**Submission**

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On behalf of the Public Affairs Executive (PAE) of the
*EUROPEAN PRIVATE EQUITY AND VENTURE CAPITAL INDUSTRY*

**8 January 2015**

**To** **European Securities and Markets Authority**

**Re** **Response to the ESMA Call for Evidence on the AIFMD Passport and Third Country AIFMs**

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The European Private Equity and Venture Capital Association (EVCA) is a member-based, non-profit trade association that was established in Brussels in 1983. The EVCA is a member of the Transparency register (ID: 60975211600-74).

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## Introduction

The Public Affairs Executive ('PAE') of the European Private Equity and Venture Capital industry welcomes ESMA's efforts and appreciates the opportunity to respond to the ESMA Call for Evidence on the AIFMD passport and third country AIFMs (the 'Consultation').

For many years, the EVCA has been an engaged interlocutor with the European Securities and Markets Authority and other European institutions, following closely the different discussions and initiatives affecting the European private equity ('PE') and venture capital ('VC') industry.

We write on behalf of the representative national and supranational European private equity and venture capital ('PE/VC') bodies. The EVCA is an industry-wide body and our members cover the whole investment spectrum, including the institutional investors investing in a broad range of PE/VC funds, as well as the PE/VC firms raising such funds, which in turn invest in the full life-cycle of unlisted companies, from high-growth technology start-ups, to the largest global buyout funds turning around and growing mature companies. Thus, we speak on behalf of the entire European PE/VC industry, investors as well as managers.

As the EVCA is an industry association and not itself an alternative investment fund manager (or an investor in alternative investment funds), we have not attempted to answer all of the questions posed in the Call for Evidence. We believe that others may be better placed to answer the questions that we do not address below. However, where we can, we have provided answers based on anecdotal evidence gathered from our members across Europe.

We also note that our partner private equity associations from around the world (EMPEA, ILPA and PEGCC) have responded to this Call for Evidence and would commend those responses to ESMA.

We stand ready to provide whatever further contribution to this work ESMA might find helpful, including attending meetings and contributing further materials in writing, and look forward to the opportunity to play a constructive role in the development of a proportionate and workable framework.

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## Executive Summary

- Experience with the EEA AIFM passport has been mixed, with EEA AIFMs experiencing a number of significant impediments to the smooth operation of the passport, which should be addressed in the context of the EEA AIFM passport (e.g., through the adoption of guidance by ESMA), as well as in the event of the extension of the passport to non-EEA AIFMs.

- The AIFMD has limited competition from non-EEA managers and thereby investor choice in the EEA because the burdens associated with registering with multiple national authorities and complying with the AIFMD requirements (and in some cases additional national requirements going beyond the AIFMD) in practice limit marketing by non-EEA AIFMs only to the largest AIFMs and Member States.

- We believe that competition and investor choice would be maximised by extending the AIFMD passport to non-EEA managers in a proportionate and practical way, while retaining the possibility of registering under NPPRs.

- Giving non-EEA AIFMs the possibility of using the passport could increase competition and investor choice, but **only** if it is introduced in an efficient, uniform, and commercially sensitive way. Non-EEA AIFMs making use of the passport would need to be able to comply with the AIFMD requirements **in a proportionate way**, reflecting the fact that EEA investors will likely represent only a small proportion of the total investment into global funds. In particular, the legal uncertainty created by the AIFMD's mechanism for selecting the Member State of reference and the absence of clear grandfathering and transition rules needs to be mitigated. In addition, ESMA and the Commission would need to clarify how non-EEA AIFMs registering under the AIFMD could comply with AIFMD obligations whose full application to non-EEA AIFMs (e.g., those regarding remuneration and capital) would be disproportionate.

- If these issues are not addressed, introduction of the non-EEA AIFM passport would actually reduce competition and EEA investor choice because one or more Member States could further restrict or even eliminate their NPPR regimes and/or non-EEA AIFMs may decide to pull out of the EEA market altogether due to the impracticality and costs of complying with burdensome legislation.

- In fact, more generally, failure to introduce a proper and well-proportioned marketing passport for non-EEA AIFMs could have a potentially restrictive effect on the global flow of capital, reduce investment options available to EEA investors, concentrate risk for EEA investors due to reduced diversification options and reduce investment in the EEA, as non-EEA AIFMs may turn their attention to other markets where they can market more freely.

- Institutional investors in Europe are seeing their ability to invest in non-EEA AIFMs constrained by the AIFMD. If this is not addressed - including by the provision of a workable marketing passport – they face the prospect of lower returns and of being forced into concentrating their portfolio into particular European markets (such an unintended and undesirable geographic concentration within their portfolios may lead to an elevated risk profile). Neither of these outcomes would be desirable. Investors in smaller EU Member States may be particularly impacted as managers further target their marketing on those

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jurisdictions where the high costs of compliance can at least be justified by the presence of a sizable number of investors with significant capital to invest.

