

PFA and AIFMD: compare and conquer to remain compliant

1. PFA is the most significant change to regulation in private funds in the U.S. since 2010

2. Those with experience in Europe are familiar with complying with similar requirements under AIFMD

3. Both PFA and AIFMD are designed to harmonise standards and protect investors

One of the main priorities for any fund manager operating globally is keeping abreast of regulatory change in the jurisdictions in which they operate, providing safeguards to investors and harmonizing reporting requirements across each region. [Angel Ramon Martinez Bastida](#) and [Dave Naab](#) explain how managers should ‘compare and conquer’ regulatory changes in Europe and the U.S. to ensure their regulatory approach is compliant across continents

The Securities and Exchange Commission’s (SEC) Private Funds Advisor (PFA) Ruling was one of the main discussion points for delegates at the recent Private Funds CFO New York Forum. Delegates agreed that, in general terms, regulation is tightening as private markets open up to new investors.

Nearly half of the 114 CFOs surveyed as part of the recent [Private Funds CFO Insights Survey 2024](#) work for advisers of registered funds – of that figure, only 15% have been examined by the SEC since the introduction of the regulator’s new marketing rule in November 2022. The respondents said that performance related

data was the most significant area of focus for the regulator, mainly around the fund's past performance and future projections.

The SEC has adopted new and amended rules under the Investment Advisers Act of 1940 that is already reforming the scope of reporting, disclosure and other obligations imposed on investment advisers to private funds. These represent the most significant changes to the regulation of private funds and private fund advisers since the Dodd-Frank Wall Street Reform and Consumer Protection Act in 2010.

Broadly, the new rules are:

- Quarterly Statement Rule
- Private Fund Audit Rule
- Preferential Treatment Rule
- Advisor-Led Secondaries Rule
- Restricted Activities Rules
- Books and Records Rule Amendments
- Compliance Rule Amendments

Managers who outsource their compliance activities will expect that their provider is scanning the regulatory landscape across their funds' jurisdictions, creating a single set of reporting standards by which they operate. Having an administrative partner with significant experience in European jurisdictions where stringent regulations have been in place for well over a decade, is helpful in ensuring operations remain compliant.

For those familiar with fundraising in Europe, the Alternative Investment Fund Manager Directive (AIFMD), sets the regulatory standards and requires managers to have an AIFM in place.

For managers who have funds domiciled in both the U.S. and the EU, there will be overlap between the requirements of PFA and AIFMD, so it makes sense then to consider compliance with the most stringent requirements under each framework.

Of the new SEC rules the Quarterly Statement Rule, the Private Fund Audit Rule and the Preferential Treatment Rule are largely aligned with AIFMD, as outlined below.

Similarities:	Differences:
Both PFA and AIFMD have rules around transparency, audit, and preferential treatment.	PFA applies to SEC-registered investment advisers and some exempt reporting advisers, while AIFMD applies to managers of EU Alternative Investment Funds.
Both require managers to provide regular reports to investors and authorities.	PFA has specific rules around quarterly statements, while AIFMD has more extensive requirements for annual reports.
Both aim to increase protection for investors.	PFA prohibits preferential redemption rights that may have a material negative effect on other investors and requires specific disclosures be made to investors in respect of preferential material economic terms, whereas AIFMD allows preferential treatment if disclosed in the fund rules or instrument of incorporation.

PFA and AIFMD - compare and conquer

AIFMD harmonized standards across the EU around fundraising, risk, reporting requirements, remuneration policies and general accountability. The PFA aims to do the same, with many of the same guardrails in place. Below is a more detailed comparison of key areas covered by both PFA and AIFMD, highlighting the similarities between the two:

PFA - the main rules:

1. Quarterly statement rule:

Advisers must provide quarterly statements to investors. These should include information on the fund's performance, fees and expenses, and any money paid or

set aside by the fund and its portfolio investments for the adviser. These statements should also report on the fund's liquidity. There is no *de minimis* rule, so all expenses, regardless of amount, are included in reporting requirements.

For existing funds, advisers will need to report rate of return calculations, multiples of invested capital and realized and unrealized parts of the portfolio – this information will also need to be reported to the SEC.

In respect of new funds, advisers will need to provide the same performance metrics, after the fund's first two full quarter-end results.

2. Private fund audit rule:

Advisers must have an annual audit for each private fund they manage, which must comply with the same standards as the Custody Rule (Rule 206(4)) within the Investment Advisors Act of 1940. This includes, but is not limited to, a requirement to distribute the financial statement within 120 days of its fiscal year-end and ensure that the audit is conducted by an independent public accountant that is registered and subject to regular inspection by the Public Company Accounting Oversight Board (PCAOB).

