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Marketing requirements for investment funds

This page contains information on the national laws, regulations and administrative provisions relating to marketing requirements for AIFs, as referred to in Section 5(1) of Regulation (EU) 2019/1156 of the European Parliament and of the Council of 20 June 2019 on facilitating the cross-border distribution of collective investment undertakings (**CBDF Regulation**).

(a) prior authorisation for marketing

Pursuant to Section 2:66(3) and Section 2:70 of the Financial Supervision Act (*Wet financieel toezicht (Wft)*), a management company of an AIF established in another Member State, that intends to offer this AIF to investors in the Netherlands, must comply with the requirements of Articles 32 and 33 of the Alternative Investment Fund Managers Directive 2011/61/EU (**AIFMD**). EU management companies that want to offer an AIF with a EuVECA or EuSEF label in the Netherlands can do so after the supervisory authority of the home Member State has notified it to the AFM.

An EU-manager which only offers units to professional investors and manages (one or more) AIFs whose total assets under management (i) are less than or equal to €500 million, in the case of a manager managing funds that are closed-end for the first five years and do not use leverage; or (ii) are less than or equal to €100 million, may offer such units in the Netherlands in accordance with the relevant provisions of Section 2:66a Wft.

Non-EU management companies of AIFs who want to offer an AIF in the Netherlands must notify such AIF. For this purpose, they can make use of the third-country regime of Section 1:13b Wft. In order to qualify for the exception of Section 1:13b(1) and (2) Wft, a non-EU management company must in any case meet the following requirements: (i) units in the AIF may only be offered to qualified investors, (ii) the non-EU management company may not be established in a State that is on the list of non-cooperative countries and territories of the Financial Action Task Force or its successor, (iii) the AFM must have concluded a cooperation agreement with the supervisory authority of the non-EU country where the management company, or if applicable the AIF, is established, and (iv) to enable the AFM to ensure that these cooperation agreements with regard to the specific management company or AIF can be effectively implemented, the management company, or where applicable the AIF, shall request confirmation from the relevant supervisor that it is a covered entity under the cooperation agreement.

<https://wetten.overheid.nl/BWBR0020368/2024-01-01> (*Wet op het financieel toezicht*)

(b) form and content of marketing material, including identification of the information and documents to be notified to the competent authority before the start of the marketing

Marketing communications provided to investors in relation to the AIF should be accurate, clear and not misleading under the CBDF Regulation.

The information referred to in Section 23 of the AIFMD that must be provided to investors pursuant to Section 4:37l(1) Wft and Section 115j of the Decree on the Supervision of the Conduct of Financial Undertakings Wft (*Besluit Gedragstoezicht financiële ondernemingen Wft (Bgfo)*), or pursuant to Section 4:37m(1) Wft and Section 115k and 115x BGfo, is provided in the Dutch or English language. The information that must be provided to investors pursuant to Section 4:37l(3) and Section 5:3 of the Wft and Regulation (EU) 2017/1129 (the **Prospectus Regulation**) must comply with the language requirements as set out in Section 27 of the Prospectus Regulation. The

information referred to in Section 43bis of the AIFMD that must be provided to investors pursuant to Section 115ee(2) of the Bgfo shall be provided in the Dutch language.

Pursuant to Section 4:22(1) of the Wft, additional rules have been laid down with regard to the provision of information and careful services by an AIF and its management company. Section 49 of the Bgfo provides further rules on the manner in which information must be provided by the (management company of the) AIF, Section 50(3) of the Bgfo stipulates that certain AIFs with their registered office in a designated state must, upon request, communicate to the participants the intrinsic value of the units on request.

Sections 2:3, 2:5 and 2:6 of the Further Regulation on the Supervision of the Conduct of Financial Undertakings under the Financial Supervision Act (**Nrgfo**) provide further requirements in addition to Section 52 of the BGfo, including the presentation and formulation of advertisements relating to participation rights in AIFs.

<https://wetten.overheid.nl/BWBR0020368/2024-01-01> (Wet op het financieel toezicht)

<https://wetten.overheid.nl/BWBR0020421/2024-01-31> (Besluit Gedragstoezicht financiële ondernemingen Wft)

<https://wetten.overheid.nl/BWBR0020540/2023-04-01> (Nadere regeling gedragstoezicht financiële ondernemingen Wft)

(c) verification of marketing communications by the competent authority

Prior notification to the AFM of the marketing communications that a management company intends to use in the context of dealing with investors is not required.