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## Consultation response

### QUESTIONS ON THE FUNCTIONING OF THE PASSPORT FOR EU AIFMS

**Q1: Please describe your experience using the AIFMD passport:**

**a) Indicate your home Member State**
**b) Number of funds marketed in other Member States (please provide a breakdown by host Member State)**
**c) Number of funds managed in other Member States (please provide a breakdown by host Member State)**

Our answers to the following questions about the AIFMD marketing passport are based on:

(1) surveys of our membership, including institutional investors (generally referred to in the industry as Limited Partners) and the private equity managers (known as General Partners) most likely to be affected by the eventual extension of the passport for non-EEA AIFMs; and

(2) qualitative evidence from, and the practical experience of, those of our associate members (such as fund administrators, law firms and accountancy firms) who have been assisting AIFMs to comply with the Directive and, where relevant, national private placement regimes.

To put our answers into context, we note that the EVCA represents:

- 112 Limited Partner members across 19 countries, most of whom are based in the EU. This includes institutional investors like banks, insurance companies and pension funds, as well as family offices and fund-of-funds; and

- 337 private equity and venture capital firms established across the 28 EU Member States and 20 other jurisdictions[1], notably Switzerland, the United States of America, Guernsey, Jersey and the Cayman Islands. 17% of these firms/offices are located in the UK, 13% in Germany and 11% in France. Countries like Spain, the Netherlands, Sweden and Switzerland each represent 5%. Some of our members are larger multi-national groups which have AIFMs in several jurisdictions.

We wish to take the opportunity to emphasise that ESMA's work in relation to third country access will have a material impact on AIFMs established in (or established with a view to investing in) Africa, Asia and Latin America. Such funds are of increasing relevance to EU institutional investors seeking to diversify their exposures, to invest in high growth economies and/or to include an element of social impact in their investment programme. We are

1 This includes the actual firms and their network offices.

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concerned that the views of these constituents may be under-represented in the consultation exercise.

**Q2: How have you found the passport application process?**

**a) Very satisfactory**
**b) Satisfactory**
**c) Problems encountered. Please explain**

Answer: (c).

The problems that our members have encountered during the marketing passport application process are described in our answer to Question 4 below.

**Q3: What is your overall experience of using the passport of the AIFMD? Please explain**

We welcome the introduction of the marketing passport and consider its availability to be the main benefit associated with the burden of complying with the AIFMD. Although we consider that the passport has the potential to strengthen the European private equity and venture capital market and contribute ultimately to the provision of capital to the European real economy, we are concerned that **a number of practical issues associated with its exercise are undermining its value**. These issues are described in more detail in our answer to Question 4 below.

By way of background, there are three general points we would like to make upfront:

- only six months have elapsed since the end of the transitional period under the AIFMD - ESMA should take this into account when reviewing the responses and formulating recommendations;

- there are material inconsistencies in the ways in which different Member States have implemented the passport;

- experience with the current EEA AIFM passport may be very limited in a number of Member States due to delayed/incomplete transposition of the AIFMD. For example, Italy has not yet completed its implementation process of the AIFMD so no experience relating to the use of the passport by Italian AIFMs is available at this stage. The same goes for countries like Poland, Lithuania and Romania. At the same time, Member States like Belgium, Spain and Portugal have only recently completed national transposition so experience in those countries will also be rather limited.

Uneven requirements that have manifested within the current AIFMD passport regime should not be allowed to persist, especially if the passport regime is expanded to non-EU AIFMs. These problems should be addressed sooner rather than later. We already see how problems with the implementation of the AIFMD EU passport limit its usefulness to EEA investors. This already has implications for their ability to achieve returns and to spread their risks beyond their home Member State.

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**Q4: What difficulties have you encountered when trying to use the passport?**

We set out below the key difficulties that our members have encountered when seeking to use the marketing passport. We would note that the EVCA has previously discussed a number of these issues with the European institutions, including ESMA and the European Commission. For example, the EVCA has been in contact with both ESMA and the European Commission on the practice of certain (host) Member States of levying a charge, per fund or per sub-fund, and imposing other restrictions and/or requirements (e.g. the appointment of a local paying agent) on AIFMs looking to use the passport they have been granted in their jurisdiction (see Annex 1 – EVCA Letter to ESMA Chairman Mr Steven Maijoor, dated 8 November 2013, and Annex 2 – EVCA Letter to Mr Laurent Degabriel and Mrs Sophie Vuarlot-Dignac at ESMA, dated 24 January 2014).

In particular, and as described in detail in our letter of 24 January 2014 to Mr Degabriel and Mrs Vuarlot-Dignac (attached as Annex 2 to this response), we are extremely concerned by the practice of some host Member State regulators of imposing additional restrictions and/or requirements on AIFMs when they seek to exercise in the host Member State the marketing passport which they have been granted by their home Member State regulator.

Where an AIFM has been granted a marketing passport by its home Member State regulator, we consider there to be no legal justification under the AIFMD for any additional restrictions and/or requirements to be imposed on the AIFM by the host Member State regulator. Not only are we concerned about the legality of such practice, but we are also concerned about the long-term and potentially significant adverse impacts that this may have on market participants' behaviour and the operation of the single market.

*(1) <u>Fees and charges imposed by host Member State regulators in response to the exercise of the passport</u>*

A number of host Member State regulators are imposing fees on AIFMs when they seek to exercise their marketing passport rights in that Member State.

The imposition of such fees – which can, as described below, be substantial – is acting as a disincentive to many of our members to market their funds in those Member States where fees are being charged. This issue is felt most acutely where the investor base in the host Member State is comparatively small and these additional regulatory costs are disproportionate to the perceived fundraising potential. As a result of this practice, investors in those Member States risk having fewer investment opportunities open to them or facing higher costs to access opportunities where they remain available. Such practice is therefore likely to lead to distortion and fragmentation of the market.

