

Entire legal requirements for Alternative Investment Fund Managers Act, version dated 25.08.2014

Full title

Federal Act enacting the Alternative Investment Fund Managers Act (*Alternative Investment Fund Managers Act – AIFMG*)
 StF: Federal Law Gazette I No. 135/2013 (NR: GP XXIV RV 2401 AB 2516 S. 216. BR: 9051 AB 9088 S. 823.)
 [CELEX no.: 32011L0061]

Amendment

Federal Law Gazette I No. 70/2014 (NR: GP XXV RV 176 AB 190 S. 34. BR: 9201 AB 9208 S. 832.)
 [CELEX no.: 32013L0014, 32013L0036]

Preamble/Promulgation clause

The National Council has decided the following:

Table of Contents

**Part 1
Scope**

- Article 1.
- Article 2. Definition of terms
- Article 3. Determination of the AIFM

**Part 2
Authorization of AIFMs**

- Article 4. Conditions for commencing activity as an AIFM
- Article 5. Application for authorization
- Article 6. Conditions for granting authorization
- Article 7. Initial capital and own funds
- Article 8. Changes in the scope of the authorization
- Article 9. Withdrawal and cancellation of the authorization

**Part 3
Operating conditions for AIFMs**

Chapter 1

General requirements

- Article 10. General principles
- Article 11. Remuneration
- Article 12. Conflicts of interest
- Article 13. Risk management
- Article 14. Liquidity management
- Article 15. Investments in securitization positions

Chapter 2

Organisational requirements

- Article 16. General Principles
- Article 17. Valuation

Chapter 3
Delegation of AIFM functions

Article 18. Delegation

Chapter 4

Article 19. Depositary

Part 4

Transparency requirements

Article 20. Annual report

Article 21. Duties to provide information to investors

Article 22. Reporting obligations to competent authorities

Part 5

AIFMs managing specific types of AIF

Chapter 1

AIFMs managing leveraged AIFs

Article 23. Use of information by competent authorities, supervisory cooperation, and limits to leverage

Chapter 2

Obligations for AIFMs managing AIFs that gain control of non-listed companies and issuers

Article 24. Scope

Article 25. Reporting the acquisition of major holdings and control of non-listed companies

Article 26. Duty of disclosure on gaining control

Article 27. Special provisions regarding the annual reports of AIFs exercising control of non-listed companies

Article 28. Asset stripping

Part 6

The right of EU AIFMs to market and manage EU AIFs

Article 29. Marketing of EU AIF units or shares in Austria as the home Member State of the AIFM

Article 30. Marketing of EU AIF units or shares in other Member States by an AIFM authorized in Austria

Article 31. Marketing of EU AIF units or shares from other Member States in Austria by an AIFM approved in a Member State

Article 32. Conditions for the management of EU AIFs by an AIFM authorized in Austria

Article 33. Conditions for the management of EU AIFs in Austria by AIFMs established in another Member State

Part 7

Specific rules relating to third countries

Article 34. Conditions for EU AIFMs managing non-EU AIFs that are not marketed in Member States

Article 35. Marketing of units or shares of a non-EU AIF in Austria by an AIFM authorized in Austria

Article 36. Marketing of units or shares of a non-EU AIF in other Member States by an AIFM authorized in Austria with a passport

Article 37. Marketing of non-EU AIFs with a passport in Austria by an EU AIFM

Article 38. Conditions for non-EU AIFs managed by EU AIFMs to be marketed in Austria without a passport

Article 39. Approval of non-EU AIFMs for which Austria is the Member State of reference

Article 40. Conditions for EU AIFs managed by non-EU AIFMs for whom Austria is the Member State of reference to be marketed within the Union with a passport

Article 41. Marketing of EU AIFs with a passport in Austria by a non-EU AIFM

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt – BGBl.).

- Article 42. Conditions for non-EU AIFs managed by a non-EU AIFM for which Austria is the Member State of reference to be marketed within the Union with a passport
- Article 43. Marketing of non-EU AIFs by a non-EU AIFM with a passport in Austria
- Article 44. Conditions for the management of EU AIFs from other Member States by non-EU AIFMs for which Austria is the Member State of reference
- Article 45. Conditions for the services of a non-EU AIFM to be provided in Austria as host Member State
- Article 46. Cooperation of the FMA as competent authority of the host Member State with the ESMA and competent authorities of other Member States
- Article 47. Conditions for AIFs managed by non-EU AIFMs to be marketed in Austria without a passport

Part 8

Marketing to retail investors

- Article 48. Marketing of Austrian AIFs by AIFMs to retail investors and qualified retail investors
- Article 49. Marketing of EU AIFs from other Member States and of non-EU AIFs by Austrian AIFMs, or of AIFs by EU AIFMs established in another Member State or by non-EU AIFMs to retail investors and qualified retail investors
- Article 50. Prohibition of marketing
- Article 51. Advertising
- Article 52. Provision of prospectuses, statement of accounts and half-yearly report free of charge
- Article 53. Continued use of general designations

Part 9

Competent Authorities

Chapter 1

Designation, powers and redress procedures

- Article 54. Designation of the competent authority
- Article 55. Responsibilities of the competent authorities in the Member States
- Article 56. Powers and costs of the FMA
- Article 57. Actions of the FMA
- Article 58. Form of communication with the FMA - electronic transmission
- Article 59. Powers and competences of the ESMA
- Article 60. Administrative penalties and publications

Chapter 2

Cooperation between the various competent authorities

- Article 61. Obligation to cooperate
- Article 62. Transmission and retention of personal data
- Article 63. Disclosure of information to third countries
- Article 64. Exchange of information relating to potential systemic consequences of AIFM transactions
- Article 65. Cooperation in supervisory activities
- Article 66. Dispute resolution

Part 10

Transitional and final provisions

- Article 67. Transitional provision
- Article 68.
- Article 69.
- Article 70.
- Article 71. References and Regulations
- Article 72. Gender-neutral use of language
- Article 73. Enforcement
- Article 74. Entry into force
- Schedule 1 to article 4
- Schedule 2 to article 11

Schedule 3 to article 29
Schedule 4 to article 30

Part 1 Scope

Article 1. (1) Subject to para 3 to 5, this Federal statute applies to

1. EU AIFMs managing one or more AIFs, regardless of whether such AIFs are EU AIFs or non-EU AIFs,
2. non-EU AIFMs managing one or more EU AIFs, and
3. non-EU AIFMs marketing one or more AIFs in the European Union, regardless of whether such AIFs are EU AIFs or non-EU AIFs.

(2) For the purposes of para 1, it is immaterial

1. whether the AIF is an open-ended or closed-ended type,
2. whether the AIF is constituted under a contract, by means of a trust, under statute, or in any other legal form,
3. what legal structure the AIFM has.

(3) This Federal statute does not apply to

1. holding companies,
2. institutions for occupational retirement provision that fall within the scope of Directive 2003/41/EC, including if applicable the approved bodies listed in article 2 para 1 of the Directive referred to that are responsible for managing such institutions and operate in their name, or the asset managers appointed under article 19 para 1 of the Directive referred to, unless they manage AIFs,
3. supranational institutions such as the European Central Bank, the European Investment Bank, the European Investment Fund, the European Development Finance Institutions and bilateral Development Banks, the World Bank, the International Monetary Fund and other supranational institutions and similar international organizations, if such institutions or organizations manage AIFs, and if these AIFs operate in the public interest,
4. national central banks,
5. government bodies and regional administrative bodies or other institutions managing funds to support social security and pension systems,
6. employee participation systems or employee savings schemes, and
7. securitization special purpose entities.

(4) This Federal statute does not apply to AIFMs managing one or more AIFs whose only investors are the AIFM or the parent companies or the subsidiaries of the AIFM or other subsidiaries of those parent companies, unless one of these investors is itself an AIF.

(5) Notwithstanding the application of article 24 to 28, 56 and 60, this Federal statute does not apply to AIFMs that, either directly or indirectly through a company to which the AIFM is linked by way of joint management, a joint control relationship or a substantial direct or indirect holding, manage the portfolios of AIFs whose assets under management (including assets acquired by the use of leverage) do not in total exceed a threshold value of EUR 100 million, or whose total assets under management do not exceed a threshold value of EUR 500 million, if the portfolios of these AIFs consist of AIFs that do not use leverage and that are not permitted to exercise any redemption rights for a period of five years after the first investment has been made in each of these AIFs. Such an AIFM must however

1. register with the FMA;
2. prove its identity and that of the AIFs it manages to the FMA at the time of registration;
3. submit to the FMA information on the investment strategies of the AIFs it manages at the time of registration;
4. inform the FMA annually and on request of the main instruments it is trading in, and of the greatest risks and concentrations of the AIFs it is managing, so the FMA can conduct effective supervision of the systemic risks;

5. notify the FMA promptly of each issue of an AIF and each commencement of winding-up of an AIF;
6. make a declaration not to market units or shares of the AIF to retail investors as defined in article 48, and
7. notify the FMA promptly if it can no longer satisfy the preconditions referred to in this para.

If the assets of the portfolios of the AIFs managed by an AIFM registered under this para subsequently exceed one of the thresholds referred to, the AIFM must apply within 30 calendar days for the authorization required under this Federal statute pursuant to article 4. An AIFM can decide to apply for authorization pursuant to article 4 regardless of the threshold values. In this event, this Federal statute shall apply in its entirety when the authorization is granted. If AIFs managed by an AIFM are intended for marketing to retail investors, this Federal statute shall at all events apply in its entirety, subject to granting of authorization pursuant to article 4.

Definition of terms

Article 2. (1) For the purposes of this Federal statute, the following terms have the meanings set out below:

1. “AIF” is any undertaking for collective investment including its sub-funds that
 - a) gathers capital from a number of investors in order to invest it according to a pre-determined investment strategy for the benefit of those investors, without the capital gathered directly serving any operational activity, and
 - b) needs no approval under article 5 of Directive 2009/65/EC.
2. “AIFM” is any legal entity whose regular business activity consists of managing one or more AIFs.
3. “Branch” with regard to an AIFM is a place of business that forms a legally dependent part of an AIFM and provides the services for which the AIFM has been granted approval; all places of business of an AIFM having their registered office in another Member State or in a third country that are established in one and the same Member State are deemed to be single branches.
4. “Carried interest” is a share of the profits of the AIF received by an AIFM as remuneration for managing the AIF; this excludes all shares in the profits of the AIF that the AIFM draws as return for the AIFM’s investments in the AIF.
5. “Close links” is a situation in which two or more natural persons or legal entities are linked by
 - a) holding, i.e. holding at least 20 % of the voting rights or of the capital of an undertaking, either directly or by way of control;
 - b) controlling, i.e. the relationship between a parent undertaking and a subsidiary pursuant to article 1 of the Seventh Directive 83/349/EEC or a similar relationship between a natural person or legal entity and an undertaking; for the purposes of this provision, a subsidiary of a subsidiary is also deemed to be a subsidiary of the parent undertaking.

A situation in which two or more natural persons or legal entities are permanently linked to one and the same person by a control relationship is also deemed to be a “close link” between these persons/entities.
6. “Competent authorities” are the national authorities of the Member States authorized by virtue of laws, regulations or administrative provisions to supervise AIFMs.
7. “Competent authorities” with regard to a depositary are
 - a) the competent authorities pursuant to article 4 para. 1 no. 40 of Regulation (EU) No. 575/2013 if the depositary is a credit institution approved under that Directive;
 - b) the competent authorities within the meaning of article 4 para 1 no 22 of Directive 2004/39/EC, if the depositary is an investment firm approved under that Directive;
 - c) the national authorities of the depositary’s home Member State that are empowered on the basis of laws, regulations and administrative provisions to supervise categories of institution pursuant to article 21 para 3 subpara 1 letter c of Directive

- 2011/61/EU, if the depositary belongs to a category of institution referred to in that provision;
- d) the national authorities of the Member State in which an undertaking has its registered office for the purposes of article 21 para 3 subpara 3 of Directive 2011/61/EU, if the depositary is an undertaking referred to in that provision, that are empowered on the basis of laws, regulations and administrative provisions to supervise such an undertaking, or the official agency responsible for registering or supervising such an undertaking in accordance with the rules of professional conduct applicable to it;
- e) the national authorities concerned of the third country in which the depositary has its registered office, if the depositary is nominated as a depositary for a non-EU AIF pursuant to article 21 para 5 letter b of Directive 2011/61/EU, and does not fall under points i to iv of that Directive.
8. “Competent authorities of the EU AIF” are the national authorities of a Member State that are empowered to supervise AIFs on the basis of laws, regulations and administrative provisions.
9. “Control” is control within the meaning of article 1 of Directive 83/349/EEC.
10. “Established” means
- in the case of AIFMs: “having its registered office in”;
 - in the case of AIFs: “approved or registered in”; or if the AIF is not approved or registered: “having its registered office in”;
 - in the case of depositaries: “having its registered office or branch in”;
 - in the case of legal representatives that are legal entities: “having its registered office or branch in”;
 - in the case of legal representatives who are natural persons: “resident in”.
11. “EU AIF” means
- an AIF that is approved or registered according to relevant national law in a Member State, or
 - an AIF that is not approved or registered in a Member State, but whose registered office and/or headquarters is located in a Member State.
12. “EU AIFM” means an AIFM having its registered office in a Member State.
13. “Feeder AIF” means an AIF that
- invests at least 85 percent of its assets in shares or units of another AIF (“master AIF”), or
 - invests at least 85 percent of its assets in more than one master AIF, if these master AIFs pursue identical investment strategies, or
 - in some other way has an exposure of at least 85 percent of its assets in such a master AIF.
14. “Financial instrument” is one of the instruments referred to in annex I section C of Directive 2004/39/EC.
15. “Holding company” is a company with a holding in one or more other undertakings, whose business is pursuing a business strategy or strategies through its subsidiaries or affiliated undertaking or holdings to promote their long-term value, and that is a company that either
- operates on its own account, and whose shares or units are admitted for trading on a regulated market within the Union, or
 - on the evidence of its annual report or other official documents, was not formed for the main purpose of generating a return for its investors by disposing of its subsidiaries or affiliated undertakings.
16. “home Member State of the AIF” is:
- the Member State in which the AIF is approved or registered under applicable national law, or in the case of multiple approvals or registrations, the Member State in which the AIF was first approved or registered, or
 - if the AIF is not approved or registered in any Member State, the Member State in which the AIF has its registered office and/or its headquarters;

17. “home Member State of the AIFM” is the Member State in which the AIFM has its registered office; in the case of non-EU AIFMs, references in Directive 2011/61/EU to the “AIFM’s home Member State” always mean the “Member State of reference” as stipulated in part 7.
18. “host Member State of the AIFM” is:
- a) a Member State other than the home Member State, in which an EU AIFM manages EU AIFs;
 - b) a Member State other than the home Member State, in which an EU AIFM markets units or shares of an EU AIF;
 - c) a Member State other than the home Member State, in which an EU AIFM markets units or shares of a non-EU AIF;
 - d) a Member State other than the Member State of reference, in which a non-EU AIFM manages units or shares of an EU AIF;
 - e) a Member State other than the Member State of reference, in which a non-EU AIFM markets units or shares of an EU AIF, or
 - f) a Member State other than the Member State of reference, in which a non-EU AIFM markets units or shares of a non-EU AIF.
19. “Initial capital” means funds as defined in article 12 of the Directive 2013/36/EU.
20. “Issuer” is any issuer pursuant to article 2 para 1 letter d of Directive 2004/109/EC having its registered office within the Union and whose securities pursuant to article 4 para 1 no 14 of Directive 2004/39/EC are admitted for trading on a regulated market.
21. “Legal representative” is any natural person resident within the Union or any legal entity having its registered office within the Union that is expressly appointed by a non-EU AIFM to act in the name of this non-EU AIFM in dealings with public authorities, clients, institutions and counterparties of the non-EU AIFM within the Union in respect of the obligations of the non-EU AIFM in accordance with Directive 2011/61/EU.
22. “Leverage” is any method by which an AIFM increases the risk of an AIF it manages, by borrowing, securities lending, leverage embedded in derivatives, or in any other way.
23. “Managing AIFs” means that at least the investment management functions in schedule 1 no 1 letter a or b referred to are performed for one or more AIFs.
24. “Marketing” is directly or indirectly offering or placing units or shares of an AIF managed by the AIFM to or with investors resident or established within the Union, on the initiative of the AIFM or on its behalf.
25. “Master AIF” is any AIF in which another AIF has invested or has exposure pursuant to no 13.
26. “Member State of reference” is the Member State determined pursuant to article 37 para 4 of Directive 2011/61/EU.
27. “Non-EU AIF” is an AIF that is not an EU AIF.
28. “Non-EU AIFM” is an AIFM that is not an EU AIFM.
29. “Non-listed company” is an undertaking having its registered office within the Union whose shares or units are not admitted for trading on a regulated market pursuant to article 4 para 1 no 14 of Directive 2004/39/EC.
30. “Own funds” are own funds pursuant to article 4 para. 1 no. 118, article 72 of Regulation (EU) No. 575/2013.
31. “Parent undertaking” is a parent undertaking as defined in articles 1 and 2 of Directive 83/349/EEC.
32. “Prime broker” is a credit institution, a regulated investment firm or some other unit subject to regulatory oversight and constant supervision that offers services to professional investors, primarily in order to finance or conduct transactions with financial instruments as counterparty, and that may also offer other services such as clearing and settlement transactions, custody services, securities lending and customized technologies and facilities for operational support.
33. “Professional investor” is any investor who is regarded as a professional client or can on application be treated as a professional client within the meaning of annex II of Directive 2004/39/EC.

34. “Qualifying holding” is a direct or indirect holding of at least 10 percent of the capital or of the voting rights of an AIFM under articles 9 and 10 of Directive 2004/109/EC, taking into account the conditions for aggregating the holdings in accordance with article 12 para 4 and 5 of the Directive referred to, or the possibility of exerting major influence on the management of the AIFM in which this holding is held.
35. “Employees’ representatives” are representatives of employees as defined by article 2 letter e of Directive 2002/14/EC.
36. “Retail investor” is an investor pursuant to article 1 no 14 of the Securities Supervision Act 2007 - WAG 2007 (FLG I No. 60/2007).
37. “Subsidiary” is a subsidiary as per the definition in articles 1 and 2 of Directive 83/349/EEC.
38. “Supervisory authorities” with regard to non-EU AIFs are the national authorities of a third country that are empowered to supervise AIFs on the basis of laws, regulations and administrative provisions.
39. “Supervisory authorities” with regard to non-EU AIFMs are the national authorities of a third country that are empowered to supervise AIFMs on the basis of laws, regulations and administrative provisions.
40. “Securitization special purpose entities” are entities whose sole purpose is to conduct one or more securitizations pursuant to article 1 para 2 of Regulation (EC) No. 24/2009, which conduct securitization transactions and other activities suitable for achieving this aim.
41. “UCITS” are undertakings for collective investment in transferable securities pursuant to article 2 para 1 no 3 of the Investment Funds Act 2011 - InvFG 2011 (FLG I No. 77/2011).
42. A “Qualified Retail Investor” is an investor,
- a) who confirms, in a separate document to the investment commitment agreement, that they are aware of the risks associated with the intended investment and that they have the unencumbered bank balance and financial instruments pursuant to article 1 no 6 WAG 2007 worth more than 500,000 Euro;
 - b) who confirms that the AIF Management Company, or if the marketing is indirect, the natural person or legal entity responsible for the marketing has assessed their expertise, experience and knowledge;
 - c) who confirms that the AIF Management Company, or if the marketing is indirect, the natural person or legal entity responsible for the marketing must be sufficiently convinced that the investor is in a position to make their own investment decisions and understand the risks associated with the investment and that such a commitment is appropriate for the investor;
 - d) who commits to investing at least 100,000 Euro in an AIF;
 - e) who confirms that they will make the investment for the purposes of diversification and risk spreading with regard to their asset management and that the AIF Management Company, or if the marketing is indirect, the natural person or legal entity responsible for the marketing will prove that it does not amount to more than 20 % of their assets from financial instruments pursuant to article 1 no 6 WAG 2007 at the time of the investment in an AIF.
- (2) For the purposes of para 1 no 30, articles 13 to 16 of Directive 2006/49/EC apply accordingly.
- (3) The FMA can issue regulations stipulating various types of AIF and their criteria, taking into account customary European practice.
- (4) Unless particular definitions are stipulated in this Federal statute, the definitions of terms set out in the Banking Act - BWG (FLG No. 532/1993) and in the Capital Market Act - KMG (FLG No. 625/1991) apply.

Determination of the AIFM

Article 3. An AIF may be managed only by a single AIFM, which is also responsible for compliance with the provisions of this Federal statute. The AIFM is either

1. an external manager that is the legal entity appointed by the AIF or in the name of the AIF, and is responsible by virtue of this appointment or by operation of law for management of the AIF (external AIFM), or
2. the AIF itself, if the legal form of the AIF permits internal management and the Executive Board of the AIF decides not to appoint an external AIFM; in this case the AIF is approved as an AIFM.

Part 2

Authorization of AIFMs

Conditions for commencing activity as an AIFM

Article 4. (1) Authorization as an AIFM, granted by the FMA, is required in order to manage AIFs. AIFMs authorized pursuant to this Federal statute must comply with the authorization conditions at all times.

(2) Subject to para 4, an external AIFM may conduct no other activities than those referred to in **schedule 1** and the additional management of UCITS subject to authorization for investment fund business pursuant to article 1 para 1 no 13 of the Banking Act (BWG) in conjunction with article 6 para 2 of the Investment Funds Act (InvFG) 2011.

(3) An internally managed AIF may conduct no other activity than internal management of this AIF in accordance with schedule 1.

(4) The FMA may also issue an external AIFM with authorization to provide the following services:

1. individual management of single portfolios, including portfolios held by pension funds and institutions for occupational retirement provision, pursuant to article 19 para 1 of Directive 2003/41/EC, and in accordance with individual discretionary mandates granted by the investors,
2. as ancillary services:
 - a) investment advice,
 - b) custody and technical management in connection with shares or units in undertakings for collective investment,
 - c) accepting and transmitting orders relating to financial instruments.

(5) AIFMs may not be authorized to

1. provide exclusively the services referred to in para 4,
2. provide the ancillary services referred to in para 4 no 2 without also being approved to provide services in accordance with para 4 no 1,
3. perform exclusively the activities referred to in schedule 1 no 2, or
4. provide the services referred to in schedule 1 no 1 letter a, without also providing those referred to in schedule 1 no 1 letter b; the same applies in the reverse case.

(6) Article 3 para 5 no 3 and 4 and para 8 and 9, and articles 5, 9 and 75 to 78 WAG 2007 apply mutatis mutandis to issuing and withdrawing authorization in accordance with para 4. AIFMs that are also entitled to provide services in accordance with para 4 must furthermore comply with the provisions pursuant to articles 16 to 26 and 29 to 51, 52 para 2) to 4, 54 para 1 and 94 to 96 WAG 2007 in respect of these activities. A UCITS management company whose authorization also extends to para 4 is subject to the rules pursuant to article 93 para 2a BWG with regard to those services.

(7) The AIFMs must submit to the FMA the information necessary for it to monitor compliance with the requirements referred to in this Federal statute at any time.

(8) Investment firms pursuant to article 1 no 1 WAG 2007 and credit institutions pursuant to article 1 para 1 and article 9 para 1 BWG are not obliged to acquire authorization under this Federal statute in the context of their entitlement to provide securities-related services pursuant to annex I to Directive 2004/39/EC. However, investment firms and credit institutions are entitled to directly or indirectly offer units or shares of AIFs to or place them with investors within the Union if these shares or units are allowed to be marketed under this Federal statute, corresponding to the respective licensing scope of their banking transactions or investment services.

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt – BGBl.).

Application for authorization

Article 5. (1) An AIFM for which Austria is the home Member State must apply to the FMA for authorization as AIFM under this Federal statute.

(2) The applicant must attach the following information and documents to the application for authorization to be granted:

1. information on the persons actually conducting the AIFM's business, and information on any controlling influence of these persons in undertakings in other Member States in the categories listed in article 6 para 3;
2. information on the identity of all shareholders or members of the AIFM with a qualifying holding in it, regardless of whether this holding is direct or indirect, or whether they are natural persons or legal entities, and the amount of these holdings, and information on any holdings of these persons in undertakings in other Member States in the categories listed in article 6 para 3;
3. a business plan including both the AIFM's organisation structure and information on how the AIFM proposes to discharge its duties under parts 2 to 4, and if applicable parts 5 to 8, of this Federal statute, and the investment strategies of the AIFs the AIFM has applied for authorization to manage;
4. information on the remuneration policy and practice pursuant to article 11;
5. information on agreements made on delegating and sub-delegating functions pursuant to article 18 to third parties.

(3) The following information regarding the AIFs the applicant proposes to manage as AIFM must be attached:

1. information on the investment strategies, including the types of target fund if the AIF is a fund of funds, and the principles the AIFM applies in connection with the use of leverage, and the risk profile and other features of the AIF it manages or proposes to manage, including information on the Member States or third countries in which the registered office of such AIFs are or are likely to be located;
2. information on the master AIF's registered office if the AIF is a feeder AIF;
3. the contractual conditions or statutes of all AIFs the AIFM is managing or proposes to manage;
4. information on the agreements for appointing the depositary pursuant to article 19 for each AIF the AIFM is managing or proposes to manage;
5. any further information referred to in article 21 para 1 for each AIF the AIFM is managing or proposes to manage.

(4) If a management company authorized pursuant to article 1 para 1 no 13 BWG in conjunction with article 6 para 2 of InvFG 2011 (hereinafter referred to as "UCITS management company"), or an investment fund management company for real estate that is authorized pursuant to article 1 para 1 no 13a of the Banking Act (BWG) applies for authorization as an AIFM under this Federal statute, it need not submit the information and documents it already submitted when it applied for the authorization under article 1 para 1 no 13 BWG in conjunction with article 6 para 2 InvFG 2011 or article 1 para 1 no 13a BWG, provided this information or these documents are still up to date.

(5) The FMA must advise the ESMA quarterly of the authorizations granted and withdrawn under this part.

Conditions for granting authorization

Article 6. (1) The authorization is to be granted if:

1. evidence has been provided that the AIFM is in a position to comply with the conditions stipulated in this Federal statute;
2. the AIFM has sufficient initial capital and own funds available pursuant to article 7;
3. the persons in fact managing the AIFM's business are sufficiently reliable and also have sufficient experience with regard to the investment strategies of the AIFs managed by the AIFM; the AIFM must notify the FMA promptly of the names of these

persons and of all their successors; at least two persons who satisfy the conditions referred to must direct the management of the AIFM;

4. the shareholders or members of the AIFM with a qualifying holding in it are suitably qualified, taking account of the need to ensure sound and prudent management of the AIFM, and

5. the registered office and the headquarters of the AIFM are located domestically.

(2) The authorization is valid in all Member States.

(3) The FMA must consult the competent authorities of the other Member States concerned before authorization is granted to an AIFM that

1. is a subsidiary of another AIFM, of a UCITS management company, of an investment firm, of a credit institution or of an insurance company approved in another Member State,

2. is a subsidiary of the parent undertaking of another AIFM, of a UCITS management company, of an investment firm, of a credit institution or of an insurance company approved in another Member State, or

3. is a company controlled by the same natural persons or legal entities as the one that controls another AIFM, a UCITS management company, an investment firm, a credit institution or an insurance company approved in another Member State.

