European Private Equity & Venture Capital Association
Bastion Tower, Place du Champ de Mars 5
B-1050 Brussels, Belgium
T +32 2 715 00 20 F +32 2 725 07 04
info@evca.eu www.evca.eu

CREATING LASTING VALUE

24 January 2014

Laurent Degabriel and Sophie Vuarlot-Dignac
European Securities and Markets Authority
Rue de Grenelle 103
75007 Paris
France

Dear Mr Degabriel and Ms Vuarlot-Dignac,

Thank you very much for your letter dated 9 December 2013.

We are grateful to the European Securities and Markets Authority (ESMA) for looking into the restrictions and additional requirements that certain national regulators are imposing on fund managers before they can use the passport that they have been granted under the Alternative Investment Fund Managers Directive (AIFMD).

As you know from my letter of 8 November 2013, we feel that such additional requirements have no legal justification under the AIFMD, which makes clear that marketing may begin once a passport has been granted by the home authority. In addition to this important point of law, we are also concerned about the impact this will have on market behaviour and on the operation of the single market.

The imposition of additional fees and other regulatory requirements will act as a disincentive to firms to market their funds in those Member States that impose them, and particularly if the investor base is comparatively small and these additional costs will be disproportionate to the perceived fundraising potential. Investors in such Member States therefore risk having fewer investment opportunities or facing higher costs to access them.

As you requested, the EVCA has now compiled further evidence based on practical experience from private equity fund managers. All of this information can be found in the first enclosure.

At this stage it is not possible to provide an exhaustive picture. The process of AIFMD authorisation is still at an early stage, and relatively few AIFMD authorised firms have started to fundraise across the EU and thus been faced with additional obligations from host competent authorities. And with around half of Member States yet to conclude national transposition their intentions are as yet unknown.

I hope that this information helps you in analysing further these developments and in making progress in your internal discussions. If you require additional information or input please do not hesitate to let me know.

Yours sincerely,

Dörte Höppner
Chief Executive
EVCA

Cc: Steven Maijoor, ESMA Chairman

European Private Equity & Venture Capital Association
Bastion Tower, Place du Champ de Mars 5
B-1050 Brussels, Belgium
T +32 2 715 00 20 F +32 2 725 07 04
info@evca.eu www.evca.eu

Enclosures:

1. Overview of fees and charges imposed by EU Member States for the use of the marketing passport in their jurisdiction
2. Background and further details on the paying agent requirement

European Private Equity & Venture Capital Association
Bastion Tower, Place du Champ de Mars 5
B-1050 Brussels, Belgium
T +32 2 715 00 20 F +32 2 725 07 04
info@evca.eu www.evca.eu

CREATING LASTING VALUE

1. AIFMD IMPLEMENTATION – FEES AND CHARGES

Background

The Alternative Investment Fund Managers Directive (Directive 2011/61/EU or AIFMD) entered into force at EU level on 22 July 2011. The deadline for transposition was 22 July 2013, the date that the AIFMD took effect in national law across the European Union.

While about half of the Member States are yet to fully transpose the AIFMD, it has become clear that some national governments are applying additional obligations relating to the passport beyond those set out in the Directive.

For example, some host Member States are levying a charge, per fund or per sub-fund, and imposing other requirements (e.g. the appointment of a paying agent) on alternative investment fund managers (AIFMs) looking to use the passport they have been granted in their jurisdiction.

Such fees could easily add up for firms with a number of funds being marketed across the EU and thereby act as a barrier to the EU internal market.

Introduction

As a general position, an EEA-based AIFM needs to submit an application for authorisation under the AIFMD as soon as is practicable and no later than one year after the transposition date (i.e. by 22 July 2014). On 22 July 2014 it must comply in all other respects with the Directive's requirements.

As a result, while at the time of writing several private equity firms have already applied for authorisation under the AIFMD (with authorisation still pending), only very few have already obtained the actual authorisation and permission to start marketing their funds under the AIFMD passport across the EU.

Therefore, the following information is based on those few AIFMD authorised firms that have started to fundraise across the EU with the AIFMD passport and covers only a limited number of Member States (i.e. only those countries that have been targeted and approached for marketing, bearing in mind that about half of the member states are yet to finalise national transposition).

