



FSMA_2014_09 of 1/09/2014

Reporting obligations of alternative investment fund managers to the FSMA

Scope:

Alternative investment fund managers authorized or registered in Belgium.

Summary/Objectives:

This circular informs the relevant managers of the contents and modalities for filing the reports they are required to provide to the FSMA in compliance with the provisions of the Law of 19 April 2014 on alternative investment funds and their managers.

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Dear Madam,
Dear Sir,

Introduction

Background

1. This Circular sets out the principal aspects of the reporting obligations¹ to the FSMA by managers, registered or authorized in Belgium, of alternative investment funds (hereafter "AIFs") within the European Union or that are marketed in one of its Member States.

¹ The reports referred to in this Circular are without prejudice to the obligation of managers to report detailed financial information periodically to the FSMA.

2. Managers of such AIFs that are registered or authorized in Belgium must, in particular, take into consideration Articles 62 and following of the Law of 19 April 2014 on alternative investment funds and their managers (hereafter "the Law of 19 April 2014"). These provisions are a partial transposition of Articles 3 and 24 of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on alternative investment fund managers (hereafter "Directive 2011/61/EU").
3. The term "AIF" means an alternative investment fund or its investment compartment. The term "manager" means, in accordance with Article 3, 13°, of the Law of 19 April 2014, an AIF management company or an AIF that is not managed by an AIF management company.

1. The reports

1.1. General remarks

4. The reports to be filed with the FSMA are drawn up on the basis of the models provided in Annex IV of Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (hereafter "Regulation 231/2013").
5. The ESMA/2013/1339 Guidelines on reporting obligations under Articles 3(3)(d) and 24(1)(2) and (4) of Directive 2011/61/EU published on 15 November 2013 (hereafter "the ESMA Guidelines") describe the content of the information requested in models provided in Annex IV of Regulation 231/2013 and the specific procedures that apply. The ESMA Guidelines (see Annex 1) have been supplemented by a document titled "Questions and Answers on the application of AIFMD" (see Annex 3).
6. The FSMA decided to collect all the additional information presented in the ESMA Opinion of 1 October 2013 (ESMA/2013/1340) as these appear in the tables published by ESMA².
7. The non-structured data in the tables have to be entered in English.
8. The reports have to be drawn up on a quarterly, half-yearly or annual basis aligned with the civil year, with the filing periods ending on the last working day of March, June, September or December respectively. The manager is responsible for determining the frequency with which each report is to be filed with the FSMA, for complying with that timetable and with notifying the FSMA in the event of a change in frequency.
9. The reports are to be filed as soon as possible, and at the latest one month after the date of the report. Where the AIF is a fund of funds, the manager has an additional 15 calendar days to file the report.

² See Annex 2 of this circular.

10. The calculation of assets under management, which determines the reporting frequency, is to be performed in accordance with Article 2 of Regulation 231/2013, but excluding among others those AIFs that are managed under a delegation arrangement. If there has been any breach of the thresholds referred to in Article 106 of the Law of 19 April 2014, the manager registered on one of the lists referred to in Articles 109 or 112 of the Law of 19 April 2014 must inform the FSMA. The manager must adapt the reporting frequency after having indicated to the FSMA whether the breach is temporary or not³.
11. Managers are to begin presenting reports between the first day of the quarter following the one for which they have information to convey and the last day of the first reporting period. By way of illustration, two examples are provided below:

Case I: The manager is authorized or registered on 23 July 2014:

Reporting frequency	Quarterly	Half-yearly	Yearly
Date of first report	31/12/2014	31/12/2014	31/12/2014
Period covered by the first report	From 1/10/2014 to 31/12/2014	From 1/10/2014 to 31/12/2014	From 1/10/2014 to 31/12/2014
Date of next report	31/03/2015	30/06/2015	31/12/2015
Period covered by the next report	From 1/1/2015 to 31/3/2015	From 1/1/2015 to 30/6/2015	From 1/1/2015 to 31/12/2015