This issue is particularly significant for those of our members which are smaller venture capital firms, because they tend to raise smaller funds and, as a result, the imposition of additional fees tends to be felt more acutely. Given the European Commission's commitment to helping innovative SMEs across Europe access venture capital funding, it would be extremely disappointing if the actions of certain Member State regulators were to adversely impact the development of the European venture capital market.

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We set out below some examples of the AIFMD (upfront and/or annual) fees which are being charged by Member State regulators:

- Austria: Initial fee of EUR 1,100 per AIF and an annual fee of EUR 600 per AIF thereafter (additional fees apply where there are sub-funds in the structure). We understand that the annual fee must be paid every year for notified funds and that the obligation to pay the annual fee falls away only when the passport is cancelled.

- Denmark: DKK 2,062.50 annually per AIF for 2014 (plus, where relevant, additional fees per compartment).

- France: EUR 2,000 per sub-fund. We understand that the AIFM must pay this fee to the AMF and receive proof of payment before it submits to its home Member State regulator the marketing passport notification form. We understand also that proof of payment must be included in the notification file.

- Germany: EUR 772 for processing the marketing passport notification.

The impact of these charges is particularly acute where annual fees are levied. In those cases, it is not always clear whether jurisdictions expect a fee to be paid: (a) only during each year that marketing takes place; or (b) even after marketing has ceased but where there are still investors in the fund in that jurisdiction. (For private equity and venture capital funds, there is no marketing after 'final close' (broadly, the point after which no new investors can be admitted to the fund).) Some Member State regulators seem to have implied in correspondence with our members that fees would cease to be due only if the AIFM cancelled its marketing passport but the position remains unclear and divergent approaches appear to be being taken by regulators.

In addition, these fees are disproportionate and lack any consistency or link to the amount of work being performed, and whilst on their face they may not look particularly significant, they can end up being substantial given how most private equity and venture capital funds are structured.

Most such funds consist of several (perhaps six or seven) parallel limited partnerships, each of which is an AIF. Each limited partnership will have slightly different characteristics to suit the needs of investors in different jurisdictions. By way of example, it has been common in the past for English AIFMs to use mainly English limited partnerships with a parallel German KG for German and Austrian investors. There may also be English limited partnerships denominated in different currencies (e.g. EUR and USD) to fit the preferences of the funds' investors. As noted above, each limited partnership is an AIF. Where fees are charged on a 'per-AIF' basis, and where funds are marketed into a number of Member States each of which is imposing fees or charges, this means that the total fees incurred can be substantial. This is demonstrated by the worked example below.

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- An AIFM wishes to exercise its marketing passport rights in respect of five parallel limited partnerships, each of which is an AIF. The average fee charged by host Member State regulators is EUR 1,200 per AIF.
- If the AIFM markets into 28 Member States, each of which charges a fee, the total fee incurred is EUR 168,000. A conservative assumption would be that the cost of appointing a paying agent in France (see further below) and one other Member State would bring the regulatory charges associated with exercising the passport to EUR 200,000.
- This is, however, before indirect costs such as the management cost of attending to the administration involved and the cost of payment transfers are included. This is also before taking into account ongoing annual regulatory fees, such as those charged in Austria and Denmark.

These fees and charges clearly add up to a large amount in absolute terms. Although for a large fund this amount might be only a small percentage of total fund commitments, for a smaller fund (and particularly venture capital funds), it will be a meaningful addition to the total expense ratio.

If a non-EEA AIFM decides that such fees are material to its marketing activities it is possible that such fees may look to be recouped by non-EEA AIFMs, either as a direct fund cost or indirectly out of a higher management fee. This could mean that the AIFMD has the effect of unintentionally increasing the cost of investing for EEA investors.

A more comprehensive overview of the applicable fees and charges for EEA AIFMs intending to exercise marketing passport rights into Europe and to market on a cross-border basis ("passport") into the relevant jurisdictions is set out in Annex 3. It should be noted that this is not an exhaustive list and it cannot be ruled out that other countries may follow suit and also start charging host fees.

Furthermore, more recently, this trend has also started to spread to the application of the EuVECA Regulation. Although the Regulation is directly effective and therefore binding on the regulators in all Member States, certain national regulators are nonetheless imposing (or considering imposing) additional requirements on qualifying venture capital managers who want to market their funds under the EuVECA label, such as the payment of a fee (similar to the AIFMD experience). The EVCA has raised this issue with both ESMA and the European Commission through formal letters in July 2014 (see Annex 4 – EVCA Letter to ESMA, dated 25 July 2014).

The EVCA would once again like to refer to the formal letters it has sent to both ESMA and the European Commission on the AIFMD fee issue (see Annex 5 - EVCA Letter to the European Commission, dated 8 November 2013), and would like to request ESMA to investigate this further and to support the industry's position.

*(2) AMF requirement for the appointment of a French paying agent*

In addition to the fees described above, the AMF also requires AIFMs to appoint a French paying agent when they market into France pursuant to the passport. Not only do we consider this requirement to be illegal (in our view, there is no legal basis in the AIFMD for such requirement to be imposed) but we also consider it to be a wholly disproportionate obligation for private

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equity and venture capital AIFMs and in fact, the imposition of the paying agent may result in costs many magnitudes more than the passport fee.

