Regulatory Reporting Under AIFMD – an Update and Comparison to SEC's Form PF

The Alternative Investment Fund Managers Directive (the "AIFMD") introduces new regulatory reporting requirements for alternative investment fund managers ("AIFMs") established in the European Economic Area ("EEA") and non-EEA AIFMs that market their fund in an EEA state. These requirements are broadly similar those already imposed in the U.S. on registered investment advisers that manager private funds, pursuant to the Form PF reporting regime, although there are important differences between AIFMD reporting and Form PF.

In particular, AIFMs that are established in the EEA and non-EEA AIFMs that market into an EEA state must satisfy the AIFMD's regulatory reporting obligations. For a non-EEA AIFM, registering under a private placement regime in an EEA state triggers these requirements. AIFMs that became authorized towards the end of the transitional period (which ended on 22 July 2014), and non-EEA AIFMs that marketed in the EEA after the end of transitional period, will now be considering their regulatory reporting requirements. Depending on the type of funds managed and the size of assets under management, AIFMs will be required to report quarterly, half-yearly or yearly. AIFMs that were authorized or that registered under a private placement regime in an EEA state in the third quarter of 2014 will need to complete the report for the last quarter of 2014. For many non-EEA fund managers marketing in one or more EEA states, an initial report will be due by 1 February 2015.

This Alert is a brief on the regulatory reporting obligation. This Alert also includes (as Annex 2) a comparison of the key reporting fields with their equivalents in the SEC's Form PF.

Recent advice from FCA

The UK Financial Conduct Authority ("FCA") recently published advice on the reporting obligation. In particular, the FCA clarified the reporting obligations of non-EEA AIFMs that market their funds in the UK in a number of important respects:

- A non-EEA AIFM that markets a feeder fund (that invests in a non-EEA master fund that is managed by the same AIFM and that is not marketed in the UK) is only required to report in respect of the feeder fund, not the master fund. (By contrast, a UK AIFM is required to report in respect of both the feeder and the master.)

- In terms of frequency of reporting, a non-EEA AIFM must determine whether its total fund assets under management ("total AuM")[1] exceed €1 billion. The reference value for this purpose is total AuM of all funds that the AIFM is marketing in the EEA (not total AuM of all funds managed).

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[1] EEA States comprise the European Union States, Iceland, Liechtenstein and Norway.

[2] For this purpose, total AuM comprises the gross value of assets under management and, for derivative positions, by converting each derivative position into its equivalent position in the underlying assets using the conversion methodologies specified.

Other EU regulators may not take the same approach as the approach taken by the FCA in respect of each of these points. Any non-EEA AIFM that is marketing in any state other than the UK will need to check the position in that state.

Reporting periods

The following table shows the reporting frequency:

Type of AIFM	Reporting frequency
1. AIFM managing portfolios of funds with total AuM above the €100 million or €500 million (in the case of managers solely of leveraged, closed-ended funds) "small AIFM" threshold[3] but less than €1 billion,[4] other than with respect to each fund with total AuM in excess of €500 million (see 3 below) and private equity funds (see 4 below).	Half-yearly for all applicable funds (1 January to 30 June; 1 July to 31 December).
2. AIFM managing portfolios of funds with total AuM in excess of €1 billion, other than private equity funds (see 4 below).	Quarterly for all applicable funds (1 January to 31 March; 1 April to 30 June; 1 July to 30 September; 1 October to 31 December).
3. AIFM falling within 1 above, for each fund with total AuM in excess of €500 million.	Quarterly for that fund, if applicable.
4. AIFM managing fund that is unleveraged and that, in accordance with its core investment policy, invests in non-listed companies to acquire control (comprising most private equity funds).	Annual for that fund, if applicable (1 January to 31 December).

