

Finansinspektionen's Regulatory Code

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Regulations amending Finansinspektionen's Regulations (FFFS 2013:10) regarding alternative investment fund managers;

FFFS 2022:11

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decided 24 May 2022.

Finansinspektionen prescribes¹ pursuant to section 4, points 4 and 5 and section 5, points 4–8 of the Alternative Investment Fund Managers Ordinance (2013:587) relating to Finansinspektionen's regulations (FFFS 2013:10) regarding alternative investment fund managers

in part that Chapter 4, section 2 and Chapter 5, sections 2, 4, 10, 11 shall have the following wording,

in part that eight new sections shall be inserted, Chapter 4, sections 5a and 5b; Chapter 5, sections 6a–6c and 10a; Chapter 6, sections 2a and 2b; and new headings inserted immediately preceding Chapter 4, section 5a; Chapter 5, sections 6a–6c; and Chapter 6, section 2a with the following wording.

Chapter 4

Section 2 An AIF manager's application for authorisation to market units or shares in an alternative investment fund to retail investors in accordance with Chapter 4, section 2 of the Alternative Investment Fund Managers Act (2013:561) shall include the following:

1. a business plan with information about the fund that will be marketed and where it is established,
2. the fund's fund rules, articles of association or equivalent regulations,
3. information identifying the fund's depositary,
4. information about where the master fund is established, if the marketing refers to units or shares in a feeder fund to an alternative investment fund,
5. a prospectus in accordance with Chapter 10, section 1 of the Alternative Investment Fund Managers Act,
6. a key investor information document in accordance with Chapter 10, section 2 of the Alternative Investment Fund Managers Act,

¹ Cf. 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, in the wording in accordance with Directive (EU) 2019/1160 of the European Parliament and of the Council.

7. the most recent annual report,

8. a description of how the AIF manager shall provide functions here in the country to perform the tasks set out in Chapter 4, section 2, first paragraph, point 4 of the Alternative Investment Fund Managers Act, and

9. a description of how the AIF manager intends to fulfil the requirement that the fund apply the principle of risk diversification.

An AIF manager shall provide the information set out in section 3, second paragraph instead of the information set out in the first paragraph, point 3 where

– the marketing refers to units or shares in such a fund as that set out in Chapter 4, section 2, third paragraph of the Alternative Investment Fund Managers Act, and

– the requirements set out in Chapter 4, section 3, second paragraph of the same act are fulfilled.

Pre-marketing of EEA-based alternative investment funds to professional investors

Section 5a An AIF manager's notification of pre-marketing of alternative investment funds, pursuant to Chapter 4, section 5c of the Alternative Investment Fund Managers Act (2013:561), shall be provided on paper or in a digital format.

Section 5b An AIF manager shall document its pre-marketing, pursuant to Chapter 4, section 5b, first paragraph, point 3 of the Alternative Investment Fund Managers Act (2013:561), on every occasion that the manager conducts such marketing and in such a manner that the marketing material can be provided in full.

The documentation referred to in the first paragraph shall also contain information about

1. the name or other designation of those to whom the pre-marketing is directed,
2. the date of every occasion on which the pre-marketing has been conducted, and
3. how the manager has ensured that it has not conducted any marketing that requires notification or authorisation.

Chapter 5

Section 2 A foreign EEA-based AIF manager's application for authorisation to manage a special fund in accordance with Chapter 5, section 2 of the Alternative Investment Fund Managers Act (2013:561) shall include the following:

1. board minutes or equivalent documents or written information stating when the governing body adopted the fund rules,
2. articles of association, articles of partnership or comparable by-laws demonstrating that the manager has a legal structure as referred to in Chapter 5, section 2, second paragraph, point 3 of the Alternative Investment Fund Managers Act,

3. the fund's fund rules,
4. information regarding assignments delegated to a third party to manage the special fund or perform certain tasks or functions,
5. a prospectus in accordance with Chapter 12, section 7 of the Alternative Investment Fund Managers Act,
6. a key investor information document in accordance with Chapter 12, section 8 of the Alternative Investment Fund Managers Act, and
7. a description of how the AIF manager shall provide functions here in the country to perform the tasks set out in Chapter 5, section 2, second paragraph, point 4 of the Alternative Investment Fund Managers Act.

Section 4 A foreign EEA-based AIF manager's application for authorisation to market units or shares in an alternative investment fund to retail investors in accordance with Chapter 5, section 6, first paragraph, point 1 of the Alternative Investment Fund Managers Act (2013:561) shall include

1. a certificate from the competent authority in the manager's home member state stating that the AIF manager has authorisation in its home member state as referred to in Directive 2011/61/EU of the European Parliament and of the Council on Alternative Investment Fund Managers,
2. a business plan with information about the fund that will be marketed and where it is established,
3. the fund's fund rules, articles of association or equivalent regulations,
4. information identifying the fund's depositary,
5. information about where the master fund is established, if the marketing refers to a feeder fund to an alternative investment fund,
6. the information set out in Article 23 of Directive 2011/61/EU of the European Parliament and of the Council on Alternative Investment Fund Managers,
7. a key investor information document in accordance with Chapter 10, section 2 of the Alternative Investment Fund Managers Act,
8. the most recent annual report,
9. a description of how the AIF manager shall provide functions here in the country to perform the tasks set out in Chapter 4, section 2, first paragraph, point 4 of the Alternative Investment Fund Managers Act and function as a point of contact for communication with Finansinspektionen, and
10. a description of how the AIF manager intends to fulfil the requirement that the fund apply the principle of risk diversification.