This document does not aim to be – and cannot be at this stage - an exhaustive and complete overview of all additional fees and charges and other regulatory requirements that are or could be imposed by all 28 EU member states. Nevertheless, we feel that it provides a compelling picture of an emerging trend which justifies further action from ESMA.

European overview

The table below provides an overview of the applicable fees and charges for EU AIFMs intending to market on a cross-border basis ("passport") into the relevant jurisdictions.

European Private Equity & Venture Capital Association
Bastion Tower, Place du Champ de Mars 5
B-1050 Brussels, Belgium
T +32 2 715 00 20 F +32 2 725 07 04
info@evca.eu www.evca.eu

CREATING LASTING VALUE

Country	Amount of the fee	Details on the circumstances of payment and payment terms for the fees	Legal basis	Reference to the relevant national supervisory (and/or legislative) text	Additional information
Austria	To enable the Austrian Financial Market Authority (FMA) to start processing the documents submitted by the AIFM the following fees have to be paid in advance: • **EUR 1,100 per AIF** for processing the documents listed in § 31 para 1 AIFMG; • additional **EUR 220 per AIF** for each additional sub-fund if a fund consists of several sub-funds (umbrella fund). In addition to these fees the following fees have to be paid once the funds are	Both annual fees and an initial EUR 1,100 fee per AIF	According to Art. 140 para 3 InvFG 2011, Art. 181 para 3 InvFG 2011 and Art. 31 para 4 AIFMG a one-time registration fee as well as a regular annual fee has to be paid for all foreign investment funds registered for marketing in Austria. At the beginning of every calendar year, at the latest by 15 January, an annual fee of EUR 600 shall be paid to the FMA **for the monitoring of compliance of the obligations under Part 6 of the AIFMG**. This fee increases for funds containing several sub-funds (umbrella funds) by EUR 200 for each sub-fund starting with the second sub-fund.	§ 31 Abs. 4 AIFMG (transposing Art. 32 AIFMD) reads as follows: *(4) Für die Bearbeitung der übermittelten Unterlagen gemäß Abs. 1 ist an die FMA eine Gebühr von **1 100 Euro** zu entrichten. Diese Gebühr erhöht sich bei EU-AIF, die mehrere Teilfonds enthalten (Umbrella-Fonds), ab dem zweiten Teilfonds für jeden Fonds um **220 Euro**. Für die Überwachung der Einhaltung der nach diesem Abschnitt bestehenden Pflichten ist weiters zu Beginn eines jeden Kalenderjahres, spätestens bis zum 15. Jänner dieses Jahres eine jährliche Gebühr von **600 Euro** an die FMA zu entrichten; diese Gebühr erhöht sich bei EU-AIF, die mehrere Teilfonds enthalten (Umbrella-Fonds), ab dem zweiten Teilfonds für jeden Teilfonds um **200 Euro**. Gebührenbeiträge, die nicht*	The Austrian Federal Act on Alternative Investment Funds (AIFMG) stipulates that a fee is to be paid for the editing of the announcement of the notification and for the monitoring of compliance of the obligations under the Federal Act on Alternative Investment Funds. It must be proved that the fee pursuant to Art. 31 para 4 AIFMG has been paid to the Austrian Financial Market Authority. If the fee is not paid within the stipulated timeframe, then the distribution of units/marketing activities can be prohibited pursuant