We have included as Annex 1 the diagrams produced by ESMA to determine the frequency of the reporting obligation.[5]

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[3] An AIFM will be below the €100 million threshold if the total AuM of funds that it *manages* (whether or not marketed in the EEA) does not exceed €100 million. An AIFM will be below the €500 million threshold if it only manages portfolios of funds that are unleveraged (disregarding limited recourse leveraging at the portfolio level) and are closed-ended, and whose total AuM (whether or not the funds are marketed in the EEA) does not exceed €500 million. In practice, very few AIFMs are below the €100 million threshold, because this threshold is assessed by reference to gross value of assets, with derivative positions converted into their equivalent positions in the underlying assets.

[4] For UK purposes, an AIFM will be below the €1 billion threshold if the total AuM of funds that the AIFM *markets* in the EEA does not exceed €1 billion. Other member state regulators may take a different approach.

[5] Reproduced from ESMA's Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD, 15 November 2013 ESMA/2013/1339

Reporting contents

The AIFMD reporting form comprises four main sections:

Relevant section	Comments
Tab 1 – AIFM file 24(1) **AIFM – specific information** This comprises information on (*inter alia*) the AIFM's principal markets and instruments and total fund assets under management.	An EEA AIFM (in respect of each fund it manages) and a non-EEA AIFM (in respect of each fund marketed in the EEA) must complete this section.
Tab 2 – AIF file 24(1) **Fund-specific information** This comprises information on (*inter alia*) the AIF's investment strategies, principal exposures and concentrations.	As above. A number of fields are asterisked, meaning that they only need to be reported to the extent required by the regulator in the relevant state.
Tab 3 – AIF file 24(2) **Further fund specific information** This includes more detailed information on exposures and risk profile.	An EEA AIFM and a non-EEA AIFM (in each case, in respect of each fund marketed in the EEA) must complete this section. As above, although this section is only completed by AIFMs that are not "sub-threshold" AIFMs.[6] Various types of market risk measures are included in this section. As above, a number of these (such as value at risk ("VAR")) are asterisked, meaning that they only need to be reported to the extent required by the regulator in the relevant state. The FCA has stated that it will require VAR reporting from all funds that calculate it. This section also requires managers to report the results of risk and liquidity stress tests. An EEA AIFM is required to perform risk stress tests and liquidity stress tests under the AIFMD. A non-EEA AIFM is not subject to these requirements, so it should only report information in these fields to the extent it performs these tests.
Tab 4 – AIF file 24(4) **Leverage information** This includes information about: • the overall level of leverage employed by the fund; • a breakdown of leverage arising from borrowing of cash or securities and leverage embedded in derivatives; • the extent to which the fund's assets have been reused under leveraging arrangements; and • the identity of the five largest sources of borrowed cash or securities for the fund and the amounts of leverage received from each of those sources.	As above, an EEA AIFM and non-EEA AIFM (in respect of each fund it markets in the EEA) must complete this section, to the extent the relevant fund employs leverage on a "substantial basis". Leverage is employed on a substantial basis for this purpose when the fund's exposure (calculated according to the "commitment" method)[7] exceeds three times its net asset value.

[6] See footnote 2 above for a description of the thresholds. Based on advice we have received from European counsel, only the UK has granted the status of "sub-threshold AIFM" to non-EEA AIFMs, meaning that a non-EEA AIFM will not be able to take advantage of the limited reporting requirements for "sub-threshold AIFMs" in any EEA state other than the UK.

When is the first report due?

The first report is due as from the first day of the quarter following the quarter in which the reporting obligation arises, until the end of the first reporting period. For a non-EEA AIFM, the reporting obligation will arise when it notifies or registers with an EEA regulator under the private placement regime for that state. For an EEA AIFM, the reporting obligation will arise when it obtains authorization as an AIFM.

We have set out the following examples to make this clear:

Reporting frequency	Date AIFM triggered reporting obligation	First reporting period	Subsequent reporting period
Quarterly	July 2014	1 October – 31 December 2014, with the report due by 1 February 2015.	Every calendar quarter
Annual	July 2014	1 October – 31 December 2014, with the report due by 1 February 2015.	Every calendar year
Annual	October 2014	1 January – 31 December 2015, with the report due by 1 February 2016.	Every calendar year

What is the reporting deadline?