(4) The FMA must at all events refuse the authorization if effective performance of its supervisory functions is impeded by one of the following circumstances:

1. by a close link between the AIFM and other natural persons or legal entities;

2. by the laws, regulations and administrative provisions of a third country to which natural persons or legal entities with which the AIFM is closely linked are subject;

3. by difficulties in enforcing these laws, regulations and administrative provisions.

(5) The FMA must either grant the authorization to the applicant within three months after receipt of the application (or within three months after provision of all information necessary for the decision if the information is incomplete), or give written notification of the decision to reject the application. The FMA can extend this period by up to three additional months if it considers this to be necessary because of the particular circumstances of the case and after appropriate notification of the AIFM. The last sentence of article 13 para 3 of the General Administrative Procedure Act (AVG) does not apply. For the purposes of this para, an application is deemed to be complete if the AIFM has submitted at least the information referred to in article 5 para 2 no 1 to 4 and article 5 para 3 no 1 and 2. AIFMs can start managing AIFs with the investment strategies described in the application pursuant to article 5 para 3 no 1 within their home country as soon as the authorization has been granted, but no sooner than one month after they have provided any missing information referred to in article 5 para 2 no 5 and article 5 para 3 no 3 to 5. The authorization must be issued in writing, and is otherwise invalid. Conditions, time limits and requirements may be attached to the authorization, especially as regards the investment strategies of the AIFs the AIFM is legitimately permitted to manage.

Initial capital and own funds

Article 7. (1) An AIFM that is an internally managed AIF must have initial capital of at least EUR 300,000.

(2) An AIFM that is appointed as the external manager of AIFs must have initial capital of at least EUR 125,000.

(3) If the value of the AIF portfolios managed by the AIFM exceeds EUR 250 million, the AIFM must contribute additional own funds; these additional own funds must amount to 0.02 percent of the amount by which the value of the AIFM's portfolios exceeds EUR 250 million; the total sum required, made up of initial capital and additional funds, does not however exceed EUR 10 million.

(4) For the purposes of para 3, the AIFs managed by the AIFM, including AIFs for which the AIFM delegated functions to third parties pursuant to article 18, but with the exception of AIF portfolios the AIFM manages on behalf of third parties, are deemed to be the portfolios of the AIFM.

(5) Notwithstanding para 3, AIFMs must always have own funds of at least the amount referred to in article 9 para 5 no 1 WAG 2007

(6) In order to cover the potential professional liability risks arising from the business activities AIFMs can pursue under this Federal statute and Directive 2011/61/EU, both internally managed AIFs and external AIFMs must have

1. additional own funds to provide adequate cover for potential liability risks arising from professional negligence, or
2. professional liability insurance for liability arising from professional negligence, corresponding to the risks covered.

(7) Own funds, including the additional own funds pursuant to para 6 no 1, may be invested only in liquid assets or assets that can be converted directly into cash at short notice, and may include no speculative positions. An AIFM that is also a UCITS management company must comply with this only with regard to the additional own funds pursuant to para 6 no 1.

(8) With the exception of para 6 and 7 and with the exception of delegated acts adopted pursuant to article 9 of Directive 2011/61/EU, this provision does not apply to AIFMs that are at the same time UCITS management companies.

Changes in the scope of the authorization

Article 8. (1) An AIFM must notify the FMA of any substantial changes to the preconditions for granting the authorization, before they are implemented. This applies in particular to substantial changes in the information submitted pursuant to article 5 and article 6 para 1.

(2) If the FMA decides to impose restrictions or to reject these changes, it must notify the AIFM thereof within one month after receipt of the notification by issuing an official notice. The last sentence of article 13 para 3 AVG does not apply. The FMA can extend this period by up to one month if it considers it necessary because of the particular circumstances of the individual case, after it has notified the AIFM accordingly. The changes may be implemented if they are not rejected by the FMA within the prescribed assessment period.

Withdrawal and cancellation of the authorization

Article 9. (1) In addition to the reasons mentioned in article 6 para 2 BWG, the FMA must withdraw the authorization if:

1. the AIFM does not make use of the authorization within twelve months, expressly waives it, or has not performed the activities referred to in this Federal statute in the preceding six months;
2. the preconditions necessary for granting the authorization no longer pertain;
3. the AIFM no longer complies with Directive 2006/49/EC if its authorization also extends to the service of discretionary portfolio management pursuant to article 4 para 4 no 1;
4. the AIFM has grossly or systematically contravened the provisions enacted under this Federal statute or the provisions of Directive 2011/61/EU, or the delegated acts adopted on the basis of this Directive.

(2) article 7 BWG applies as regards cancellation of the authorization.

(3) If the FMA withdraws the AIFM's authorization, the right to manage the AIF passes to the depositary. It is not permissible to pay out shares or units when the right to manage the AIF passes to the depositary. The depositary must wind up the AIF promptly, and distribute the assets to the investors. The assets held for the AIF must be converted into cash as quickly as possible whilst safeguarding the interests of the shareholders. The assets must be distributed to the share- or unit-holders only after the AIF's obligations have been discharged, and after payments to the AIFM and the depositary permissible under the fund's conditions have been made. Article 22 para 1 to 4 applies to the depositary *mutatis mutandis* during winding up. With the FMA's approval, the depositary may desist from winding up the AIF and distributing the assets, and assign management of the AIF to another AIFM within one month after the right to manage the AIF has passed to the depositary, subject to the investment conditions. The FMA may attach appropriate conditions and stipulations to the approval.

Part 3
Operating conditions for AIFMs

Chapter 1

General requirements

General principles

Article 10. (1) An AIFM must always:

1. conduct its activity in a fair and honest manner, with due skill, care and diligence;
2. act in the best interests of the AIFs it manages, or of the investors in those AIFs, and of the integrity of the market;
3. have available the resources and procedures necessary for the proper conduct of its business activity, and apply them effectively;
4. take all appropriate steps to avoid conflicts of interest, and where these cannot be avoided, investigate, settle, monitor and if applicable disclose these conflicts of interest, in order to avoid them having adverse effects on the interests of the AIFs and of their investors, and in order to ensure that the AIFs it manages receive fair treatment;
5. comply with all regulatory requirements applicable to the conduct of its business activities, so as to promote the best interests of the AIFs it manages or of the investors in these AIFs, and the integrity of the market;
6. treat all investors in the AIFs fairly.

The AIFM must treat investors in the AIFs it manages equally, and not put the interests of one particular group of investors before the interests of another group of investors, unless such preferential treatment is stipulated in the contractual conditions or in the statutes of the AIF concerned.

(2) An AIFM whose authorization also extends to individual discretionary portfolio management pursuant to article 4 para 4 no 1 may invest the client's portfolio neither wholly nor in part in units or shares of the AIFs it manages, unless it has previously received a general consent from the client, and is subject to the provisions of article 75 to 78 WAG 2007 in respect of the services pursuant to article 4 para 4. If the AIFM also has authorization pursuant to article 1 para 1 no 13 BWG in conjunction with article 6 para 2 InvFG 2011, article 93 para 2a BWG applies instead.

(3) Articles 40, 40a, 40b and 41 BWG apply to AIFMs. Article 40 para 2 and 2a no 1 BWG also applies to persons who acquire share certificates or units or shares from the AIFM.

Remuneration

Article 11. (1) An AIFM must establish remuneration policies and practices for all categories of employee including the managers and persons actually conducting the business, risk takers, employees with monitoring functions and all employees receiving total remuneration placing them in the same remuneration bracket as the managers and risk takers whose professional activity impacts materially on the risk profile of the AIFM or on the risk profiles of the AIFs it manages, that are consistent with and promote sound and effective risk management, and do not encourage risk-taking that is incompatible with the risk profile, the contractual conditions or the statutes of the AIFs it manages.

(2) An AIFM must determine the remuneration policies and practices in accordance with **schedule 2**.

(3) The FMA can issue regulations to determine the principles for a remuneration policy, taking into account European custom and practice.

Conflicts of interest

Article 12. (1) An AIFM must take all appropriate steps to identify conflicts of interest arising in connection with managing AIFs, between

1. the AIFM and its managers, employees or any other person directly or indirectly linked to the AIFM by a control relationship, and the AIF it manages, or the investors in this AIF,
2. the AIF or the investors in this AIF and another AIF or the investors in that AIF,
3. the AIF or the investors in this AIF and another client of the AIFM,
4. the AIF or the investors in this AIF and a UCITS managed by the AIFM, or the investors in that UCITS, or
5. two clients of the AIFM.

The AIFM must make and maintain effective organisational and administrative arrangements to take all appropriate measures to identify, prevent, resolve and monitor conflicts of interest in order to prevent them damaging the interests of the AIF and its investors. Within its own operational processes, the AIFM must segregate functions and responsibilities that could be regarded as incompatible with each other, or that could give rise to potentially systemic conflicts of interest. The AIFM must assess whether their operating conditions could entail other material conflicts of interest, and must disclose these to the AIF investors.

(2) If the arrangements made by the AIFM to identify, prevent, resolve and monitor conflicts of interest are not sufficient to ensure at its reasonable discretion that the risk of impairment of investor's interests is avoided, the AIFM must inform the investors unequivocally of the general nature or the sources of the conflicts of interest, and develop appropriate strategies and procedures before it effects transactions on their behalf.

(3) If the AIFM uses the services of a prime broker for an AIF, it must agree the conditions in a written contract. In particular, any possibility of transferring and reusing AIF assets must be agreed in this contract, and must be consistent with the AIF's contractual conditions or statutes. The contract must stipulate that the depositary is notified of the contract. The AIFM must proceed with due skill, care and diligence when selecting and nominating the prime brokers with whom a contract is concluded.

Risk management

Article 13. (1) AIFMs must functionally and hierarchically separate the functions of risk management from the operational departments. The FMA must monitor this in accordance with the proportionality principle. AIFMs must at all events be in a position to demonstrate to the FMA on request that specific safeguards are in place against conflicts of interest to enable risk management measures to be independently implemented, and that risk management satisfies the requirements of this provision, and is consistently effective.

(2) AIFMs must implement appropriate risk management systems in order to ensure that all risks that are material for the individual AIF investment strategies and to which each AIF is or may be exposed are adequately identified, evaluated, controlled, and monitored. AIFMs must review the risk management systems at appropriate intervals, but at least once a year, and adapt them as necessary.

(3) An AIFM has at least the following obligations:

1. it must implement a documented and regularly updated due diligence process that is appropriate to the investment strategy, the aims and the risk profile of the AIF when making investments for account of the AIF;
2. it must ensure that the risks associated with the AIF's individual investment positions, and their effect on the AIF's total portfolio, can be duly evaluated, assessed, controlled and monitored on an ongoing basis — also by using appropriate stress tests;
3. it must moreover ensure that the AIF's risk profiles correspond to the size, portfolio structure and investment strategies and objectives as stipulated in the AIF's contractual conditions or statutes, prospectus and flotation documents.

(4) An AIFM must set a maximum level of leverage that it can use for each of the AIFs it manages, and the extent of the right to re-use collateral or other guarantees granted under the leverage agreement, taking into account the following:

1. the type of the AIF,
2. the AIF's investment strategy,
3. the sources of the AIF's leverage,

4. any other link or relevant relationship with other financial services institutes that could pose a systemic risk,
5. the need to limit exposure in respect of any single counterparty,
6. the extent to which the leverage is collateralised,
7. the ratio between assets and liabilities,
8. the extent, nature and degree of the AIFM's business activities on the markets concerned.

(5) The FMA can issue regulations determining specific criteria as regards techniques for efficient portfolio management, having regard for European custom and practice.

Liquidity management

Article 14. (1) An AIFM must have an appropriate liquidity management system for each AIF it manages that is not an AIF of the closed-ended type without leverage, and must establish procedures enabling it to monitor the AIF's liquidity risks, and must ensure that the liquidity profile of the AIF's investments complies with its underlying obligations. The AIFM must regularly conduct stress tests based on both normal and exceptional liquidity conditions, enabling it to evaluate the AIF's liquidity risks and monitor them accordingly.

(2) An AIFM must ensure that the investment strategy, the liquidity profile and the redemption policies of each AIF it manages are consistent with each other.

Investments in securitization positions

Article 15. In order to ensure coherence across sectors and to eliminate divergences between the interests of companies that repackage loans into tradable securities and originators pursuant to article 4 para. 1 no. 13 of Regulation (EU) No. 575/2013, and the interests of AIFMs that invest in those securities or other financial instruments for account of AIFs, the AIFM must comply with delegated acts related to this.

Chapter 2

Organisational Requirements

General Principles

Article 16. (1) An AIFM must at all times use adequate and suitable human and technical resources for the due and proper management of the AIFs.

(2) Taking into account the nature of the AIF it manages, an AIFM must have sound management and accounting, control and security arrangements in place as regards electronic data processing, and suitable internal control procedures, including in particular rules for personal transactions by its employees and for holding or managing investments for the purpose of own-account investment, guaranteeing at least that each transaction relating to the AIF can be reconstructed by origin, contracting parties, type, transaction time and place, and that the assets of the AIFs managed by the AIFM are invested in accordance with the AIF's contractual conditions or statutes, and in accordance with the relevant legal provisions.

Valuation

Article 17. (1) An AIFM must ensure that suitable and coherent procedures are established for each AIF it manages, so that a proper and independent valuation of the assets of the AIF can be carried out in accordance with this provision and the AIF's contractual conditions or statutes.

(2) The rules that apply to valuing the assets and calculating the net asset value per unit or share of an AIF must be governed by the AIF's contractual conditions or statutes, if the AIF has its registered office in Austria.

(3) An AIFM must also ensure that the net asset value per share or unit of the AIF is calculated and disclosed to the investors in accordance with this provision and the AIF's contractual conditions or statutes. The valuation procedures used must ensure that the valuation of the assets and the calculation of the net asset value per share or unit is carried out

at least once a year. If it is an open-ended AIF, such valuations and calculations must be carried out at intervals appropriate to the assets held by the AIF and its issue and redemption frequency. If it is a closed-ended AIF, such valuations and calculations must also be carried out if the capital of the AIF concerned is increased or decreased. The investors must be informed about the valuations and calculations in accordance with the relevant contractual conditions or the statutes of the AIF.

- (4) An AIFM must ensure that the valuation is carried out by one of the following bodies:
1. by an external valuer being a natural person or legal entity independent of the AIF, the AIFM and any other persons with close links to the AIF or to the AIFM, or
 2. by the AIFM itself, provided the valuation assignment is functionally independent of portfolio management, and the remuneration policy and other measures ensure that conflicts of interest are minimised, and undue influence on the employees is prevented.

The depositary appointed for an AIF may not be appointed as external valuer of this AIF, except if there is functional and hierarchical separation of performance of its depositary functions from its functions as external valuer, and the potential conflicts of interest are properly identified, controlled, monitored and disclosed to the investors of the AIF.

- (5) If an external valuer is consulted for the valuation, the AIFM must demonstrate that:
1. the external valuer is subject to legally recognized mandatory professional registration or to laws, regulations and administrative provisions or rules of professional conduct;
 2. the external valuer can provide adequate professional guarantees to be able to effectively perform the valuation function required in accordance with para 1, 2 and 3, and
 3. the appointment of the external valuer satisfies the requirements of article 18 and the delegated acts adopted pursuant to article 20 para 7 of Directive 2011/61/EU.

- (6) The external valuer appointed may not delegate the valuation function to a third party.

(7) An AIFM must notify the FMA promptly of the appointment of an external valuer; if the preconditions set out in para 5 are not satisfied, the FMA can demand the appointment of another external valuer.

- (8) The valuation must be conducted impartially and with due skill, care and diligence.

(9) If the valuation is not performed by an external valuer, the FMA can require the AIFM's valuation procedures and valuations to be checked by an external valuer, or by an auditor if applicable.

(10) An AIFM is responsible for the proper valuation of the AIF's assets, and for calculating and declaring this net asset value. The AIFM's liability to the AIF and its investors must therefore not be affected by the fact that the AIFM has appointed an external valuer. The external valuer is nevertheless liable to the AIFM for any losses of the AIFM that can be attributed to the external valuer's negligent or deliberate failure to perform its functions, regardless of any contractual provisions to the contrary.

Chapter 3

Delegation of AIFM functions

Delegation

Article 18. (1) The AIFM is entitled to delegate one or more of its functions to third parties. The following preconditions must be satisfied in this case:

1. The AIFM must notify the FMA promptly in writing of the delegation when the decision is made, and at all events before the delegation arrangement enters into force;
2. the AIFM must be in a position to justify its entire delegation structure with objective reasons;
3. the appointee must have sufficient resources available to perform the functions concerned, and the persons actually conducting the third party's transactions must be of good repute, and have sufficient experience;

4. if the delegation relates to portfolio management or risk management, it must be only to undertakings that are approved for the purposes of asset management and are subject to supervision, or, if this condition cannot be met, only with the prior approval of the FMA;
5. if the delegation relates to portfolio management or risk management, and if delegation is to an undertaking from a third country, then cooperation must be ensured between the FMA and the supervisory authority responsible for the undertaking, in addition to the requirements set out in no 4;
6. the delegation must not impair the effectiveness of the supervision of the AIFM; in particular it must neither prevent the AIFM acting in the interests of its investors, nor prevent the AIF being managed in the interests of the investors;
7. the AIFM must be able to demonstrate that the appointee concerned has the necessary qualifications and is in a position to perform the functions concerned, that it was carefully selected, and that the AIFM is in a position to effectively monitor the functions delegated at any time, to give further instructions to the appointee at any time, and to withdraw the delegation with immediate effect if this is in the interests of the investors.

The AIFM must review the services provided by appointees at all times.

(2) Portfolio management or risk management must not be delegated to the following institutions:

1. the depositary or an appointee of the depositary, or
2. any other undertaking whose interests may conflict with those of the AIFM or of the investors of the AIF, unless such an undertaking has functional and hierarchical separation in place between performance of its portfolio or risk management function and its other potentially conflicting functions, and the potential conflicts of interest are properly identified, controlled, monitored and disclosed to the investors of the AIF.

(3) The duties of the AIFM towards the AIF and its investors pursuant to this Federal statute are not affected by any such delegation or further sub-delegation. The AIFM is at all events liable for the behaviour of the third party as for its own behaviour. The AIFM may not delegate its functions to an extent that makes it a letterbox company. The provisions of the data protection legislation (articles 10 ff of the Data Protection Act 2000(DSG 2000)) must be complied with.

(4) Third parties may sub-delegate any of the functions delegated to them, provided the following conditions are met:

1. the AIFM has previously consented to the sub-delegation;
2. the AIFM has reported this to the FMA before the sub-delegation arrangement enters into effect;
3. the conditions established in para 1 and 2 are likewise always satisfied in the case of sub-delegation;
4. the AIFM's appointee must check the services provided by sub-appointees at all times.

(5) If the sub-appointee further delegates functions delegated to it, para 4 is to be applied and adhered to.

Chapter 4 Depositary

Article 19. (1) For each AIF it manages, the AIFM must ensure that a single depositary is appointed in compliance with this provision.

(2) The appointment of the depositary must be agreed in writing in a contract. The contract must govern, inter alia, the exchange of information regarded as necessary for the depositary to discharge its functions for the AIF for which it is appointed as depositary in accordance with this Federal statute and in accordance with the other applicable laws, regulations and administrative provisions.

(3) The depositary must be either:

1. a credit institution having its registered office within the Union, that is approved pursuant to Directive 2013/36/EU, or

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt – BGBl.).

2. an investment firm having its registered office within the Union that is subject to the capital adequacy requirements pursuant to article 92 of Regulation (EU) No. 575/2013, including the capital requirements for operational risks, and that is approved pursuant to Directive 2004/39/EC, and that also provides ancillary services such as safe custody and management of financial instruments for clients' account pursuant to annex I section B no 1 of Directive 2004/39/EC; such investment firms must at all events have own funds available amounting to no less than the initial capital amount referred to in article 28 para. 2 of Directive 2013/36/EU; or

3. another category of institution that is subject to supervision and constant monitoring, and that on 21 July 2011 falls into one of the categories determined by the Member States pursuant to article 23 para 3 of Directive 2009/65/EC from which a depositary can be selected,

Only in the case of non-EU AIFs and notwithstanding para 5 no 2, the depositary can also be a credit institution or an undertaking of similar kind to that referred to in no 1 and 2, provided that the conditions of para 6 no 2 are complied with.

(4) To avoid conflicts of interest between the depositary, the AIFM and/or the AIF and/or its investors

1. an AIFM may not perform the function of a depositary;

2. a prime broker acting as an AIF's business partner may not perform the functions of a depositary of this AIF, unless there is functional and hierarchical separation between the performance of its safekeeping functions and its functions as prime broker, and the potential conflicts of interest are properly identified, controlled, monitored, and disclosed to the investors of the AIF. Pursuant to para 11, it is permissible for the depositary to delegate its safekeeping functions to such a prime broker if the relevant conditions are complied with.

(5) The depositary must have its registered office in one of the following places:

1. in the case of EU AIFs, in the home Member State of the AIF;

2. in the case of non-EU AIFs, in the third country in which the AIF's registered office is located, or in the home Member State of the AIFM, or in the Member State of reference of the AIFM managing the AIF.

(6) Notwithstanding the requirements of para 3, the appointment of a depositary having its registered office in a third country is subject to the following conditions:

1. the competent authorities of the Member State in which the shares or units of the non-EU AIF are to be marketed, and if different public authorities are involved, the public authorities of the home Member State of the AIFM, have signed agreements on cooperation and exchange of information with the competent authorities of the depositary;

2. the depositary is subject to effective supervisory regulation, including minimum capital adequacy requirements, and supervision compliant with the legal requirements of the Union that are effectively enforced;

3. the third country in which the depositary has its registered office is not a country or territory in which there may be an increased risk of money laundering or financing of terrorism, pursuant to the last sentence of article 40b para 1 BWG;

4. the Member States in which the units or shares of the non-EU AIF are to be marketed, and the home Member State of the AIFM if different, have signed an agreement with the third country in which the depositary has its registered office that is fully compliant with the standards of article 26 of the OECD Model Tax Convention on Income and on Capital, and ensures effective exchange of information in taxation matters, including multilateral tax treaties;

5. the depositary is contractually liable to the AIF or to the investors of the AIF, in conformity with para 12 and 13, and expressly declares itself willing to comply with para 11.

If the FMA does not agree with the assessment of the application of no 1 to 4 by the competent authorities of the home Member State of the AIFM, it can draw the matter to the attention of the ESMA, namely with regard to the powers conferred on it under article 19 of Regulation (EU) No. 1095/2010.

(7) The depositary must ensure that the AIF's cash flows are properly monitored, and must in particular ensure that all payments by investors or in the name of investors when subscribing for units or shares of an AIF have been made, and that all the AIF's cash resources have been posted to a cash account opened for account of the AIF, in the name of the AIFM acting for account of the AIF, or in the name of the depositary acting for account of the AIF, with an entity pursuant to article 18 para 1 letter a, b and c of Directive 2006/73/EC or with an entity of the same type in the market concerned, in which cash accounts are required, as long as such entity is subject to effective supervisory regulation and supervision corresponding to the legal requirements of the Union that are effectively enforced, and complies with the principles pursuant to article 16 of Directive 2006/73/EC. If cash accounts are opened in the name of the depositary acting for account of the AIF, no cash resources of the entity referred to in this para and no cash resources of the depositary itself are posted to such accounts.

(8) The assets of the AIF or of the AIFM acting for account of the AIF must be entrusted to the depositary for safekeeping as follows:

1. for financial instruments that can be taken into safe custody, the following applies:

a) the depositary safekeeps all financial instruments that can be posted to the deposit facility on an account for financial instruments, and all financial instruments that can be physically delivered to the depositary;

b) for this purpose the depositary ensures that all financial instruments that can be posted in the deposit facility on an account for financial instruments are registered in the books of the depositary on segregated accounts pursuant to the principles set out in article 16 of Directive 2006/73/EC that have been opened in the name of the AIF or of the AIFM acting for it, so that the financial instruments can at all times be unambiguously identified in accordance with prevailing law as instruments belonging to the AIF;

2. for other assets the following applies:

a) the depositary checks the title of the AIF or of the AIFM acting for account of the AIF to such assets, and keeps records of those assets in respect of which it has satisfied itself that the AIF or the AIFM acting for account of the AIF holds the title to these assets;

b) the assessment of whether the AIF or the AIFM acting for account of the AIF is the owner is based on information or documents the AIF or the AIFM submits, and external evidence if available;

c) the depositary keeps its records up to date.

(9) In addition to the functions indicated in para 7 and 8, the depositary must ensure that

1. the marketing, issue, redemption and disbursement and cancellation of shares or units of the AIF are conducted in accordance with applicable national law and the AIF's contractual conditions or statutes;

2. the value of the AIF's units or shares is calculated according to applicable national law, the AIF's contractual conditions or the statutes, in accordance with article 17 of this Federal statute or of the procedure stipulated in article 19 of Directive 2011/61/EU;

3. the AIFM's instructions are carried out, unless they infringe applicable national law or the AIF's contractual conditions or statutes;

4. in the case of transactions involving the AIF's assets, the counter-value is remitted to the AIF within the customary time limits;

5. the AIF's income is applied in accordance with applicable national law and the AIF's contractual conditions or statutes.

(10) The AIFM and the depositary must perform their respective functions honestly, fairly, professionally and independently, and in the interests of the AIF and of its investors. A depositary must not undertake any activities with regard to the AIF or for the AIFM acting for account of the AIF that could create conflicts of interest between the AIF, the investors in the AIF, the AIFM and itself, unless there is functional and hierarchical separation of performance of its depositary functions from functions potentially conflicting with it, and the potential conflicts of interest are properly identified, controlled, monitored and disclosed to the investors of the AIF.

The assets indicated in para 8 may not be re-used by the depositary without the prior consent of the AIF or of the AIFM acting for account of the AIF.

(11) The depositary may not delegate its functions stipulated in this provision to third parties, except for the functions referred to in para 8. The depositary can delegate the functions referred to in para 8 to third parties subject to the following conditions:

1. the functions are not delegated with the intention of circumventing the provisions of this Federal statute;
2. the depositary can demonstrate there is an objective reason for the delegation;
3. the depositary proceeded with due skill, care and diligence in selecting and appointing a third party to which it wishes to delegate some of its functions, and continues to proceed with due skill, care and diligence in ongoing control and regular checking of third parties to whom it has delegated some of its functions, and of agreements made by the third party in respect of the functions delegated to it, and
4. the depositary ensures that the third party complies at all times with the following conditions in discharging the functions delegated to it:
 - a) the third party has an organisational structure and the expertise adequate and suitable for the nature and complexity of the assets of the AIF or of the AIFM acting on its behalf;
 - b) in respect of the custody functions pursuant to para 8 no 1, the third party is subject to effective supervisory regulation, including minimum capital adequacy requirements, and supervision in the applicable legal jurisdiction, and the third party is moreover subject to regular external audit ensuring that the financial instruments are in its possession;
 - c) the third party segregates the assets of the depositary's clients from its own assets and from the assets of the depositary in such a way that they can at all times be clearly identified as the property of clients of a particular depositary;
 - d) the third party may not apply the assets without the prior consent of the AIF or of the AIFM acting for account of the AIF, and prior notification to the depositary, and
 - e) the third party complies with the general obligations and prohibitions pursuant to para 8 and 10.