Country	Amount of the fee	Details on the circumstances of payment and payment terms for the fees	Legal basis	Reference to the relevant national supervisory (and/or legislative) text	Additional information
	marketed in Austria: • an annual fee of **EUR 600 per AIF** must be paid to the FMA at the beginning of each calendar year, no later than 15 January of the respective year; in the case of umbrella funds, this fee is increased from the second sub-fund by **EUR 200 per AIF** (for each sub-fund).			*spätestens am Fälligkeitstag entrichtet wurden, sind vollstreckbar. Die FMA hat einen als Exekutionstitel geltenden Rückstandsausweis auszufertigen. Dieser hat Namen und Anschrift des Gebührenpflichtigen, den Betrag der Schuld und den Vermerk zu enthalten, dass die Schuld vollstreckbar geworden ist. Die nicht fristgerechte Entrichtung der Gebühr ist ein Vertriebsuntersagungsgrund gemäß § 50.*	to Article 50 AIFMG. More specifically, if the annual fee is not paid the FMA is entitled to issue a '*Rückstandsausweis*', which is a legal title for execution, and the further marketing of units can be prohibited by the FMA according to Art. 162 para 2 no 1 in conjunction with Art. 140 para 3 InvFG 2011 respectively Art. 182 para 2 in conjunction with Art. 181 para 3 InvFG 2011 or pursuant to Art. 31 para 4 in conjunction with Art. 50 para 2 no 5 AIFMG.
Czech Republic	At the moment, there are no fees laid down regarding the registration of EU or non-EU AIFs in the lists of investment funds maintained by the Czech National Bank (the CNB). The only fee which is			All administrative fees to be paid in connection with the Act no. 240/2013 Coll., on Investment Companies and Investment Funds (the AICIF) are specified in the Act No. 634/2004 Coll., on administrative fees, as amended (the AAF).	

European Private Equity & Venture Capital Association
Bastion Tower, Place du Champ de Mars 5
B-1050 Brussels, Belgium
T +32 2 715 00 20 F +32 2 725 07 04
info@evca.eu www.evca.eu

CREATING LASTING VALUE

Country	**Amount of the fee**	**Details on the circumstances of payment and payment terms for the fees**	**Legal basis**	**Reference to the relevant national supervisory (and/or legislative) text**	**Additional information**
	specified in the AAF relates to granting licence by the CNB to a foreign entity not established in the EU which intends to (i) manage special funds, foreign investment funds comparable to special funds, professional investment funds or investment funds comparable to professional investment funds (i.e., in general non-UCITS funds), (ii) market investments in these funds or (iii) administer these funds. Such a licence is subject to a fee of CZK 100,000 (approximately EUR 3,700); however, provided that the entity only intends to manage, market or administer professional investment funds or investment funds				

European Private Equity & Venture Capital Association
Bastion Tower, Place du Champ de Mars 5
B-1050 Brussels, Belgium
T +32 2 715 00 20 F +32 2 725 07 04
info@evca.eu www.evca.eu

CREATING LASTING VALUE

Country	Amount of the fee	Details on the circumstances of payment and payment terms for the fees	Legal basis	Reference to the relevant national supervisory (and/or legislative) text	Additional information
	comparable to professional investment funds, a reduced fee of CZK 50,000 (approximately EUR 1,850) is applied.				
Denmark	DKK 2,000 annually per alternative investment fund plus DKK 2,000 annually per compartment	Annually	The invoice is due to cover the Danish FSA's operations. According to section 368(2), an undertaking has to pay the full fee, even though it has only been under supervision for part of the year.	Part 22 'Fees' of the Danish Financial Business Act, Section 360-(1), paragraph 32: 'Foreign alternative investment fund managers which have been granted a licence to place on the market a foreign alternative investment fund in Denmark shall pay DKK 2,000 annually per alternative investment fund plus DKK 2,000 annually per compartment'. Part 22 'Fees' of the Danish Financial Business Act, Section 360-(1), paragraph 31 states: 'Foreign alternative investment fund managers from a Member State of the European Union or a country with which the Union has entered into an agreement for the financial area, and	

European Private Equity & Venture Capital Association
Bastion Tower, Place du Champ de Mars 5
B-1050 Brussels, Belgium
T +32 2 715 00 20 F +32 2 725 07 04
info@evca.eu www.evca.eu

Country	Amount of the fee	Details on the circumstances of payment and payment terms for the fees	Legal basis	Reference to the relevant national supervisory (and/or legislative) text	Additional information
				foreign alternative investment fund managers from a third country for which Denmark is the country of reference and which have been granted a licence to manage Danish alternative investment funds shall pay DKK 20,000 annually.'	
Finland	The Finnish Financial Supervision Authority is at least currently planning to charge fees from foreign passport holders. No further details are known at this stage.		The Finnish Financial Supervision Authority refers to UCITS as a benchmark.		
France	EUR 2,000 per sub-fund			Article L621-5-3 4° and Article D621-27 4° of the French Financial and Monetary Code request a payment of a filing fee of EUR 2,000 per sub-fund. The Law makes a general statement including a range for the fees. Article L621-5-3 4° says: « *l'occasion d'une autorisation de commercialisation en France d'un organisme de placements collectifs soumis à la législation d'un Etat*	For more information about the increase in the AMF's resources further to the Finance Act for 2011, click here. A full readout of Article L621-5-3 can be found here.