The report must be provided no later than one month after the end of reporting period. The AIFM of a fund that is a fund of funds can extend this period by 15 days.

To whom does an AIFM report?

An EEA AIFM will usually report to the competent authority in the member state of its registered office. A non-EEA AIFM will report to the competent authority in each member state where it markets the AIF. The FCA has a web interface (Gabriel) available for reporting. Other EEA regulators may require delivery of the completed file by email.

If the AIFM has marketed the fund but the fund has not yet raised any capital (or has raised capital but has not yet invested), the AIFM should still submit the report, although the majority of fields will not need to be completed.

Where a non-EEA AIFM markets one fund in one jurisdiction and another fund in another jurisdiction, the AIFM should only report to the relevant regulator in respect of the relevant fund marketed in that jurisdiction.

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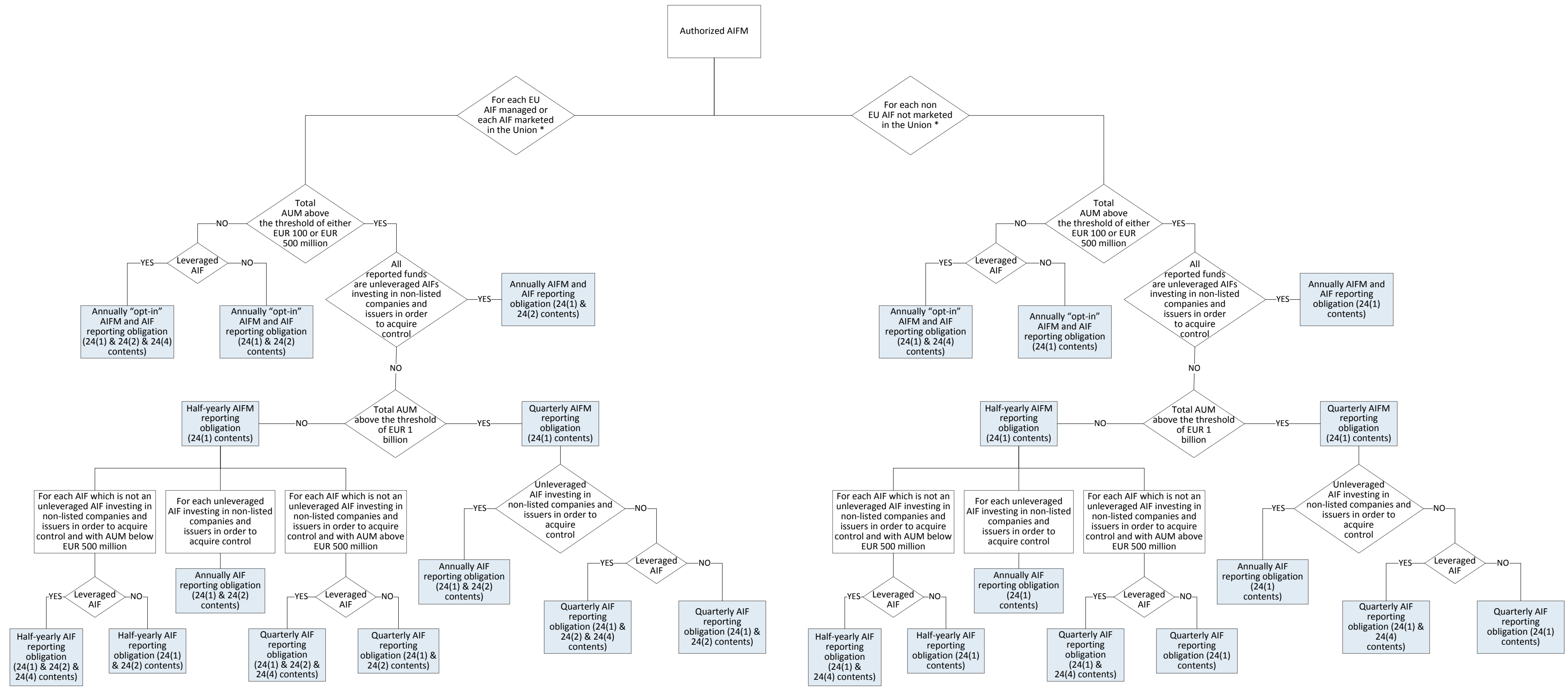
[7] The commitment method requires the AIFM to calculate the sum of the absolute values of all positions, with each derivative position converted into its equivalent position in the underlying assets using the conversion methodologies specified.