Notwithstanding no 4 letter b, if the law of a third country requires that certain financial instruments are held in safekeeping by a local institution, and there are no local institutions that satisfy the delegation requirements pursuant to no 4 letter b, the depositary may delegate its functions to such local institution only to the extent required by the law of the third country, and only as long as there are no local institutions that satisfy the delegation requirements, subject to the following requirements:

- aa) The investors of the AIF concerned must be properly informed before making their investment that such delegation is necessary because of legal constraints in the law of the third country, and they must be informed of the circumstances justifying the delegation, and
- bb) the AIF or the AIFM acting for account of the AIF must instruct the depositary to delegate safe keeping of these financial instruments to such local institution.

The third party can in turn sub-delegate these functions on the same conditions. In this case para 13 applies accordingly for the parties involved. Providing services pursuant to Directive 98/26/EC by securities delivery and settlement systems as provided for the purposes of that Directive, or providing similar services through securities delivery and settlement systems of third countries, is not deemed to constitute delegation of safekeeping functions for the purposes of this para.

(12) The depositary is liable to the AIF or to the AIF's investors for loss by the depositary or by a third party entrusted with safekeeping of financial instruments pursuant to para 8 no 1. In the event of such loss of a financial instrument in safekeeping, the depositary must immediately return a financial instrument of the same type to the AIF or to the AIFM acting for account of the AIF, or reimburse a corresponding sum. The depositary is not liable if it can prove that the loss is attributable to force majeure, the consequences of which were unavoidable despite all reasonable countermeasures. The depositary is also liable to the AIF or the investors of the AIF

for any other losses they suffer as a consequence of the depositary negligently or deliberately failing to meet its obligations under this Federal statute.

(13) The depositary's liability is unaffected by any delegation pursuant to para 11. The depositary can nevertheless exempt itself from liability in the event of loss of financial instruments that were in the safekeeping of a third party pursuant to para 11, if it can prove that:

1. all conditions for delegating its custody functions pursuant to para 11 no 1 to 4 are complied with;
2. a written contract between the depositary and the third party expressly transfers the depositary's liability to this third party, and enables the AIF or the AIFM acting for account of the AIF to assert its claim for loss of financial instruments against the third party, or the depositary may assert such a claim for it, and
3. a written contract between the depositary and the AIF or the AIFM acting for account of the AIF expressly permits exemption of the depositary from liability, and gives an objective reason for the contractual agreement of such exemption.

(14) If the law of a third country furthermore requires that certain financial instruments must be held in safe custody by a local institution, and there are no local institutions that satisfy the delegation requirements pursuant to para 11 no 4 letter b, the depositary can exempt itself from liability provided that the following conditions are complied with:

1. the contractual conditions or the statutes of the AIF concerned expressly permit such exemption under the preconditions referred to in this para;
2. the investors of the AIF concerned were duly informed of this exemption from liability and of the circumstances justifying this exemption from liability, before they made their investment;
3. the AIF, or the AIFM acting for account of the AIF, instructed the depositary to delegate safekeeping of these financial instruments to a local institution;
4. there is a written contract between the depositary and the AIF, or the AIFM acting for account of the AIF, expressly permitting such exemption from liability; and
5. there is a written contract between the depositary and the third party under which the depositary's liability is expressly transferred to the third party, enabling the AIF, or the AIFM acting for account of the AIF, to assert its claim for loss of financial instruments against the third party, or the depositary may assert such a claim for it.

(15) Liability claims of investors of an AIF can be asserted directly or indirectly through the AIFM, depending on the nature of the legal relations between the depositary, the AIFM and the investors.

(16) The depositary must on request provide the FMA as the competent public authority with all the information it has received in the course of performing its functions that the FMA could need as the competent authority of the AIF or of the AIFM. If the competent authorities of the AIF or of the AIFM are different from those of the depositary, the FMA as competent authority of the depositary must immediately provide the information received to the competent authorities of the AIF and of the AIFM.

(17) The AIFM must provide suitable documented procedures and arrangements enabling the depositary to be changed swiftly in the event that the depositary can no longer guarantee performance of its functions.

(18) By way of derogation from para 3, the depositary can also be a trustee of AIFs pursuant to part 5, chapter 2 that performs the functions of a depositary in the course of its professional or business activity, provided that

1. no redemption rights can be exercised in respect of the AIFs within 5 years after the first investments have been made, and
2. in conformity with their main investment strategy, the AIFs generally invest in issuers or non-listed companies, in order to possibly gain control of such undertakings in accordance with articles 24 ff.

(19) The trustee appointed pursuant to para 18 must be subject to legally recognized obligatory registration in respect of its professional or business activity, or be subject to laws, regulations and administrative provisions or rules of professional conduct that can offer adequate financial and professional guarantees enabling it to effectively perform the relevant functions of a depositary and to fulfil the obligations entailed by this function. The adequate

financial and professional guarantee must be continually ensured. The trustee must promptly report to the FMA any changes relating to its financial or professional guarantees. If the trustee takes out insurance for the purposes of the financial guarantee, the insurance contract requires the insurance company to immediately report to the FMA the commencement and the conclusion or termination of the insurance contract, and circumstances impairing the stipulated insurance cover.

(20) The AIFM must notify the FMA of the trustee before appointment, pursuant to para 18. If the FMA has reservations about the appointment, it can require another trustee to be nominated within a reasonable time limit. If the AIFM fails to do this, or if the FMA also has reservations about the appointment of the proposed new trustee, the AIFM must appoint a depositary for the AIF pursuant to para 3.

Part 4

Transparency requirements

Annual report

Article 20. (1) An AIFM must produce an annual report for each of the EU AIFs it manages, and for each of the AIFs it markets within the Union for each financial year no later than six months after the end of the financial year. This annual report must be sent to the investors on request. The annual report must be provided by the AIFM within the time limit indicated to the FMA as competent authority of the home Member State of the AIFM, and if appropriate to the FMA as competent authority of the home Member State of the AIF. If Directive 2004/109/EC requires the AIF to publish annual financial reports, only the information set out in para 2 must be additionally submitted to the investors on application. It may be sent separately or in the form of a supplement to the annual financial report. In the latter case, the annual financial report must be published no later than four months after the end of the financial year.

(2) The annual report must include at least the following:

1. a balance sheet or a statement of assets and liabilities;
2. a statement of income and expenditure for the financial year;
3. a report on the activities in the past financial year;
4. any material change to the information listed in article 21 during the financial year to which the report relates;
5. the total sum of the remuneration paid in the past financial year, broken down into fixed and variable remuneration paid by the AIFM to its employees, the number of beneficiaries, and any carried interest paid by the AIF if applicable;
6. the total sum of the remuneration paid, broken down into management and employees of the AIFM whose activity has a material effect on the AIF's risk profile.

(3) The figures included in the annual report must be compiled in accordance with the accounting standards of the home Member State of the AIF, or in accordance with the accounting standards of the third country in which the AIF has its registered office, and in accordance with the accounting rules stipulated in the AIF's contractual conditions or statutes. The figures included in the annual report are audited by one or more persons legally approved in accordance with Directive 2006/43/EC to audit annual accounts. The auditor's report, including any qualifications, must be reproduced in full in the annual report.

Duties to provide information to investors

Article 21. (1) For each of the EU AIFs they manage and for each of the AIFs they market within the Union, AIFMs must provide investors in the AIF with the following information in accordance with the contractual conditions or the statutes of the AIF, and all material changes to this information, before the investors make any investment in an AIF:

1. a description of the investment strategy and the aims of the AIF, information on the registered office of any master AIF, and on the registered office of the target fund if the AIF is a fund of funds, a description of the type of assets the AIF is permitted to invest in, the techniques it is permitted to use, and all associated risks, any investment restrictions, the circumstances in which the AIF can use leverage, the nature and sources of permissible leverage, and the associated risks, any other restrictions on the

use of leverage, and agreements on collateral and on the re-use of assets, and of the maximum amount of leverage the AIFM may use for account of the AIF;

2. a description of the procedures by which the AIF can change its investment strategy or its investment policy, or both;
3. a description of the most relevant legal consequences for the contractual relationship entered into to make the investment, including information on the courts of competent jurisdiction, the governing law, and the presence or absence of legal instruments providing for recognition and enforcement of judgements in the territory in which the AIF has its registered office;
4. the identity of the AIFM, of the AIF's depositary, of the auditor or other service providers, and an explanation of their duties and the investors' rights;
5. a description of how the AIFM complies with the requirements of article 7 para 6;
6. a description of all management functions delegated by the AIFM in accordance with schedule 1, and of all safe custody functions delegated by the depositary, designation of the appointee, and of any conflicts of interest that could arise from the delegation of functions;
7. a description of the AIF's valuation procedure, and of the calculation methods for valuing assets, including the procedures for valuing assets that are difficult to value, in accordance with article 17;
8. a description of the AIF's liquidity risk management, including the redemption rights under normal and extraordinary circumstances, and the existing redemption agreements with the investors;
9. a description of all fees, charges and other costs, indicating the maximum amounts borne directly or indirectly by the investors;
10. a description of how the AIFM ensures fair treatment of the investors, and whenever an investor receives preferential treatment or a claim to such treatment, an explanation of this treatment, of the type of investors receiving such preferential treatment, and if applicable the legal or financial links between these investors and the AIF or the AIFM;
11. the latest annual report as per article 20;
12. the procedures and conditions for issuing and marketing units or shares;
13. the latest net asset value of the AIF, or the latest market price of the units or shares of the AIF in accordance with article 17;
14. the historical performance of the AIF, if available;
15. the identity of the prime broker and a description of all material agreements between the AIF and its prime brokers, and the manner in which related conflicts of interest are resolved, and the provision in the contract with the depositary relating to the possibility of transferring and re-using assets of the AIF, and information on any transfer of liability to the prime broker;
16. a description of how and when the information required under para 4 and 5 is disclosed.

(2) Before the investors make their investment in the AIF, the AIFM must inform them of any agreement the depositary has made, in order for the AIFM to exempt itself contractually from liability under article 19 para 13. The AIFM must likewise inform the investors promptly of any resultant changes as regards the depositary's liability.

(3) If the AIF is obliged to publish a prospectus pursuant to Directive 2003/71/EC or any other national legal requirements, only the information as per para 1 and 2 need be disclosed separately or as supplementary information in the prospectus, in addition to the information included in the prospectus. The prospectus due diligence or prospectus approval process required under article 8 or 8a KMG does not extend to this supplementary information. If this information is compiled separately, the document can be deposited with the registration office together with the prospectus in accordance with article 12 KMG.

(4) For each EU AIF they manage and for each AIF they market within the Union, AIFMs must inform the investors about the following regularly, at least annually:

1. the percentage of the AIF's assets that are difficult to liquidate, and are therefore subject to special rules;

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt – BGBl.).

2. any new rules on managing the AIF's liquidity;
3. the AIF's current risk profile, and the risk management systems the AIFM uses to manage these risks.

(5) AIFMs managing EU AIFs that use leverage, or marketing AIFs that use leverage, within the Union, must disclose the following regularly, at least annually, in compliance with the AIF's relevant contractual conditions or statutes, for each of these AIFs:

1. any changes to the maximum extent to which the AIFM can use leverage for account of the AIF, and any rights to re-use collateral or other guarantees granted within the framework of the leverage;
2. the total amount of the leverage of the AIF concerned.

Reporting obligations to competent authorities

Article 22. (1) The AIFM must inform the FMA regularly of the main markets and instruments in or with which it is trading for account of the AIFs it manages. It must submit information on the main instruments with which it trades, on the markets of which it is a member or in which it actively trades, and on the greatest exposures and concentrations of each of the AIFs it manages.

(2) The AIFM must submit the following to the FMA for each of the EU AIFs it manages, and for each AIF it markets within the Union:

1. the percentage of the AIF's assets that are difficult to liquidate, and are therefore subject to special rules;
2. any new rules on managing the AIF's liquidity;
3. the AIF's current risk profile, and the risk management systems used by the AIFM to manage the market risk, the liquidity risk, the counterparty default risk and other risks including operational risk;
4. information on the main categories of asset the AIF has invested in, and
5. the results of the stress tests carried out under article 13 para 3 no 2 and article 14 para 1.

(3) The AIFM must submit the following documents to the FMA on request:

1. an annual report on each EU AIF managed by the AIFM, and on each AIF it markets within the Union, for each financial year, in accordance with article 20 para 1;
2. a detailed list of all AIFs managed by the AIFM, at the end of each quarter.

(4) An AIFM managing AIFs that make substantial use of leverage must send the FMA information on the total extent of leverage used for each of the AIFs it manages, a breakdown by leverage on the basis of borrowing or securities lending, and leverage embedded in derivatives, and information on the extent to which the AIF's assets have been re-used in the course of leverage. This information must include for each of the AIFs managed by the AIFM information on the identity of the five largest sources of borrowed cash or securities, and on the amount of the leverage derived from these sources for each of the AIFs listed. The reporting obligations for non-EU AIFMs under this para are restricted to the EU AIFs they manage, and the non-EU AIFs they market within the Union.

(5) To the extent necessary for effective monitoring of systemic risks, the FMA as the competent authority of the home Member State can request supplementary information to the information stipulated in these provisions, either regularly or on an ad-hoc basis. The FMA must inform the ESMA about the additional information requirement. In exceptional circumstances and where necessary to ensure the stability and integrity of the financial system or to promote sustainable long-term growth, the FMA must comply with additional requests by the ESMA for reports.

(6) AIFMs must prepare annual accounts as per the breakdown in schedule 2 to article 43 BWG in good time to comply with the time limit set out in para 7. Schedule 2 to article 43 BWG, part 2 (Structure of the Profit and Loss Account) must be applied with the proviso that the item "including fixed overheads" must additionally be reported under the item "III. Operating expenses". Articles 43, 45 to 59a, 64 and 65 para 1 and para 2 BWG must be applied. The provisions pursuant to article 275 of the Commercial Code (UGB) on the responsibility of the auditor are to be applied.

(7) The audited annual accounts of the AIFM prepared in accordance with para 6 and audited in accordance with para 8 must be submitted to the FMA within six months at the latest after the AIFM's financial year end. The managers must ensure the annual accounts comply with legislation. The FMA can also require the annual accounts data to be submitted by means of electronic transmission or on electronic data carriers in a standardised form.

(8) The annual accounts must be audited by auditors, in the case of cooperatives by the audit functions of the statutory auditing bodies. The auditor must check that the annual accounts comply with legislation. The audit must furthermore include:

1. the factual correctness of the valuation including the application of depreciation, value adjustment and provisions rules, and
2. compliance with the provisions of this Federal statute.

(9) The FMA can stipulate by means of regulation more specific criteria with respect to the information duties pursuant to this provision and pursuant to article 1 para 5 no 4, and the type of transmission with particular regard to prescribing the use of electronic reporting systems or data carriers and EDP formats, taking into account European custom and practice.

Part 5

AIFMs managing specific types of AIF

Chapter 1

AIFMs managing leveraged AIFs

Use of information by competent authorities, supervisory cooperation, and limits to leverage

Article 23. (1) The FMA as competent authority of the home Member State of the AIFM must forward the information to be gathered under article 22 to the Austrian National Bank (OeNB). On the basis of this information, the OeNB must analyse how far the use of leverage contributes to the build-up of systemic risk in the financial system, to the risk of market disruption in one or more segments of the market, or to risks to long-term economic growth. The OeNB must promptly forward its analysis to the FMA if any such risks are discerned.

(2) The FMA must ensure that all information on the AIFMs under its supervision collected in accordance with article 22, and the information collected in accordance with article 5, is made available to the competent authorities of other Member States affected, the ESMA and the ESRB in accordance with the procedures set out in article 61 and in article 50 of Directive 2011/61/EU on cooperation in supervisory activities. It must also promptly inform the competent authorities of the other Member States directly concerned in accordance with these procedures, if it emerges from the OeNB's analyses on the basis of the information pursuant to article 22 that a major counterparty risk for a credit institution or other systemically relevant institutions in other Member States could arise from an AIFM under its supervision or an AIF managed by this AIFM.

(3) The AIFM must demonstrate to the FMA that the leverage limits it has set are reasonable for each of the AIFs it manages, and that it always complies with this limitation. On the basis of the information pursuant to article 22, the OeNB must assess the danger of systemic risks in the financial system, or of market disruption in individual or several market segments, that could arise from the use of leverage by an AIFM in the case of an AIF managed by it. The OeNB must forward its analysis to the FMA promptly if it identifies any such risks. If it is considered necessary to ensure the stability and integrity of the financial system, the FMA must restrict the extent of the leverage an AIFM may use, after notifying the ESMA, the ESRB and the competent authorities of the AIF concerned, or must impose other restrictions on the AIF management in respect of the AIFs it manages, so as to limit the extent to which the use of leverage contributes to the creation of systemic risks in the financial system or of the risk of market disruption in individual or several market segments. The FMA as competent authority of the home Member State of the AIFM must duly inform the ESMA, the ESRB and the competent authorities of the AIF about the steps taken in this regard, through the procedures set out in article 61 and in article 50 of Directive 2011/61/EU.

(4) The notification pursuant to para 3 must be made no later than ten working days before the proposed measure is to take effect or be renewed. The notification must include details on

the proposed measure, the reasons for it, and the point in time when it is to enter into effect. In particular circumstances, the FMA, as the competent authority of the home Member States of the AIFM, can require the proposed measure to enter into effect within the period stipulated in sentence 1.

(5) If the FMA as competent authority proposes to take steps that contradict the ESMA's recommendation pursuant to article 25 para 6 or 7 of Directive 2011/61/EU, it must notify the ESMA accordingly, stating its reasons.

(6) The second sentence of article 79 para 4 BWG applies mutatis mutandis to the functions of the OeNB referred to in para 1 to 3.

Chapter 2

Obligations for AIFMs managing AIFs that acquire control of non-listed companies and issuers

Scope

Article 24. (1) This chapter applies to:

1. AIFMs managing one or more AIFs that acquire control of a non-listed company pursuant to para 5, either solely or jointly on the basis of an agreement aiming to acquire control;
2. AIFMs cooperating with one or more other AIFMs on the basis of an agreement under which the AIFs managed by these AIFMs jointly acquire control of a non-listed company pursuant to para 5.

(2) This chapter does not apply in the event that the non-listed companies are

1. small and medium-sized undertakings within the meaning of article 2 para 1 of the annex to the Commission's recommendation regarding the definition of micro, small and medium-sized undertakings, OJ No. L 124 dated 20.05.2003 p. 36 or
2. special-purpose vehicles for the acquisition, ownership and management of real estate.

(3) Notwithstanding para 1 and 2, article 25 para 1 also applies to AIFMs managing AIFs that acquire a minority holding in a non-listed company.

(4) Article 26 para 1, 2 and 3 and article 28 also apply to AIFMs managing AIFs that acquire control in respect of issuers. For the purposes of these articles, para 1 and 2 of this provision apply mutatis mutandis.

(5) For the purposes of this chapter, control in the case of non-listed companies means more than 50 percent of the voting rights of these undertakings. In calculating the proportion of the voting rights held by the AIF concerned, the following voting rights are counted in addition to the voting rights held directly by the AIF concerned, subject to control being established in accordance with the first sentence of this para:

1. by undertakings controlled by the AIF, and
2. by natural persons or legal entities acting in their own name, but on behalf of the AIF or an undertaking controlled by the AIF.

The proportion of voting rights is calculated on the basis of the total number of units or shares vested with voting rights, even if exercise of these voting rights is suspended. Notwithstanding article 2 para 1 no 9, for the purposes of article 26 para 1, 2 and 3 and of article 28, control in respect of issuers is defined pursuant to article 5 para 3 of Directive 2004/25/EC.

(6) This chapter applies subject to the conditions and restrictions stipulated in article 6 of Directive 2002/14/EC.

(7) This chapter applies notwithstanding any stricter rules adopted by any of the Member States regarding the acquisition of holdings in issuers and non-listed companies in their sovereign territory.

Reporting the acquisition of major holdings and of control of non-listed companies

Article 25. (1) When an AIF acquires, sells or holds units or shares of a non-listed company, the AIFM managing this AIF must always report to the FMA the proportion of the voting rights of the

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt – BGBl.).

non-listed company held by the AIF whenever this proportion reaches, exceeds or falls below the threshold values of 10 percent, 20 percent, 30 percent, 50 percent and 75 percent.

(2) If an AIF solely or jointly acquires control of a non-listed company pursuant to article 24 para 1 in conjunction with para 5, the AIFM managing the AIF concerned must inform the following entities of the acquisition of control by the AIF:

1. the non-listed company;
2. the share- or unit-holders whose identity and address are available to the AIFM, or that can be provided to it by the non-listed company or through a register to which the AIFM has or can gain access, and
3. the FMA as competent authority of the home Member State of the AIFM.

(3) The notification required pursuant to para 2 includes the following additional information:

1. the resultant situation regarding voting rights;
2. the conditions under which control was acquired, including naming the individual share- or unit-holders involved, the natural persons or legal entities empowered to vote in their name, and if applicable the chain of holdings through which the voting rights are effectively held;
3. the date on which control was acquired.

(4) In its notification to the non-listed company, the AIFM must request the management board of the undertaking to notify the employees' representatives, or the employees themselves if there are no such representatives, with undue delay, of the acquisition of control by the AIF managed by the AIFM, and the information pursuant to para 3. The AIFM must use its best efforts to ensure that the employees' representatives, or the employees themselves if there are no such representatives, are properly informed by the management board in accordance with this provision.

(5) The notifications pursuant to para 1, 2 and 3 must be effected no later than ten working days after the date on which the AIF reached, exceeded or fell below the corresponding threshold, or acquired control of the non-listed company.

Duty of disclosure on gaining control

Article 26. (1) If an AIF solely or jointly gains control of a non-listed company or an issuer pursuant to article 24 para 1 in conjunction with para 5, the AIFM managing that AIF must make the information pursuant to para 2 of this provision available to

1. the undertaking concerned;
2. the share- or unit-holders of the undertaking whose identity and address is available to the AIFM or can be made available to it by the undertaking or through a register to which the AIFM has or can gain access, and
3. the FMA as competent authority of the home Member State of the AIFM.

(2) The AIFM must submit the following information:

1. the names of the AIFMs that have gained control either individually or under an agreement with other AIFMs managing AIFs;
2. the policy for avoiding and managing conflicts of interest, especially between the AIFM, the AIF and the undertaking, including information on the special safeguards in place to ensure that agreements between the AIFM and/or the AIF and the undertaking are concluded at arm's length, and
3. the external and internal communication policy with regard to the undertaking, especially in respect of the employees.

(3) In its notification to the undertaking pursuant to para 1 no 1, the AIFM must request the management board of the undertaking to notify the employees' representatives, or the employees themselves if there are no such representatives, without undue delay, of the information pursuant to para 1. The AIFM must use its best efforts to ensure that the employees' representatives, or the employees themselves if there are no such representatives, are properly informed by the management board pursuant to this para.

(4) If an AIF solely or jointly gains control of a non-listed company pursuant to article 24 para 1 in conjunction with para 5, the AIFM managing that AIF must disclose, or ensure that the AIF discloses, the intentions of the AIF in respect of the future business development of the

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt – BGBl.).

non-listed company and the prospective effects on employment, including any material change to working conditions to the following persons:

1. the non-listed company, and
2. the share- or unit-holders of the non-listed company whose identity and address are available to the AIFM or can be provided to it by the non-listed company or through a register to which the AIFM has or can gain access.

The AIFM managing the AIF concerned must furthermore request and use its best efforts to ensure that the management board of the non-listed company notifies the employees' representatives, or the employees themselves if there are no such representatives, of the information set out in the first sentence of this para.

(5) As soon as an AIF gains control of a non-listed company pursuant to article 24 para 1 in conjunction with para 5, the AIFM managing the AIF concerned must provide the FMA as competent authority of its home Member State and the investors of the AIF with information on the financing of the acquisition.

Special provisions regarding the annual reports of AIFs exercising control of non-listed companies

Article 27. (1) If an AIF solely or jointly gains control of a non-listed company pursuant to article 24 para 1 in conjunction with para 5, the AIFM managing the AIF concerned must either

1. request and use its best efforts to ensure that the annual report of the non-listed company is prepared in accordance with para 2, and made available by the undertaking's management board to all employees' representatives, or to the employees themselves if there are no such representatives, within the time limit stipulated in the applicable national legal requirements for preparing such an annual report, or
2. furthermore include in the annual report required pursuant to article 20 for each AIF concerned the information indicated in para 2 on the non-listed company concerned.

(2) The additional information to be included in the annual report of the undertaking or of the AIF pursuant to para 1 must include at least a report on the position at the end of the period covered by the annual report, showing the company's business performance in such a way as to convey a true and fair view of the net worth, financial position and results. The report should also include information on the following:

1. events of particular significance that have arisen since the end of the financial year,
2. the anticipated future performance of the undertaking, and
3. the information on acquisition of its own shares as per article 24 para 2 of Directive 2012/30/EU.

(3) The AIFM managing the AIF concerned must either

1. request and use its best efforts to ensure that the management board of the non-listed company provides all employees' representatives of the undertaking concerned, or the employees themselves if there are no such representatives, with the information relating to the undertaking as indicated in para 1 no 2 within the time limit stipulated in article 20 para 1, or
2. provide the investors of the AIF with the information pursuant to para 1 no 1 if already available, within the time limit stipulated in article 20 para 1 and at all events no later than the date on which the annual report of the non-listed company is prepared in accordance with the applicable national legal requirements.

Asset stripping

Article 28. (1) If an AIF solely or jointly acquires control of a non-listed company or of an issuer pursuant to article 24 para 1 in conjunction with para 5, the AIFM managing the AIF concerned must within a period of 24 months after the AIF gaining control of the undertaking

1. not permit, enable, support or direct the sale, capital reduction, share redemption and/or acquisition of own shares by the undertaking pursuant to para 2;
2. insofar as the AIFM is authorized to vote in the name of the AIF at the meetings of the governing bodies of the undertaking, not vote in favour of sale, capital reduction,

share redemption and/or acquisition by the undertaking of its own shares pursuant to para 2, and

3. at all events use its best efforts to prevent the sale, capital reduction, share redemption and/or acquisition by the undertaking of its own shares, pursuant to para 2.

(2) The obligations imposed on AIFMs under para 1 extend to the following:

1. distributions to shareholders made if the net assets reported in the undertaking's annual accounts at the end of the last financial year are less than the amount of the subscribed capital plus the reserves, distribution of which is not permitted by law or by the statutes, or that would fall below this figure in the event of such distribution, on the understanding that the amount of the subscribed capital is reduced by the amount of the uncalled portion of the subscribed capital, if the latter is not reported on the assets side of the balance sheet;

2. distributions to shareholders, the amount of which would exceed the amount of the profit of the last complete financial year plus the profit carried forward and withdrawals from reserves available for this purpose, less the losses from previous financial years and the sums transferred to reserves in compliance with the law or the statutes;

3. to the extent that the purchase of own shares is permitted, purchases by the undertaking including shares acquired previously by the undertaking and held by it, and shares acquired by a person acting in his own name but on behalf of the undertaking, where this would result in the net assets falling below the threshold indicated in no 1.

(3) For the purposes of para 2, the following applies:

1. The term "distribution" used in para 2 no 1 and 2 relates in particular to the payment of dividends and interest relating to shares;

2. the provisions relating to capital reductions do not extend to reductions of the subscribed capital aiming to offset losses incurred or to include funds in a non-distributable reserve, on condition that the amount of such reserve does not exceed 10 percent of the reduced subscribed capital after this action, and

3. the restriction pursuant to para 2 no 3 is determined by article 22 para 1 letter b to h of Directive 2012/30/EU.