Private fund of funds can be distributed to current investors within 180 days.

3. Preferential treatment rule:

This rule prohibits private funds from offering certain preferential redemption rights to an investor in a private fund or similar pool of assets, if the adviser reasonably believes it will have a material negative effect on other fund investors.

In addition, the rule requires all preferential material economic terms should be disclosed in advance of an investor's investment in the fund. Also, advisers must provide current investors with an annual disclosure of all preferential treatments that have been provided since the last annual notice.

Who it applies to:

The Private Fund Rules apply to SEC-registered investment advisers, and to some exempt reporting advisers including advisers located outside of the U.S. in respect of their U.S. domiciled funds only. Subject to the foregoing, the Private Fund Rules do not capture advisers who are domiciled outside the U.S. even if their non-U.S. funds have U.S. investors.

Implementation dates:

	Advisers with \$1.5 billion or more in private fund assets under management	Advisers with less than \$1.5 billion in private fund assets under management
Compliance Amendment Rule	November 13, 2023	November 13, 2023
Adviser-Led Secondaries	September 14, 2024	March 14, 2025
Preferential Treatment	September 14, 2024	March 14, 2025
Restricted Activities	September 14, 2024	March 14, 2025
Quarterly Statement	March 14, 2025	March 14, 2025
Private Fund Audit	March 14, 2025	March 14, 2025

The new rules require advisers to retain books and records related to each of the above requirements.

AIFMD - the main rules:

Under its transparency obligation, AIFMD aims to increase visibility around managers and fund activities to better protect investors, a similar aim to the PFA. This is fulfilled through these three sections of AIFMD:

1. Annual report

An Alternative Investment Fund (AIF) must have an audited report for each financial year. It must be ready no later than six months after the end of the financial year and it must be available to investors and relevant authorities on request. Among what this annual report must include are: a balance sheet of assets and liabilities, an income and expenditure account, material changes in information shared with investors, total amount of remuneration paid to AIFM and its staff, as well as disclosures relating to how the AIF makes use of SFTs and total return swaps, and disclosures under the EU's Sustainable Financial Disclosure Regulation ([SFDR](#))

2. Disclosure to investors

A range of disclosures must be shared with investors before they invest in the

fund, including, among others: The latest annual report and the latest net asset value; the AIF's investment strategy (including risk considerations) and objectives of the fund, including the procedures for changing them; the main legal implications of the contractual relationship; the identity of the AIFM, the AIF's depositary, auditor, and any other service providers, and a description of their duties and the investors' rights. This should include any delegated management function.

In addition, it must include the AIF's valuation and risk management procedures; all fees, charges, and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors; how it ensures fair treatment of investors; where available, the historical performance of the AIF, and how and when periodic disclosures will be made.

3. Reporting obligations to competent authorities

An AIFM must regularly deliver to the competent authorities in its home member state aggregated information on the main instruments in which it trades, the markets it trades in and how the portfolio is diversified to mitigate risk for each AIFM under management.

An AIF must also provide additional information to its home member state regulator on the percentage of its assets subject to special arrangements arising from their illiquid nature, and any liquidity management arrangements, the risk profile and management systems employed along with the main asset classes in which it invests and the results of stress tests required by AIFMD for investment risk and liquidity risk.

The home member state may request additional information, including the annual report of each EU AIF managed by the AIFM and of each AIF marketed by it in the EU, and the list of all AIFs managed by the AIFM each quarter.

Note: A non-EU AIFM marketing an AIF in the EU under the national private placement regime (NPPR) will have to report this information to regulators in each member state in which the AIF is marketed.

4. AIFMD fair treatment of investors provisions

Unless the fund rules or incorporation documents say otherwise, an AIFM should not give better treatment to some investors in an AIF that it manages. The AIFM

must tell investors, before they put money into the AIF, how it makes sure that all investors are treated fairly, as well as revealing any better treatment or right to get better treatment that other investors have. Lastly, giving one or more investors better treatment should not harm other investors in a material way.

Get ahead of the curve

In summary, when funds must comply with newly adopted regulatory requirements, it is often the case that there are more similarities than differences for those working across jurisdictions and within different regulatory frameworks.

Outsource partners that are already experts at ensuring compliance with the EU's AIFMD requirements, will already be ahead of the curve with many of the PFA's requirements, considering they already must meet a variation of those requirements today. For this reason, a 'compare and conquer' approach brings many benefits for advisers.

We're delighted to announce the launch of our brand new [AIFM offering](#), meaning you can now meet all your European operational and regulatory requirements through our Single Partner Solution. To find out how we can help you with all your regulatory obligations across European and the U.S., contact [Angel Ramon Martinez Bastida](#) and [Dave Naab](#).