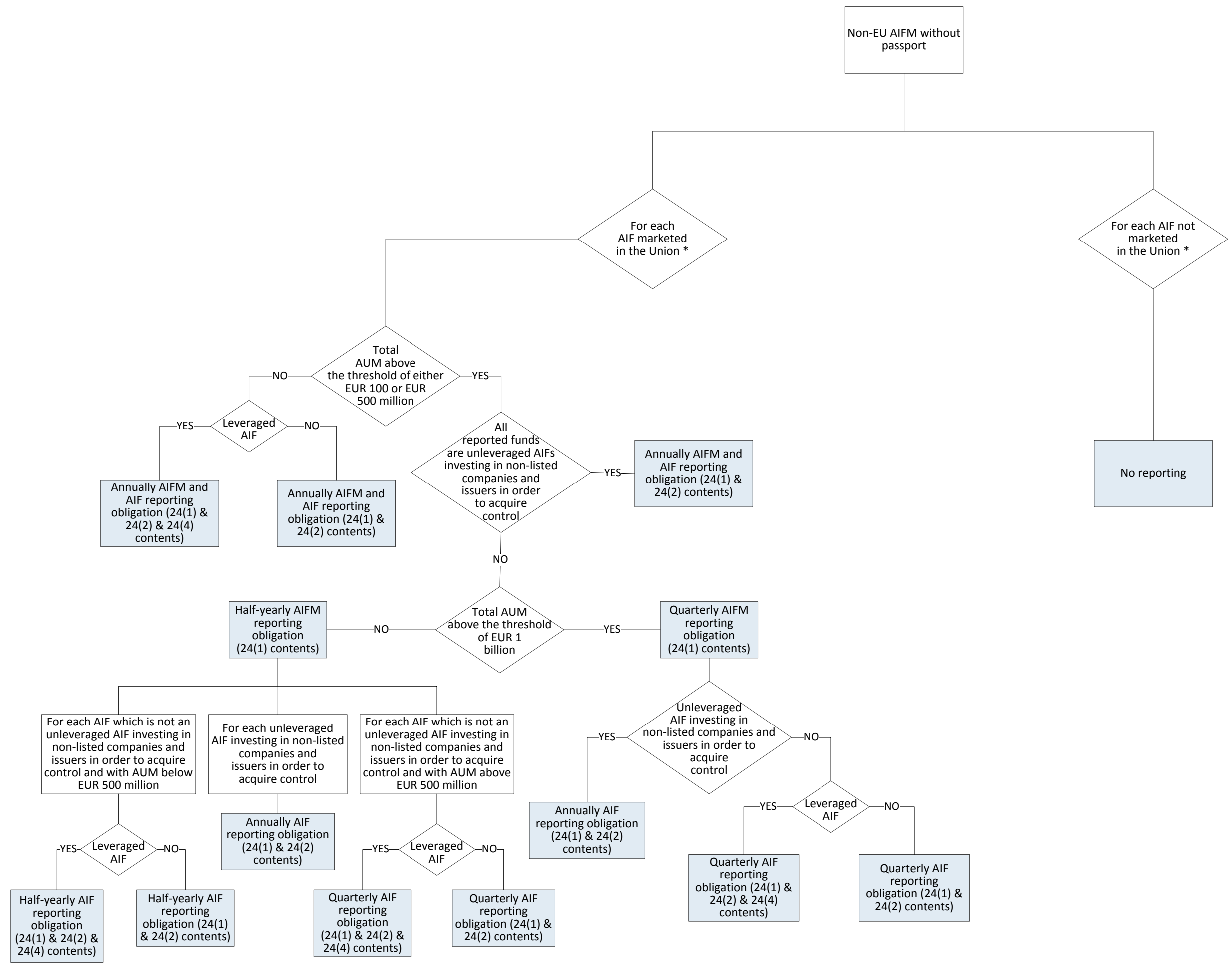
Annex 1 – ESMA's diagrams on the reporting obligation