An AIF manager shall provide the information set out in section 3, second paragraph instead of the information set out in the first paragraph, point 4 where

– the marketing refers to units or shares in such a fund as that set out in Chapter 5, section 6, third paragraph of the Alternative Investment Fund Managers Act, and

– the requirements in Chapter 5, section 5, third paragraph of the same act are fulfilled.

Functions in Sweden

Section 6a Provisions that a foreign EEA-based AIF manager who manages a special fund shall provide functions here in the country to perform certain tasks, and inform investors about the tasks the functions perform, are set out in Chapter 5, section 2, second paragraph, point 4 of the Alternative Investment Fund Managers Act (2013:561). Chapter 5, section 6, first paragraph, point 1 of the same Act sets forth that corresponding requirements apply to a foreign EEA-based AIF manager that markets units or shares in an alternative investment fund to retail investors in Sweden.

Information about the tasks the functions referred to in the first paragraph perform shall be provided in a durable medium. The functions shall be provided in Swedish.

Disclosure of the intention to terminate marketing in Sweden

Section 6b Disclosures pursuant to Chapter 5, section 7a, first paragraph, point 2 of the Alternative Investment Fund Managers Act (2013:561) shall be made by the AIF manager on its website providing information on the intention to terminate marketing in Sweden.

Information obligation after the marketing has been terminated

Section 6c A foreign EEA-based AIF manager that has terminated its marketing in Sweden of an alternative investment fund may use all types of digital communication or other technology for distance communication to provide remaining unit or share holders in the fund here in the country with information pursuant to Chapter 5, section 7c, first paragraph of the Alternative Investment Fund Managers Act (2013:561).

Section 10 A non-EEA-based AIF manager's application for authorisation to market units or shares in an alternative investment fund to retail investors in accordance with Chapter 5, section 11, first paragraph, point 1 of the Alternative Investment Fund Managers Act (2013:561) shall include that which is set out in section 9, points 1–6 and

1. a copy of the AIF manager's authorisation to conduct operations,
2. a certificate from the supervisory authority stating that the manager is under supervision in its home country and what this supervision entails,
3. information identifying the alternative investment fund's depository,
4. a key investor information document in accordance with Chapter 10, section 2 of the Alternative Investment Fund Managers Act,
5. a description of how the AIF manager shall provide functions here in the country to perform the tasks set out in Chapter 4, section 2, first paragraph, point 4 of the Alternative Investment Fund Managers Act and function as a point of contact for communication with Finansinspektionen, and

6. a description of how the AIF manager intends to fulfil the requirement that the fund apply the risk diversification principle.

Section 10a Chapter 5, section 11, first paragraph, point 1 of the Alternative Investment Fund Managers Act (2013:561) sets forth that a non-EEA-based AIF manager that markets units or shares in an alternative investment fund to retail investors in Sweden shall meet the requirements set out in Chapter 4, section 2, second paragraph of the same Act.

Information about the tasks the functions referred to in the first paragraph perform shall be provided in a durable medium. The functions shall be provided in Swedish.

Section 11 A foreign non-EEA-based AIF manager's application for authorisation to market units or shares in an alternative investment fund to retail investors in accordance with Chapter 5, section 11, first paragraph, point 2 of the Alternative Investment Fund Managers Act (2013:561), in addition to that set out in section 9, points 1-6 and section 10, point 4, shall also include information demonstrating that the fund's units or shares are admitted to trading on a regulated market or an equivalent market outside of the EEA.

Chapter 6

Pre-marketing of an EEA-based alternative investment fund in another EEA country to professional investors

Section 2a An AIF manager's notification of pre-marketing of an alternative investment fund pursuant to Chapter 6, section 2c of the Alternative Investment Fund Managers Act (2013:561) shall be provided on paper or in a digital format.

Section 2b An AIF manager shall document its pre-marketing, pursuant to Chapter 6, section 2b, first paragraph, point 3 of the Alternative Investment Fund Managers Act (2013:561), on every occasion that the manager conducts such marketing and in such a manner that the marketing material can be provided in full.

The documentation referred to in the first paragraph shall also contain information about

1. the name or other designation of those to whom the pre-marketing is directed,
2. the date of every occasion on which the pre-marketing has been conducted, and
3. how the manager has ensured that it has not conducted any marketing that requires notification or authorisation.

These regulations shall enter into force on 07 June 2022.

ERIK THEDÉEN

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