(d) trading to retail investors or to professional investors

Additional rules apply if a management company offers units in the Netherlands to retail investors, insofar as these units (i) can be acquired for a consideration of less than € 100,000 per participant, or (ii) have a nominal value per right of less than € 100,000. These additional rules relate to the management company's business operations, the provision of information, including the making available of an up-to-date version of the key investor information document (EID) to investors (Section 4:37p Wft and Sections 115p – 115 dd BGfo).

When a management company of an AIF offers units to retail investors in the Netherlands, additional rules apply on the basis of Section 4:37p Wft and § 10.3.1.1 BGfo ('retail top-up'). In order to make use of the 'retail top-up' as included in Section 4:37p Wft as an EU management company, the AFM must, in addition to the notification, also receive a statement signed by the management company in which the management company explicitly states that it meets the requirements that apply in the Netherlands for offering units to non-professional investors (pursuant to Section 4:37p Wft).

An AIF whose units are offered in the Netherlands to non-professional investors must make available the provisions referred to in Section 43a(1) sub (a) to (f), AIFMD. The aforementioned facilities in the Netherlands must be made available in the Dutch language now that the AFM has not currently approved any other language as referred to in Section 115de(2) BGfo.

<https://wetten.overheid.nl/BWBR0020368/2024-01-01> (Wet op het financieel toezicht)

<https://wetten.overheid.nl/BWBR0020421/2024-01-31> (Besluit Gedragstoezicht financiële ondernemingen Wft)

(e) reporting obligations with regard to marketing

A management company of an AIF with its registered office in another Member State informs the AFM if there is a suspension of the repurchase or redemption of units in an AIF managed by it (Section 4:26(4) Wft).

Non-EU management companies that offer AIFs on the basis of Section 1:13b Wft are also subject to a number of ongoing requirements, which are listed in Section 1:13b, third paragraph, of the Wft. For example, there is a periodic reporting obligation to DNB.

<https://wetten.overheid.nl/BWBR0020368/2024-01-01> (Wet op het financieel toezicht)

(f) passport regulation

An EU management company of an AIF managed by it and having its registered office in another Member State, that intends to offer such AIF to investors in the Netherlands, must comply with the requirements of Section 32 and 33 AIFMD. After the supervisory authority in the home Member State has forwarded the notification and accompanying documentation to the AFM, it sends a confirmation to the management company. Upon receipt of this confirmation, the AIF may be offered to professional investors in the Netherlands on the basis of Section 2:70(1) Wft. An EU management company who wishes to offer units in an AIF managed by it with its registered office in another Member State in the Netherlands to retail investors must also comply with the requirements of Section 32 and 33 AIFMD. In addition, the foreign management company must report this intention to the AFM on the basis of Section 2:70(3) Wft. For the determination of whether an investment institution is offered in the Netherlands, the criteria in the Policy Rule Active in the Netherlands 2013 (*Beleidsregel Actief in Nederland 2013*) apply.

<https://wetten.overheid.nl/BWBR0020368/2024-01-01> (Wet op het financieel toezicht)

<https://www.afm.nl/nl-nl/sector/themas/belangrijke-verplichtingen-voor-ondernemingen/beleidsuitingen>

(g) distribution of funds established in a third country under the national private placement scheme

An EU licensed management company who wishes to offer a non-EU AIF in the Netherlands must report this to the AFM on the basis of Section 1:13b Wft. To this end, the management company must provide the AFM with a Section 36 notification form with an attestation from the European supervisory authority of its home member state.

Foreign management companies of AIFs or AIFs originating from a designated state that wish to offer units in the Netherlands may, under certain circumstances, make use of the designated state regime of Section 2:66(1) Wft and 2:73 Wft. Currently, Guernsey, Jersey, the United States of America (provided that the institution is supervised by the SEC) and Hong Kong SAR (provided that the institution is supervised by the Securities and Futures Commission of Hong Kong (SFC) and meets the other conditions for market access under the relevant SFC Circular) qualify as a

designated state for this regime (Section 2 of the Decree on Designated States under the Wft). An AIF that makes use of this regime is exempt from the licence requirement of Section 2:65 Wft, but will have to comply with a number of ongoing obligations. Provided that the top-up retail of Section 4:37p Wft is met, such a party can also offer to non-professional investors in the Netherlands.