Authorised AIFMs



Reproduced from ESMA's Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD, 15 November 2013 ESMA/2013/1339

Non-EU AIFMs under Private Placement Regime



Reproduced from ESMA's Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD, 15 November 2013 ESMA/2013/1339

Annex 2 – the AIFMD form and Form PF compared

AIFMD form – key concept	How is this dealt with under Form PF?
Value of assets under management ("AuM")[8]	
An AIFM must measure and report the AuM of its funds under management. AuM is a measure of the fund's total exposures. It is calculated as followed: • assets (other than derivative positions) are valued in accordance with the fund's valuation rules (as gross values); and • derivative positions are valued on the basis of set conversion methodologies[9] that measure the exposure represented by the position. For many derivative positions, this will be the notional value or underlying market value of the reference assets.	Form PF requires reporting of regulatory assets under management and gross asset value. Under Form PF, regulatory assets under management and gross asset value are determined on the basis of the values of the assets in the fund's balance sheet (in line with Form ADV). For derivative instruments, this will be market value, not notional value (depending on the instrument). This is a key difference of approach to the AIFMD Reporting Form.
Breakdown of investment strategies[10]	
An AIFM must select the strategy or strategies that describe the relevant fund's strategy, and (if applicable) provide a breakdown (by percentage of NAV) of the strategies selected. Various types of strategy are listed. This requirement applies to all types of funds.	In Form PF, this requirement only applies to hedge funds (as that term is defined in Form PF). Form PF asks a similar question, with similar (and additional) types of strategies listed.
High frequency trading ("HFT")[11]	
An AIFM must report the number of transactions executed under high frequency trading and the market value of the buys and sells. HFT follows the definition of high frequency algorithmic trading under the revised EU Markets in Financial Instruments Directive.	Form PF only requires this information for hedge funds. Form PF asks for the approximate percentage of the NAV that was managed using high-frequency trading (so the basis for reporting is different). HFT is defined in a different manner to the AIFMD reporting form.
Fund exposures[12]	
An AIFM must report various items relating to the fund's long and short exposures (10 principal exposures by sub-asset type; all exposures by sub-asset type; and total value of exposures by each currency – in each case, as at the last day of the reporting period). Fund exposures are calculated in the way described in "Value of assets under management" above. ESMA has provided guidance on the meaning of the various sub-asset types (in particular, ESMA has stated that cash should be included and that loans held by the fund as assets should be included at their notional, as opposed to market, value). All funds must complete these fields. Private equity and real estate funds will calculate exposure as the last calculated value of their assets.	Form PF only requires this information for hedge funds. The asset types listed in Form PF correspond in some, but not all respects, with the asset types listed in the AIFMD reporting form. In particular, Form PF has rather broader asset types. Form PF requires this information as at the last day of each month of the reporting period. As for the AIFMD Reporting Form, derivatives are valued at their gross notional value (with options valued at their delta adjusted notional value). Form PF is less prescriptive than the AIFMD Reporting Form in terms of the conversion methodology used, so firms will need to consider whether each conversion methodology used under Form PF complies with the AIFMD methodologies.