European Private Equity & Venture Capital Association
Bastion Tower, Place du Champ de Mars 5
B-1050 Brussels, Belgium
T +32 2 715 00 20 F +32 2 725 07 04
info@evca.eu www.evca.eu

CREATING LASTING VALUE

Country	Amount of the fee	Details on the circumstances of payment and payment terms for the fees	Legal basis	Reference to the relevant national supervisory (and/or legislative) text	Additional information
				étranger ou d'un compartiment d'un tel organisme, le droit dû, fixé par décret, est ***supérieur à 1 000 euros et inférieur ou égal à 4 000 euros****. Il est exigible le jour du dépôt de la demande d'autorisation la première année et le 30 avril les années suivantes »* The Decree is more specific. At the time of the AIFMD transposition in France, Article D621-27 of the French Financial and Monetary Code was modified (by Décret n°2013-687 du 25 juillet 2013 - art. 16), extending paragraph 4 of this article to AIFs (addition underlined): *« Le droit fixe dû au titre du I de l'article L. 621-5-3 est fixé à:* *1° 750 euros pour tout dépôt de document de la déclaration mentionnée au 1°;* *2° 3 200 euros à l'occasion de l'examen de l'obligation de dépôt d'une offre publique mentionnée au*	

European Private Equity & Venture Capital Association
Bastion Tower, Place du Champ de Mars 5
B-1050 Brussels, Belgium
T +32 2 715 00 20 F +32 2 725 07 04
info@evca.eu www.evca.eu

CREATING LASTING VALUE

Country	Amount of the fee	Details on the circumstances of payment and payment terms for the fees	Legal basis	Reference to the relevant national supervisory (and/or legislative) text	Additional information
				2°; *3° 1 000 euros pour tout dépôt d'un document de référence ou d'un document de base mentionné au 3°;* *4° 2 000 euros pour toute autorisation d'un organisme de placements collectifs en valeurs mobilières ou <u>d'un FIA relevant des paragraphes 1, 2 et 6 de la sous-section 2, du paragraphe 2 ou du sous-paragraphe 1 du paragraphe 1 de la sous-section 3, et de la sous-section 4 de la section 2 du chapitre IV du titre Ier du livre II, ou</u> d'un compartiment d'un tel organisme <u>ou d'un tel FIA</u>, soumis à la législation d'un Etat étranger;* *5° 1 500 euros par dépôt d'un document d'information sur un programme d'émission de titres de créances soumis à un enregistrement préalable ou portant sur des contrats financiers à terme et mentionnés au 5°;*	

European Private Equity & Venture Capital Association
Bastion Tower, Place du Champ de Mars 5
B-1050 Brussels, Belgium
T +32 2 715 00 20 F +32 2 725 07 04
info@evca.eu www.evca.eu

CREATING LASTING VALUE

Country	Amount of the fee	Details on the circumstances of payment and payment terms for the fees	Legal basis	Reference to the relevant national supervisory (and/or legislative) text	Additional information
				6° 150 euros par tranche d'émission de warrants mentionnée au 6° de ce même article; *7° 8 000 euros par dépôt d'un document d'information ou d'un projet de contrat type mentionné au 7°. »*	
Germany	1. EUR 772 for processing the notification 2. EUR 216 for any amendments to the description of how marketing to retail investors is being prevented	1. 'one-off' payment 2. 'one-off' payment		Transposition of Article 32 AIFMD (§ 323 KAGB). More specifically: 1. no. 4.1.10.2.6.1.1 of the fee schedule 2. no. 4.1.10.2.6.1.2 of the fee schedule	The German financial supervisory authority (BaFin) charges these fees in accordance with section 2 (1) of the Regulation on the Imposition of Fees and Allocation of Costs Pursuant to the FinDAG (*Erhebung von Gebühren und die Umlegung von Kosten nach dem Finanzdienstleistungsaufsichtsgesetz – FinDAGKostV*) and of its fee schedule. It should be noted that, in the case of umbrella schemes, each investment compartment is subject to the duty to pay fees.