In a private equity and venture capital context, the only payments to investors tend to be distributions made following either the realisation of an investment or a refinancing. There are, therefore, typically very few payments made during the life of an investment. Further, although there is a requirement for a paying agent in the UCITS market, this is partly to ensure that there is a local entity, the employees of which speak the language of the host Member State, which investors can approach if necessary. Whilst this is not an unreasonable requirement in the retail market, it is disproportionate in the professional investor market, where all involved parties speak English, meaning that a local paying agent is unnecessary. Setting aside the issue of illegality, to require a private equity or venture capital AIFM to incur the costs and administrative burden associated with the appointment of a paying agent is therefore a disproportionate obligation.

As in the case of the fees and charges described above, this obligation is likely to deter many (and particularly smaller) AIFMs from marketing into France. This renders the passport redundant in terms of accessing French investors, is anti-competitive and further undermines the single market for non-UCITS funds which the AIFMD sought to establish.

The EVCA would once again like to make reference to the formal letters that were sent to both ESMA and the European Commission on this (see Annexes 1, 2 and 5), and would like to request ESMA to investigate this further and to support the industry's position.

*(3) Certain host Member State regulators commenting on materials (such as Article 23 disclosures) communicated to them by the home Member State regulator*

As ESMA will be aware, when applying for a marketing passport an AIFM must submit, to its home Member State regulator, a notification comprising the documentation and information described in Annex IV to the Directive (Article 32(2) of the Directive).

Under Article 32(3) of the Directive, the competent authority of the AIFM's home Member State must, no later than 20 working days after receiving a complete notification, transmit the notification to the competent authorities of the Member State(s) where it is intended that the AIF will be marketed. The competent authority of the home Member State will only transmit the notification if it is satisfied that the AIFM's management of the AIF complies with the Directive. The competent authority of the home Member State must inform the AIFM of the notification's transmission and the AIFM may start marketing the AIF in the host Member State(s) as of the date of that notification (Article 32(4) of the Directive).

As is clear from the above, nowhere in Article 32 of the Directive (or elsewhere in the AIFMD) is it contemplated that the host Member State competent authority should review the content of the notification (and, in particular, the 'Article 23 disclosures') and/or contact the AIFM about its intended marketing activity in their Member State. We are, however, aware that both of these things have been occurring in practice.

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Some host Member State regulators have been communicating with AIFMs either through the relevant home Member State regulator or directly. Where this concerns obvious omissions or errors in the mandatory Article 23 disclosures not identified by the home Member State regulator, there can be little objection. On some points, however, there is a risk of multiple divergent views being expressed by different regulators (e.g. how to approach disclosure of NAV when this will fluctuate). Given that under the architecture of the Directive an AIFM is required only to deal with its home Member State regulator in the context of the marketing passport, the views of that regulator must be determinative. Any other result undermines the operation of the passport, creates legal and regulatory uncertainty and will hinder AIFMs' cross-border marketing activities.

We are also aware that in some cases, local expectations about the content of a marketing passport notification go beyond the requirements set out in the Directive. We understand, for example, that at least one national regulator is in some instances requiring an AIFM to provide certain confirmations in its passport notification about its marketing arrangements and (where relevant) the arrangements in place to prevent marketing to retail investors. Whilst we acknowledge that, pursuant to Article 32(5) of the Directive, such arrangements are subject to the laws and supervision of the host Member State, we believe this means that the arrangements should secure compliance with the local laws and do not think that a host Member State competent authority has any legal basis on which to require additional confirmations from an AIFM as part of its passport notification.

We would suggest that it is for competent authorities to develop common supervisory expectations about the passport and the contents of the passporting notification through ESMA's Investment Management Standing Committee and to communicate those expectations to the industry. This would allow the marketing passport application process to function more effectively, provide AIFMs with the certainty they need to ensure their notifications will meet regulatory expectations on a cross-border basis and avoid disruption to AIFMs' fundraising activities. Accordingly, we invite ESMA to publish guidelines in order to harmonise practices.

*(4)* *<u>Initial marketing notification, followed by 30 days' notice of planned "material changes", is inconsistent with/difficult to apply in the context of closed-ended funds' iterative marketing process</u>*

The marketing passport notification process – where an initial notification must be made to the AIFM's home Member State regulator followed by subsequent notifications to that regulator of any "material changes" to the contents of the initial notification – is difficult to apply in the closed-ended fund context where marketing takes place on an iterative basis. We describe below our members' typical approach to fundraising and the problems they are encountering with the notification process given this approach.

*Typical private equity/venture capital fundraising process*

As also mentioned in other parts of this submission, private equity funds are typically partnerships (or other negotiated structures), and not off-the-shelf unitized collective investment funds as such, which are merely "sold" to investors. Participation in these co-investment arrangements is negotiated with each partner (and their advisors) individually and

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there is no general offer or "marketing" in the customary sense (as opposed to the technical interpretation of the AIFMD term, which varies from Member State to Member State). This makes for a very fluid closing process, where negotiations with individual investors/partners can typically take 6 months or even longer and where often critical points (typically in favour of the investors) are agreed quite late in the process.