<https://wetten.overheid.nl/BWBR0020368/2024-01-01> (Wet op het financieel toezicht)
[wetten.nl - Regeling - Besluit aangewezen staten Wft - BWBR0020528 \(overheid.nl\)](https://wetten.nl - Regeling - Besluit aangewezen staten Wft - BWBR0020528 (overheid.nl))

(h) distribution of open-end AIFs and closed-end AIFs

If a management company offers units in the Netherlands that are not negotiable, the management company will issue a prospectus on that AIF pursuant to Section 4:37l Wft before investors acquire these rights. The manager shall update the prospectus as soon as there is reason to do so.

The prospectus shall contain at least the information referred to in Section 23(1) and (2) of the AIFMD as referred to in Section 115j BGfo.

<https://wetten.overheid.nl/BWBR0020368/2024-01-01> (Wet op het financieel toezicht)
<https://wetten.overheid.nl/BWBR0020421/2024-01-31> (Besluit Gedragstoezicht financiële ondernemingen Wft)

(i) withdrawal of marketing arrangements

The withdrawal of a European Passport for the offering of units in an AIF must meet the requirements of Section 32a(1) AIFMD, which are implemented in Section 2:121ca Wft.

<https://wetten.overheid.nl/BWBR0020368/2024-01-01> (Wet op het financieel toezicht)

(j) other rules for the marketing of AIFs applicable within the jurisdiction of the competent authorities.

A management company of an AIF, an EuVECA fund or an EuSEF fund that wishes to proceed with pre-marketing must report this to the AFM no later than two weeks after it has started with pre-marketing on the basis of Sections 1:13b, 2:69 and 2:73 Wft. The obligation does not apply to a management company who uses the registration regime and does not manage or do not want to manage an EuVECA fund or EuSEF fund. Pre-marketing means the direct or indirect provision of information on investment strategies or investment ideas to potential professional investors in the EU, either directly or through a third party, with the aim of verifying whether those investors are interested in an alternative investment fund (AIF) that, or compartment or sub-fund, has not yet been established or registered or notified. Third parties may only pre-market on behalf of a management company under the CBDF Directive if it is authorised as an investment firm, as a credit institution, as a UCITS management company, as a management company of an AIF, or as a tied agent of an investment firm. If, within 18 months of pre-marketing by professional investors, subscription is made to units or shares in the information provided in the context of the pre-marketing, or to an AIF, EuVECA or EuSEF established as a result of the pre-marketing, this shall be considered as a result of the marketing. The AIF, EuVECA or EuSEF, must then be registered with the AFM at the time of trading or notified for a European passport. In addition, for a period of 36 months after de-notification, no pre-marketing may be done with regard to the denotified AIF, EuVECA or EuSEF (Article 30a AIFMD).

In addition to the Wft and underlying regulations, other regulations may also apply in the case of offering units in an AIF to retail investors in the Netherlands. This includes, in any event, Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market, which is implemented in the Netherlands in Section 3A, Title 6, Book 6, of the Dutch Civil Code (*Burgerlijk Wetboek (BW)*). E.g. Section 6:193b BW explains when there are unfair commercial practices and Section 6:193f BW states which essential information must be stated in the case of commercial communication, advertising or marketing aimed at non-professional investors.

<https://wetten.overheid.nl/BWBR0020586/2022-05-28> (*Wet handhaving consumentenbescherming*)

<https://wetten.overheid.nl/BWBR0020368/2024-01-01> (*Wet op het financieel toezicht*)

https://wetten.overheid.nl/BWBR0005289/2024-01-01#Boek6_Titeldeel3_Afdeling3A

Other requirements

In addition to the provisions mentioned above, which apply specifically to the marketing of AIFs, there are other legal provisions that may apply to their marketing in the Netherlands, even if they are not specifically intended for the marketing of AIFs depending on the individual situation of those involved in the marketing of shares or units in AIFs. Trading in the Netherlands may give rise to the application of other requirements, such as, but not limited to, requirements that apply on the basis of:

- Dutch Civil Code (*Burgelijk Wetboek*);
- General Administrative Law Act (*Algemene Wet Bestuursrecht*);
- Bankruptcy Act (*Faillissementswet*);
- Competition Act (*Mededingingswet*);
- Money Laundering and Terrorist Financing Prevention Act (*Wet ter voorkoming van witwassen en financieren van terrorisme*);
- Sanctions Act (*Sanctiewet*); and
- the Income Tax Act 2001 (*de Wet inkomstenbelasting 2001*).

Disclaimer: the AFM has taken reasonable care to ensure that the information on the national provisions governing the marketing requirements for AIFS in the Netherlands included on this webpage is up-to-date and complete. The AFM is not responsible for maintaining external websites and is not liable for any error or omission on any external website to which hyperlinks are provided on this webpage.