European Private Equity & Venture Capital Association
Bastion Tower, Place du Champ de Mars 5
B-1050 Brussels, Belgium
T +32 2 715 00 20 F +32 2 725 07 04
info@evca.eu www.evca.eu

CREATING LASTING VALUE

Country	**Amount of the fee**	**Details on the circumstances of payment and payment terms for the fees**	**Legal basis**	**Reference to the relevant national supervisory (and/or legislative) text**	**Additional information**
Italy	According to Article 1.j) of the Consob Resolution 18427 'Determination, pursuant to Article 40 of Law 724/1994, of the amounts of the fees payable for the 2013 fiscal year', asset management companies, SICAVs and collective investment undertakings must pay: • Fixed amount of EUR 3,740, plus - in case of persons offering their units or shares to the public following the filing of a prospectus - an amount of EUR 1,580 for each fund or, where envisaged, for each sub-fund operating on 2.1.2013. The first two funds / sub-funds shall be exempt from the calculation of the fee increase.	Annually		The Consob Resolution n. 18427 published on the CONSOB website envisages that asset management companies and collective investment undertakings that market their units or shares in Italy have to pay a fee to CONSOB. As stipulated in Article 1.j) of the abovementioned Resolution, the criteria on the basis of which the fees are computed depend on the kind of offering (if it is dedicated to institutional investors or to retail investors). In order to determine 'offering status' the situation on 2 January of each year is relevant. Pursuant to CONSOB Communication n. 12094970/2012 of 5 December 2012, asset management companies, SICAVs and collective investment undertakings carrying out activities within the Italian territory, shall communicate to CONSOB all data and information required/necessary for the calculation of the annual fee amount due to CONSOB.	

European Private Equity & Venture Capital Association
Bastion Tower, Place du Champ de Mars 5
B-1050 Brussels, Belgium
T +32 2 715 00 20 F +32 2 725 07 04
info@evca.eu www.evca.eu

CREATING LASTING VALUE

Country	**Amount of the fee**	**Details on the circumstances of payment and payment terms for the fees**	**Legal basis**	**Reference to the relevant national supervisory (and/or legislative) text**	**Additional information**
Latvia	EUR 1,209 a year	Annually		According to Section 82 'Payments to Finance the Activities of the Commission' of the Law on Alternative Investment Funds and Their Managers, the manager shall pay EUR 1,209 a year to the Latvian Financial and Capital Market Commission for the supervision of the marketing of the investment units (shares) of each fund of the member state or each third country fund managed by it.	We understand that it is the view of the Latvian Financial and Capital Market Commission that while the AIFMD provides for an internal market for AIFMs and a harmonised and stringent regulatory and supervisory framework for their activities, the Directive does not harmonise supervisory methods, registration fees and marketing fees. They believe that such matters are not dealt with in the AIFMD and that firms can therefore be required to comply with member state legislation.

It is not always clear if jurisdictions are expecting a fee to be paid:

(a) only during each year that marketing is actually occurring; or
(b) even if marketing has ceased but there are still investors in the fund in that jurisdiction.

For private equity funds typically the sponsor does not create a secondary market and there is no marketing after final close. However, some of the correspondence from the national regulators implies – though with some ambiguity - that fees would only cease to be due if an AIFM actually cancelled its marketing passport or removed the member state in question from its list of intended marketing destinations.

Market considerations

In addition to the legal arguments around the absence of any legal authority under the AIFMD for a host regulator to prevent a firm from using its passport, there are a number of practical and market impacts that are relevant.

Most private equity funds consist of several parallel limited partnership AIFs - perhaps 6 or 7 of them - with subtly different characteristics that are adapted to the needs and circumstances of investors in different jurisdictions. For example, it has been common for English AIFMs to use mainly limited partnerships under English law, but with a parallel German KG for German and Austrian investors.