Ultimately these negotiations will lead to a series of "closings" where investors are admitted to the partnership (or 'fund') (become parties to the partnership agreement). Contractual certainty is critical in a private equity context given the size and long-term nature of these commitments and the need for investors (co-investment partners) to rely upon one another to adhere to the terms of the co-investment agreement.

These series of negotiations typically imply that it takes somewhere between 12 to 18 months before a private equity fund holds its final "close". As a consequence of the negotiated nature of these co-investment arrangements, it is only very late in the process where the limited partnership (and the AIFM as the case may be) is established and the information memorandum (which is not a subscription document) summarizing the investment strategy, the main commercial terms and how the fund is to be operated is finalized. This typically only occurs just before or in connection with the first "closing".

*Problems encountered by our members*

A planned "material change" to the contents of an initial marketing notification requires one month's prior notification to the AIFM's home Member State regulator before 'implementing' the change. In the closed-ended fund context, we consider 'implementing' a change to mean closing (i.e. admitting investors) on the basis of the change. An unplanned material change requires notification only after the change has taken place.

Whilst the term "material change" is used in the marketing context, it is defined only in the context of an AIF's annual report. In that context, Article 106(1) of the Level 2 Regulation provides that, "*Any changes in information shall be deemed material within the meaning of [Article 22(2)(d) of the Level 1 Directive] if there is a substantial likelihood that a reasonable investor, becoming aware of such information, would reconsider its investment in the AIF, including because such information could impact an investor's ability to exercise its rights in relation to its investment, or otherwise prejudice the interests of one or more investors in the AIF*" (the "Article 106 test").

Whilst the Article 106 test does not technically apply in the marketing context, we consider that it sets a sensible basis on which to commence an analysis of whether changes to the information or documentation provided to a regulator as part of an initial marketing notification (which will include the limited partnership agreement) must subsequently be notified to that regulator. Whilst the UK FCA has helpfully expressly adopted this test in its AIFMD marketing notification forms, we understand that not all Member State regulators are taking this approach.

Although we consider it sensible broadly to apply the Article 106 test in the marketing context (that is, under Articles 31(4) and 32(7) of the Directive), we think the test would benefit from an additional gloss in this context. We consider that a change which is advantageous to investors

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(such as a reduction in the management fee payable by investors) and/or purely administrative (such as a change of name of an AIF) is not a material change at all for the purposes of Articles 31(4) and 32(7) of the Directive and therefore does not require prior notification to the AIFM's home Member State regulator.

Adopting this interpretation would not adversely impact investor protection but would both minimise disruption to AIFMs' businesses and reduce the administrative burden on Member State regulators. Unless Member State regulators either accept that changes to fund documentation during the negotiation process described above are "unplanned" (and therefore subject only to a post-change notification requirement) or the approach set out here is adopted (our preferred approach), fundraisings will be disrupted by a series of one-month wait periods before closings. This is frustrating for both managers and investors (the latter will have agreed to the changes during the negotiation process and will therefore be aware of them) and does not benefit any parties.

Finally, whichever test is adopted it would be helpful if all Member State regulators could adopt the same approach to assessing materiality and whether changes require notification. This would ensure that there is a level playing field across the EU and avoid there being a more onerous (and therefore anti-competitive) regulatory notification burden in some Member States. From a practical perspective, there is a risk of uncertainty for an AIFM if its home Member State regulator adopts the Article 106 test but a host Member State does not (although, as noted above, we consider that the Directive considers the opinion of the home Member State regulator to be determinative). We invite ESMA to endorse our interpretation through guidance.

**Q5: Have you been deterred from using the passport and if so – why?**

We believe that a number of our members have been deterred from using the passport. Please see numbered comments (1) and (2) in our response to Question 4 above for an explanation of some of the key reasons as to why this is the case.

**Q6: Have you experienced issues of investor protection in relation to AIFs marketed or managed from another Member State, including AIFs marketed to retail investors under Article 43? If so, please provide details (e.g. number of complaints from investors, the reasons for those complaints etc).**

We would like to note that in a private equity fund context, partners are institutional in nature and carry out extensive due diligence on each other and the controls over the operation of any platform before agreeing to enter into any partnership arrangement (or 'fund').

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## QUESTIONS ON THE FUNCTIONING OF THE NATIONAL PRIVATE PLACEMENT REGIMES

**Q7: Please describe the activity of your organisation in the EU:**

**a) Identify whether your organisation operates under Article 36 (marketing of non-EU AIFs by EU AIFMs in a Member State) or Article 42 (management and/or marketing of AIFs by non-EU AIFMs in a Member State) of the AIFMD**
**b) Identify the non-EU country of the AIFM and/or the AIF**
**c) Number of funds marketed in an EU Member State (please provide a breakdown by Member State)**
**d) Number of funds managed in an EU Member State (please breakdown by Member State)**

As discussed above, our members cover a large number of organisations, including many operating under Article 36 and many operating under Article 42.

**Q8: How many times has your organisation received a request for information from an EU NCA? Please indicate your average time of response.**

We understand that a number of our members have received requests for information and that our members have replied to such requests on a timely basis.

**Q9: How many times has your organisation refused to provide the information requested by an EU NCA? Please explain the reasons.**

As far as we are aware, none of our members has refused to provide information requested by an EU NCA.

