

March 2024

Follow [@Paul Hastings](#)



Investment Funds & Private Capital

AIFMD Refresher: The AIFMD Compliant Annual Report

By [Zach Milloy](#)

The AIFMD contains numerous ongoing obligations that apply to sponsors and funds long after fundraising has completed. As part of our AIFMD refresher series, this article summarises one of the key AIFMD ongoing requirements that both EU and non-EU alternative investment fund managers must comply with for each fund marketed in the European Union and the United Kingdom. As most sponsors are aware, the AIFMD includes ongoing compliance requirements, including reporting to regulators and investors, post-deal notifications to EU and UK regulators and ESG investor reporting – this article focusses on the AIFMD-compliant annual report under Article 22 of the AIFMD.

Key Takeaways:

1. Given the requirement to include ESG reporting under the EU SFDR in a fund's AIFMD Annual Report, fund managers should be live to a potential increase in investor requests for a fund's AIFMD-compliant annual report.

Article:

Both EU and non-EU fund managers marketing an alternative investment fund in the EU or the UK (either under an EU marketing passport or the relevant national placement regimes (collectively referred to herein as “AIFMs”)) are required to prepare an AIFMD-compliant annual report which should be made available to either their home member state regulator or the regulators in each jurisdiction where the fund is registered for marketing (together, the “Regulators”), and to investors, on request.

Pursuant to Article 22 of the AIFMD, sponsors are required to prepare an annual report for each relevant fund within the scope of the AIFMD, which includes specific investor disclosures. The AIFMD-compliant annual report should not be confused with the ordinary annual report prepared in accordance with the fund's partnership agreement.

A fund's annual report must contain the following items in order to be AIFMD-compliant:

- a balance sheet or a statement of assets and liabilities;
- an income and expenditure account for the financial year;
- a report on the activities of the financial year;
- details of any material changes to the pre-investment disclosures under Article 23;
- the total amount of remuneration for the financial year (split into fixed and variable remuneration) paid by the sponsor to its staff, the number of beneficiaries and, where relevant, the amount of carried interest paid by the fund in the financial year; and
- the aggregate amount of remuneration broken down by:
 - i) senior management, and
 - ii) other members of staff of the sponsor whose actions have a material impact on the risk profile of the fund.

Where applicable, certain prescribed information regarding any EU/UK portfolio companies of which the fund has acquired control must be included in either the AIFMD-compliant annual report of the fund or the annual report of the relevant portfolio company.

The first AIFMD-compliant fund annual report must be available to investors no later than six months after the financial year end of the fund.

Generally, sponsors approach the AIFMD annual report in one of two ways:

- i. Notify the fund's auditors that the annual report will need to be AIFMD-compliant, in order to ensure that the annual report is audited in accordance with the relevant provisions of the AIFMD and the relevant disclosures required under Article 22 are included in the report; or
- ii. Prepare the usual audited annual report, and in parallel prepare the AIFMD-compliant annual report supplement, which includes the relevant disclosures required under Article 22.

The AIFMD-compliant annual report must be made available to investors on request. In many jurisdictions, the AIFMD-compliant annual report should also be provided to Regulators on request (i.e. no proactive filing required); however, in certain jurisdictions (Germany, Luxembourg and the Netherlands), sponsors may be required to proactively file the AIFMD-compliant annual report with the Regulator no later than six months after the financial year end of the fund.

Following the introduction of the Sustainable Finance Disclosure Regulation ("**SFDR**"), the AIFMD-compliant annual report must also include that relevant ESG reporting data sponsors are required to report to investors under the SFDR.

While the AIFMD-compliant annual report is available to investors on request, in practice investors rarely request a copy of this report. However, sponsors should be aware that the inclusion of the SFDR ESG disclosures in the AIFMD-compliant annual report may lead to an increase in requests for the AIFMD-compliant annual report from EU investors.

Key takeaways for sponsors are to be live to a potential increase in investor requests for a fund's AIFMD-compliant annual report, given the inclusion of the SFDR reporting data.

Go Deeper:

[Paul Hastings' Investment Funds & Private Capital](#) practice has a truly global footprint, with more than 70 lawyers across the U.S., Europe and Asia. We represent a diverse set of asset managers, private fund sponsors, and institutional investors.

Our [Investment Funds & Private Capital – Regulatory](#) practice includes attorneys with deep experience handling sensitive and complex regulatory and compliance issues. In the U.S., we regularly advise on Investment Company Act status and structuring issues, private fund investment manager registration, Investment Advisers Act, Securities Act, Securities Exchange Act and other compliance, SEC examinations and enforcement.



If you have any questions concerning these developing issues, please do not hesitate to contact the following Paul Hastings lawyer:

Zach Milloy
44-020-3023-5190
zacharymilloy@paulhastings.com