Part 6

The right of EU AIFMs to market and manage EU AIFs

Marketing of EU AIF units or shares in Austria as the home Member State of the AIFM

Article 29. (1) An AIFM authorized in Austria can market units or shares of all EU AIFs it manages to professional investors in Austria as its home Member State, as soon as the conditions stipulated in this provision are complied with. If the EU AIF is a feeder AIF, the marketing right referred to in the first sentence of this para applies only if the master AIF is likewise an EU AIF managed by an EU AIFM approved in a Member State.

(2) The AIFM must submit an application for approval to the FMA for each AIF it proposes to market. The application for approval must include the documentation and the information set out in **schedule 3**.

(3) Within 20 working days of receipt of the complete application pursuant to para 2, the FMA must decide on the permissibility of marketing the AIF referred to. The last sentence of article 13 para 3 AVG does not apply for purposes of calculating the time limit. The FMA can forbid marketing of the AIF if the AIFM or its management of the AIF in some other way infringes or will infringe this Federal statute, Directive 2011/61/EU or delegated acts adopted on the basis of this Directive. In the event of a positive decision, the AIFM can start marketing the AIF from the date of the relevant approval.

(4) In the event that the FMA is not at the same time the competent authority of the EU AIF, the FMA notifies the competent authorities of the EU AIF that the AIFM can start marketing shares or units of the AIF in Austria.

(5) The AIFM must inform the FMA in writing of any material change in the information provided under para 2 at least one month before the change is implemented if it is a planned change, or immediately after the change has occurred if it is an unplanned change. If the

planned change results in the AIFM's management of the EU AIF, or the AIFM in general, now infringing this Federal statute, infringing Directive 2011/61/EU, or infringing delegated acts adopted on the basis of this Directive, the FMA must immediately prohibit the AIFM from implementing the change. If a planned change is implemented regardless of this para or of a prohibition, or if a change triggered by unplanned circumstances results in the AIFM's management of the EU AIF, or the AIFM in general, now infringing this Federal statute, Directive 2011/61/EU, or delegated acts adopted on the basis of this Directive, the FMA must take all necessary measures pursuant to articles 56 f, including if necessary express prohibition of marketing of the EU AIF within the country.

(6) Notwithstanding article 48 para 1, the AIFs managed and marketed by the AIFM may be marketed only to professional investors.

Marketing of EU AIF units or shares in other Member States by an AIFM authorized in Austria

Article 30. (1) An AIFM authorized in Austria can market units or shares of an EU AIF it manages to professional investors in other Member States than in Austria, as soon as the conditions stipulated in this provision are complied with. If the EU AIF is a feeder AIF, the marketing right is valid only if the master AIF is likewise an EU AIF managed by an EU AIFM approved in a Member State.

(2) An AIFM authorized in Austria proposing to market in another Member State the shares or units of an EU AIF it manages, must first send the FMA a notification letter including the documentation and information set out in **schedule 4**.

(3) After checking the completeness of the notification and documents sent pursuant to para 2, the FMA must send them to the competent authorities of the Member State in which the EU AIF is to be marketed, no later than 20 days after receipt of the complete notification letter and documents. The last sentence of article 13 para 3 AVG does not apply for purposes of calculating the time limit. The FMA must send the notification only if the AIFM's management of the EU AIF complies and will continue to comply with this Federal statute, Directive 2011/61/EU and the delegated legal acts adopted on the basis of this Directive, and if the AIFM in general adheres to this Federal statute, Directive 2011/61/EU, and delegated legal acts adopted on the basis of this Directive. The FMA must attach a certificate to the effect that the AIFM concerned is authorized to manage AIFs with a particular investment strategy.

(4) The FMA must immediately notify the AIFM about the dispatch of the notification documents. The AIFM can start marketing the EU AIF in the host Member State from the date of this notification. If the FMA is not also the competent authority of the EU AIF, the FMA must furthermore inform the competent authorities responsible for the EU AIF that the AIFM can start marketing units or shares of the EU AIF in the host Member State of the AIFM.

(5) The AIFM's notification letter referred to in para 2, the certificate referred to in para 3, and the change notification referred to in para 6 must be in German or in English, or in some other language recognised by the FMA according to regulation (article 7b para 1 of the Capital Market Act (KMG)). The FMA must accept electronic transmission and archiving of the documents referred to.

(6) The AIFM must inform the FMA in writing of any material change in the information provided under para 2 at least one month before the change is implemented if it is a planned change, or immediately after the change has occurred if it is an unplanned change. If the planned change results in the AIFM's management of the EU AIF, or the AIFM in general, now infringing this Federal statute, infringing Directive 2011/61/EU, or infringing delegated acts adopted on the basis of this Directive, the FMA must immediately prohibit the AIFM from implementing the change. If a planned change is implemented regardless of this para or of a prohibition, or if a change triggered by unplanned circumstances results in the AIFM's management of the EU AIF, or the AIFM in general, now infringing this Federal statute, Directive 2011/61/EU, or delegated acts adopted on the basis of this Directive, the FMA must take all necessary measures pursuant to articles 56 f, including if necessary express prohibition of marketing of the EU AIF. If the changes are permissible, the FMA must immediately inform the competent authorities of the host Member State of the AIFM of these changes.

(7) Notwithstanding article 48 para 1, the AIFs managed and marketed domestically by the AIFM may be marketed only to professional investors.

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt – BGBl.).

Marketing of EU AIF units or shares from other Member States in Austria by an AIFM approved in a Member State

Article 31. (1) An AIFM approved in a Member State can market units or shares of an EU AIF it manages to professional investors in Austria as soon as the AIFM has been informed by the competent authority of its home Member State that the complete documents and information pursuant to schedule 4 and a certificate corresponding to the last sentence of article 30 para. 3 have been sent to the FMA.

(2) The arrangements to be reported pursuant to schedule 4 letter h for marketing the EU AIF, and the arrangements made to prevent units or shares of the EU AIF being marketed to retail investors if applicable, are subject to the requirements of this Federal statute and to supervision by the FMA even if the AIFM engages independent undertakings to provide securities-related services for the AIF. In the event of any infringement of this Federal statute, of Directive 2011/61/EU, or of delegated acts adopted on the basis of this Directive, the FMA must take all necessary measures pursuant to articles 56 f, including express prohibition of marketing the EU AIF within the country if necessary.

(3) The notification sent by the competent authority of the home Member State of the AIFM, together with documents, and the certificate referred to in article 30 para 3 must be in German or in English, or in some other language recognised by the FMA according to regulation (article 7b para 1 KMG). The FMA must accept electronic transmission and archiving of the documents referred to.

(4) A fee of EUR 1,100 is payable to the FMA for processing the documents sent pursuant to para 1. In the case of EU AIFs comprising several sub-funds (umbrella funds), this fee is increased from the second sub-fund by EUR 220 for each fund. An annual fee of EUR 600 is payable to the FMA at the beginning of each calendar year, by 15 January of this year at the latest for each approved EU-AIF on the effective date 01 January of this year, for monitoring compliance with the obligations under this chapter; in the case of EU AIFs comprising several sub-funds (umbrella funds) this fee is increased by EUR 200 for each sub-fund from the second sub-fund. Fee contributions not paid by the due date at the latest are enforceable. The FMA must issue an arrears statement with the effect of constituting executory title. This must include the name and address of the fee debtor, the amount of the debt, and a notice that the debt has become enforceable. Failure to pay the fee on time constitutes grounds for prohibiting marketing pursuant to article 50.

Conditions for the management of EU AIFs by an AIFM authorized in Austria

Article 32. (1) An AIFM authorized in Austria can either directly or indirectly manage EU AIFs whose registered office is in another Member State through a branch, provided that the authorization entitles the AIFM to manage this type of AIF.

(2) An AIFM proposing for the first time to manage EU AIFs having their registered office in another Member State must report this to the FMA, providing the following information:

1. the Member State in which the AIFM proposes to manage EU AIFs directly or through a branch,
2. a business plan indicating in particular what services it proposes to provide, and what EU AIFs it proposes to manage.

(3) If the AIFM proposes to establish a branch in this Member State, the following information must be provided in addition to the information set out in para 2:

1. the organisational structure of the branch;
2. the address from which documents can be requested in the EU AIF's home Member State; and
3. the names and contact details of the managers of the branch.

(4) Within one month of receiving the complete notification pursuant to para 2, or within two months of receiving the complete documentation pursuant to para 3, the FMA must send the complete notification documents to the competent authorities of the host Member State of the AIFM. The last sentence of article 13 para 3 AVG does not apply for purposes of calculating the time limit. The FMA must send the notification only if the AIFM's management of the EU AIF complies and will continue to comply with this Federal statute, Directive 2011/61/EU, and the

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt – BGBl.).

delegated acts adopted on the basis of this Directive, and if the AIFM in general adheres to this Federal statute, Directive 2011/61/EU and the delegated acts adopted on the basis of this Directive. The FMA must attach a certificate authorizing the AIFM concerned to manage AIFs with a particular investment strategy.

(5) The FMA must notify the AIFM immediately when the documents have been sent. The AIFM can start providing the services in the host Member State from the date of this notification.

(6) The AIFM must inform the FMA in writing of any material change in the information provided under para 2 and under para 3 if applicable at least one month before the change is implemented if it is a planned change, or immediately after the change has occurred if it is an unplanned change. If the planned change results in the AIFM's management of the EU AIF, or the AIFM in general, now infringing this Federal statute, infringing Directive 2011/61/EU, or infringing delegated acts adopted on the basis of this Directive, the FMA must immediately prohibit the AIFM from implementing the change. If a planned change is implemented regardless of this para or of a prohibition, or if a change triggered by unplanned circumstances results in the AIFM's management of the EU AIF, or the AIFM in general, now infringing this Federal statute, Directive 2011/61/EU, or delegated acts adopted on the basis of this Directive, the FMA must take all necessary measures pursuant to article 56 f, including if necessary express prohibition of marketing of the EU AIF within the country. If the changes are permissible, the FMA must immediately inform the competent authorities of the host Member State of the AIFM of these changes.

(7) The AIFM's notification letter referred to in para 2, the information provided in para 3 if applicable, and the change notification referred to in para 6 must be in German or in English, or in some other language recognised by the FMA according to regulation (article 7b para 1 KMG). The FMA must accept electronic transmission and archiving of the documents referred to.

Conditions for the management of EU AIFs in Austria by AIFMs established in another Member State

Article 33. (1) EU AIFMs approved in another Member State can manage EU AIFs either directly or indirectly through a branch in Austria, provided that the EU AIFM is entitled to manage this type of EU AIF.

(2) An EU AIFM is permitted to start managing the EU AIF in Austria and to establish a branch in Austria if the competent authority of the EU AIFM's home Member State has submitted to the FMA all information pursuant to article 32 para 2, 3 and a certificate corresponding to the last sentence of para. 4, and the EU AIFM has received confirmation of receipt from the competent authority of its home Member State. The information pursuant to article 32 para 2 and 3 must be in German or in English, or in some other language recognised by the FMA according to regulation (article 7b para 1 KMG). The FMA must accept electronic transmission and archiving of the documents referred to.

(3) If the intention is to operate collective portfolio management of an AIF approved in Austria, the EU AIFM must apply to the FMA for this pursuant to article 29. If the EU AIFM is already managing AIFs of the same type in Austria, it is sufficient to refer to the documents already submitted. Marketing the EU AIF to retail investors in Austria is permissible only if the conditions of article 48 are complied with.

Part 7

Specific rules relating to third countries

Conditions for EU AIFMs managing non-EU AIFs that are not marketed in Member States

Article 34. An EU AIFM authorized domestically may manage non-EU AIFs that are not marketed in the European Union, if

1. the AIFM satisfies all the requirements stipulated for these AIFs in this Federal statute or in Directive 2011/61/EU, with the exception of the requirements in articles 19 and 20, or in articles 21 and 22 of Directive 2011/61/EU, and
2. there are suitable agreements on cooperation between the FMA as competent authority of the home Member State of the AIFM and the supervisory authorities of the third country in which the non-EU AIF has its registered office, at least ensuring efficient

exchange of information permitting the FMA as competent authority of the home Member State of the AIFM to perform its functions as specified in this Federal statute and in Directive 2011/61/EU.

Note for the following provision

Shall apply pursuant to the delegated acts adopted by the European Commission according to article 67 para. 6 of Directive 2011/61/EU and only from the date defined therein (cf. article 74 para. 1).

Marketing of units or shares of a non-EU AIF in Austria by an AIFM authorized in Austria

Article 35. (1) An AIFM authorized in Austria can market units or shares of a non-EU AIF it manages to professional investors in Austria, as soon as the conditions stipulated in this provision are complied with.

(2) If an AIFM authorized in Austria proposes to market in Austria units or shares of a non-EU AIF it manages, it must send the FMA a notification letter in advance for each non-EU AIF it proposes to market, including the documentation and the information set out in schedule 3.

(3) The AIFM must satisfy all requirements stipulated in this Federal statute, with the exception of those in part 6, chapter VI of Directive 2011/61/EU, or in delegated acts adopted on the basis of this Directive. The following conditions must also be complied with:

1. there must be suitable agreements on cooperation between the FMA and the supervisory authorities of the third country in which the non-EU AIF has its registered office, ensuring efficient exchange of information taking account of article 61 para 3, enabling the FMA to perform its functions pursuant to this Federal statute;
2. the third country in which the non-EU AIF has its registered office is not a country or territory in which there may be an increased risk of money laundering or financing of terrorism pursuant to the last sentence of article 40b para 1 BWG;
3. the third country in which the non-EU AIF has its registered office has signed an agreement with Austria that fully satisfies the standards pursuant to article 26 of the OECD Model Tax Convention on Income and Capital, and ensures effective exchange of information in tax matters, including multilateral treaties on taxation if applicable.

(4) Within 20 working days of receipt of the complete notification letter and the documents pursuant to para 2, the FMA must check that the notification and the documents are complete, then notify the AIFM whether it can start marketing the AIF indicated in the notification letter in accordance with para 2 domestically. The last sentence of article 13 para 3 AVG does not apply for purposes of calculating the time limit. The FMA can forbid marketing of the AIF only if the management of the AIF by the AIFM, or the AIFM in general, infringes this Federal statute, Directive 2011/61/EU, or delegated acts adopted on the basis of this Directive. In the event of a positive decision, the AIFM can start marketing the AIF from the date of the relevant notification from the FMA.

(5) The AIFM's notification letter referred to in para 2 must be in German or in English, or in some other language recognised by the FMA according to regulation (article 7b para 1KMG). The FMA must accept electronic transmission and archiving of the documents referred to.

(6) The AIFM must inform the FMA in writing of any material change in the information provided under para 2 at least one month before the change is implemented if it is a planned change, or immediately after the change has occurred if it is an unplanned change. If the planned change results in the AIFM's management of the non-EU AIF, or the AIFM in general, now infringing this Federal statute, infringing Directive 2011/61/EU, or infringing delegated acts adopted on the basis of this Directive, the FMA must immediately prohibit the AIFM from implementing the change. If a planned change is implemented regardless of this para or of a prohibition, if a precondition pursuant to para 3 subsequently lapses, or if a change triggered by unplanned circumstances results in the AIFM's management of the non-EU AIF, or the AIFM in general, now infringing this Federal statute, Directive 2011/61/EU, or delegated acts adopted on the basis of this Directive, the FMA must take all necessary measures pursuant to articles 56 f, including if necessary express prohibition of marketing of the non-EU AIF. If the changes are permissible, the FMA must notify the AIFM of this as required in para 4.

(7) Notwithstanding article 48 para 1, the non-EU AIFs managed and marketed by the AIFM may be marketed only to professional investors.

(8) This provision applies equally to EU feeder AIFs that do not satisfy the requirements pursuant to the second sentence of article 29 para 1.

Note for the following provision

Shall apply pursuant to the delegated acts adopted by the European Commission according to article 67 para. 6 of Directive 2011/61/EU and only from the date defined therein (cf. article 74 para. 1).

Marketing of units or shares of a non-EU AIF in other Member States by an AIFM authorized in Austria with a passport

Article 36. (1) An AIFM authorized in Austria can market units or shares of a non-EU AIF that it manages and that is registered pursuant to article 35 to professional investors in other Member States, as soon as the conditions stipulated in this provision are complied with.

(2) For each non-EU AIF concerned, the AIFM must notify the FMA in advance of any intention to market in another Member State units or shares of a non-EU AIF that it manages and that is registered pursuant to article 35. The notification letter must at all events include the documentation and the information set out in schedule 4.

(3) The AIFM must satisfy all requirements stipulated in this Federal statute, with the exception of those in part 6, chapter VI of Directive 2011/61/EU, or in delegated acts adopted on the basis of this Directive. The following conditions must also be complied with:

1. there must be suitable agreements on cooperation between the FMA and the supervisory authorities of the third country in which the non-EU AIF has its registered office, ensuring efficient exchange of information taking account of article 61 para 3, enabling the FMA to perform its functions pursuant to this Federal statute;
2. the third country in which the non-EU AIF has its registered office is not a country or territory in which there may be an increased risk of money laundering or financing of terrorism pursuant to the last sentence of article 40b para 1 BWG;
3. the third country in which the non-EU AIF has its registered office has signed an agreement with Austria, and with all other Member States in which the shares or units of the non-EU AIF are to be marketed, that fully satisfies the standards pursuant to article 26 of the OECD Model Tax Convention on Income and Capital, and ensures effective exchange of information in tax matters, including multilateral treaties on taxation if applicable.

(4) After checking the completeness of the notification and documents sent pursuant to para 2, the FMA must send them to the competent authorities of the Member State in which the non-EU AIF is to be marketed, no later than 20 days after receipt of the complete notification letter and documents. The last sentence of article 13 para 3 AVG does not apply for purposes of calculating the time limit. The FMA must send the notification only if the AIFM's management of the non-EU AIF complies and will continue to comply with this Federal statute, Directive 2011/61/EU and the delegated legal acts adopted on the basis of this Directive, and if the AIFM in general adheres to this Federal statute, Directive 2011/61/EU, and delegated legal acts adopted on the basis of this Directive. The FMA must attach a certificate to the effect that the AIFM concerned is authorized to manage AIFs with a particular investment strategy.

(5) The AIFM's notification letter referred to in para 2 and the certificate referred to in para 4 must be in German or in English, or in some other language recognised by the FMA according to regulation (article 7b para 1 KMG). The FMA must accept electronic transmission and archiving of the documents referred to.

(6) The FMA must notify the AIFM immediately when the notification documents have been sent. The AIFM can start marketing the AIF in the host Member States of the AIFM from the date of this notification from the FMA. The FMA must moreover notify the ESMA that the AIFM can start marketing units or shares of the AIF in the host Member States of the AIFM.

(7) The AIFM must inform the FMA in writing of any material change in the information provided under para 2 at least one month before the change is implemented if it is a planned

change, or immediately after the change has occurred if it is an unplanned change. If the planned change results in the AIFM's management of the non-EU AIF, or the AIFM in general, now infringing this Federal statute, infringing Directive 2011/61/EU, or infringing delegated acts adopted on the basis of this Directive, the FMA must immediately prohibit the AIFM from implementing the change. If a planned change is implemented regardless of this para or of a prohibition, if a precondition of para 3 subsequently lapses, or if a change triggered by unplanned circumstances results in the AIFM's management of the non-EU AIF, or the AIFM in general, now infringing this Federal statute, Directive 2011/61/EU, or delegated acts adopted on the basis of this Directive, the FMA must take all necessary measures pursuant to articles 56 f, including if necessary express prohibition of marketing of the non-EU AIF. If the changes are permissible, the FMA must notify the ESMA as required in para 4 if the changes relate to terminating the marketing of particular AIFs or the marketing of additional AIFs, and the competent authorities of the host Member States of the AIFM if applicable.

(8) If a competent authority rejects an application for exchange of information pursuant to the provisions of the regulatory technical standards mentioned in article 35 para 14 of Directive 2011/61/EU, the FMA as competent authority must refer the matter to the ESMA, which can intervene within the framework of the powers conferred on it by article 19 of Regulation (EU) No. 1095/2010.

(9) Notwithstanding article 48 para 1, the non-EU AIFs managed and marketed by the AIFM may be marketed only to professional investors.

(10) This provision applies equally to EU feeder AIFs that do not satisfy the requirements pursuant to the second sentence of article 29 para 1.

Note for the following provision

Shall apply pursuant to the delegated acts adopted by the European Commission according to article 67 para. 6 of Directive 2011/61/EU and only from the date defined therein (cf. article 74 para. 1).

Marketing of non-EU AIFs with a passport in Austria by an EU AIFM

Article 37. (1) An EU AIFM approved in a Member State can market units or shares of a non-EU AIF it manages to professional investors in Austria, as soon as the FMA has been sent the complete documents and information pursuant to article 36 by the competent authority of the EU AIFM's home Member State.

(2) The arrangements to be reported pursuant to schedule 4 letter h for marketing the non-EU AIF, and the arrangements made to prevent units or shares of the non-EU AIF being marketed to retail investors if applicable, are subject to the requirements of this Federal statute and to supervision by the FMA even if the AIFM engages independent undertakings to provide securities-related services for the AIF. In the event of any infringement of this Federal statute, of Directive 2011/61/EU, or of delegated acts adopted on the basis of this Directive, the FMA must take all necessary measures pursuant to articles 56 f, including express prohibition of marketing the non-EU AIF within the country if necessary.

(3) The AIFM's notification sent by the competent authority of the home Member State of the AIFM, together with documents, and the certificate referred to in article 36 para 4 must be in German or in English, or in some other language recognised by the FMA according to regulation (article 7b para 1KMG). The FMA must accept electronic transmission and archiving of the documents referred to.

(4) A fee of EUR 1,100 is payable to the FMA for processing the notification pursuant to para 1. In the case of non-EU AIFs comprising several sub-funds (umbrella funds) this fee is increased from the second sub-fund by EUR 220 for each fund. For monitoring compliance with the obligations under this chapter, an annual fee of EUR 600 is also payable to the FMA at the beginning of each calendar year, by 15 January of that year at the latest; in the case of non-EU AIFs comprising several sub-funds (umbrella funds), this fee is increased by EUR 200 for each sub-fund from the second sub-fund. Fee contributions not paid by the due date at the latest are enforceable. The FMA must issue an arrears statement with the effect of constituting executory title. This must include the name and address of the fee debtor, the amount of the debt, and a

notice that the debt has become enforceable. Failure to pay the fee on time constitutes grounds for prohibiting marketing pursuant to article 50.

(5) If the FMA does not consent to the assessment of the competent authority of the home Member State of the AIFM as regards satisfying the preconditions pursuant to article 36 para 3 no 1 and 2, the FMA can bring this to the attention of the ESMA, which can intervene within the framework of the powers conferred on it by article 19 of Regulation (EU) No. 1095/2010. It is not permissible to market the units of the non-EU AIF concerned in Austria until the conciliation proceedings by the ESMA have been completed.

(6) Notwithstanding article 48 para 1, the non-EU AIFs managed and marketed by the AIFM may be marketed only to professional investors.

(7) This provision applies equally to EU feeder AIFs that do not satisfy the requirements pursuant to the second sentence of article 29 para 1.

Conditions for non-EU AIFs managed by EU AIFMs to be marketed in Austria without a passport

Article 38. (1) Notwithstanding article 35, an EU AIFM may conduct only domestic marketing of shares or units in a non-EU AIF it manages and of EU feeder AIFs that do not satisfy the requirements pursuant to the second sentence of article 29 para 1 to professional investors, provided the following preconditions are complied with:

1. the EU AIFM satisfies all the requirements stipulated in this Federal statute, with the exception of article 19. The EU AIFM nominates one or more entities that perform the functions pursuant to article 19 para 7, 8 and 9, and immediately reports this to the FMA and the supervisory authorities of the third country in which the non-EU AIF has its registered office. The requirements of article 19 para 7, 8 and 9 cannot be discharged by the EU AIFM itself.

2. There are suitable agreements serving to monitor systemic risks that comply with international standards regarding cooperation between the FMA and the supervisory authorities of the third country in which the non-EU AIF has its registered office, ensuring efficient exchange of information enabling the FMA to perform its functions as specified in this Federal statute.

3. the third country in which the non-EU AIF has its registered office is not a country or territory in which there may be an increased risk of money laundering or financing of terrorism, pursuant to the last sentence of article 40b para 1 of the Banking Act (BWG);

(2) If an EU AIFM proposes to market units or shares of a non-EU AIF in Austria, it must send the FMA a notification letter for each non-EU AIF. This notification letter includes the documentation and the information set out in schedule 3, and confirmation by the competent authority of the non-EU AIF's home State that it satisfies all requirements in this Federal statute or Directive 2011/61/EU and delegated acts adopted on the basis of this Directive, with the exception of those in part 6. Verification of payment of the fee pursuant to para 3 must also be enclosed.

(3) A fee of EUR 2,200 is payable to the FMA for processing the notification pursuant to para 2. In the case of non-EU AIFs comprising several sub-funds (umbrella funds), this fee is increased from the second sub-fund by EUR 440 for each fund. For checking the documents required pursuant to para 6, an annual fee of EUR 1,200 is payable to the FMA at the beginning of each calendar year, by 15 January of this year at the latest; in the case of funds comprising several sub-funds (umbrella funds), this fee is increased by EUR 400 for each sub-fund from the second sub-fund. Fee contributions not paid by the due date at the latest are enforceable. The FMA must issue an arrears statement with the effect of constituting executory title. This must include the name and address of the fee debtor, the amount of the debt, and a notice that the debt has become enforceable. Failure to pay the fee on time constitutes grounds for prohibiting marketing pursuant to para 8.

(4) The FMA must check the notification for formal completeness; no substantive checking over and above that is to be carried out. No later than two months after receipt of the complete notification letter pursuant to para 2, the FMA must notify the EU AIFM whether it can start marketing the non-EU AIF referred to in the notification letter pursuant to para 2 within the country; marketing may be conducted from the date of that notification. The last sentence of

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt – BGBl.).

article 13 para 3 AVG does not apply for purposes of calculating the time limit of two months. The FMA must forbid marketing of the non-EU AIF if the EU AIFM's management of the non-EU AIF, or the EU AIFM in general, infringes this Federal statute or Directive 2011/61/EU, or delegated acts adopted on the basis of this Directive. Commencement of marketing must moreover be forbidden if the EU AIFM or the non-EU AIF does not satisfy a precondition of this provision, or the notification pursuant to para 2 was not properly lodged.

(5) The EU AIFM's notification letter referred to in para 2 and its enclosures must be in German or in English, or in some other language customary in the world of finance pursuant to article 7b para 1 KMG. The FMA as competent authority must accept electronic transmission and archiving of the documents referred to.

(6) The EU AIFM must inform the FMA in writing of any material change in the information provided under para 2 at least one month before the change is implemented if it is a planned change, or immediately after the change has occurred if it is an unplanned change. If the planned change results in the EU AIFM's management of the non-EU AIF, or the EU AIFM in general, now infringing this Federal statute, infringing Directive 2011/61/EU, or infringing delegated acts adopted on the basis of this Directive, the FMA must immediately prohibit the EU AIFM from implementing the change. If a planned change is implemented regardless of this para or of a prohibition, or if a change triggered by unplanned circumstances results in the EU AIFM's management of the non-EU AIF, or the EU AIFM in general, now infringing this Federal statute, Directive 2011/61/EU, or delegated acts adopted on the basis of this Directive, the FMA must take all necessary measures pursuant to articles 56 f, including if necessary express prohibition of marketing of the non-EU AIF within the country.

(7) The EU AIFM must notify the FMA immediately of any intention to stop marketing units or shares of the non-EU AIF in Austria.