**Q10: How many times has an EU NCA performed an on-site visit at your organisation?**

We are not aware of any such on-site visits, but this is not surprising given the short time since the end of the AIFMD’s transition period.

**Q11: How many times has an EU NCA initiated enforcement action against your organisation?**

We are not aware that any EU NCA has initiated enforcement actions against any of our members.

**Q12: How many times has an EU NCA imposed a sanction on your organisation?**

We are not aware of any EU NCA imposing a sanction on any of our members.

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**Q13: Are there any specific limitations in the legal framework in your country that impede or limit your organisation from collaborating with an EU NCA? If yes, please specify.**

We are not aware of any such limitations. Indeed, we note that high levels of regulation exist internationally that facilitate collaboration.

**Q14: Has your organisation experienced issues of investor protection in relation to AIFs marketed or managed in an EU Member State? If so, please describe (e.g. number of complaints from investors, the reasons for those complaints etc).**

We are not aware that any such issues have arisen.

**Q15: What have been the benefits of the National Private Placement Regimes (NPPR) to you?**

*Context*

The private equity and venture capital industry is inherently global. Private equity raises money worldwide to invest locally and/or regionally. Cross-border structures and cross-border marketing are key elements of the industry, and the continued free movement of capital on a global basis (both in to and out of the EU) is important both for European companies, which are the recipients of significant third country private equity investment and European investors, who invest in third country private equity funds as part of their asset allocation and risk diversification strategies.

Between 2009 and 2013, private equity firms located outside the EEA invested EUR 6bn in the EEA economy; over the same period of time, private equity firms located in the EEA invested EUR 15bn in non-EEA economies.

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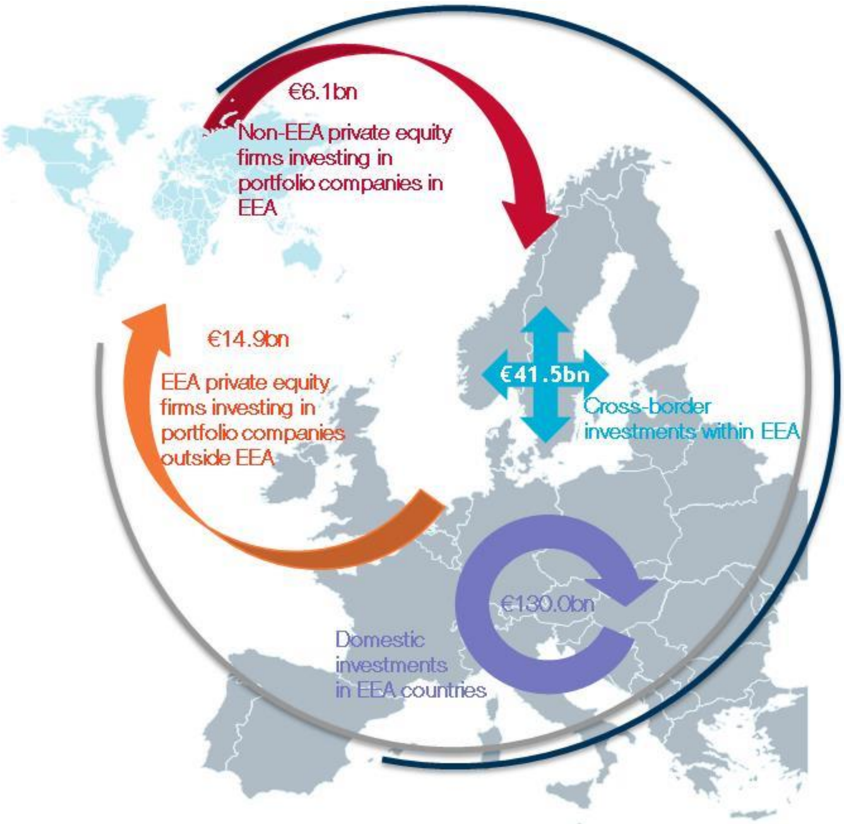
Figure 1: All Private Equity - Geographic investment flows 2009-2013 (Industry vs. Market statistics)




Source: EVCA/PEREP_Analytics

Prior to the introduction of the AIFMD, European professional investors had extensive opportunities to invest in funds managed by third country managers where permitted by their NPPRs. Similarly, EU managers relied heavily on third country investors in their funds in order to support their investment into European companies. Indeed, 42% of the total funds raised by EEA private equity houses between 2009 and 2013 was sourced from non-EEA investors (see Figure 2). In actual numbers, this boils down to an amount of EUR 66bn that was invested by non-EEA investors in EEA based funds.