[8] Fields 33 to 34 of the first tab of the AIFMD Reporting Form (total AuM) and field 48 of the second tab (AuM of the relevant fund). Section 1(a) question 3 (regulatory assets under management) and section 1(b) question 8 (gross asset value of the relevant fund) of Form PF.

[9] Annex II of the Commission Delegated Regulation on AIFMD ("**Level 2 Regulation**").

[10] Fields 58 to 61 of the second tab. Section 1(c) questions 19 to 20 of Form PF.

[11] Fields 62 to 63 of the second tab. Section 1(c) question 21 of Form PF.

[12] Fields 94 to 102 of the second tab (ten principal exposures); fields 121 to 124 of the third tab (individual exposures by sub-asset type); fields 128 to 130 of the third tab (total long and short value of exposures by currency). Section 2(a) question 26 of Form PF (aggregated information for all hedge funds advised) and question 30 (information for each hedge fund).

AIFMD form – key concept	How is this dealt with under Form PF?
Investor concentrations[13]	
An AIFM must look through to the beneficial owners of the AIF's equity and report the percentage of the fund's equity that is owned by: (i) five largest beneficial owners; (ii) professional clients or retail investors (that bear specific meanings in EU legislation); and (iii) various categories of investor (e.g. insurance corporations and pension plans). Many AIFMs have incomplete knowledge of the beneficial owners of their equity and look-through to beneficial owners is only required "where known or possible". AIFMs will need to consider the work involved in determining beneficial ownership.	Form PF requires reporting of the percentage of the fund's equity that is owned by (i) the five largest beneficial owners and (ii) various categories of investor, that are similar, but not identical, to the AIFMD Reporting Form. Data used in Form PF will need to be re-calculated to take account of the slightly different categories of investors in the AIFMD reporting form. In addition, US managers may have to categorise their investors as professional clients or retail investors.
Value of turnover[14]	
An AIFM must report details of the value of turnover (by sub-asset type) in the fund's base currency. The value of turnover is the sum of the absolute values of buys and sells over the reporting period. The AIFM must report market value and (for derivatives) notional value.	Form PF only requires this information for hedge funds. As for the AIFMD Reporting Form, the value of turnover is the sum of the absolute value of transactions (by asset class) over the reporting period.
Value of exposures by currency groups[15]	
An AIFM must report the total long and short values of exposures by each currency, converted into the AIF's base currency (before any currency hedging).	Form PF only requires this information for hedge funds. Form PF requires the total long and short value of exposures to all non-US currency holdings as at the last day of each month of the reporting period. There is no requirement to specify exposures by each currency – all non-US currencies are grouped together.
Private equity portfolio company level information[16]	
Private equity funds must state the name of each company in which the fund has a dominant influence, together with the percentage of voting rights and type of transaction. "Dominant influence" means effective control of a company.	No equivalent question, although Form PF requires detailed information on each "financial industry portfolio company".
Expected annual investment return/IRR[17]	
An AIFM must report its expected annual investment return (or IRR if calculated) in "normal market conditions". There is some uncertainty as to the correct approach here (and ESMA has not published any guidance on this field) – AIFMs may choose to report a reasonably expected return, based on prior performance and market conditions; or they may report a targeted return.	No equivalent question.

[13] Fields 118 to 120 of the second tab. Section 1(b) questions 15 to 16 of Form PF.
[14] Fields 125 to 127 of the third tab. Section 2(a) question 27 of Form PF.
[15] Fields 128 to 130 of the third tab. Section 2(b) question 26 of Form PF.
[16] Fields 131 to 136 of the third tab. Section 4 question 76 of Form PF.
[17] Field 137 of the third tab.