Case II: The manager is authorized or registered on 15 March 2015:

Reporting frequency	Quarterly	Half-yearly	Yearly
Date of first report	30/6/2015	30/6/2015	31/12/2015
Period covered by the first report	From 1/4/2015 to 30/06/2015	From 1/4/2015 to 30/06/2015	From 1/4/2015 to 31/12/2015
Date of next report	30/9/2015	31/12/2015	31/12/2016
Period covered by the next report	From 1/7/2015 to 30/9/2015	From 1/7/2015 to 31/12/2015	From 1/1/2016 to 31/12/2016

³ See Article 4 of Regulation 231/2013.

Managers must notify the FSMA if they will be managing a new AIF⁴.

12. In the event of a change of manager, the new manager must file, at the end of the reporting period, a report covering the entire period, based on the information provided by the former manager. The same procedure is to be followed if a manager merges with another and no longer exists. In the event of the liquidation or merger of an AIF, the managers must file the last report on the AIF with the FSMA immediately after the liquidation or merger⁵. The managers are to notify the FSMA of these changes⁶ and, where applicable, indicate in the report that there will be no further reports.
13. There are four different types of report:
 - i. The report on the AIF manager is found in the table⁷ *AIFM-specific information to be reported / (Article 3(3)(d) and Article 24(1) of Directive 2011/61/EU)* (hereafter "AIFM file 24(1)");
 - ii. The report on the AIF is contained in the tables⁸ *AIF-specific information to be reported / (Article 3(3)(d) and Article 24(1) of Directive 2011/61/EU)* (hereafter "AIF file 24(1)") and *AIF-specific information to be reported / (Article 24(2) of Directive 2011/61/EU)* (hereafter "AIF file 24(2)");
 - iii. The report on an AIF that employs leverage on a substantial basis (hereafter "leveraged AIF") is contained in the table⁹ *AIF-specific information to be reported / (Article 24(4) of Directive 2011/61/EU)* (hereafter "AIF file 24(4)");
 - iv. Additional report at the request of the FSMA.

1.2 Report on the AIF manager

14. Whether the AIF manager is registered or authorized, it must report regularly to the FSMA on the principal instruments it is trading in, the markets on which it is active and the most significant exposures and concentrations in the AIFs it manages. This information is to be included in AIFM file 24(1).
15. AIFM file 24(1) is to be submitted to the FSMA with the following frequency:
 - annually for small managers¹⁰ registered on the list referred to in Article 109 of the Law of 19 April 2014¹¹;

⁴ See Article 13, § 2 (2), Article 18, § 1 and Article 107, § 2 (1) of the Law of 19 April 2014.

⁵ No later than one month after the end of the quarter in which the AIF was liquidated or merged, in accordance with Question 7 (Section III) of the document titled "Questions and Answers on the Application of AIFMD" which is included as Annex 3 of this Circular.

⁶ See Article 13, § 2 (2), Article 18, § 1 and Article 107, § 2 (1) of the Law of 19 April 2014.

⁷ See Annex 2 of this circular.

⁸ See Annex 2 of this circular.

⁹ See Annex 2 of this circular.

¹⁰ See Article 106 of the Law of 19 April 2014 and Article 2 of Regulation 231/2013, that is, those whose total assets under management do not exceed the threshold of EUR 100,000,000 or EUR 500,000,000 referred to in Article 3(2) points (a) and (b) respectively of Directive 2011/61/EU.

¹¹ See Article 107, §2, 1°, of the Law of 19 April 2014 and Article 5, 5°, of Regulation 231/2013.

- annually for smaller managers registered on the list referred to in Article 112 of the Law of 19 April 2014¹²;
- every 6 months for managers registered on the list referred to in Article 19 of the Law of 19 April 2014 whose total assets under management are less than or equal to EUR 1,000,000,000¹³;
- every 3 months for managers registered on the list referred to in Article 19 of the Law of 19 April 2014 whose total assets under management are greater than EUR 1,000,000,000¹⁴.