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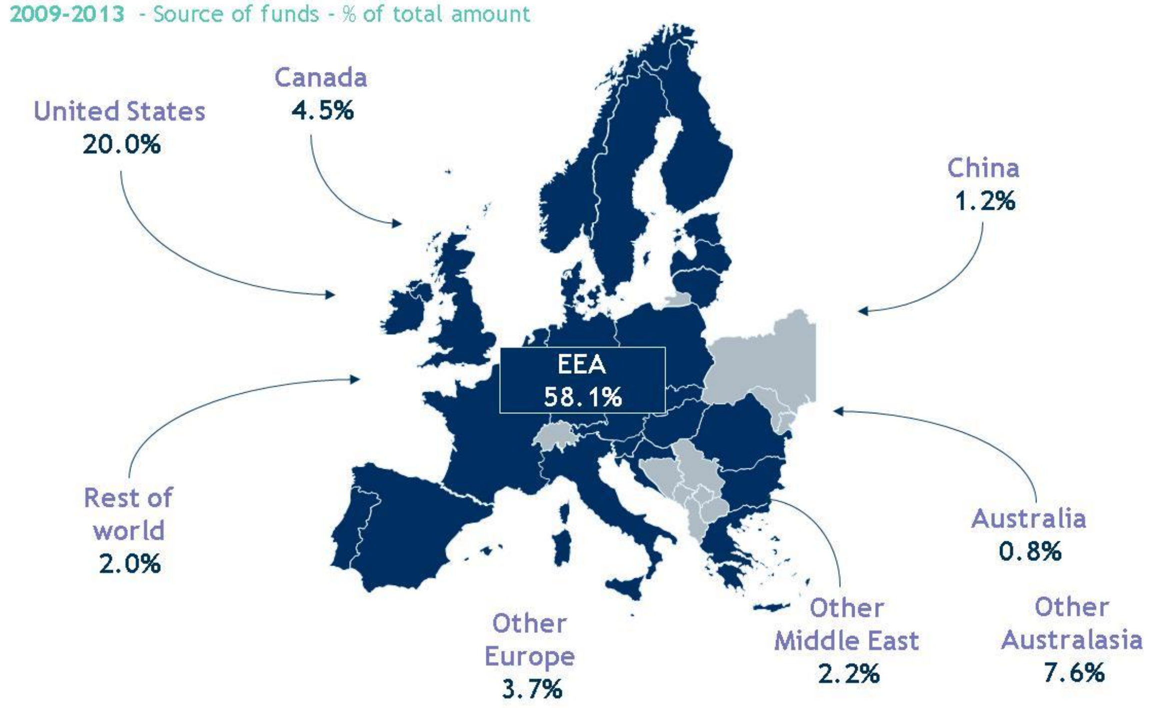
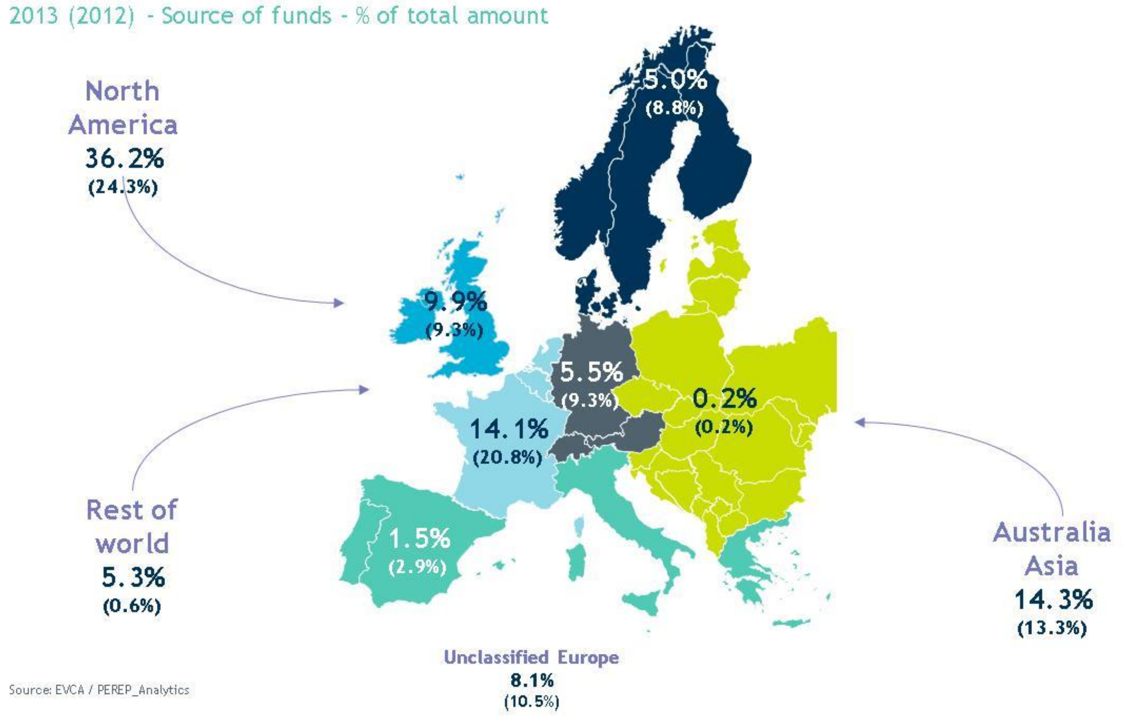
Figure 2: All Private Equity – EEA Fundraising geographic breakdown (2009-2013)




Source: EVCA/PEREP_Analytics

The fundraising geographic breakdown for 2013 (compared to 2012) looks as follows (Figure 3):




Source: EVCA/PEREP_Analytics

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Private equity fund managers raise funds from professional investors which are then invested into the real economy. As a commercial matter, the location of the manager does not limit where funds are raised or where funds are invested. For instance, provided the relevant laws permit this, a US manager can raise funds from European investors for investment in Europe. Similarly an African manager can raise money from European investors for investment into Africa. Under the current AIFMD regime, the only avenue for a non-EEA AIFM to market an AIF to EEA investors is the NPPR regime.