The following worked example demonstrates the impact such fees and charges could have:

- An AIFM wishes to passport its marketing of five parallel vehicles, each a separate AIF. The average fee is EUR 1,200 per AIF.
- If it markets into 28 Member States, the fee is EUR 168,000. Let us assume conservatively that the cost of appointing a paying agent in France and one other Member State brings this up to EUR 200,000.
- This is before indirect costs, such as the management cost of administration, and the cost of payment transfers. It is also before taking into account ongoing annual fees, such as those imposed in Austria.
- These costs will be borne ultimately by investors in the fund, whether as a direct fund cost or indirectly out of a higher fund management fee.
- This is a large amount in absolute terms. While in a large fund, it might represent a small percentage of fund commitments, for a smaller fund (and venture or growth capital funds tend to be smaller funds), it will be a meaningful addition to the total expense ratio.
- The practical implication is that managers will be selective in choosing which jurisdictions to market their funds into. This will lead to fragmentation of the market from the perspective of limited partner investors. Those in Member States with a smaller number of investors might not have the opportunity to invest at all if AIFMs determine that the fundraising opportunities in that Member State are not sufficient to justify the additional costs and burdens imposed on them.

Comparison with UCITS

We understand that funds and managers operating under the UCITS regime may already face similar obligations. But we do not believe the situations are analogous. In UCITS the co-legislator provided an explicit authorisation for such additional obligations, but did not do so in the AIFMD. This choice reflects the very different nature of the two regimes, with UCITS targeted at retail investors and therefore demanding higher standards of investor protection which in turn create

European Private Equity & Venture Capital Association
Bastion Tower, Place du Champ de Mars 5
B-1050 Brussels, Belgium
T +32 2 715 00 20 F +32 2 725 07 04
info@evca.eu www.evca.eu

legitimate additional work for host competent authorities. Local public registration and translation of marketing materials into local languages brings material investor protection benefits in a retail context. In the AIFMD context, fund managers are dealing with institutional investors for whom different standards of investor protection are set. Such professional investors are also likely to be particularly sensitive to any imposition of additional costs.

Developments in EuVECA Implementation

Similarly to the AIFMD, we understand that some member states are also (considering) imposing fees and charges to fund managers who want to market their funds under the EuVECA label, granted by EU Regulation No 345/2013 of 17 April 2013 on European venture capital funds. Countries like France, Croatia and Latvia have been mentioned in this respect.

In the case of Latvia, for example, according to Article 82 of the Law for the supervision of AIF marketing in Latvia, the manager shall pay to the Latvian Financial and Capital Market Commission 850 LVL (or EUR 1,209) for each fund marketed in Latvia annually. The payment shall be made annually until the notification of cease of AIF marketing is not received by the Financial and Capital Market Commission.

European Private Equity & Venture Capital Association
Bastion Tower, Place du Champ de Mars 5
B-1050 Brussels, Belgium
T +32 2 715 00 20 F +32 2 725 07 04
info@evca.eu www.evca.eu

CREATING LASTING VALUE

2. Paying agent

To the EVCA's knowledge, to date France is the only EU member state that is requiring the appointment of a local paying agent.

Each AIF which intends to market in France must notify the AMF (*Autorité des Marchés Financiers*) of its centralizing agent (*correspondant centralisateur*) in France.

Legal basis

The current legal basis for the obligation on AIFs to appoint a « correspondant centralisateur » lies in Article 421-27 of the *Règlement général de l'AMF*. This was introduced by the *Arrêté du 11 décembre 2013 portant homologation de modifications du règlement général de l'Autorité des marchés financiers*. The full text is available here.

Article 421-27 of the *Règlement Général de l'AMF* provides more information on the role and functions of such a centralizing agent and reads as follows:

« Le FIA établi dans un autre Etat membre de l'Union européenne que la France ou sa société de gestion, ou le FIA de pays tiers ou son gestionnaire, désigne un ou plusieurs correspondants, dont un correspondant centralisateur, établis en France dans les conditions fixées par une instruction de l'AMF.

Le ou les correspondants doivent appartenir à l'une des catégories mentionnées à l'article 1er de l'arrêté du 6 septembre 1989.