(8) The FMA must forbid the further marketing of non-EU AIFs if

1. the notification pursuant to para 2 has not been lodged,
2. a precondition under this provision ceases to apply,
3. marketing has involved serious infringement of legal provisions,
5. a share- or unit-holder's claim established by declaratory judgement or court settlement against the non-EU AIF or EU AIFM has not been satisfied,
6. the obligations provided in this law are not properly discharged, or
7. the approval by the competent bodies of the non-EU AIF's home state has been withdrawn.

(9) If the FMA has prohibited commencement or continuation of marketing of the non-EU AIF, a period of at least one year from the date of the prohibition must expire before the EU AIFM can give renewed notification pursuant to para 2 of its intention to market units or shares of this non-EU AIF within the scope of this Federal statute.

(10) In the case of umbrella structures, the FMA may also forbid marketing of shares or units of a non-EU AIF that are allowed to be marketed within the scope of this Federal statute having regard to para 8, if further shares or units of sub-funds of the same umbrella structure are marketed within the scope of this Federal statute that have not duly lodged a notification pursuant to para 2.

(11) This provision applies equally to EU feeder AIFs that do not satisfy the requirements pursuant to the second sentence of article 29 para 1.

Note for the following provision

Shall apply pursuant to the delegated acts adopted by the European Commission according to article 67 para. 6 of Directive 2011/61/EU and only from the date defined therein (cf. article 74 para. 1).

Approval of non-EU AIFMs for which Austria is the Member State of reference

Article 39. (1) A non-EU AIFM that proposes to manage AIFs or to market AIFs it manages pursuant to article 40 or article 42, must apply to the FMA for approval if Austria is the non-EU AIFM's Member State of reference pursuant to para 3. The provisions of part 2 of this Federal statute apply taking into account para 6 and 7 of this provision. The non-EU AIFM is obliged to

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt – BGBl.).

comply with this Federal statute, with the exception of part 6, with Directive 2011/61/EU, and with the delegated acts adopted on the basis of this Directive. If and to the extent that compliance with one of these provisions is inconsistent with compliance with the legal requirements to which the non-EU AIFM or the non-EU AIF marketed in a Member State is subject, there is no obligation for the non-EU AIFM to adhere to this provision. For this purpose it must prove to the FMA that

1. it is not possible to reconcile compliance with this provision with compliance with a binding legal provision to which the non-EU AIFM or the non-EU AIF marketed in a Member State is subject;
2. the legal requirements to which the non-EU AIFM or the non-EU AIF is subject contain an equivalent provision with the same regulatory intent and the same level of protection for the investors of the non-EU AIF concerned; and
3. the non-EU AIFM or the non-EU AIF satisfies the equivalent provision indicated in no 2.

(2) A non-EU AIFM that proposes to manage AIFs or to market AIFs it manages pursuant to article 40 or article 42 must have a legal representative whose registered office is in Austria. The legal representative represents the non-EU AIFM judicially and extra-judicially, is the party authorized to accept service, and the contact point for the non-EU AIFM in Austria. All correspondence between the FMA and the non-EU AIFM and between the investors of the AIF concerned and the non-EU AIFM under this Federal statute is handled through this legal representative. Jointly with the non-EU AIFM, the legal representative must discharge the compliance function in respect of the management and marketing activities carried out by the non-EU AIFM pursuant to this Directive. These powers cannot be restricted.

(3) Austria is the Member State of reference of a non-EU AIFM if the non-EU AIFM proposes

1. to manage a single EU AIF or several EU AIFs having their registered office in Austria, and does not propose to market an AIF in another Member State pursuant to article 40 or article 42;
2. to manage several EU AIFs having their registered office in various Member States, and does not propose to market an AIF in another Member State pursuant to article 40 or article 42, and either
 - a) most of the AIFs concerned have their registered office in Austria, or
 - b) the most extensive assets are managed in Austria;
3. to market a single AIF, Austria is the home Member State of the AIF, and the AIF is not marketed in any other Member State;
4. to market a single AIF, the AIF is approved in another Member State, and is marketed exclusively in Austria;
5. to market a single non-EU AIF exclusively in Austria;
6. to market a single EU AIF in various Member States, and Austria is the home Member State of the AIF or one of the Member States in which the AIFM proposes to build up effective marketing;
7. to market a single AIF that is not approved in a Member State in various Member States, and Austria is one of the Member States in which the AIFM proposes to build up effective marketing;
8. to market a single non-EU AIF in Austria and in at least one other Member State, and no other Member State has been named as Member State of reference;
9. to market several EU AIFs within the Union, and Austria is the home Member State of all EU AIFs, or to build up effective marketing of most of the AIFs concerned in Austria;
10. to market several EU-AIFs that do not all have the same home Member State within the Union, and to build up effective marketing of most of the AIFs concerned in Austria;
11. to market several EU and non-EU AIFs or several non-EU AIFs within the Union, and to build up effective marketing of most of the AIFs concerned in Austria;

If other Member States are under consideration as Member States of reference in addition to Austria, the non-EU AIFM concerned proposing to manage EU AIFs without marketing them, or to market AIFs it manages pursuant to articles 39 or 40 of Directive 2011/61/EU within the

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt – BGBl.).

Union, must apply to the FMA, and also to the competent authorities of all Member States under consideration as Member States of reference, for these competent authorities to agree among themselves on determination of its Member State of reference. The FMA and the other competent authorities concerned must within one month of receipt of such an application jointly decide on the Member State of reference for the non-EU AIFM. If the FMA is decided on as the competent authority of the Member State of reference, it must immediately notify the non-EU AIFM of this decision. If the non-EU AIFM is not duly informed within seven days after issue of the decision of the competent authorities, or the competent authorities concerned have not reached a decision within the one-month time limit, the non-EU AIFM itself can determine its Member State of reference according to the criteria listed in this para. If the non-EU AIFM decides on Austria as its Member State of reference, it must disclose its marketing strategy to the FMA, and provide documentary evidence that it is considering building up effective marketing in Austria.

(4) After receipt of an application for approval of a non-EU AIFM, the FMA must assess whether the non-EU AIFM's decision regarding its Member State of reference satisfies the criteria set out in para 3. If the FMA takes the view that this is not the case, it must reject the application of the non-EU AIFM for approval. If the FMA takes the view that the criteria set out in para 3 are satisfied, it must notify the ESMA accordingly, and request it to issue a recommendation relating to its assessment. In its notification to the ESMA, the FMA must set out the reasons of the non-EU AIFM for its assessment regarding the Member State of reference, and information on the non-EU AIFM's marketing strategy. The time limit under article 6 para 5 is suspended during the ESMA's consultations pursuant to article 37 para 5 of Directive 2011/65/EC until the ESMA sends the recommendation. If the FMA as competent authority proposes to grant approval to the non-EU AIFM, contrary to the ESMA's recommendation, it must notify the ESMA of this, stating its reasons. If the non-EU AIFM proposes to market units or shares of AIFs it manages in other Member States than Austria, the FMA must likewise notify the competent authorities of the Member States concerned, stating its reasons. The FMA must likewise if appropriate notify the competent authorities of the home Member States of the AIFs managed by the non-EU AIFM, stating its reasons.

(5) Notwithstanding para 6, the FMA's approval may not be granted until the following additional conditions are complied with:

1. Austria is nominated as the Member State of reference by the non-EU AIFM in accordance with the criteria set out in para 3, confirmed by disclosure of the marketing strategy, and the procedure pursuant to para 4 has been carried out by the competent authorities concerned;
2. the non-EU AIFM has nominated a legal representative pursuant to para 2;
3. there are suitable agreements on the cooperation between the FMA, the competent authorities of the home Member States of the EU AIFs concerned, and the supervisory authorities of the third country in which the non-EU AIFM has its registered office, so that at least an efficient exchange of information is ensured, enabling the competent authorities to perform their functions pursuant to this Federal statute and Directive 2011/61/EU;
4. the third country in which the non-EU AIFM has its registered office is not a country or territory in which there may be an increased risk of money laundering or financing of terrorism, pursuant to the last sentence of article 40b para 1 BWG;
5. the third country in which the non-EU AIFM has its registered office has signed an agreement with Austria fully compliant with the standards of article 26 of the OECD Model Tax Convention on Income and Capital, ensuring effective exchange of information in taxation matters, including multilateral tax treaties if appropriate;
6. the laws, regulations and administrative provisions of a third country applicable to non-EU AIFMs, or the restrictions of the supervisory and investigative powers of the supervisory authorities of this third country, do not prevent the competent authorities' effectively discharging their supervisory functions pursuant to Directive 2011/61/EU.

(6) The FMA's consent to the non-EU AIFM is granted in accordance with part 2 of this Federal statute, subject to the following criteria:

1. the information pursuant to article 5 para 2 is supplemented by the following:

- a) the non-EU AIFM's reasons for its assessment in respect of the Member State of reference in accordance with the criteria pursuant to para 3 and information on marketing strategy;
 - b) a list of the provisions of this Federal statute that the non-EU AIFM is unable to comply with since compliance with them by the non-EU AIFM pursuant to para 1 is not compatible with compliance with a mandatory legal requirement to which the non-EU AIFM or the non-EU AIF marketed in a Member State is subject;
 - c) written evidence on the basis of regulatory technical standards produced by the ESMA that the legal requirements of the third country contain a provision that is equivalent to the provisions that cannot be complied with, that pursues the same regulatory intent, and that provides the investors in the AIF concerned with the same degree of protection, and that the non-EU AIFM adheres to this equivalent provision; this written evidence is underpinned by a legal opinion relating to the existence of the incompatible mandatory provision concerned in the law of the third country, also including a description of the regulatory intent and of the features of the investor protection the provision seeks to achieve, and
 - d) the name and registered office of the legal representatives of the non-EU AIFM;
2. the information pursuant to article 5 para 3 can be restricted to the EU-AIFs that the non-EU AIFM proposes to manage, and to the AIFs managed by the non-EU AIFM that it proposes to market within the Union with a passport;
 3. article 6 para 1 no 1 applies notwithstanding para 1 of this provision;
 4. article 6 para 1 no 5 does not apply;
 5. the third and fourth sentences of article 6 para 5 are to be read with the following amendment: "the information set out in article 39 para 6 no 1".

(7) If the FMA takes the view that the non-EU AIFM can be exempted from compliance with certain provisions of Directive 2011/61/EU pursuant to para 1, it must notify the ESMA hereof without delay. It must support this assessment with the information submitted by the non-EU AIFM pursuant to para 6 no 1 letter b and c. The time limit set out in article 6 para 5 is suspended until the ESMA's recommendation has been sent pursuant to this para. If the FMA proposes to grant approval, contrary to the ESMA's recommendation, it must notify the ESMA of this, stating its reasons. If the non-EU AIFM proposes to market units or shares of AIFs it manages in other Member States than Austria, the FMA must likewise notify the competent authorities of the Member States concerned, stating its reasons.

(8) The FMA as competent authority of the Member State of reference must advise the ESMA without delay of the result of the approval process, of any changes to the approval of the non-EU AIFM, and of any withdrawal of approval. The FMA must moreover inform the ESMA about the applications for approval it has rejected, submitting information on the non-EU AIFMs that have applied for approval, and the reasons for rejection.

(9) If the non-EU AIFM changes its marketing strategy within two years after its approval in such a way that this would have influenced determination of the Member State of reference in the event of an application for approval, the non-EU AIFM must notify the FMA of this change before it is implemented, and state its new Member State of reference according to the criteria set out in para 3, based on its new marketing strategy. At the same time the non-EU AIFM must submit information on its new legal representative, including its name and registered office in the new Member State of reference. The FMA must assess whether the determination by the non-EU AIFM pursuant to this para is correct, and must notify the ESMA of this assessment. This communication must include an account of the non-EU AIFM's reasons for its assessment regarding the new Member State of reference, and the information on the new marketing strategy of the non-EU AIFM. After the FMA has received the ESMA's recommendation, it must notify the non-EU AIFM, its nominated legal representative in Austria, and the ESMA of its decision. If the FMA agrees to the assessment made by the non-EU AIFM, it must also notify the competent authorities of the new Member State of reference of the change. The FMA must promptly send the competent authority of the new Member State of reference a copy of the non-EU AIFM's approval and supervision documents. From the date the approval and supervision documents are sent, the competent authority of the new Member State of reference is responsible for approval and supervision of the non-EU AIFM. If the FMA's final assessment contradicts the ESMA's recommendation, the FMA must take the following into account:

1. the FMA must notify the ESMA of this, stating its reasons;

2. if the non-EU AIFM markets units or shares of AIFs it manages in other Member States than Austria as the original Member State of reference, the FMA must also notify the competent authorities of these other Member States, stating its reasons. The FMA must if appropriate also notify the competent authorities of the home Member States of the AIFs managed by the non-EU AIFM, stating its reasons.

(10) If the profile of the non-EU AIFM's actual business development within two years after its approval indicates that the non-EU AIFM has not followed the marketing strategy submitted at the time of its approval, that the non-EU AIFM provided false information in this regard, or that the non-EU AIFM did not adhere to para 9 in changing its marketing strategy, the FMA must require the non-EU AIFM to declare the Member State of reference according to its actual marketing strategy. The procedure set out in para 9 must be applied accordingly. If the non-EU AIFM does not comply with the FMA's demand, it must withdraw its approval in accordance with article 9. If the non-EU AIFM changes its marketing strategy after expiry of the timeframe indicated in para 9, and if it wishes to change its Member State of reference according to its new marketing strategy, it can lodge an application with the FMA to change its Member State of reference. The procedure under para 9 must be applied accordingly. If the FMA as competent authority of a Member State does not agree with the assessment as regards determining the Member State of reference pursuant to para 9 or to this para, it can bring the matter to the attention of the ESMA, which can intervene within the framework of the powers conferred on it by article 19 of Regulation (EU) No. 1095/2010.

(11) Any disputes arising between the non-EU AIFM or the AIF and investors in the AIF concerned having their registered office or place of residence in a Member State are settled according to the law of a Member State, and are subject to its jurisdiction.

(12) If a competent authority rejects an application for exchange of information according to the regulatory technical standards mentioned in article 37 para 17 of Directive 2011/61/EU, the FMA as competent authority may refer the matter to the ESMA, which can intervene within the framework of the powers conferred on it under article 19 of Regulation (EU) No. 1095/2010.

Note for the following provision

Shall apply pursuant to the delegated acts adopted by the European Commission according to article 67 para. 6 of Directive 2011/61/EU and only from the date defined therein (cf. article 74 para. 1).

Conditions for EU AIFs managed by non-EU AIFMs for whom Austria is the Member State of reference to be marketed within the Union with a passport

Article 40. (1) A non-EU AIFM duly approved pursuant to article 39 can market units or shares of an EU-AIF it manages to professional investors in the Union with a passport, as soon as the conditions stipulated in this provision are complied with.

(2) If the non-EU AIFM for which Austria is the Member State of reference pursuant to article 39 proposes to market units or shares of an EU AIF in Austria, it must submit a notification letter to the FMA including the documentation and the information pursuant to schedule 3.

(3) The FMA must check the notification for formal completeness; no substantive checking over and above that is to be carried out. No later than twenty working days after receipt of the complete notification letter pursuant to para 2, the FMA must notify the non-EU AIFM whether it can start marketing the non-EU AIF referred to in the notification letter pursuant to para 2 within the country. Article 13 para 3 AVG does not apply for purposes of calculating the time limit. In the event of a positive decision, the non-EU AIFM can start marketing the EU AIF from the date of the FMA's notification in this regard. Commencement of marketing must be forbidden if the non-EU AIFM's management of the EU AIF, or the non-EU AIFM in general, infringes this Federal statute, Directive 2011/61/EU, or delegated acts adopted on the basis of this Directive, or the notification pursuant to para 2 was not properly lodged. The FMA must notify the ESMA and the authorities responsible for the EU AIF that the non-EU AIFM can start marketing units or shares of the EU AIF in Austria.

(4) If the AIFM proposes to market units or shares of the EU AIF in other Member States beyond its Member State of reference, it must submit a notification letter to the FMA for each

EU AIF it proposes to market, which letter must include the documentation and the information set out in schedule 4.

(5) The FMA must check the notification for formal completeness; no substantive checking over and above that is to be carried out. No later than twenty working days after receipt of the complete notification letter pursuant to para 4, the FMA must forward it to the competent authorities of the Member States in which the EU AIF's units are to be marketed. The FMA must attach a certificate of approval for the non-EU AIFM concerned to manage EU AIFs with a particular investment strategy. It must be forwarded only if the non-EU AIFM's management of the EU AIF complies and will continue to comply with this Federal statute, with Directive 2011/61/EU, and with delegated acts adopted on the basis of this Directive, and the non-EU AIFM in general adheres to these provisions. Article 13 para 3 of the General Administrative Procedure Act (AVG) does not apply for purposes of calculating the time limit.

(6) The FMA must notify the non-EU AIFM without delay about the forwarding of the notification documents. The FMA must also notify the ESMA and the authorities responsible for the EU AIF that the non-EU AIFM can start marketing units or shares of the EU AIF in its host Member States.

(7) The non-EU AIFM's notification letter referred to in para 2 and 4, and its enclosures, must be in German or in English, or in some other language customary in the world of finance pursuant to article 7b para 1 KMG. The FMA must accept electronic transmission and archiving of the documents.

(8) A fee of EUR 2,200 is payable to the FMA for processing the notification pursuant to para 2. In the case of EU AIFs comprising several sub-funds (umbrella funds), this fee is increased from the second sub-fund by EUR 440 for each fund. A fee of EUR 400 is payable to the FMA for processing the notification pursuant to para 4. For checking the documents required pursuant to para 2, an annual fee of EUR 1,200 is payable to the FMA at the beginning of each calendar year, by 15 January of this year at the latest; in the case of funds comprising several sub-funds (umbrella funds), this fee is increased by EUR 400 for each sub-fund from the second sub-fund. Fee contributions not paid by the due date at the latest are enforceable. The FMA must issue an arrears statement with the effect of constituting executory title. This must include the name and address of the fee debtor, the amount of the debt, and a notice that the debt has become enforceable. Failure to pay the fee on time constitutes grounds for prohibiting marketing pursuant to article 50.

(9) The non-EU AIFM must inform the FMA in writing of any material change in the information provided under para 2 or para 4 at least one month before the change is implemented if it is a planned change, or immediately after the change has occurred if it is an unplanned change. If the planned change results in the non-EU AIFM's management of the EU AIF, or the non-EU AIFM in general, now infringing this Federal statute, infringing Directive 2011/61/EU, or infringing delegated acts adopted on the basis of this Directive, the FMA must immediately inform the non-EU AIFM that it must not implement the change. If a planned change is implemented regardless of this para, or if a change triggered by unplanned circumstances results in the non-EU AIFM's management of the EU AIF, or the non-EU AIFM in general, now infringing this Federal statute, Directive 2011/61/EU, or delegated acts adopted on the basis of this Directive, the FMA must take all necessary measures pursuant to articles 56 f, including if necessary express prohibition of marketing of the EU AIF. If the changes are permissible because they do not affect the compatibility of the management of the EU AIF by the non-EU AIFM with this Federal statute, Directive 2011/61/EU, or delegated acts adopted on the basis of this Directive, or compliance with these provisions by the non-EU AIFM in general, the FMA must promptly report of these changes to the ESMA if the changes concern termination of marketing of certain EU AIFs, or additional EU AIFs marketed, and to the competent authorities of the host Member States if appropriate.

(10) Notwithstanding article 48 para 1, the EU AIFs managed and marketed by the non-EU AIFM may be marketed only to professional investors.

Note for the following provision

Shall apply pursuant to the delegated acts adopted by the European Commission according to article 67 para. 6 of Directive 2011/61/EU and only from the date defined therein (cf. article 74 para. 1).

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt – BGBl.).

Marketing of EU AIFs with a passport in Austria by a non-EU AIFM

Article 41. (1) A non-EU AIFM for which Austria is not the Member State of reference can market units or shares of an EU AIF it manages to professional investors in Austria, as soon as the non-EU AIFM has been notified that the complete documentation and information pursuant to article 39 of Directive 2011/65/EU, and pursuant to schedule 4, have been sent to the FMA by the competent authority of the non-EU AIFM's Member State of reference.

(2) The arrangements to be reported pursuant to schedule 4 letter h for marketing the EU AIF, and the arrangements made to prevent units or shares of the EU AIF being marketed to retail investors if applicable, are subject to the requirements of this Federal statute and to supervision by the FMA even if the non-EU AIFM engages independent undertakings to provide securities-related services for the EU AIF. In the event of any infringement of this Federal statute, of Directive 2011/61/EU, or of delegated acts adopted on the basis of this Directive, the FMA must take all necessary measures pursuant to articles 56 f, including express prohibition of marketing of the non-EU AIF within the country if necessary.

(3) The notification of the non-EU AIFM sent by the competent authority of the non-EU AIFM's Member State of reference, together with documents and the certificate of approval for the non-EU AIFM concerned to manage EU AIFs, with a particular investment strategy if appropriate, must be in German or in English, or in some other language recognised by the FMA according to regulation (article 7b para 1 KMG). The FMA must accept electronic transmission and archiving of the documents referred to.

(4) A fee of EUR 1,100 is payable to the FMA for processing the documents sent pursuant to para 1. In the case of EU AIFs comprising several sub-funds (umbrella funds), this fee is increased from the second sub-fund by EUR 220 for each fund. For monitoring compliance with the obligations under this chapter, an annual fee of EUR 600 is payable to the FMA at the beginning of each calendar year, by 15 January of this year at the latest; in the case of EU AIFs comprising several sub-funds (umbrella funds), this fee is increased by EUR 200 for each sub-fund from the second sub-fund. Fee contributions not paid by the due date at the latest are enforceable. The FMA must issue an arrears statement with the effect of constituting executory title. This must include the name and address of the fee debtor, the amount of the debt, and a notice that the debt has become enforceable. Failure to pay the fee on time constitutes grounds for prohibiting marketing pursuant to article 50.

(5) Notwithstanding article 48 para 1, the EU AIFs managed and marketed by the non-EU AIFM may be marketed only to professional investors.

Note for the following provision

Shall apply pursuant to the delegated acts adopted by the European Commission according to article 67 para. 6 of Directive 2011/61/EU and only from the date defined therein (cf. article 74 para. 1).

Conditions for non-EU AIFs managed by a non-EU AIFM for which Austria is the Member State of reference to be marketed within the Union with a passport

Article 42. (1) A non-EU AIFM duly approved in accordance with article 39 can market units or shares of a non-EU AIF it manages to professional investors within the Union with a passport, as soon as the conditions stipulated in this provision are complied with.

(2) In addition to the requirements for EU AIFMs stipulated in this Federal statute, non-EU AIFMs for which Austria is the Member State of reference must comply with the following conditions:

1. there are suitable agreements on cooperation between the FMA and the supervisory authority of the third country in which the non-EU AIF has its registered office, so that at least an efficient exchange of information is ensured permitting the FMA to perform its functions as specified in this Federal statute, Directive 2011/61/EU, and delegated acts adopted on the basis of this Directive;

2. the third country in which the non-EU AIF has its registered office is not a country or territory in which there may be an increased risk of money laundering or financing of terrorism pursuant to the last sentence of article 40b para 1 BWG;

3. the third country in which the non-EU AIF has its registered office has signed an agreement with Austria and with each other Member State in which the shares or units of the non-EU AIF are to be marketed that fully satisfies the standards pursuant to article 26 of the OECD Model Tax Convention on Income and Capital, and ensures effective exchange of information in tax matters, including multilateral treaties on taxation if applicable.

(3) The non-EU AIFM must submit a notification to the FMA for each non-EU AIF it proposes to market in Austria. The notification must include the documentation and the information set out in schedule 3.

(4) The FMA must check the notification for formal completeness; no substantive checking over and above that is to be carried out. No later than 20 working days after receipt of the complete notification letter pursuant to para 3, the FMA must notify the non-EU AIFM whether it can start marketing the non-EU AIF referred to in the notification letter pursuant to para 3 within the country. Article 13 para 3 AVG does not apply for purposes of calculating the time limit. In the event of a positive decision, the non-EU AIFM can start marketing the non-EU AIF from the date of the relevant notification from the FMA. Commencement of marketing must be forbidden if management of the non-EU AIF by the non-EU AIFM, or the non-EU AIFM in general, infringes this Federal statute, Directive 2011/61/EU, or delegated acts adopted on the basis of this Directive, or the notification pursuant to para 3 was not properly lodged. The FMA must notify the ESMA that the non-EU AIFM can start marketing shares or units of the non-EU AIF in Austria.

(5) If the non-EU AIFM proposes to market the shares or units of a non-EU AIF in other Member States as well beyond Austria as its Member State of reference, it must submit a notification letter to the FMA for each non-EU AIF it proposes to market, which letter must include the documentation and the information set out in schedule 4.

(6) The FMA must check the notification for formal completeness; no substantive checking over and above that is to be carried out. No later than 20 working days after receipt of the complete notification letter pursuant to para 5, the FMA must forward it to the competent authorities of the Member States in which the shares or units of the non-EU AIF are to be marketed. The FMA must attach a certificate of approval for the non-EU AIFM concerned to manage non-EU AIFs with a particular investment strategy. The FMA must forward the notification only if the non-EU AIFM's management of the non-EU AIF complies and will continue to comply with this Federal statute, Directive 2011/61/EU and the delegated legal acts adopted on the basis of this Directive, and if the non-EU AIFM in general adheres to these conditions. Article 13 para 3 AVG does not apply for purposes of calculating the time limit.

(7) The FMA must promptly notify the non-EU AIFM of forwarding of the notification documents. The FMA must moreover notify the ESMA that the non-EU AIFM can start marketing shares or units of the non-EU AIF in its host Member States.

(8) The non-EU AIFM's notification letters referred to in para 3 and 5, and the enclosures, must be in German or in English, or in some other language customary in the world of finance pursuant to article 7b para 1 KMG. The FMA must accept electronic transmission and archiving of the documents.

(9) A fee of EUR 2,200 is payable to the FMA for processing the notification pursuant to para 3. In the case of EU AIFs comprising several sub-funds (umbrella funds), this fee is increased from the second sub-fund by EUR 440 for each fund. A fee of EUR 400 is payable to the FMA for processing the notification pursuant to para 5. An annual fee of EUR 1,200 is payable to the FMA at the beginning of each calendar year, by 15 January of this year at the latest, for checking the prescribed documents pursuant to article 3; in the case of funds comprising several sub-funds (umbrella funds), this fee is increased by EUR 400 for each sub-fund from the second sub-fund. Fee contributions not paid by the due date at the latest are enforceable. The FMA must issue an arrears statement with the effect of constituting executory title. This must include the name and address of the fee debtor, the amount of the debt, and a notice that the debt has become enforceable. Failure to pay the fee on time constitutes grounds for prohibiting marketing pursuant to article 50.

(10) The non-EU AIFM must inform the FMA in writing of any material change in the information provided under para 3 or 5 at least one month before the change is implemented if it is a planned change, or immediately after the change has occurred if it is an unplanned change. If the planned change results in the non-EU AIFM's management of the non-EU AIF, or the non-EU AIFM in general, now infringing this Federal statute, infringing Directive 2011/61/EU, or infringing delegated acts adopted on the basis of this Directive, the FMA must immediately inform the non-EU AIFM it must not implement the change. If a planned change is implemented regardless of this para, or if a change triggered by unplanned circumstances results in the non-EU AIFM's management of the non-EU AIF, or the non-EU AIFM in general, now infringing this Federal statute, Directive 2011/61/EU, or delegated acts adopted on the basis of this Directive, the FMA must take all necessary measures pursuant to articles 56 f, including if necessary express prohibition of marketing of the non-EU AIF. If the changes are permissible because they do not affect the compatibility of the non-EU AIFM's management of the non-EU AIF with this Federal statute, Directive 2011/61/EU, or delegated acts adopted on the basis of this Directive, or compliance with these provisions by the non-EU AIFM in general, the FMA must promptly notify the ESMA, and if appropriate the competent authorities of the host Member States, of these changes if they concern terminating the marketing of certain non-EU AIFs, or any additional non-EU AIFs marketed.