AIFMD form – key concept	How is this dealt with under Form PF?
Risk measures[18]	
An AIFM must report the following risk measures: (i) Net Equity Delta; (ii) Net DV01 in three buckets (each defined by maturity of security <5yrs, 5-15yrs and >15yrs); and (iii) Net CS01 in three buckets (each defined by maturity of security <5yrs, 5-15yrs and >15yrs).	Form PF only requires this information for hedge funds. Form PF requires the manager to report whether it uses any risk metrics (other than VaR) that it considers important to the fund's risk management, but does not require reporting of the results of the risk measures.
VaR[19]	
EEA regulators may require an AIFM to report the results of VaR risk metric if it is calculated for the fund for any purpose.	Form PF only requires this information for hedge funds. Form PF requires details of the basis and results of VaR reporting, if it is calculated for the fund.
Trading and clearing mechanisms[20]	
An AIFM must report details of the percentage of securities, derivatives and repo (including reverse repo) traded (calculated either by reference to market value or trade volumes, as specified) on a regulated exchange or OTC, during the reporting period. A regulated exchange for this purpose comprises EU regulated markets, EU multilateral trading facilities and EU-organised trading facilities (as those terms are defined in the revised EU Markets in Financial Instruments Directive).	Form PF only requires this information for hedge funds. Form PF requires the same information. The terms "regulated exchange" and "swap execution facility" in Form PF do not correspond to the equivalent terms used in the AIFMD reporting form.
Value of collateral posted[21]	
An AIFM must report details of the (mark-to-market) value of collateral and other credit support (divided by cash, securities and other collateral, including letters of credit) posted to counterparties, as at the last business day of the reporting period. This is understood to mean all collateral held by counterparties, as opposed to the amount of collateral held that is equal to margin requirements.	Form PF only requires this information for hedge funds. Form PF requires the same information.
Counterparty exposures[22]	
An AIFM must report details of the fund's top five mark-to-market counterparty exposures (net of any collateral posted). This covers counterparties to which the fund has exposure and counterparties which have exposure to the fund. The name and percentage of exposure (as a % of NAV) needs to be reported.	Form PF only requires this information for hedge funds. Form PF only requires reporting of counterparty credit exposures, not underlying issuer exposures. Unlike the AIFMD reporting form, Form PF requires reporting of exposure without regard to collateral posted.
Portfolio liquidity profile[23]	
An AIFM must report the percentage of the fund's portfolio that is reasonably capable of being liquidated at its "carrying value" within each of the liquidity periods specified, and the value of the AIF's unencumbered cash.	Form PF only requires this information for hedge funds. Form PF requires the same information (in respect of the same periods).

[18] Fields 138 to 147 of the third tab. Section 2(b) questions 40 to 42 of Form PF.
[19] Fields 138 to 147 of the third tab. Section 2(b) question 40 of Form PF.
[20] Fields 148 to 156 of the third tab. Section 1(c) question 24 of Form PF.
[21] Fields 157 to 159 of the third tab. Section 2(b) question 37 of Form PF.
[22] Fields 160 to 171 of the third tab. Section 1(c) questions 22 to 23 of Form PF.
[23] Fields 178 to 185 of the third tab. Section 2(b) question 32 of Form PF.

AIFMD form – key concept	How is this dealt with under Form PF?
Investor liquidity profile[24]	
An AIFM must report the percentage of the fund's NAV that investors are entitled to redeem within each of the liquidity periods specified. The AIFM should assume it will impose "gates" where it has the power to do so, but should not assume any suspension of redemptions or redemption fees.	Form PF only requires this information for hedge funds. Form PF requires the same information (in respect of the same periods).
Special arrangements and preferential treatment[25]	
An AIFM must report the percentage of the fund's NAV that is subject to any of the following special arrangements: side pockets, gates, suspension of dealings and other arrangements for managing illiquid assets. An AIFM must also report the percentage of the fund's NAV that is subject to any of the following types of "preferential treatment" granted to investors: different disclosure/reporting to investors; different investor liquidity terms; different fee terms for investors and other preferential treatment.	Form PF requires reporting of the percentage of the fund's NAV that is subject to a side pocket arrangement. In addition, Form PF requires reporting of the percentage of the fund's NAV that is, or may be, subject to gates or restrictions on suspensions or withdrawals. Form PF has no equivalent question relating to "preferential treatment" granted to investors.
Total borrowings[26]	
An AIFM must report the total borrowings and cash financing available to the fund (including drawn and undrawn financing), and the total amount by reference to specified periods for which the creditor is contractually committed to provide such financing. Borrowings embedded in financial instruments (such as derivatives) must be included.	Form PF requires reporting of the value of the fund's borrowings, the types of borrowings and the types of creditors (but does not require a break down by periods for which the creditor is committed). Form PF does not require leverage embedded through the use of derivatives in all circumstances to be included.
Gross and net investment returns[27]	
An AIFM must report the gross return or IRR (gross of management and performance fees) for each month of the fund's reporting period.	Form PF requires the same information, if reported to investors or if calculated for any other purpose. Private equity funds will generally only report this information on a quarterly basis.