Le correspondant centralisateur et, le cas échéant, les autres correspondants sont contractuellement chargés d'assurer les services financiers suivants:

1° Traitement des demandes de souscription et de rachat;

2° Paiement des coupons et dividendes;

3° Mise à disposition des documents destinés à l'information des investisseurs;

4° Information particulière des porteurs dans les cas prévus par une instruction de l'AMF.

Quand le FIA n'est pas admis aux opérations du dépositaire central en France, le contrat conclu entre le correspondant centralisateur et le FIA peut prévoir que le correspondant centralisateur est en charge de la seule fonction mentionnée au 3° et que le FIA demeure en charge des tâches mentionnées aux 1°, 2° et 4°. Dans ce cas, le FIA informe le correspondant centralisateur de l'accomplissement des tâches dont il conserve la charge et lui transmet une copie de l'information mentionnée au 4°.

Le correspondant centralisateur est chargé d'acquitter le droit fixe annuel, conformément à l'article L. 621-5-3 du code monétaire et financier. »

European Private Equity & Venture Capital Association
Bastion Tower, Place du Champ de Mars 5
B-1050 Brussels, Belgium
T +32 2 715 00 20 F +32 2 725 07 04
info@evca.eu www.evca.eu

Link with the UCITS Directive

The inspiration for this requirement comes from the UCITS Directive, which includes a similar provision. The requirement for a UCITS centralizing agent can be found in Article 411-135 of the *Règlement général de l'AMF*, currently available here[1]. Article 411-135 of the *Règlement Général de l'AMF* reads as follows:

Sous-section 3 - Correspondant centralisateur

Article 411-135

« L'OPCVM de droit étranger ayant fait l'objet d'une notification conformément aux dispositions du deuxième alinéa du II de l'article L. 214-1 du code monétaire et financier désigne un ou plusieurs correspondants, dont un correspondant centralisateur, établis en France dans les conditions fixées par une instruction de l'AMF.

Le ou les correspondants doivent appartenir à l'une des catégories mentionnées à l'article 1er de l'arrêté du 6 septembre 1989.

Le correspondant centralisateur et, le cas échéant, les autres correspondants sont contractuellement chargés d'assurer les services financiers suivants:

1° Traitement des demandes de souscription et de rachat;

2° Paiement des coupons et dividendes;

3° Mise à disposition des documents d'information aux investisseurs;

4° Information particulière des porteurs dans les cas prévus par une instruction de l'AMF.

(Arrêté du 15 octobre 2012) « Quand l'OPCVM n'est pas admis aux opérations du dépositaire central en France, le contrat conclu entre le correspondant centralisateur et l'OPCVM peut prévoir que le correspondant centralisateur est en charge de la seule fonction mentionnée au 3° et que l'OPCVM demeure en charge des tâches mentionnées aux 1°, 2° et 4°. Dans ce cas, l'OPCVM informe le correspondant centralisateur de l'accomplissement des tâches dont il conserve la charge et lui transmet une copie de l'information mentionnée au 4°.

Le correspondant centralisateur est chargé d'acquitter le droit fixe annuel, conformément à l'article L. 621-5-3 du code monétaire et financier. »

The link between the similar requirements under UCITS and the AIFMD is demonstrated clearly in the 2013 AMF consultation paper '*Consultation publique sur les modifications du Livre IV du règlement général transposant la directive AIFM*'. The relevant provisions are set out on pages 32-33 of the consultation:

---

[1] Please note that this is a link to a version that is not consolidated (yet).

European Private Equity & Venture Capital Association
Bastion Tower, Place du Champ de Mars 5
B-1050 Brussels, Belgium
T +32 2 715 00 20 F +32 2 725 07 04
info@evca.eu www.evca.eu