(11) Notwithstanding article 48 para 1, the non-EU AIFs managed and marketed by the non-EU AIFM may be marketed only to professional investors.

Note for the following provision

Shall apply pursuant to the delegated acts adopted by the European Commission according to article 67 para. 6 of Directive 2011/61/EU and only from the date defined therein (cf. article 74 para. 1).

Marketing of non-EU AIFs by a non-EU AIFM with a passport in Austria

Article 43. (1) A non-EU AIFM for which Austria is not the Member State of reference can market units or shares of a non-EU AIF it manages to professional investors in Austria, as soon as the non-EU AIFM has been informed by the competent authority of its Member State of reference that the competent authority of the Member State of reference of the non-EU AIFM has sent the FMA the complete documentation and information pursuant to article 40 of Directive 2011/65/EU and pursuant to schedule 4.

(2) The arrangements to be reported pursuant to schedule 4 letter h for marketing the non-EU AIF, and the arrangements made to prevent units or shares of the non-EU AIF being marketed to retail investors if applicable, are subject to the requirements of this Federal statute and to supervision by the FMA, even if the non-EU AIFM engages independent undertakings to provide securities-related services for the non-EU AIF. In the event of any infringement of this Federal statute, of Directive 2011/61/EU, or of delegated acts adopted on the basis of this Directive, the FMA must take all necessary measures pursuant to articles 56 f, including express prohibition of marketing the non-EU AIF within the country if necessary.

(3) The notification of the non-EU AIFM sent by the competent authority of the non-EU AIFM's Member State of reference, together with documents, and the certificate of approval for the non-EU AIFM concerned to manage non-EU AIFs, with a particular investment strategy if applicable, must be in German or in English, or in some other language recognised by the FMA according to regulation (article 7b para 1 KMG). The FMA must accept electronic transmission and archiving of the documents referred to.

(4) A fee of EUR 1,100 is payable to the FMA for processing the documents sent pursuant to para 1. In the case of non-EU AIFs comprising several sub-funds (umbrella funds), this fee is increased from the second sub-fund by EUR 220 for each fund. An annual fee of EUR 600 is payable to the FMA at the beginning of each calendar year, by 15 January of this year at the latest, for monitoring compliance with the duties under this chapter; in the case of non-EU AIFs comprising several sub-funds (umbrella funds), this fee is increased by EUR 200 for each sub-fund from the second sub-fund. Fee contributions not paid by the due date at the latest are enforceable. The FMA must issue an arrears statement with the effect of constituting executory title. This must include the name and address of the fee debtor, the amount of the debt, and a

notice that the debt has become enforceable. Failure to pay the fee on time constitutes grounds for prohibiting the marketing pursuant to article 50.

(5) Notwithstanding article 48 para 1, the non-EU AIFs managed and marketed by the non-EU AIFM may be marketed only to professional investors.

Note for the following provision

Shall apply pursuant to the delegated acts adopted by the European Commission according to article 67 para. 6 of Directive 2011/61/EU and only from the date defined therein (cf. article 74 para. 1).

Conditions for the management of EU AIFs from other Member States by non-EU AIFMs for which Austria is the Member State of reference

Article 44. (1) A non-EU AIFM duly approved pursuant to article 39 may manage EU AIFs having their registered office in another Member State either directly or indirectly through a branch, provided the non-EU AIFM is approved to manage this type of EU AIF.

(2) A non-EU AIFM proposing for the first time to manage an EU AIF having its registered office in another Member State, must notify the FMA of the following:

1. the Member State in which it proposes to manage the EU AIF directly or through a branch;
2. a business plan stating in particular which services it proposes to provide and which EU AIFs it proposes to manage.

(3) If the non-EU AIFM proposes to establish a branch in another Member State, it must state the following, in addition to the information pursuant to para 2:

1. the organisational structure of the branch,
2. the address under which documents can be requested in the home Member State of the EU AIF,
3. the names and contact details of the managers of the branch.

(4) The FMA must check the notification pursuant to para 2, and that pursuant to para 3 if applicable, for formal completeness; no substantive checking over and above that is to be carried out. No later than one month after receipt of the complete documentation pursuant to para 2, or two months after receipt of the complete documentation pursuant to para 3, the FMA must send it to the competent authorities of the host Member States of the non-EU AIFM. The FMA must attach a certificate of approval for the non-EU AIFM concerned to manage EU AIFs with a particular investment strategy. It is to be forwarded only if the non-EU AIFM's management of the EU AIF complies and continues to comply with this Federal statute, with Directive 2011/61/EU, and with delegated acts adopted on the basis of this Directive, and the non-EU AIFM in general adheres to these provisions. Article 13 para 3 AVG does not apply for purposes of calculating the time limit. The FMA must notify the non-EU AIFM as soon as it has been sent. The FMA must moreover notify the ESMA that the non-EU AIFM can start managing the EU AIF in the non-EU AIFM's host Member States.

(5) The non-EU AIFM must inform the FMA in writing of any change to the notifications sent pursuant to para 2, or pursuant to para 3 if applicable, at least one month before the change is implemented if it is a planned change, or immediately after the change has occurred if it is an unplanned change. If the planned change results in the non-EU AIFM's management of the EU AIF, or the non-EU AIFM in general, now infringing this Federal statute, infringing Directive 2011/61/EU, or infringing delegated acts adopted on the basis of this Directive, the FMA must immediately inform the non-EU AIFM that it must not implement the change. If a planned change is implemented regardless of this para, or if a change triggered by unplanned circumstances results in the non-EU AIFM's management of the AIF, or the non-EU AIFM in general, now infringing this Federal statute, Directive 2011/61/EU, or delegated acts adopted on the basis of this Directive, the FMA must take all necessary measures pursuant to articles 56 f, including if necessary express prohibition of marketing of the EU AIF. If the changes are permissible because they do not affect the compatibility of the non-EU AIFM's management of the EU AIF with this Federal statute, Directive 2011/61/EU, or delegated acts adopted on the basis of this Directive, or affect compliance with these provisions by the non-EU AIFM in

general, the FMA must promptly notify the competent authorities of the host Member States of the non-EU AIFM of these changes.

Conditions for the services of a non-EU AIFM to be provided in Austria as host Member State

Article 45. (1) A non-EU AIFM for which Austria is not the Member State of reference can manage EU AIFs either directly or indirectly through a branch in Austria and market them to professional investors, provided the non-EU AIFM is entitled to manage this type of EU AIF.

(2) Commencement of management of the EU AIF in Austria and establishing a branch in Austria by a non-EU AIFM is permissible if the competent authority of the non-EU AIFM's Member State of reference has sent the FMA all information pursuant to article 44 para 2 and 3, and the non-EU AIFM has received confirmation from the competent authority of its Member State of reference that it has been sent. The information pursuant to article 44 para 2 and 3 must be provided in German or in English, or in some other language recognised by the FMA according to regulation (article 7b para 1 KMG). The FMA must accept electronic transmission and archiving of the documents referred to. Marketing of the EU AIF to retail investors in Austria is permissible only if the conditions of article 48 are complied with, and the type of the EU AIF corresponds to a type of AIF permissible in Austria under this Federal statute for marketing to retail investors, and the relevant requirements are complied with.

(3) If collective portfolio management of an AIF approved in Austria is proposed, the non-EU AIFM must apply to the FMA for this, pursuant to article 30. If the non-EU AIFM already manages AIFs of the same type in Austria, it is sufficient to refer to the documents already submitted.

(4) The FMA as competent authority of the non-EU AIFM's host Member State may not impose any additional requirements on the non-EU AIFM concerned in the areas covered by this Federal statute, Directive 2011/61/EU, or delegated acts adopted on the basis of this Directive.

Cooperation of the FMA as competent authority of the host Member State with the ESMA and competent authorities of other Member States

Article 46. (1) If the FMA does not agree with the non-EU AIFM's decision pursuant to article 39 or article 37 of Directive 2011/61/EU as regards its Member State of reference, it can bring the matter to the attention of the ESMA, which can intervene within the framework of powers conferred on it by article 19 of Regulation (EU) No. 1095/2010.

(2) If the FMA does not agree with the assessment of the application of article 37 para 7 letter a to e and g of Directive 2011/61/EU, or the non-EU AIFM being granted approval by the competent authorities of another Member State of reference of the AIFM, it can bring the matter to the attention of the ESMA, which can intervene within the framework of powers conferred on it by article 19 of Regulation (EU) No. 1095/2010.

(3) If an authority responsible for an EU AIF does not conclude the agreements on cooperation required pursuant to article 37 para. 7 lit. d of Directive 2011/61/EU. within a reasonable time period, the FMA can bring the matter to the attention of the ESMA, which can intervene within the framework of powers conferred on it by article 19 of Regulation (EU) No. 1095/2010.

(4) If the FMA as competent authority of another Member State does not agree with the decision by the competent authorities of the non-EU AIFM's Member State of reference as regards exemption of the non-EU AIFM from compliance with particular provisions of Directive 2011/61/EU, it can bring the matter to the attention of the ESMA, which can intervene within the framework of powers conferred on it by article 19 of Regulation (EU) No. 1095/2010.

(5) If the FMA as competent authority of another Member State does not agree with how the competent authorities of the AIFM's Member State of reference assess the application of article 40 para 2 subpara 1 letter a and b of Directive 2011/61/EU as regards the further requirements for non-EU AIFMs wishing to manage non-EU AIFs with a passport, it can bring the matter to the attention of the ESMA, which can intervene within the framework of powers conferred on it by article 19 of Regulation (EU) No. 1095/2010.

(6) If a competent authority rejects an application for exchange of information in accordance with the regulatory technical standards mentioned in article 40 para 14 of Directive 2011/61/EU, the FMA as competent authority can bring the matter to the attention of the ESMA, which can intervene within the framework of powers conferred on it by article 19 of Regulation (EU) No. 1095/2010.

Conditions for AIFs managed by non-EU AIFMs to be marketed in Austria without a passport

Article 47. (1) Notwithstanding articles 39, 40 and 42, a non-EU AIFM can market units or shares of the AIFs it manages to professional investors only within the country, provided the non-EU AIFM satisfies all requirements stipulated in this Federal statute, in Directive 2011/61/EU, and in the delegated acts adopted on the basis of the Directive.

(2) A non-EU AIFM proposing to market AIFs it manages in Austria must have a legal representative whose registered office is in Austria. The legal representative represents the non-EU AIFM judicially and extra-judicially, is the party authorized to accept service, and the contact point for the non-EU AIFM in Austria. All correspondence between the FMA and the non-EU AIFM and between the domestic investors of the AIF concerned and the non-EU AIFM under this Federal statute is handled through this legal representative. The legal representative must, jointly with the non-EU AIFM, discharge the compliance function in respect of the management and marketing activities carried out by the non-EU AIFM pursuant to this Directive. These powers cannot be restricted.

(3) If a non-EU AIFM proposes to market units or shares of an AIF in Austria, it must send the FMA a notification letter for each AIF it proposes to market. This notification letter includes the documentation and information set out in schedule 3, and confirmation of the competent authorities of the home State of the non-EU AIFM and of the AIF, that the AIF and the non-EU AIFM satisfy all requirements stipulated in this Federal statute, with the exception of part 6, in Directive 2011/61/EU, and in delegated acts adopted on the basis of this Directive. The following must be enclosed with the notification in addition:

1. the corresponding information pursuant to article 5 para 2 and 3;
2. information on the marketing strategy;
3. the name of the legal representative of the non-EU AIFM, stating its registered office;
4. confirmation by the non-EU AIFM's legal representative that it is in a position to satisfy the requirements that apply to it, that it represents the non-EU AIFM judicially and extra-judicially, and acts as contact point for the investors of the AIF concerned, and is at least adequately equipped to be able to discharge the compliance function pursuant to this Federal statute and Directive 2011/61/EU;
5. verification of payment of the fee pursuant to para 6;
6. a declaration by the non-EU AIFM that it undertakes to comply with the requirements stipulated in this Federal statute, in Directive 2011/61/EU, and in the delegated acts adopted on the basis of the Directive for the entire duration of marketing of the AIF in Austria.

(4) The notification letter of the non-EU AIFM referred to in para 3 and its enclosures must be in German or in English, or in some other language customary in the world of finance pursuant to article 7b para 1 KMG. The FMA as competent authority must accept electronic transmission and archiving of the documents referred to in para 3.

(5) The FMA must check the notification for formal completeness; no substantive checking over and above that is to be carried out. No later than 4 calendar months after receipt of the complete notification letter pursuant to para 3, the FMA must notify the non-EU AIFM whether it can start marketing the AIF referred to in the notification letter pursuant to para 3 within the country. Article 13 para 3 of the General Administrative Procedure Act (AVG) does not apply for purposes of calculating the time limit. In the event of a positive decision, the non-EU AIFM can start marketing the AIF from the date of the relevant notification from the FMA. Commencement of marketing must be forbidden if the non-EU AIFM or the AIF does not satisfy a precondition of this provision, or the notification pursuant to para 3 was not properly lodged. The FMA must grant approval for marketing the AIF if the following additional conditions are complied with:

1. there are suitable agreements, especially serving to monitor systemic risks, that comply with international standards, regarding cooperation between the FMA, the competent authorities of the home Member State of the AIF concerned, and the supervisory authorities of the third country in which the non-EU AIFM has its registered office, ensuring efficient exchange of information enabling the competent authorities to perform their functions as specified in this Federal statute and in Directive 2011/61/EU;
2. the third country in which the non-EU AIFM has its registered office is not a country or territory in which there may be an increased risk of money laundering or financing of terrorism, pursuant to the last sentence of article 40b para 1BWG;
3. the third country in which the non-EU AIFM has its registered office has signed an agreement with Austria that is fully compliant with the standards of article 26 of the OECD Model Tax Convention on Income and Capital, and ensures effective exchange of information in taxation matters, including multilateral tax treaties if applicable;
4. the laws, regulations and administrative provisions of a third country applicable to non-EU AIFMs, or the constraints of the supervisory and investigative powers of this third country's supervisory authorities, do not prevent the competent authorities' effectively discharging their supervisory functions pursuant to this Directive.

(6) A fee of EUR 4,500 is payable to the FMA for processing the notification pursuant to para 3. In the case of AIFs comprising several sub-funds (umbrella funds), this fee is increased from the second sub-fund by EUR 1,000 for each fund. An annual fee of EUR 2,500 is payable to the FMA at the beginning of each calendar year, by 15 January of this year at the latest, for checking the prescribed documents pursuant to para 3 and 4; in the case of funds comprising several sub-funds (umbrella funds) this fee is increased by EUR 600 for each sub-fund from the second sub-fund. Fee contributions not paid by the due date at the latest are enforceable. The FMA must issue an arrears statement with the effect of constituting executory title. This must include the name and address of the fee debtor, the amount of the debt, and a notice that the debt has become enforceable. Failure to pay the fee on time constitutes grounds for prohibiting marketing pursuant to para 9.

(7) The non-EU AIFM must inform the FMA in writing of any material change in the information provided under para 3 at least one month before the change is implemented if it is a planned change, or immediately after the change has occurred if it is an unplanned change. If the planned change results in the non-EU AIFM's management of the AIF, or the non-EU AIFM in general, now infringing this Federal statute, infringing Directive 2011/61/EU, or infringing delegated acts adopted on the basis of this Directive, the FMA must immediately inform the non-EU AIFM that it must not implement the change. If a planned change is implemented regardless of this para, or if a change triggered by unplanned circumstances results in the non-EU AIFM's management of the AIF, or the non-EU AIFM in general, now infringing this Federal statute, Directive 2011/61/EU, or delegated acts adopted on the basis of this Directive, the FMA must take all necessary measures pursuant to articles 56 f, including if necessary express prohibition of marketing of the AIF.

(8) The non-EU AIFM must notify the FMA immediately of any intention to discontinue the marketing of shares or units of the AIF in Austria.

(9) The FMA must forbid further marketing of AIFs if

1. the notification pursuant to para 3 has not been lodged, or the non-EU AIFM breaches the obligations arising from the declaration pursuant to para 3 no 6;
2. a precondition under this provision ceases to apply;
3. marketing has involved serious infringement of legal provisions;
4. a share- or unit-holder's claim established by declaratory judgement or court settlement against the AIF or non-EU AIFM has not been satisfied;
5. the obligations provided in this statute are not properly discharged; or
6. the approval by the competent bodies of the home state of the non-EU AIFM or of the AIF has been withdrawn.

(10) If the FMA has prohibited commencement or continuation of marketing the AIF, a period of at least one year from the date of the prohibition must expire before the non-EU AIFM can give renewed notification pursuant to para 3 of its intention to market units or shares of this AIF within the scope of this Federal statute.

(11) In the case of umbrella structures, the FMA may also forbid marketing of shares or units of an AIF that are allowed to be marketed within the scope of this Federal statute, having regard to para 9, if further shares or units of sub-funds of the umbrella structure are marketed within the scope of this Federal statute that have not duly completed the notification procedure pursuant to para 3.

Note for the following provision

Para. 1a shall apply to new business which was concluded after 01 August 2014 (cf. article 74 para. 3).

Part 8

Marketing to retail investors

Marketing of Austrian AIFs by AIFMs to retail investors and qualified retail investors

Article 48. (1) An AIFM can market shares or units of the following domestic AIFs approved pursuant to article 29 to retail investors in Austria:

1. shares or units of real-estate funds pursuant to the Real-Estate Investment Funds Act (ImmoInvFG) (FLG I No. 80/2003), provided it has authorization pursuant to article 1 para 1 no 13a BWG,
2. AIFs pursuant to the first chapter of part 3 of InvFG 2011, provided it has authorization pursuant to article 1 para 1 no 13 BWG in conjunction with article 6 para 2 InvFG 2011,
3. AIFs in real estate that satisfy the conditions of para 5 and 6, provided it has authorization pursuant to part 2 of this Federal statute, or
4. AIFs that satisfy the conditions of para 7 and 8 (managed futures funds), provided it has authorization pursuant to part 2 of this Federal statute.
5. AIFs that satisfy the conditions of para 8a and 8b (private equity fund of funds), provided it has authorization pursuant to part 2 of this Federal statute.
6. AIFs that satisfy the conditions of para 8c and 8d (AIF in private equity), provided it has authorization pursuant to part 2 of this Federal statute.

(1a) In accordance with para. 1 no 4, 5 or 6 and in the event of an investment, the investor shall confirm in writing, in a separate document to the investment commitment agreement, that he is aware of the risks associated with the intended investment and the AIFM, or if the marketing is indirect, the natural person or legal entity responsible for the marketing has assessed his expertise, experience and knowledge. The AIFM, or if the marketing is indirect, the natural person or legal entity responsible for the marketing must be sufficiently convinced that the investor is in a position to make his own investment decisions and understands the risks associated with the investment and that such a commitment is appropriate for the investor.

(2) Insofar as the requirements of the Real-Estate Investment Funds Act (ImmoInvFG) for the management and marketing of real-estate funds pursuant to the Real-Estate Investment Funds Act (ImmoInvFG) extend beyond this Federal statute, those provisions prevail.

(3) Insofar as the requirements of the InvFG 2011 for the management and marketing of AIFs extend beyond this Federal statute, those provisions prevail for the management and marketing of AIFs pursuant to part 3 of the first sector of the InvFG 2011.

(4) Insofar as this Federal statute extends beyond the requirements of the ImmoInvFG or InvFG 2011 for the management and marketing of AIFs to retail investors, the provisions of this Federal statute prevail for the management and marketing of AIFs or real estate funds.

(5) The FMA must approve an AIF in real estate pursuant to para 1 no 3 for marketing to retail investors if:

1. the investment strategy seeks predominantly to use the invested capital to directly or indirectly generate income from rental or conveyance of real estate to third parties, regardless of whether the legal form is that of a security or of an investment pursuant to article 1 par 1 no 3 KMG;
2. the minimum diversification requirements of the real estate portfolio pursuant to article 22 para 1 to 4 ImmoInvFG are complied with;

3. the net asset value of the AIF determined pursuant to article 17 is published at least twice a month, unless the AIF is admitted to trading on a regulated market;
4. leverage is used for the AIF with exposure not exceeding twice the AIF's net asset value, calculated according to the commitment method;
5. all marketing documentation includes a notice referring to the particular risk associated with this investment (risk notice) in a typographically prominent position;
6. a semi-annual report is produced 2 months after the end of the half-year at the latest;
7. a client information document in German containing the essential investor information and equivalent to the KIID pursuant to article 134 InvFG 2011 and to the regulation adopted thereunder. A simplified prospectus corresponding to the simplified prospectus pursuant to article 7 ImmoInvFG can be provided in German as an alternative to a KIID.

(6) The following must be included with the application for approval:

1. In the event that the AIF in real estate has to produce a prospectus pursuant to KMG, the prospectus audited or approved in accordance with article 8 or article 8a KMG. The supplementary information pursuant to article 21 para 1 and 2 required pursuant to article 21 para 3 must be presented separately, and the information already included in the prospectus must be clearly identified in accordance with article 21. The auditing and/or approval of the prospectus provided under article 8 or 8a KMG does not extend to this supplementary information;
2. in the event that the AIF in real estate is not required to produce a prospectus pursuant to the Capital Market Act (KMG), the information pursuant to article 21;
3. the latest annual report pursuant to article 20;
4. in the event that the AIF in real estate is a collective investment scheme in real estate pursuant to article 14 KMG, the latest statement of account pursuant to article 14 no 4 KMG;
5. a confirmation by the AIFM that the conditions of para 5 are complied with.

(7) The FMA must approve an AIF (managed futures fund) for marketing to retail investors

if

1. the fund's assets are invested in such a way as to ensure sufficient diversification and appropriate distribution of risk. In addition to acquiring exchange-traded futures contracts in the form of futures, the fund assets may be invested exclusively in
 - a) over-the-counter interest-rate and currency forward contracts unless they are concluded to hedge the fund's assets, to an extent that the margin deposits and variation margin payments associated with such over-the-counter interest-rate and currency forward contracts may not exceed 30 percent of the fund's assets;
 - b) money market instruments pursuant to article 70 InvFG 2011;
 - c) in compliance with article 71 and 77 para 1 InvFG 2011, units or shares of UCITS that have been approved in their home state pursuant to article 50 InvFG 2011, or pursuant to article 5 of Directive 2009/65/EC, to an extent that may not exceed 50 percent of the fund's assets;
2. no other commodities contracts than commodities futures contracts may be concluded, and no open position
 - a) is held for an individual futures contract for which the margin deposit or variation margin payment exceeds 5 percent of the fund's assets, or
 - b) is held for futures contracts for one and the same commodity, or for one and the same category of futures contract for financial instruments, for which the margin deposits or variation margin payment exceeds 20 percent of the fund's assets;
3. in the case of transactions with commodity derivatives, physical delivery of the underlying commodity is excluded;
4. margin deposits and variation margin payments in connection with exchange-traded futures contracts do not exceed 50 percent of the fund's assets; the reserve of liquid assets must correspond to at least the amount of the margin deposits and variation margin payments made in total, and consist of money market instruments pursuant to article 70 InvFG 2011;

5. margin deposits or variation margin payments are not financed by loans or borrowing;
6. the net asset value of the managed futures fund determined pursuant to article 17 is published each time there is an issue or redemption of shares or units of the managed futures fund, but at least twice a month;
7. leverage is used for the managed futures fund, with the maximum risk for the managed futures fund, calculated applying the absolute value-at-risk approach of article 87 InvFG 2011, does not exceed 35 percent of the net asset value of the managed futures fund. The following parameters must be applied when calculating the absolute value-at-risk approach:
 - a) confidence interval of 99 percent;
 - b) holding period of one month (20 business days);
 - c) effective monitoring period of the risk factors of at least one year (250 business days), except if there are grounds for a shorter monitoring period due to a significant increase in price volatility due to extreme market conditions;
 - d) quarterly data updating, or more frequent if market prices are subject to significant variations;
 - e) calculation at least on a daily basis;
8. a confidence interval at variance with no 7 letter a, and a holding period at variance with no 7 letter b can be applied by the managed futures fund only if the confidence interval is no less than 95 percent, and the holding period is no more than one month (20 business days); a conversion must be carried out for the 35 percent limit for the holding period concerned and for the confidence interval concerned, applying these calculation parameters; but this conversion may be applied only assuming a normal distribution with an identical and independent distribution of the risk factors, and of reference to the quantiles of the normal distribution and of the mathematical square root of time rule;
9. all marketing documentation includes a notice referring to the particular risk associated with this investment (risk notice) in a typographically prominent position;
10. a semi-annual report is produced 2 months after the end of the half-year at the latest;
11. a client information document is available in German containing the essential investor information and equivalent to the KIID pursuant to article 134 InvFG 2011 and of the regulation adopted thereunder.

(8) The following must be included with the application for approval of a managed futures fund pursuant to para 7:

1. The prospectus audited or approved in compliance with article 8 or 8a KMG, if the managed futures fund has to produce a prospectus pursuant to the Capital Market Act (KMG). The supplementary information pursuant to article 21 para 1 and 2 required pursuant to article 21 para 3 must be presented separately, and the information already included must be clearly identified in the prospectus in accordance with article 21. The auditing and/or approval of the prospectus provided under article 8 or 8a KMG does not extend to this supplementary information;
2. the information pursuant to article 21, if the managed futures fund is not required to produce a prospectus pursuant to the KMG;
3. the latest annual report pursuant to article 20;
4. a confirmation by the AIFM that the conditions of para 7 are complied with.

(8a) The FMA must approve an AIF (private equity fund of funds) for marketing to retail investors if

1. the private equity fund of funds investment strategy seeks predominantly to invest in other AIFs, which in turn invest in non-listed companies pursuant to their investment strategies. The investment in one single AIF must not exceed 10 % of the fund assets of the private equity fund of funds. In addition to this predominant investment, the private equity fund of funds may only acquire money market instruments pursuant to article 70 InvFG 2011. If, in addition to this predominant investment, the AIF in which investments are made can also make other investments than in non-listed companies and money

market instruments pursuant to its statutes or investment conditions, then the private equity fund of funds investments in such an AIF are restricted to 5 % of its fund assets in each case. In total, a maximum of 20 % of the fund assets of a private equity fund of funds may be invested in such an AIF;

2. the net asset value of the private equity fund of funds determined pursuant to article 17 is published each time there is an issue or redemption of shares or units of the private equity fund of funds, but at least once a month, unless the private equity fund of funds is admitted to trading on a regulated market;
3. with regard to the private equity fund of funds fund of funds, no leverage is used. Similarly, investments in AIFs, which use leverage, are not permitted. If the statutes or the investment conditions of an AIF, in which investments are made, provide for this, short-term loans up to the amount of 20 % of the fund assets of the AIF are authorised on their account;
4. all marketing documentation includes a notice referring to the particular risk associated with this investment (risk notice) and to the limited liquidity of such an investment in a typographically prominent position;
5. a semi-annual report is produced 2 months after the end of the half-year at the latest;
6. a key investor information document is available in German containing the essential investor information and equivalent to the KIID pursuant to article 134 InvFG 2011 and the regulation adopted thereunder;
7. the investment required per retail investor amounts to at least 100,000 Euro;
8. the retail investor of the AIFM or, if the marketing is indirect, the natural person or legal entity responsible for the marketing can prove that they have made investments in financial instruments for more than four years pursuant to article 1 no 4 lit. a WAG 2007.

