

DUTCH REGULATOR TO REQUIRE AIFMS MARKETING UNDER ARTICLE 36 OR 42 OF THE AIFMD TO PROVIDE REGULATORY REPORTING FROM Q1 2023

The Dutch financial services regulator, the Autoriteit Financiële Markten (AFM), has announced that it will require non-EU AIFMs that have registered with the AFM for marketing under Article 42 of the AIFMD and EU AIFMs that have registered non-EU AIFs with the AFM for marketing under Article 36 of the AIFMD to provide regulatory reporting to the AFM with effect from Q1 2023.

Background

The EU Alternative Investment Fund Managers Directive (AIFMD) is a piece of EU legislation that governs the way in which an array of fund managers, from private equity and hedge fund managers to certain retail fund managers, manage and market their funds.

Article 36 of the AIFMD permits EU member states to allow EU alternative investment fund managers (AIFMs) to market non-EU funds (AIFs) into the EU. Article 42 of the AIFMD permits EU member states to allow non-EU AIFMs to market AIFs into the EU. Marketing in this manner is often referred to as marketing under the National Private Placement Regime (NPPR).

To market under Article 36 or 42 of the AIFMD, the AIFM must satisfy certain conditions. One such condition is that the AIFM must provide regulatory reporting to the regulatory authority in the member state(s) into which the relevant AIF is marketed. This reporting is often referred to as Article 24 reporting (as the reporting requirements are contained in Article 24 of the AIFMD) or Annex IV reporting (as the detailed reporting requirements are contained in Annex IV to the EU Alternative Investment Fund Managers Regulations).

The Netherlands permits AIFMs to market funds into the Netherlands under Articles 36 and 42 of the AIFMD but the AFM has, historically, waived the requirement for those funds to provide Annex IV reporting. In a statement published on 8 November 2022, the AFM confirmed that it will begin to require these AIFMs to submit Annex IV reporting from Q1 2023.

Which entities will need to submit reports?

An AIFM will need to submit reports if it has registered an AIF for marketing in the Netherlands under Article 36 or 42 of the AIFMD, for so long as that AIF continues to have a Dutch investor.

When will this reporting need to take place?

Reporting will need to take effect from Q1 2023, with first reports due in April 2023. The frequency with which reports need to be made under the AIFMD varies according to certain features of the AIFM and AIF. The AIFM will need to determine its Annex IV reporting frequency by looking at the relevant rules set out in Article 110 of Commission Delegated Regulation (EU) No 231/2013 and then report on a yearly, half-yearly or quarterly basis (as applicable).

What will need to be reported?

Reports will need to be completed using a standard form XML format. Each report will need to contain prescribed information regarding the relevant AIFM and AIF, including basic details of the AIFM and AIF and technical data regarding, amongst other things, the AIF's risk profile, liquidity, assets in which the AIF is invested and stress testing.

How should the information be reported?

Annex IV reporting should be completed by using the [AFM Portal](#). Practical information regarding submitting reports using the AFM portal can be found on the AFM's website [here](#) and further information from the AFM regarding Annex IV reporting can be found [here](#).

The AFM also performs Data Quality Engagement Framework (DQEF) reviews on the data provided. The DQEF review enables the AFM to identify any inconsistencies in the reporting. Following a DQEF review, the relevant AIFM may be requested to re-report, i.e. to correct and resubmit its report. AIFMs marketing under Article 36 or 42 of the AIFMD will not be subject to the DQEF review in 2023 but will be subject to this review from 2024 onwards.

How does this relate to AIFMD reporting in other jurisdictions?

If an AIFM has marketed an AIF into the Netherlands and other EU jurisdictions, the AIFM may already be completing Annex IV reporting in those other jurisdictions. However, the AIFM will still need to submit Annex IV reporting into the Netherlands as the obligation to complete Annex IV reporting applies in each jurisdiction into which the AIF is marketed.

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