Directive AIFM	***Proposition de rédaction***
Article 411-135 RGAMF actuel *L'OPCVM de droit étranger ayant fait l'objet d'une notification conformément aux dispositions du deuxième alinéa du II de l'article L. 214-1 du code monétaire et financier désigne un ou plusieurs correspondants, dont un correspondant centralisateur, établis en France dans les conditions fixées par une instruction de l'AMF.* *Le ou les correspondants doivent appartenir à l'une des catégories mentionnées à l'article 1er de l'arrêté du 6 septembre 1989.* *Le correspondant centralisateur et, le cas échéant, les autres correspondants sont contractuellement chargés* *D'assurer les services financiers suivants :* *1° Traitement des demandes de souscription et de rachat;* *2° Paiement des coupons et dividendes;* *3° Mise à disposition des documents d'information aux investisseurs;* *4° Information particulière des porteurs dans les cas prévus par une instruction de l'AMF.* *Quand l'OPCVM n'est pas admis aux opérations du dépositaire central en France, le contrat conclu entre le correspondant centralisateur et l'OPCVM peut prévoir que le correspondant centralisateur est en charge de la seule fonction mentionnée au 3° et que l'OPCVM demeure en charge des tâches mentionnées aux 1°, 2° et 4°. Dans ce cas, l'OPCVM informe le correspondant centralisateur de l'accomplissement des tâches dont il conserve la charge et lui transmet une copie de l'information mentionnée au 4°.* *Le correspondant centralisateur est chargé d'acquitter le droit fixe annuel, conformément à l'article L. 621-5-3 du code monétaire et financier.*	***Article 421-27*** *~~L'OPCVM de droit étranger ayant fait l'objet d'une notification conformément aux dispositions du deuxième alinéa du II de l'article L. 214-1 du code monétaire et financier~~ **Le FIA établi dans un autre Etat membre de l'Union européenne ou sa société de gestion,** désigne un ou plusieurs correspondants, dont un correspondant centralisateur, établis en France dans les conditions fixées par une instruction de l'AMF.* *Le ou les correspondants doivent appartenir à l'une des catégories mentionnées à l'article 1er de l'arrêté du 6 septembre 1989.* *Le correspondant centralisateur et, le cas échéant, les autres correspondants sont contractuellement chargés d'assurer les services financiers suivants :* *1° Traitement des demandes de souscription et de rachat;* *2° Paiement des coupons et dividendes;* *3° Mise à disposition des documents ~~d'information aux investisseurs~~ **destinés à l'information des investisseurs**;* *4° Information particulière des porteurs dans les cas prévus par une instruction de l'AMF.* *Quand ~~l'OPCVM~~ **le FIA** n'est pas admis aux opérations du dépositaire central en France, le contrat conclu entre le correspondant centralisateur et ~~l'OPCVM~~ **le FIA** peut prévoir que le correspondant centralisateur est en charge de la seule fonction mentionnée au 3° et que ~~l'OPCVM~~ **le FIA** demeure en charge des tâches mentionnées aux 1°, 2° et 4°. Dans ce cas, ~~l'OPCVM~~ **le FIA** informe le correspondant centralisateur de l'accomplissement des tâches dont il conserve la charge et lui transmet une copie de l'information mentionnée au 4°.* *Le correspondant centralisateur est chargé d'acquitter le droit fixe annuel, conformément à l'article L. 621-5-3 du code monétaire et financier.*

European Private Equity & Venture Capital Association
Bastion Tower, Place du Champ de Mars 5
B-1050 Brussels, Belgium
T +32 2 715 00 20 F +32 2 725 07 04
info@evca.eu www.evca.eu

Potential Market Implications of Such a Requirement

As with the imposition of fees or charges we contend that the AIFMD does not provide a legal base for additional regulatory requirements such as this to be imposed on an AIFM before it uses the passport it has been granted by its home authorities.

Furthermore, the requirement to impose a paying agent is disproportionate for private equity funds. For most private equity funds the payments are only distributed to the investors (who are professional, not retail) following a realisation or refinancing and typically there are very few such payments during the life of an investment. It is not, therefore, a proportionate obligation for this sector.

And the demanding nature of this obligation could impact on the willingness of managers to market particular types of fund in particular jurisdictions, contrary to the single market intentions of the AIFMD. In a jurisdiction with a small number of investors the manager may conclude that the small number of payments (perhaps in the range of 15-40) that will be made to those investors during the life of a typical 10-year closed-ended fund do not justify the costs of establishing a paying agent. This excess cost would effectively neutralise the benefits of the passport.