(8b) The following must be included with the application for approval of a private equity fund of funds pursuant to para 8a:

1. In the event that the private equity fund of funds has to issue a prospectus pursuant to the Capital Market Act - KMG, the audited or approved prospectus pursuant to article 8 or 8a of the Capital Market Act - KMG. The supplementary information required pursuant to article 21 para. 3 must be submitted separately pursuant to article 21 para. 1 and 2, whereby the information already contained in the prospectus must be clearly marked pursuant to article 21. The planned auditing or approval of the prospectus pursuant to article 8 or article 8a of the Capital Market Act - KMG does not apply to this supplementary information;
2. in the event that the private equity fund of funds does not have to issue a prospectus pursuant to the Capital Market Act - KMG, the information pursuant to article 21;
3. the latest annual report pursuant to article 20;
4. a confirmation from the AIFM that the conditions of para. 8a are met.

(8c) The FMA must approve an AIF in private equity for marketing to retail investors if

1. the fund's assets are invested in such a way as to ensure sufficient diversification and appropriate distribution of risk. In addition to acquiring shareholdings in non-listed companies, mostly SMEs, the fund assets may only be invested in bank balances and money market instruments pursuant to article 70 InvFG 2011;
2. investments are made in at least five companies which are not connected at the time of investment;
3. the investment in one company does not exceed 50 % of the fund assets at the time of investment;
4. investments in companies and money market instruments pursuant to article 70 InvFG 2011, which are exposed to currency risk, do not exceed 30 % of the fund assets;
5. no leverage is used for the AIF in private equity, short selling is not taking place and borrowing is not permitted;
6. derivatives may only be held to hedge assets held in the AIF in private equity;

7. the net asset value of the AIF in private equity determined pursuant to article 17 is published each time there is an issue or redemption of shares or units of the AIF in private equity, but at least once a month;
8. all marketing documentation includes a notice referring to the particular risk associated with this investment (risk notice) and to the limited liquidity of such an investment in a typographically prominent position;
9. a semi-annual report is produced 2 months after the end of the half-year at the latest;
10. a key investor information document is available in German containing the essential investor information and equivalent to the KIID pursuant to article 134 InvFG 2011 and of the regulation adopted thereunder;
11. the investment required per retail investor amounts to at least 100,000 Euro;
12. the retail investor of the AIFM or, if the marketing is indirect, the natural person or legal entity responsible for the marketing can prove that they have made investments in financial instruments for more than four years pursuant to article 1 no 4 lit. a WAG 2007.

(8d) The following must be included with the application for approval of an AIF in private equity pursuant to para 8c:

1. In the event that the AIF in private equity has to issue a prospectus pursuant to the Capital Market Act - KMG, the audited or approved prospectus pursuant to article 8 or article 8a of the Capital Market Act - KMG. The supplementary information required pursuant to article 21 para. 3 must be submitted separately pursuant to article 21 para. 1 and 2, whereby the information already contained in the prospectus must be clearly marked pursuant to article 21. The planned auditing or approval pursuant to article 8 or article 8a of the Capital Market Act - KMG does not apply to this supplementary information;
2. in the event that the AIF in private equity does not have to issue a prospectus pursuant to the Capital Market Act - KMG, the information pursuant to article 21;
3. the latest annual report pursuant to article 20;
4. a confirmation from the AIFM that the conditions of para. 8c are met.

(9) If information and documents are unchanged from the approval granted pursuant to article 29, they need not be sent again, referring to the previous submission.

(10) Commencement and termination of marketing must be reported to the FMA without delay. The AIFM must also report to the FMA without delay any temporary suspension of redemption of the share or unit certificates, for which extraordinary circumstances must prevail, and the resumption of redemption of share or unit certificates, and make a public announcement notifying the investors when redemption of the share or unit certificates is suspended and resumed.

(11) The FMA can issue regulations stipulating the form of the risk notices pursuant to para 5 no 5, para 7 no 9, para 8a no 4 and para 8c no 8, and stipulate further notices.

(12) An AIFM can market units or shares of approved AIFs pursuant to article 29 to qualified retail investors in Austria, provided they have authorisation pursuant to part 2 of this Federal statute and with regard to the AIF

1. no leverage is used or
2. leverage that does not exceed the net asset value of the AIF by more than 30 % is used.

Article 52 shall not apply.

Marketing of EU AIFs from other Member States and of non-EU AIFs by Austrian AIFMs, or of AIFs by EU AIFMs having their registered office in another Member State or by non-EU AIFMs to retail investors and qualified retail investors

Article 49. (1) Domestic AIFMs can market EU AIFs from other Member States and non-EU AIFs managed in accordance with Directive 2011/61/EU, and EU AIFMs having their registered office in another Member State and non-EU AIFMs can market EU-AIFs and Non-EU-AIFs they manage in accordance with Directive 2011/61/EU in Austria to retail investors if:

1. the AIF is approved for marketing to retail investors in its home state, and
2. the AIF is approved pursuant to articles 29, 31, 35, 38, 40, 42 or 47 in Austria for marketing to professional investors, and
3. the AIF is materially equivalent to a fund type approved pursuant to article 48 para 1 in Austria for marketing to retail investors, namely
 - a) units or shares of real-estate funds pursuant to the Real-Estate Investment Funds Act,
 - b) AIFs pursuant to the first chapter of part 3 of the InvFG 2011,
 - c) AIFs in real estate pursuant to article 48 para 1 no 3,
 - d) AIFs pursuant to article 48 para 7, 8a and 8c or
 - e) the AIF is an AIF that is materially equivalent to a UCITS under Directive 2009/65/EU, but is managed by a non-EU AIFM.

(2) If an AIFM proposes to market units or shares of such AIFs to retail investors in Austria, it must send the FMA a notification letter for each AIF it proposes to market. If information and documents are unchanged from the notification sent pursuant to articles 21, 38 or 47, they need not be sent again, referring to the previous submission.

(3) The notification must be accompanied by:

1. the documentation and the information set out in schedule 3;
2. a confirmation by the competent authority of the non-EU AIFM's or non-EU AIF's home state that it satisfies all the requirements stipulated in Directive 2011/61/EU, with the exception of those in chapter 6, and delegated acts adopted on the basis of this Directive, and in the case of para 1 no 3 letter e, that the AIF is materially equivalent to a UCITS pursuant to Directive 2009/65/EU;
3. a confirmation by the competent authority of the AIF's home state that the AIF is approved for marketing to retail investors in the home state;
4. a semi-annual report to be produced no later than 2 months after the end of the half-year;
5. a client information document in German containing the essential investor information that is equivalent to the KIID pursuant to article 134 InvFG 2011, and the regulation adopted in this regard. A simplified prospectus corresponding to the simplified prospectus pursuant to article 7 ImmoInvFG can be provided in German, as an alternative to a KIID;
6. verification of payment of the fee pursuant to para 6.

(4) In case the AIFM is not authorised in Austria, the KIID or the simplified prospectus pursuant to para 3 no 5 and all advertising documentation of the AIF or of the AIFM must include a typographically prominent warning notice, that neither the AIF nor the AIFM is subject to supervision by an Austrian public authority, that no Austrian public authority has checked a prospectus, KIID or simplified prospectus, and no Austrian public authority is liable for the correctness or completeness of these documents.

(5) The FMA can issue regulations stipulating the form of the warning notices pursuant to para 4, and stipulate further notices.

(6) A fee of EUR 1,100 is payable to the FMA for processing the notification sent pursuant to para 3. In the case of AIFs comprising several sub-funds (umbrella funds), this fee is increased from the second sub-fund by EUR 220 for each fund. For checking the prescribed documents pursuant to para 2 and 3, an annual fee of EUR 600 is payable to the FMA at the beginning of each calendar year, by 15 January of this year at the latest; in the case of funds comprising several sub-funds (umbrella funds), this fee is increased by EUR 200 for each sub-fund from the second sub-fund. Fee contributions not paid by the due date at the latest are enforceable. The FMA must issue an arrears statement with the effect of constituting executory title. This must include the name and address of the fee debtor, the amount of the debt, and a notice that the debt has become enforceable. Failure to pay the fee on time constitutes grounds for prohibiting marketing pursuant to article 50.

(7) The FMA must check the notification for formal completeness; no substantive checking over and above that is to be carried out. No later than 4 months after receipt of the complete notification letter pursuant to para 3, the FMA must notify the AIFM whether it can start marketing the AIF referred to in the notification letter pursuant to para 3 to retail investors within

the country. In the case of a positive decision, the AIFM may commence marketing the AIF from the date of that notification from the FMA. The last sentence of article 13 para 3 AVG does not apply.

(8) The AIFM's notification letter mentioned in para 2, and its enclosures, must be in German or in English, or in some other language customary in the world of finance pursuant to article 7b para 1 KMG. The FMA as the competent authority must accept electronic transmission and archiving of the documents referred to in para 2 and 3.

(9) The AIFM must inform the FMA in writing of any material change in the information provided under para 2 or 3 at least one month before the change is implemented if it is a planned change, or immediately after the change has occurred if it is an unplanned change. If the planned change results in the AIFM's management of the AIF, or the AIFM in general, now infringing this Federal statute or Directive 2011/61/EU, the FMA must immediately inform the AIFM that it must not implement the change. If a planned change is implemented regardless of this para, or if a change triggered by unplanned circumstances results in the AIFM's management of the AIF, or the AIFM in general, now infringing this Federal statute or Directive 2011/61/EU, the FMA must take all necessary measures pursuant to articles 56 f, including if necessary express prohibition of marketing the AIF.

(10) The AIFM must report to the FMA without delay any temporary suspension of redemption of the share or unit certificates - which is permissible only in exceptional circumstances - and the resumption of redemption of share or unit certificates, and make a public announcement notifying the investors when redemption of the share or unit certificates is suspended and resumed.

(11) The AIFM must notify the FMA of any intention to discontinue marketing of AIF shares or units to retail investors in Austria.

(12) Domestic AIFMs can market EU AIFs from other Member States and non-EU AIFs managed in accordance with Directive 2011/61/EU, and EU AIFMs having their registered office in another Member State and non-EU AIFMs can market EU-AIFs and Non-EU-AIFs they manage in accordance with Directive 2011/61/EU in Austria to qualified retail investors if

1. the AIF is approved pursuant to articles 29, 31, 35, 38, 40, 42 or 47 in Austria for marketing to professional investors, and
2. with regard to the AIF
 - a) no leverage is used or
 - b) leverage that does not exceed the net asset value of the AIF by more than 30 % is used.

Article 52 shall not apply.

Prohibition of marketing

Article 50. (1) Commencement of marketing must be forbidden if the AIFM or the AIF does not satisfy a precondition of article 48 or article 49, or the application for approval pursuant to article 48, or the notification pursuant to article 49 was not properly lodged.

- (2) The FMA must forbid the further marketing of AIFs if
1. the application for approval pursuant to article 48 or the notification pursuant to article 49 has not been lodged,
 2. a precondition under article 48 or article 49 ceases to apply,
 3. marketing has involved serious infringement of legal provisions,
 4. a shareholder's or unit-holder's claim established by declaratory judgement or court settlement against the AIF or AIFM has not been satisfied,
 5. the obligations provided in this law are not properly discharged, or
 6. approval by the competent bodies of the home state of the AIFM or the AIF has been withdrawn.

(3) If the FMA has prohibited commencement or continuation of marketing of the AIF, a period of at least one year from the date of the prohibition must expire before the AIFM can give renewed notification pursuant to article 48 or article 49 of its intention to market units or shares of this AIF within the scope of this Federal statute.

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt – BGBl.).

(4) In the case of umbrella structures, the FMA may also forbid marketing of shares or units of an AIF that are allowed to be marketed within the scope of this Federal statute, having regard to para 2, if further shares or units of sub-funds of the umbrella structure are marketed within the scope of this Federal statute that have not duly completed the notification procedure pursuant to article 49.

Advertising

Article 51. (1) Advertising referring to the powers of the FMA under this statute is forbidden.

(2) Advertising is permissible only subject to application of article 128 para 1 to 3 of the Investment Funds Act (InvFG) 2011.

(3) If the AIFM, its legal representative, or a person concerned with marketing breaches para 1 or 2, and if the breaches do not cease despite warning, the FMA must forbid further marketing of shares or units.

Provision of prospectuses, statement of accounts and half-yearly report free of charge

Article 52. The information pursuant to article 21, and the KIID to be produced if applicable, or the current version of the simplified prospectus, the most recently published statement of account and the associated half-yearly report if published must be provided free of charge to a potential purchaser before conclusion of contract, and to any prospective shareholder or unit-holder of an AIF marketed pursuant to article 48 or article 49.

Continued use of general designations

Article 53. The AIFM and the AIF may use the same general designations they legitimately bear in the state in which their registered office is located. The AIFM must however attach appropriate clarifying addenda to such designations if there is a danger of confusion.

Part 9

Competent authorities

Chapter 1

Designation, powers and redress procedures

Designation of the competent authority

Article 54. (1) The FMA is responsible for performing the functions arising from this Federal statute and from Directive 2011/61/EU. The FMA must use suitable methods to check that AIFMs discharge their obligations pursuant to this Federal statute and to Directive 2011/61/EU, on the basis of the guidelines developed by the ESMA if applicable.

(2) The FMA is the competent authority for Austria pursuant to

1. article 3(m) of Regulation (EU) No. 345/2013 relating to European Venture Capital Funds, and
2. article 3(m) of Regulation (EU) No. 346/2013 relating to European Social Entrepreneurship Funds, and

notwithstanding the functions assigned to it under other Federal statutes, is entrusted with registering managers of collective investment vehicles pursuant to these Regulations. The FMA must monitor compliance with the provisions of these Regulations by managers of a qualifying venture capital fund and managers of a qualifying social entrepreneurship fund. For this purpose the FMA is entitled in particular to the powers pursuant to article 56 para 2, no 1, 2, 5, 8, 9 and 11, notwithstanding the powers assigned to it in these Regulations.

Functions of the competent authorities in the Member States

Article 55. (1) As the competent authority of the home Member State of the AIFM, the FMA is responsible for supervising an AIFM, regardless of whether the AIFM manages and/or markets AIFs in another Member State; this does not affect the provisions of this Federal statute and of

Directive 2011/61/EU that delegate authority for supervision to the competent authorities of the host Member State of the AIFM.

(2) Monitoring of an AIFM's compliance with articles 10 and 12 is the responsibility of the FMA as competent authority of the host Member State of the AIFM, if the AIFM manages and/or markets AIFs through a branch in Austria.

(3) The FMA as competent authority of the host Member State of the AIFM can demand an AIFM managing or marketing AIFs in Austria, whether or not this is through a branch, to present information necessary in order to supervise compliance by the AIFM with the relevant provisions for which the FMA is responsible.

(4) If the FMA, as competent authority of the host Member State of the AIFM, establishes that an AIFM managing and/or marketing AIFs in Austria, whether through a branch or otherwise, breaches a provision which it is responsible for monitoring compliance with, the FMA orders the AIFM concerned to desist from the breach, and accordingly notifies the competent authorities of the home Member State of the AIFM accordingly.

(5) If the AIFM concerned declines to send the FMA as competent authority of its host Member State the information falling within its sphere of competence, or if it does not take the necessary steps to end the breach pursuant to para 4, the FMA as competent authority of its host Member State must bring this to the attention to the competent authorities of its home Member State.

(6) The FMA as the AIFM's competent authority must

1. without delay take all appropriate measures to ensure that the AIFM concerned presents the information required by the competent authorities of its host Member State pursuant to article 45 para 3 of Directive 2011/61/EU, or ends the breach within the meaning of para 4 of the provision referred to,
2. without delay request the supervisory authorities concerned in the third countries to provide the necessary information.

The FMA must notify the competent authorities of the host Member State of the AIFM of the nature of the measures pursuant to no 1 and 2.

(7) If, despite the measures taken by the competent authorities of its home Member State pursuant to para 5, or because such measures prove to be insufficient or are not available in the Member State in question, the AIFM still refuses to present the information required by the FMA as competent authority of its host Member State within the meaning of para 3, or if it continues to breach the laws, regulations and administrative provisions of its host Member State set out in para 4, the FMA as competent authority of the host Member State of the AIFM can take suitable measures, including the measures in articles 56 and 60, to prevent or penalise further breaches, having notified the competent authorities of the home Member State of the AIFM; if necessary, it can also prohibit this AIFM from effecting new transactions in Austria. If the function performed in Austria as the host Member State of the AIFM is managing AIFs, the FMA as competent authority of the host Member State can demand that the AIFM cease management of these AIFs.

(8) If the FMA as competent authority of an AIFM's host Member State has clear and verifiable grounds for assuming that the AIFM is in breach of its obligations under the provisions that it is not responsible for monitoring compliance with, it must notify the competent authorities of the home Member State of the AIFM of its findings; as competent authority of the home Member State, it in turn must take suitable measures, and if necessary request additional information from the relevant supervisory authorities in third countries.

(9) If, despite the measures taken by the competent authorities of its home Member State, or because such measures prove to be insufficient, or the home Member State of the AIFM does not act in good time, the AIFM continues to act in a manner that is clearly detrimental to the interests of the investors of the AIF concerned, to the financial stability or integrity of the market in the host Member State of the AIFM, the FMA as competent authority of the host Member State of the AIFM can, after notifying the competent authorities of the home Member State of the AIFM, take all necessary measures to protect the investors of the AIF concerned, and the financial stability and integrity of the market in the host Member State; it also has the option of forbidding the AIFM concerned to continue marketing units or shares of the AIF concerned in Austria as host Member State.

(10) The procedure pursuant to para 8 and 9 moreover applies if the FMA as competent authority of the host Member State has clear and verifiable objections to approval of a non-EU AIFM by the Member State of reference.

(11) If there is no consensus between the competent authorities concerned as regards a measure taken by a competent authority pursuant to para 4 to 10, the FMA can bring the matter to the attention of the ESMA, which can intervene within the framework of the powers conferred on it by article 19 of Regulation (EU) No. 1095/2010.

Powers and costs of the FMA

Article 56. (1) Notwithstanding the functions assigned to it in other Federal statutes or EU Regulations in respect of AIFs, AIFMs authorized pursuant to article 4 para 1 or AIFMs registered pursuant to article 1 para 5 no 1, EU AIFMs from other Member States within the framework of article 55, non-EU AIFMs, third parties within the framework of article 18, and depositaries pursuant to article 19, the FMA must monitor compliance with this Federal statute and with the delegated acts adopted on the basis of Directive 2011/61/EU, and take all necessary measures to ensure proper functioning of the markets in the cases in which the activity of one or more AIFs on the market for a financial instrument could jeopardize the proper functioning of this market.

(2) Within its sphere of competence pursuant to para 1 and article 54 para 2, the FMA is in particular empowered

1. to inspect documents of all kinds and receive a copy of them,
2. to demand information from each person connected with the activities of the AIFM, of the manager of a qualifying venture capital fund, of the manager of a qualifying social entrepreneurship fund, or of the AIF, and if appropriate to summon and interview a person for the purpose of acquiring information,
3. to carry out investigations on site with or without prior notification,
4. to demand existing recordings of telephone conversations and data transmissions,
5. to require parties to desist from practices that breach this Federal statute, Directive 2011/61/EU, the delegated acts adopted on the basis of this Directive, Regulation (EU) No. 345/2013 or Regulation (EU) No. 346/2013,
6. to request the public prosecution service responsible to apply to a court for seizure pursuant to articles 109 no 1 and article 110 para 1 no 3 or for confiscation pursuant to articles 109 no 2 and article 115 para 1 no 3 of the Code of Criminal Procedure 1975 - StPO (FLG No. 631/1975),
7. to impose a temporary ban on professional practice,
8. to demand information from AIFMs, depositaries, auditors, managers of a qualifying venture capital fund or managers of a qualifying social entrepreneurship fund,
9. to take any kind of action to ensure that AIFMs, depositaries, managers of a qualifying venture capital fund or managers of a qualifying social entrepreneurship fund continue to adhere to the relevant requirements of this Federal statute, of the delegated legal acts adopted on the basis of Directive 2011/61/EU, of Regulation (EU) No. 345/2013 or of Regulation (EU) No. 346/2013,
10. to demand suspension of the issue, redemption or disbursement of units or shares in the interests of the shareholders or share- or unit-holders or of the public,
11. to forbid the continued activity of an AIFM, of a manager of a qualifying venture capital fund, a manager of a qualifying social entrepreneurship fund, or of a depositary within the country,
12. to have inspections or investigations carried out by auditors or experts.

(3) If the FMA as competent authority of the Member State of reference forms the view that an approved non-EU AIFM is not fulfilling its duties under this Federal statute, Directive 2011/61/EU, or of delegated legal acts adopted on the basis of this Directive, the FMA notifies the ESMA of this as soon as possible, fully stating the reasons.

(4) The FMA can forbid managing AIFs by natural persons or legal entities without authorization pursuant to article 4 para 1 or registration pursuant to article 1 para 5 no 1. For this purpose, and for prosecuting transgressions as per article 60 para 1 no 2 by these persons,

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt – BGBl.).

the FMA has powers available pursuant to articles 22b to 22e of the Financial Market Supervisory Authority Act - FMABG (FLG I No. 97/2001).

(5) The costs of the FMA from the securities supervision accounting group (article 19 para. 1 no. 3 and para. 4 of the Financial Market Authority Act) shall be borne by authorised AIFM pursuant to article 4 para. 1 or registered AIFM pursuant to article 1 para. 5 no. 1, by established branches pursuant to article 32 para. 3, by non-EU AIFM pursuant to article 39 para. 3, by registered managers of a qualifying venture capital fund pursuant to article 14 of Directive (EU) No. 345/2013 and by registered managers of a qualifying social entrepreneurship fund pursuant to article 15 of Directive (EU) No. 346/2013. For that purpose, the FMA shall form an additional joint accounting subgroup for AIFM, managers of qualifying venture capital funds, managers of a qualifying social entrepreneurship funds, management companies (Investment Funds Act 2011), real estate investment management companies (Real Estate Investment Funds Act) and corporate staff and self-employment provision funds (Corporate Staff and Self-Employment Provision Act).

(6) The FMA shall demand payment of the amounts payable by the entities liable to pay pursuant to para. 5 by official notice; determining lump sums shall be permissible. The FMA shall specify, by way of regulation, more detailed rules regarding the allocation of costs and the demands for payment. In particular, the following shall be regulated:

1. the assessment bases of the individual types of demands for payment;
2. the dates of the official notices concerning the costs and the deadlines for payments by the entities liable to pay.

The AIFM shall provide the FMA with all necessary information concerning the bases of the assessment of the costs.

Actions of the FMA

Article 57. (1) If an external AIFM is not in a position to ensure compliance with the requirements of this Federal statute, it must without delay notify the competent authorities of its home Member State and the competent authorities of EU-AIF concerned, if applicable. The FMA must issue instructions to establish compliance with the law on pain of a penalty, within a time limit that is reasonable having regard to the circumstances of the case.

(2) If the requirements of this Federal statute are still not complied with, the FMA must direct the AIFM to relinquish its appointment as manager of the AIF concerned if it is an EU AIFM or an EU AIF. In this case the AIF may no longer be marketed within the Union. In the event of a non-EU AIFM managing a non-EU AIF, the AIF may no longer be marketed within the Union. The FMA must without delay bring the order to the attention of the competent authorities of the host Member States of the AIFM. Article 9 para 3 is to be applied *mutatis mutandis*.

Form of communication with the FMA - electronic transmission

Article 58. The FMA can issue a regulation requiring that the notifications and transmissions pursuant to article 1 para 5 no 4, article 8 para 1, article 18 para 1 no 1, article 20 para 1, article 22 para 1 to 5 and 7, article 25 para 1, article 29 para 2, article 30 para 2 and 6, article 32 para 2, 3 and 6, article 35 para 2 and 6, article 36 para 2 and 7, article 38 para 2, 6 and 7, article 39 para 1 and 9, article 40 para 2, 4 and 9, article 42 para 3, 5 and 10, article 44 para 2, 3 and 5, article 47 para 3, 7 and 8, article 48 para 6, 8, 8b and 8d, article 49 para 2, 3, 9 and 11 are to be effected exclusively in electronic form, and must comply with certain structures, minimum technical requirements and transmission modalities. The FMA must be guided in this by the principles of efficiency and expediency, and must ensure that the data remain available to the FMA at all times in electronic form, and that supervisory interests are not impaired. The FMA must make suitable arrangements that those with reporting obligations or their collection agents if applicable can check within a reasonable period of time in the system that the reporting data provided by them or their collection agents is correct and complete.

Powers and competences of the ESMA

Article 59. (1) The FMA must observe the guidelines of the ESMA for the competent authorities of the Member States as regards exercising their powers of approval and their information

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt – BGBl.).

obligations pursuant to Directive 2011/61/EU, and verify compliance with these guidelines on request by the ESMA.

(2) All persons who are working or have worked for the FMA or for any other entity to which the ESMA has delegated functions, including the auditors and experts engaged by the ESMA, are bound to professional secrecy. The information covered by professional secrecy is disclosed to no other person or authority, unless disclosure is necessary for legal proceedings.

(3) All information exchanged between the ESMA, the competent authorities, the EBA, the EIOPA and the ESRB under this Directive are to be regarded as confidential unless the ESMA or the competent authority concerned or another authority or body declares at the time of the communication that this information can be disclosed, or that disclosure is necessary for legal proceedings.

(4) The FMA as competent authority of the Member State of reference of the non-EU AIFM concerned can require the ESMA to review a decision pursuant to article 47 para 5 ff of Directive 2011/61/EU.

Administrative penalties and publications

Article 60. (1) If the act does not constitute a punishable offence falling within the jurisdiction of the courts, an administrative offence subject to a fine by the FMA of up to EUR 100,000 is committed by anyone who

1. contravenes the requirement for authorization pursuant to article 4 para 1 or the requirement for registration pursuant to article 1 para 5 no 1;
2. markets units or shares of AIFs despite prohibition of marketing by the FMA pursuant to article 29 para 5, article 30 para 6, article 31 para 2, article 32 para 6, article 35 para 6, article 36 para 7, article 38 para 6, article 40 para 8 and 9, article 41 para 4, article 42 para 9 and 10, article 43 para 4, article 44 para 5, article 47 para 6 and 7, article 49 para 9, article 50 or article 56 para 2 no 5, 10 and 11, as well as para 4;
3. continues to manage AIFs contrary to an order by the FMA pursuant to article 56 para 4 to cease managing AIFs.

