFM and of the information referred to in paragraph 3. The AIFM shall use its best efforts to guarantee that the employees' representatives or, where there are none, the employees themselves, are duly informed by the statutory governing body in accordance with this Article.
- § 5. The notifications referred to in paragraphs 1, 2 and 3 shall be made as soon as possible and, in any event, no later than ten working days after the date on which the AIF reached, exceeded or fell below the relevant threshold or acquired control of the non-listed company.

Article 80

- § 1. When an AIF acquires, individually or jointly, control over a non-listed company pursuant to Articles 76, § 1 and 77, the AIFM managing the AIF shall make the information referred to in § 2 available to:
- 1° the company in question;
 - 2° the company shareholders of which the identities and addresses are available to the AIFM or can be made available by the company or through a register of shareholders to which the AIFM has or can obtain access; and
 - 3° the FSMA.

§ 2. The AIFM shall make the following information available:

- 1° the identity of the AIFMs which either individually or in agreement with other AIFMs manage the AIFs that have acquired control;
- 2° the policy for preventing and managing conflicts of interest, in particular between the AIFM, the AIF and the company, including information about the specific safeguards established to guarantee that any agreements between the AIFM and/or the AIF and the company are concluded at arm's length; and
- 3° the policy for the company's external and internal communication, in particular as regards employees.

§ 3. In its notification to the non-listed company pursuant to § 8, 1°, the AIFM shall request the statutory governing body of the company to inform the employees' representatives or, where there are none, the employees themselves, without delay of the information referred to in § 1. The AIFM shall use its best efforts to guarantee that the employees' representatives or, where there are none, the employees themselves, are duly informed by the statutory governing body in accordance with this Article.

§ 4. When an AIF acquires, individually or jointly, control of a non-listed company pursuant to Articles 76, § 1 and 77, the AIFM managing the AIF shall disclose its intentions with regard to the future business of the company and the likely repercussions on employment, as well as any material change in the conditions of employment, to:

- 1° the company; and
- 2° the company shareholders of which the identities and addresses are available to the AIFM or can be made available by the company or through a register to which the AIFM has or can obtain access.

In addition, the AIFM managing the AIF shall request and use its best efforts to ensure that the statutory governing body of the company makes available the information set out in the first paragraph to the employees' representatives or, where there are none, the employees themselves, of the company.

§ 5. When an AIF acquires control of a non-listed company pursuant to Articles 76, § 1 and 77, the AIFM managing such an AIF shall provide the FSMA and the AIF's unit-holders with information on the financing of the acquisition of control.

c. Special provisions regarding the annual report of the non-listed companies that are controlled by an alternative investment fund

Article 81

§ 1. When an AIF acquires, individually or jointly, control of a non-listed company pursuant to Articles 76, § 1 and 77, the AIFM managing the AIF shall request and use its best efforts to ensure that the annual report of the company, drawn up in accordance with paragraph 2, is made available by the statutory governing body of the company to the employees' representatives, or where there are none, to the employees themselves within the period in which such an annual report must be drawn up in accordance with the applicable law.

§ 2. The additional information to be included in the annual report of the company or the AIF, pursuant to Article 61, § 2, shall include at least a fair review of the development of the company's business and of the situation at the end of the period covered by the annual report. The report shall also give an indication of:

- 1° all important events that have occurred since the end of the financial year;
- 2° the company's likely future development; and
- 3° the information concerning acquisitions of own shares prescribed by Article 22, paragraph 2 of Directive 77/91/EEC.

§ 3. The AIFM managing the AIF, shall

- 1° request and use its best efforts to ensure that the statutory governing body of the company makes available the information referred to in Article 61, § 2 relating to the company concerned to the employees' representatives of the company concerned, or where there are none, to the employees themselves, within the period referred to in Article 60; or
- 2° make available the information referred to in Article 61, § 2, to the unit-holders of the AIF, in so far as already available, within the period referred to in Article 60 and, in any event, no later than the date on which the annual report of the company is drawn up in accordance with the national applicable law.

d. Asset stripping

Article 82

When an AIF, individually or jointly, acquires control of a non-listed company or an issuer, the AIFM managing the AIF shall for a period of 24 months following the acquisition of control of the company:

- 1° not facilitate, support or instruct any distribution, capital reduction, share redemption and/or acquisition of own shares by the company as referred to in Article 83;
- 2° not vote in favour of a distribution, capital reduction, share redemption and/or acquisition of own shares by the company as referred to in Article 83; and
- 3° in any event use its best efforts to prevent distributions, capital reductions, share redemptions and/or acquisitions of own shares by the company as referred to in Article 83.

[...]