1.3 Report on the AIF

16. Whether registered or authorized, AIF managers must report to the FSMA, for each AIF they manage, the percentage of the assets that are given special treatment because of their non-liquid nature, the provisions made for managing liquidity, the risk profile and the risk management systems used, the principal categories of assets in which the AIF has invested and the results of the stress tests carried out. This information is to be included in AIF files 24(1) and 24(2).
17. AIF file 24(1) is to be submitted to the FSMA with the following frequency:
- annually for smaller managers¹⁵ registered on the list referred to in Article 109 of the Law of 19 April 2014¹⁶;
 - annually for smaller managers registered on the list referred to in Article 112 of the Law of 19 April 2014¹⁷.
18. AIF file 24(1) as well as AIF file 24(2) are to be submitted to the FSMA with the following frequencies¹⁸:
- every 6 months for managers registered on the list referred to in Article 19 of the Law of 19 April 2014, whose total assets under management are less than or equal to EUR 1,000,000,000;
 - every 3 months for managers registered on the list referred to in Article 19 of the Law of 19 April 2014, whose total assets under management are greater than EUR 1,000,000,000;
 - every 3 months for AIFs whose total assets exceed EUR 500,000,000, regardless of the total amount of assets managed by the manager;
 - annually for AIFs that do not employ leverage and that, in accordance with their core investment policy, invest in non-listed companies and issuers in order to acquire control over them, regardless of the total amount of assets managed by the manager.

¹² See Article 110 of the Law of 19 April 2014 and Article 5, 5°, of Regulation 231/2013.

¹³ See Article 110, § 3 of Regulation 231/2013.

¹⁴ See Article 110, § 3 of Regulation 231/2013.

¹⁵ See Article 106 of the Law of 19 April 2014 and Article 2 of Regulation 231/2013, that is, those whose total assets under management do not exceed the threshold of EUR 100,000,000 or EUR 500,000,000 referred to in Article 3(2) points (a) and (b) respectively of Directive 2011/61/EU.

¹⁶ See Article 107 of the Law of 19 April 2014 and Article 5, 5°, of Regulation 231/2013.

¹⁷ See Article 110 of the Law of 19 April 2014 and Article 5, 5°, of Regulation 231/2013.

¹⁸ See Article 110, § 3 of Regulation 231/2013.

1.4 Report on AIFs that employ leverage on a substantial basis

19. AIF managers are to make available to the FSMA, for each AIF they manage that employs leverage on a substantial basis¹⁹, the general leverage level, a breakdown of the leverage, the reuse of the assets under leverage and the principal sources of leverage received. This information is to be included in AIF file 24(4).
20. AIF file 24(4) is to be submitted to the FSMA with the following frequencies²⁰:
 - every 6 months for managers registered on the list referred to in Article 19 of the Law of 19 April 2014 whose total assets under management are less than EUR 1,000,000,000;
 - every 3 months for managers registered on the list referred to in Article 19 of the Law of 19 April 2014 whose total assets under management are greater than EUR 1,000,000,000;
 - every 3 months for AIFs whose total assets exceed EUR 500,000,000, regardless of the total amount of assets managed by the manager.

1.5 Additional reporting

21. The FSMA may ask managers to provide a quarterly detailed list all AIFs they manage. Where applicable, the managers may be required to provide any additional information necessary to detect and monitor factors liable to affect the stability of the financial system. An additional report is a report for which no model is provided in Annex IV of Regulation 231/2013 and for which no tables have been published by ESMA. If the FSMA decides it requires information in the form of an additional report, that decision will in each case be communicated to the management of the AIFM. The means by which this additional report is to be submitted will depend on the structure and frequency of the information requested.

2. Filing the reports

22. The reports using the tables published by ESMA (cf. points 1.2 to 1.4 of this Circular) are to be filed with the FSMA by electronic means via the "FIMIS" platform ("Financial Institutions and Markets Information System").