(2) If the act does not constitute a punishable offence falling within the jurisdiction of the courts, an administrative offence punishable by the FMA by a fine of up to EUR 60,000 is committed by anyone who

1. omits to notify the FMA pursuant to article 1 para 5 no 4;
2. infringes the provision of article 1 para 5 no 5;
3. manages an AIF together with another AIFM in contravention of article 3;
4. performs other activities in contravention of article 4 para 2 or 3;
5. does not promptly notify the FMA pursuant to article 6 para 1 no 3 of the names of the successors of the persons actually conducting the business of the AIFMs;
6. infringes the provision of article 7 para 5;
7. does not notify the FMA of all material changes to the preconditions for granting authorization before exercising it, in contravention of article 8 para 1;
8. infringes the provisions of article 10 para 2 and article 11 to 17;
9. does not promptly notify the FMA of delegation of functions to third parties pursuant to article 18 para 1 no 1;
10. breaches the duties pursuant to article 19;
11. infringes the provisions of articles 21 to 23;
12. infringes the information requirements of article 25;
13. infringes the disclosure requirements of article 26;
14. infringes the provisions of articles 27 and 28 para 1;
15. does not notify the FMA in good time of material changes to the information, in contraventions of article 29 para 5, article 30 para 6, article 32 para 6, article 35 para 6, article 36 para 7, article 38 para 6, article 40 para 9, article 42 para 10, article 44 para 5, article 47 para 7 or article 49 para 9;
16. continues to market shares or units despite a prohibition of marketing pursuant to article 51 para 3;

17. infringes the provisions of articles 52 or 53;
18. does not notify the FMA, in contravention of article 57 para 1;
19. does not relinquish its appointment as manager of the AIF concerned, or continues to market an AIF in contravention of article 57 para 2;
20. infringes a provision of the delegated acts adopted on the basis of Directive 2011/61/EU;
21. breaches a regulation adopted by the FMA pursuant to this Federal statute.

(3) Any responsible officer (article 9 of the Administrative Penalties Act (VStG)) of an AIFM pursuant to article 10 para 3 breaching the duties pursuant to articles 40, 40a, 40b and 41 para 1 to 4 BWG, thereby commits an administrative offence, unless the act constitutes an offence falling within the jurisdiction of the courts, and the FMA must impose a fine of up to EUR 150,000.

(4) Any trustee failing to comply with its duty of disclosure pursuant to article 40 para 2 of the Banking Act (BWG) to an AIFM pursuant to article 10 para 3, unless the act constitutes an offence falling within the jurisdiction of the courts, thereby commits an administrative offence, and the FMA must impose a prison sentence of up to six weeks, or a fine of up to EUR 60,000.

(5) Anyone infringing the provisions of Regulation (EU) No. 345/2013 or the provisions of Regulation (EU) No. 346/2013 commits an administrative offence for which the FMA must impose a fine of up to EUR 60,000, unless the act constitutes a punishable offence falling within the jurisdiction of the courts, or an administrative offence falling under para 1.

(6) The FMA as competent authority can make public any measure or sanction imposed in the case of infringement of the provisions adopted under this Federal statute or Directive 2011/61/EU, or of Regulation (EU) No. 345/2013 or of Regulation (EU) No. 346/2013, unless such announcement seriously jeopardises the stability of the financial markets, is detrimental to the interests of the investors, or causes disproportionately great loss to the parties involved.

(7) The party affected by the publication can apply to the FMA for a review of the legality of the publication pursuant to para 6 in a procedure to be determined by official decision. In this case the FMA must likewise announce initiation of such a procedure. If the review finds the publication was illegal, the FMA must correct the publication, or at the request of the party concerned either revoke it or remove it from the website. If the courts of public law grant suspensive effect to a complaint against an official decision announced pursuant to para 6, the FMA must announce this likewise. The publication must be corrected, or on application by the party affected either revoked or removed from the website if the official decision is overturned.

(8) In the case of administrative offences under this provision, a limitation period of 18 months applies in place of the limitation period of article 31 para 1 VStG.

(9) The fines imposed by the FMA pursuant to this Federal statute accrue to the benefit of the Federal Government.

Chapter 2

Cooperation between the various competent authorities

Obligation to cooperate

Article 61. (1) The FMA must cooperate with the competent authorities of the other Member States and with the ESMA and the ESRB whenever this is necessary to perform its functions stipulated in this Federal statute or in Directive 2011/61/EU, or to exercise the powers delegated to it by this Directive or by national law.

(2) The FMA as competent authority must make use of its powers for the purpose of cooperation, even if the conduct under investigation does not constitute an infringement of a provision that applies in Austria.

(3) The FMA as competent authority must without delay send the competent authorities of the other Member States and the ESMA the information necessary to perform their functions pursuant to this Federal statute and to Directive 2011/61/EU. The FMA as competent authority of the home Member State must send the competent authorities of the host Member States of the AIFM concerned a copy of the agreements on cooperation entered into by it pursuant to articles 35, 37 or 40 of Directive 2011/61/EU. The FMA as competent authority of the home

Member State must forward to the competent authorities of the host Member State of the AIFM concerned the information it has received from supervisory authorities of third countries under the agreements on cooperation made with the third country supervisory authorities, or under the terms of article 45 para 6 or 7 of the Directive referred to if applicable, in respect of an AIFM in accordance with the procedures relating to the applicable regulatory technical standards pursuant to article 35 para 14, article 37 para 17 or article 40 para 14 of the Directive referred to. If the FMA as competent authority of a host Member State takes the view that the substance of the agreement on cooperation entered into by the home Member State of the AIFM concerned pursuant to articles 35, 37 or 40 of the Directive referred to is not consistent with what is required under the applicable regulatory technical standards, the FMA can bring the matter to the attention of the ESMA, which can intervene under the powers conferred on it by article 19 of Regulation (EU) No. 1095/2010.

(4) If the FMA as competent authority has clear and demonstrable grounds for supposing that an AIFM not subject to its supervision is infringing or has infringed Directive 2011/61/EU, it must report this to the ESMA and the competent authorities of the home Member State and the host Member State of the AIFM concerned as specifically as possible. If the FMA is the public authority receiving such information, it must take appropriate action and must notify the ESMA and the competent authorities it was informed by of the outcome of this action, and as far as possible of any material developments that have occurred in the meantime. The powers of the FMA as the competent authority submitting the information are not affected by this para.

Transmission and retention of personal data

Article 62. (1) When transmitting personal data between competent authorities, the FMA as competent authority must apply Directive 95/46/EC.

(2) The data may be retained for a maximum period of five years.

Disclosure of information to third countries

Article 63. (1) The FMA as competent authority of a Member State can send a competent authority of a third country data and data analyses including customer data in individual cases, provided that this is consistent with article 25 or article 26 of Directive 95/46/EC, and provided that it has satisfied itself as competent authority of the Member State that sending this data is necessary for the purposes of this Federal statute or of Directive 2011/61/EU, or of corresponding provisions in the third country, or to discharge any other legal functions in the course of supervising the financial market in the third country. It is also necessary to ensure that the competent authority of the third country is not entitled to forward the data to other third countries without the express written consent of the FMA as competent authority of the Member State.

(2) The FMA as competent authority of a Member State may disclose the information received from a competent authority of another Member State to a supervisory authority of a third country only if it has received the express consent of the competent authority that provided the information, and, if appropriate, if the information is disclosed solely for the purpose for which the competent authority granted its consent. Exchange of information relating to potential systemic consequences of AIFM transactions.

Article 64. (1) As competent authority responsible for approving and/or supervising AIFMs, the FMA must send the competent authorities of other Member States information insofar as it is of material importance for monitoring and responding to potential consequences of the transactions of individual AIFMs or of AIFMs collectively on the stability of systemically relevant financial institutions and the orderly functioning of the markets in which AIFMs operate. The ESMA and the ESRB must also be notified by the FMA, and must in turn forward this information to the competent authorities of the other Member States.

(2) Under the provisions of article 35 of Regulation (EU) No. 1095/2010, the FMA as competent authority responsible for the AIFM must send the ESMA and the ESRB aggregated information on the transactions of AIFMs for which it is responsible.

Cooperation in supervisory activities

Article 65. (1) The FMA as competent authority of a Member State can, when exercising the powers conferred on it by this Federal statute or by Directive 2011/61/EU, request the cooperation of the competent authorities of another Member State in supervision, in on-site verification, or in investigation within the territory of this other Member State. If the FMA as competent authority receives a request for on-site verification or an investigation, it must take the following measures:

1. it can undertake the verification or investigation itself,
2. it can permit the requesting authority to conduct the verification or investigation,
3. it can permit auditors or experts to conduct the verification or investigation.

(2) In the case set out in para 1 no 1, the competent authority of the Member State requesting cooperation can apply for members of its staff to support the FMA's staff conducting the verification or investigation. The review or investigation is however subject to the overall control of the FMA as competent authority of the Member State within whose sovereign territory it is conducted. In the case set out in para 1 no 2, the FMA as competent authority of the Member State in whose sovereign territory the verification or investigation is carried out can apply for members of its staff to support the staff conducting the verification or investigation.

(3) The FMA as competent authority can reject a request for exchange of information or for cooperation in an investigation or on-site verification only in the following cases:

1. the investigation, the on-site verification or exchange of information could impair the sovereignty, security or public order of Austria,
2. proceedings are already pending in an Austrian court in respect of the same acts and against the same persons,
3. a final judgement has already been pronounced in Austria against the same persons and in respect of the same acts.

The FMA as competent authority must notify the requesting competent authorities of each decision made pursuant to para 3, stating the reasons.

- (4) The FMA can also cooperate with competent authorities from third countries under the terms of para 1 to 3 and of article 61 para 1 and 2 and article 64 para 1. This also applies to functions and purposes pursuant to statutory provisions in a third country that are equivalent to those pursuant to this Federal statute or to Directive 2011/61/EU.

Dispute resolution

Article 66. In the event of failure to agree between the competent authorities of the Member States on an assessment, action or omission of one of the competent authorities in a field in which Directive 2011/61/EU stipulates cooperation or coordination between competent authorities from more than one Member State, the FMA as competent authority can refer the matter to the ESMA, which can intervene on the basis of the powers conferred on it by article 19 of Regulation (EU) No. 1095/2010.

Part 10

Transitional and final provisions

Transitional provision

Article 67. (1) AIFMs that conduct activities in Austria pursuant to this Federal statute or to Directive 2011/61/EU before 22 July 2013 must take all necessary measures to comply with the national law enacted on the basis of this Federal statute, and must submit an application for authorization pursuant to article 5 and an application for consent pursuant to article 29 for the AIFs they manage and market, and if applicable lodge a notification pursuant to articles 30, 31, 32 or 33, by 22 July 2014.

(2) Notwithstanding articles 48 ff, an application for consent pursuant to article 29 must be made, or a notification pursuant to articles 30 or 32 lodged, in respect of special funds established before 22 July 2013 as real-estate funds pursuant to InvFG 2011 or as AIFs pursuant to the first chapter of part 3 of InvFG 2011, within one year after expiry of this date, otherwise the marketing authorization expires.

(3) EU AIFMs and non-EU AIFMs marketing AIFs in Austria before 22 July 2013 must take all necessary measures to comply with national law enacted on the basis of this Federal statute, and must make an application for approval by 21 July 2014, otherwise the AIF's marketing authorization expires. AIFMs that are permitted to publicly market units or shares of AIFs in Austria pursuant to part 3, chapter 2 of InvFG 2011 before 22 July 2013 must in addition submit the notification pursuant to article 49 for approval of marketing to retail investors, by 31 December 2014 at the latest, otherwise the authorization to market to retail investors expires.

(3a) AIFMs that are permitted to publicly market units or shares of AIFs pursuant to article 48 para. 1 no 4 to 6 before 22 July 2014, must submit the application pursuant to article 48 para. 8, 8b or 8d no later than 31 December 2014, otherwise the authorization to market to retail investors expires.

(4) Articles 29, 30, 31, 33, 38 or 47 do not apply to the marketing of units or shares of AIFs that are the object of an ongoing public offering by way of a prospectus produced and published in accordance with KMG or Directive 2003/71/EC before 22 July 2013, as long as this prospectus remains valid.

(5) If AIFMs are managing closed-ended type AIFs before 22 July 2013 that make no further investments after 22 July 2013, they can nevertheless continue to manage such AIFs without having approval pursuant to this Federal statute or to Directive 2011/61/EU.

(6) If AIFMs are managing closed-ended AIFs whose subscription period for investors expired before Directive 2011/61/EU entered into force, and that were issued for a period that expires no later than three years after 22 July 2013, they can nevertheless continue to manage such AIFs without having to comply with the provisions of this Federal statute, with the exception of article 20 and if applicable articles 24 to 28, or apply for authorization pursuant to this Federal statute or to Directive 2011/61/EU.

(7) Article 69a BWG is to be applied until 31 December 2013 for purposes of assignment of costs.

(8) By way of derogation from article 19 para. 5 no 1, the AIFM may appoint a depositary, which is located outside of the home Member State of the AIF, for the AIFs it manages by 22 July 2017 pursuant to article 19 para. 3 no 1. Such AIF must not be marketed to retail investors pursuant to articles 48 and 49.

Article 68. After this Federal statute enters into force and until the ESMA's expert opinion mentioned in article 67 para 1 letter a of Directive 2011/61/EU has been presented, the FMA as competent authority must supply the ESMA for this purpose with quarterly information on the AIFMs managing and/or marketing AIFs subject to its supervision pursuant to the passport provision in this Directive or to the internal national provisions. It must moreover provide the information necessary to evaluate the items indicated in article 67 para 2 of the Directive referred to.

Article 69. After the delegated act mentioned in article 67 para 6 of Directive 2011/61/EU has entered into force, and until the ESMA expert opinion mentioned in article 68 para 1 letter a of the Directive referred to has been presented, the FMA as competent authority must provide the ESMA with information on the AIFMs managing and/or marketing AIFs subject to its supervision pursuant to the passport provision in this Directive or to the internal national provisions.

Article 70. For purposes of review pursuant to article 69 para 1 of Directive 2011/61/EU, the FMA must provide the Commission yearly with information on AIFMs managing and/or marketing AIFs subject to its supervision either pursuant to the passport provision of this Directive, or pursuant to the internal national provisions. It must state the date on which the passport provision was implemented in its sovereign territory or was applied if applicable. The information must include the following:

1. information on the registered office of the AIFMs concerned;
2. information on the EU AIFs managed and/or marketed by the AIFMs concerned, if applicable;
3. information on the non-EU AIFs managed by EU AIFMs, but not marketed within the Union, if applicable;

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt – BGBl.).

4. information on the non-EU AIFs marketed within the Union, if applicable;
5. information on the applicable provision, whether national or at Union level, under the terms of which the AIFMs concerned perform their activities, and
6. other information that is important for understanding how the management and marketing of AIFs by AIFMs within the Union functions in practice.

References and Regulations

Article 71. (1) Where there are references in this Federal statute to other Federal statutes, these other Federal statutes must be applied as amended, in the absence of an express direction to the contrary.

(2) When reference is made in this Federal statute to the following delegated acts of the European Union, the following versions of them are to be applied in the absence of a direction to the contrary:

1. Directive 2011/61/EU 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 OJ No. L 174 dated 01.07.2011 p. 1, as amended by corrigendum OJ No. L 155 dated 27.04.2012 p. 35;
2. Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, OJ No. L 235 dated 23.09.2003 p. 10, most recently amended by Directive 2011/61/EU, OJ No. L 174 dated 01.07.2011 p. 1;
3. Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, OJ No. L 302 dated 17.11.2009 p. 32, most recently amended by Directive 2011/61/EU, OJ No. L 174 dated 01.07.2011 p. 1;
4. Seventh Directive 83/349/EEC on the basis of article 54 para 2 letter g of the Treaty on consolidated accounts, OJ No. L 193 dated 18.07.1983 p. 1, most recently amended by Directive 2009/49/EC, OJ No. L 164 dated 26.06.2009 p. 42;
5. Directive 2013/36/EU relating to the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ No. L 176 dated 27.6.2013 p. 338, as amended by the correction, OJ No. L 208 dated 2.8.2013 p. 73;
6. Directive 2004/39/EC on markets in financial instruments, amending the Directives 85/611/EEC and 93/6/EEC of the Council and Directive 2000/12/EC of the European Parliament and of the Council, and repealing Directive 93/22/EEC, OJ No. L 145 dated 30.04.2004 p. 1, most recently amended by Directive 2010/78/EU, OJ No. L 331 dated 15.12.2010 p. 120;
7. Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, and amending Directive 2001/34/EC, OJ No. L 390 dated 31.12.2004 p. 638, most recently amended by Directive 2010/78/EU, OJ No. L 331 dated 15.12.2010 p. 120;
8. Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community – joint declaration of the European Parliament, the Council and the Commission on employee representation, OJ No. L 80 dated 23.03.2002 p. 29;
9. Regulation (EC) No. 24/2009 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitization transactions, OJ No. L 15 dated 20.01.2009 p. 1;
10. Regulation (EU) No. 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012, OJ No. L 176 dated 27.6.2013 p. 1, as amended by the correction OJ No. L 321 dated 30.11.2013 p. 6;
11. Regulation (EU) No. 1095/2010 establishing a European supervisory authority (European Securities and Markets Authority), amending Decision No. 716/2009/EC and repealing Decision 2009/77/EC, OJ No. L 331 dated 15.12.2010 p. 84, as amended by Directive 2011/61/EU, OJ No. L 174 dated 01.07.2011 p. 1;

12. Directive 2006/73/EC implementing Directive 2004/39/EC relating to the organisational requirements and operating conditions for investment firms, and relating to the definition of certain terms for the purposes of the Directive referred to, OJ No. L 241 dated 02.09.2006 p. 26;
13. Directive 98/26/EC on settlement finality in payment and securities settlement systems, OJ No. L 166 dated 11.06.1998 p. 45, most recently amended by Regulation (EU) No. 648/2012, OJ No. L 201 dated 27.07.2012 p. 1;
14. Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts, amending Directives 78/660/EEC and 83/349/EEC of the Council, and repealing Directive 84/253/EEC of the Council, OJ No. L 157 dated 09.06.2006 p. 87, most recently amended by Directive 2008/30/EC, OJ No. L 81 dated 20.03.2008 p. 53;
15. Directive 2003/71/EC relating to the prospectus to be published when securities are offered to the public or admitted to trading, amending Directive 2001/34/EC, OJ No. L 345 dated 31.12.2003 p. 64, most recently amended by Directive 2010/78/EU, OJ No. L 331 dated 15.12.2010 p. 120;
16. Directive 2004/25/EC relating to takeover bids, OJ No. L 142 dated 30.04.2004 p. 12;
17. Directive 2012/30/EU on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the of article 54 para 2 of the Treaty on the Functioning of the European Union, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent on coordinating safeguards required in the Member States, OJ No. L 315 dated 14.11.2012 p. 74;
18. Regulation (EU) No. 1094/2010 on establishing a European supervisory authority (European Insurance and Occupational Pensions Authority), amending Decision No. 716/2009/EC, and repealing Decision 2009/79/EC of the Commission, OJ No. L 331 dated 15.12.2010 p. 48;
19. Directive 95/46/EC on the protection of natural persons with regard to the processing of personal data and the free movement of such data, OJ No. L 281 dated 23.11.1995 p. 31, as amended by Regulation (EC) No. 1882/2003, OJ No. L 284 dated 31.10.2003 p. 1
20. Regulation (EU) No. 345/2013 on European Venture Capital Funds, OJ No. L 115 dated 25.04.2013, p. 1;
21. Regulation (EU) No. 346/2013 on European Social Entrepreneurship Funds, OJ No. L 115 dated 25.04.2013, p. 18.

(3) Decrees issued by virtue of this Federal statute as amended may be enacted as of the day following promulgation of the Federal statute to be implemented; they may not however enter into force before the statutory provisions to be implemented.

Gender-neutral use of language

Article 72. Any references in this Federal statute to persons only in the masculine form refer to men and women equally. When referring to individual natural persons, the applicable gender form must be used.

Enforcement

Article 73. The Federal Ministry of Finance is charged with enforcement of this Federal statute.

Entry into force

Article 74. (1) This Federal statute enters into force on 22 July 2013, with the exception of articles 35 to 37, articles 39 to 46, article 56 para 5 and 6, and article 60. Article 60 enters into force on the date following promulgation. Articles 35 to 37 and articles 39 to 46 apply in accordance with the delegated acts adopted by the European Commission under article 67 para 6 of Directive 2011/61/EU, and only from the date determined therein.

(2) Article 56 para 5 and 6 enters into force on 1 January 2014, and is applicable to the FMA's financial years starting after 31 December 2013.

(3) Article 13 para. 2 and 3a and article 71 para. 2 no 1 to 3 as amended by the Federal Act Federal Law Gazette I No. 70/2014 shall enter into force on 21 December 2014. Article 48 para. 1a as amended by the Federal Act Federal Law Gazette I No. 70/2014 shall be applied to new business that was concluded after 01 August 2014.

Schedule 1 to article 4

1. Investment management functions which an AIFM shall at least perform when managing an AIF:
 - a) portfolio management,
 - b) risk management.
2. Other functions that an AIFM may additionally perform in the course of the collective management of an AIF:
 - a) administration:
 - i) legal and fund management accounting services,
 - ii) customer inquiries,
 - iii) valuation and pricing, including tax returns,
 - iv) regulatory compliance monitoring,
 - v) maintenance of unit-/shareholder register,
 - vi) distribution of income,
 - vii) unit/shares issues and redemptions,
 - viii) contract settlements, including certificate dispatch,
 - ix) record keeping;
 - b) marketing;
 - c) activities related to the assets of AIFs, namely services necessary to meet the fiduciary duties of the AIFM, facilities management, real estate administration activities, advice to undertakings on capital structure, industrial strategy and related matters, advice and services relating to mergers and the purchase of undertakings and other services connected to the management of the AIF and the companies and other assets in which it has invested.

Schedule 2 to article 11

Remuneration policy

1. When establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on the risk profiles of the AIFMs or of AIFs they manage, AIFMs shall comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:
 - a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the AIFs they manage;
 - b) the remuneration policy is in line with the business strategy, objectives, values and interests of the AIFM and the AIFs it manages or the investors of such AIFs, and includes measures to avoid conflicts of interest;
 - c) the management body of the AIFM, in its supervisory function, adopts and periodically reviews the general principles of the remuneration policy and is responsible for its implementation;

- d) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;
- e) staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control;
- f) the remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee;
- g) where remuneration is performance related, the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit or AIF concerned and of the overall results of the AIFM, and when assessing individual performance, financial as well as non-financial criteria are taken into account;
- h) the assessment of performance is set in a multi-year framework appropriate to the life-cycle of the AIFs managed by the AIFM in order to ensure that the assessment process is based on longer term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the redemption policy of the AIFs it manages and their investment risks;
- i) guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year;
- j) fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy, on variable remuneration components, including the possibility to pay no variable remuneration component;
- k) payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;
- l) the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;
- m) subject to the legal structure of the AIF and its rules or instruments of incorporation, a substantial portion, and in any event at least 50 % of any variable remuneration consists of units or shares of the AIF concerned, or equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments, unless the management of AIFs accounts for less than 50 % of the total portfolio managed by the AIFM, in which case the minimum of 50 % does not apply. The instruments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the interests of the AIFM and the AIFs it manages and the investors of such AIFs. Member States or their competent authorities may place restrictions on the types and designs of those instruments or ban certain instruments as appropriate. This point shall be applied to both the portion of the variable remuneration component deferred in line with no (n) and the portion of the variable remuneration component not deferred;
- n) a substantial portion, and in any event at least 40 %, of the variable remuneration component, is deferred over a period which is appropriate in view of the life cycle and redemption policy of the AIF concerned and is correctly aligned with the nature of the risks of the AIF in question. The period referred to in this point shall be at least three to 5 years unless the life cycle of the AIF concerned is shorter; remuneration payable under deferral arrangements vests no faster than on a pro-rata basis; in the case of a variable remuneration component of a particularly high amount, at least 60 % of the amount is deferred;
- o) the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the AIFM as a whole, and justified according to the performance of the business unit, the AIF and the individual concerned. The total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the AIFM or of the AIF concerned occurs, taking into account both current compensation and reductions in

payouts of amounts previously earned, including through malus or clawback arrangements;

p) the pension policy is in line with the business strategy, objectives, values and long-term interests of the AIFM and the AIFs it manages. If the employee leaves the AIFM before retirement, discretionary pension benefits shall be held by the AIFM for a period of 5 years in the form of instruments defined in no (m). In the case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments defined in no (m), subject to a 5 year retention period;

q) staff are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;

r) variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of this Directive.

2. The principles set out in no 1 shall apply to remuneration of any type paid by the AIFM, to any amount paid directly by the AIF itself, including carried interest, and to any transfer of units or shares of the AIF, made to the benefits of those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on their risk profile or the risk profiles of the AIF that they manage.

3. AIFMs that are significant in terms of their size or the size of the AIFs they manage, their internal organisation and the nature, the scope and the complexity of their activities shall establish a remuneration committee. The remuneration committee shall be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk.

The remuneration committee shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the AIFM or the AIF concerned and which are to be taken by the management body in its supervisory function. The remuneration committee shall be chaired by a member of the management body who does not perform any executive functions in the AIFM concerned. The members of the remuneration committee shall be members of the management body who do not perform any executive functions in the AIFM concerned.

Schedule 3 to article 29

Documents and information to be provided in the event of an intention to market in the home Member State of the AIFM

- a) A notification letter, including a programme of operations identifying the AIFs the AIFM intends to market and information on where the AIFs are established;
- b) the AIF rules or instruments of incorporation;
- c) identification of the depositary of the AIF;
- d) a description of, or any information on, the AIF available to investors;
- e) information on where the master AIF is established if the AIF is a feeder AIF;
- f) any additional information referred to in article 21 para 1 for each AIF the AIFM intends to market;
- g) where relevant, information on the arrangements established to prevent units or shares of the AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the AIF.

Schedule 4 to article 30

Documentation and information to be provided in the case of an intended marketing in Member States other than the home Member State of the AIFM

- a) A notification letter, including a programme of operations identifying the AIFs the AIFM intends to market and information on where the AIFs are established;

This English translation of the authentic German text serves merely information purposes. The official wording in German can be found in the Austrian Federal Law Gazette (Bundesgesetzblatt – BGBl.).

- b) the AIF rules or instruments of incorporation;
- c) identification of the depository of the AIF;
 - d) a description of, or any information on, the AIF available to investors;
- e) information on where the master AIF is established if the AIF is a feeder AIF;
- f) any additional information referred to in article 21 para 1 for each AIF the AIFM intends to market;
- g) the indication of the Member State in which it intends to market the units or shares of the AIF to professional investors;
- h) information about arrangements made for the marketing of AIFs and, where relevant, information on the arrangements established to prevent units or shares of the AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the AIF.

Article 1

Note on implementation

(Note: concerning to articles 1 to 74 and the schedules 1 to 4, FLG I No 135/2013)

This Federal statute

1. implements Directive 2011/61/EU on Alternative Investment Fund Managers, amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010 OJ No. L 174 dated 01.07.2011 p. 1, as amended by corrigendum OJ No. L 155 dated 27.04.2012 p. 35, and
2. creates the conditions necessary for the following to enter into effect
 - a) Regulation (EU) No. 345/2013 on European Venture Capital Funds, OJ No. L 115 dated 25.04.2013, p. 1 and
 - b) Regulation (EU) No. 346/2013 on European Social Entrepreneurship Funds, OJ No. L 115 dated 25.04.2013, p. 18.

Note on implementation

(Note: from Federal Law Gazette I No. 70/2014, concerning the articles 0, 2, 4, 7, 13, 15, 19, 21, 27, 29, 31, 33, 38, 45, 46, 47, 48, 49, 50, 54, 56, 58, 60, 67 and 71, Federal Law Gazette I No. 135/2013)

This Federal Act serves to implement the Directive 2013/14/EC amending Directive 2003/41/EC concerning the activities and the supervision of institutions for occupational retirement provision, the Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to certain undertakings for collective investment in transferable securities (UCITS) and the Directive 2011/61/EC on the Alternative Investment Fund Managers as regards excessive recourse to ratings, OJ No. L 145 dated 31.05.2013 p. 1.