[24] Fields 186 to 192 of the third tab. Section 2(b) question 50 of Form PF.
[25] Fields 197 to 207 of the third tab. Section 2(b) questions 48 and 49 of Form PF.
[26] Fields 210 to 217 of the third tab. Section 1(b) question 12 and section 2(b) question 43 of Form PF.
[27] Fields 219 to 230 of the third tab. Section 1(b) question 17 of Form PF.

AIFMD form – key concept	How is this dealt with under Form PF?
Stress tests[28]	
An AIFM must provide the results of stress tests performed in accordance with Articles 15(3)(b) (risk testing) and 16(1) (liquidity) of AIFMD. Non-EEA AIFMs are not subject to these provisions of AIFMD and the FCA has confirmed that a non-EEA AIFM should only complete these fields to the extent it performs stress tests in a similar manner to that envisaged under AIFMD. These fields are "free text" fields, so there is no standard format for reporting the information in these fields.	Form PF requires hedge funds to model various market factors (e.g., a drop in interest rates) on the fund's portfolio and provide the results.
Re-hypothecation[29]	
An AIFM must report the percentage of collateral re-hypothecated by counterparties (as a ratio of the market value of the collateral re-hypothecated over the aggregate market value of all collateral posted). There is some uncertainty as to whether this calculation needs to be performed as an average over the reporting period or as at the last day of the reporting period.	Form PF only requires this information for hedge funds. Form PF only requires reporting of the percentage of collateral that *may be* re-hypothecated.
Value of borrowings[30]	
An AIFM must report the value of cash or securities borrowings, represented by unsecured cash borrowing, collateralised or secured cash borrowing via prime broker, collateralised or secured cash borrowing via (reverse) repo and other collateralised or secured cash borrowing. An AIFM must also report the value of borrowings embedded in financial instruments, represented by exchange traded derivatives, OTC derivatives and the value of securities borrowed for short positions.	Form PF requires reporting of the total amount of unsecured borrowings, with indications of the percentage borrowed from US and non-US financial institutions and other US or non-US creditors. Form PF requires reporting of the total amounts of secured borrowing, represented by prime brokerage, reverse repo and other secured borrowings. Form PF excludes from the requirement to report borrowings any leverage embedded through the use of derivatives.
Total leverage[31]	
An AIFM must report the AIF's leverage, calculated under both the gross and commitment methods. Leverage is the ratio between exposure (see Value of assets under management) (above) and net asset value. The AIFMD Level 2 Regulation sets out the methodology for calculating the gross and commitment methods. The gross approach does not take into account any netting or hedging. The commitment approach takes into account netting and hedging.	No equivalent question, although Form PF asks for certain information on private equity funds' borrowings.

[28] Fields 279 to 280 of the third tab. Section 2(b) question 42 of Form PF.
[29] Field 282 of the third tab. Section 2(b) question 38 of Form PF.
[30] Fields 283 to 286 of the third tab. Section 1(b) question 12 or section 2(b) question 43 of Form PF.
[31] Fields 294 to 295 of the third tab.

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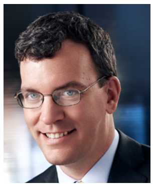

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