2.1 Access to the platform

23. Access to the platform is provided via the address <https://fimis.fsma.be> and is granted on condition that the user can be validly identified (see below).
24. The manager is required to notify the FSMA officially of the names of two individuals who alone will be authorized to file the reports, specifying (i) in the event of outsourcing, whether these individuals are external to the company and (ii) any change as regards the individuals in question. The updated contact information for these individuals (surname, first name, telephone number and email address) should be available at all times to the FSMA.

¹⁹ See Question 31, Questions and Answers of 21 July 2014 (ESMA/2014/868) in Annex 3 of this circular.

²⁰ See Article 110, § 5 of Regulation 231/2013.

2.2 Financial tables

25. The reports required by the FSMA are collected via the following two surveys:

- The AIFM survey: for the report on the AIF manager (AIFM file 24(1));
- The AIF survey(s): for the report on the AIF(s) (AIF files 24(1) and 24(2)) and, where applicable, AIFs that make substantial use of leverage effect (AIF file 24(4)).

2.3 Filing with the FSMA

26. The electronic filing of the reports takes place, according to the manager's preference, either via access to the "manual data entry", whereby the data for each reporting table can be entered, or by downloading a standardized XML file in line with the technical protocol. Two examples of such XML files (AIFM & AIF) are provided in Annex 4 to this circular.

27. For each report, all the validation tests prepared by ESMA (cf. Annex 4) must be completed.

28. Each of the surveys must be closed by the deadlines laid down in this circular, and as soon as the manager deems that it has filed the reports correctly. Where applicable²¹, a request to reopen the survey, specifying the survey(s) and reporting period(s) in question, should be sent by email to the financial analysts responsible for the manager concerned²².

29. It goes without saying that the manual which is the object of Annex 5 to this circular will be updated in accordance with the functionalities that will be implemented in FIMIS. The two contact persons responsible for the reports who have access to the platform will be informed by email of any material update to this application

30. To gain access to FIMIS, the designated contact persons must have a personal certificate. A personal certificate will be issued to you by an accredited third party.

The following certificates are accepted:

- GlobalSign Personal 3 (for more information, see <http://www.globalsign.be>);
- Isabel (for more information, see <http://www.isabel.be>); or
- your eID or electronic identity card (for more information, see <http://eid.belgium.be>).

This certificate is personal, which means that if more than one person from a company is tasked with managing the information in FIMIS, they must each have a certificate.

31. Any managers interested will be informed of the launch of a test period during which the functionalities of downloading XML files or entering data can be tested. Interested managers are invited to let us know by an email to FiMiS@fsma.be specifying the contact details of the individual(s) to be contacted.

²¹ At the initiative of the manager to update its financial data, or at the FSMA's initiative (where an error in reporting has been identified).

²² Cf. FiMiS platform, under the heading "info" of the institution in question ("fin analyst" and "deputy fin analyst" among the "FSMA Contacts").

32. Any notification required pursuant to this circular, or any request for additional information, comment or question regarding the contents of the reports may be sent by email to the address opm@fsma.be for AIFM companies and to the address fpp@fsma.be for any AIF not managed by an AIFM.

Requests for additional information, comments or questions on the technical aspects of filing the reports may be sent by email to the address FIMIS@fsma.be.

Yours sincerely,

The Chairman,

Jean-Paul Servais

Attachments:

- [FSMA 2014 09-1 / ESMA Guidelines on reporting obligations under Articles 3\(3\)\(d\) and 24\(1\), \(2\) and \(4\) of the AIFM \(ESMA/2013/1339\)](#)
- [FSMA 2014 09-2 / Consolidated AIFM reporting template](#)
- [FSMA 2014 09-3 / ESMA Questions and Answers: Application of the AIFMD, 21 July 2014 \(ESMA/2014/868\)](#)
- [FSMA 2014 09-4 / ESMA IT Technical Guidance](#)
- [FSMA 2014 09-5 / FiMiS for Prudential Reporting User Guide \(available in French and Dutch only\)](#)