Absent the possibility of registering under the AIFMD and benefitting from the passport, the NPPR regimes offer the only possibility for non-EEA AIFMs to market interests in the AIFs they manage to EEA investors.

Related benefits are that non-protectionist NPPRs benefit Member States' investors by increasing their ability (compared to the absence of any NPPR regime) to access non-EEA AIFMs and their funds. Such access facilitates diversification of investment by asset class and geography and is a critical component of the risk diversification strategies pursued by many European-based institutional investors for the benefit of their ultimate investors (mainly pension and insurance savers across Europe). Access to third country investment opportunities also helps reduce the build-up of systemic risk in the EU by spreading investment more widely. Many EU private equity investors are pension funds. The ability to pick the best in class investment manager from a global range of managers (rather than being restricted only to EU managers) means an EU pension scheme has a better chance of making returns to satisfy its obligations to pay European pensioners. It also gives investors the chance to invest in non-EEA funds which invest into the EU or into emerging markets.

The maintenance of many NPPRs post-AIFMD has also limited the scope for third countries to restrict the ability of EU managers to market their funds to potential investors in their jurisdictions for reasons of non-reciprocity. This is clearly beneficial to the EU fund management industry and the European real economy as a whole.

On the other hand, the NPPR regimes, where they exist, are onerous and discriminatory, in that non-EEA AIFMs need to register with multiple authorities and to comply with very different obligations imposed by the national legislators (which in some cases go beyond the AIFMD requirements for third country fund managers) in order to be able to market to EEA investors, who will normally represent a small proportion of an AIF's global investor base.

Whilst the flow of capital has not in practice been stopped entirely across the EEA, experience on the ground suggests that AIFMs are being much more selective about which EEA Member State regimes they are willing to navigate in order to reach prospective investors in those markets. As such, the NPPR regime without a passport regime in place in parallel is very unsatisfactory and has tended to result in only larger non-EEA AIFMs marketing in the EEA, and in those cases only in the largest Member States, thus limiting investors' risk diversification and their access to return opportunities. (We note in passing that such "third country funds" include funds dedicated to investment in the EEA but which are established outside the EEA such as in the Channel Islands and Switzerland.) In addition, due to the fact that some Member States have all but removed/made it impossible for a non-EEA AIFM to register under their NPPRs, the consequence has been that, even if a non-EEA AIFM was willing to negotiate the regulatory

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requirements and incur the costs necessary to market in a Member State in order to reach potential investors therein, they are unable to do so. This is to the potential detriment of the investors in that Member State for reasons outlined elsewhere in this response.

Accordingly, we believe strongly that a passport regime is needed to give third country fund managers the opportunity to market in all EEA countries under the same conditions as EEA managers, whilst the NPPR regimes should be maintained alongside the third country passport to continue to enable third country fund managers who only wish to approach a select number of investors in the EEA to continue to be able to do so without being forced to use the passport.

Finally, we would note that the NPPRs remain the only way in which 'sub-threshold' EU AIFMs of EU AIFs who do not 'opt in' to the Directive (and are therefore unable to benefit from the marketing passport) can market on a cross-border basis within the EU. The NPPRs are therefore important also to avoid discrimination against smaller EU fund managers. (In this regard, we note that the EuVECA label is available only to a limited number of managers/funds as it is unnecessarily restrictive in its approach to what constitutes qualifying investments and/or qualifying portfolio undertakings.)

**Q16: What have been the obstacles or barriers to entry of the NPPR to you?**

Whilst the continued existence of many NPPRs is to be welcomed, AIFMs have faced a number of practical issues when seeking to market into Member States under them. We describe these issues in our answer to Question 17 below.

Separately, certain Member States have, as part of the AIFMD implementation process, added new and more onerous requirements to their NPPRs; others, notably France and Italy, have chosen in effect not to operate an NPPR. This means that it is all but impossible for a non-EEA AIFM to market in those jurisdictions. In the absence of an NPPR, the only way in which an investor could invest in a fund managed by a non-EEA manager is if it happened to know about the existence of that fund (perhaps because it had invested in previous funds managed by the same manager) and approached the manager on its own initiative.

This means that investors in many Member States are in effect 'shut off' from investing with non-domestic managers/funds. This seriously limits their ability to spread risks and tap into different markets and economies.

**Q17: What obstacles did you encounter when trying to register through the NPPR?**

We summarise below the key issues faced by third country managers/managers of third country funds when seeking to register under Member States' NPPRs.

*(1) <u>Absence of a harmonised registration process</u>*

One of the key issues facing AIFMs seeking to use NPPRs is the absence of a harmonised registration process across the EU. There is a different form which must be filed with each Member State regulator and differences also between:

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- the supporting information which must be supplied with the form (some Member State regulators require significant amounts of supporting information and documentation whilst others do not);
- whether contractual agreements need to be established between an AIF and a service provider (e.g. depositary) prior to the form being filed;
- the way in which the form must be filed;
- fees/charges imposed on the AIFM when filing the form; and
- the timing for regulators to consider the form/material submitted.

  In Austria and Germany, for instance, it can take up to four months for the national competent authority (FMA or BaFin) to review the AIFM's notification application, whilst in other Member States a manager may market immediately following filing.

  Furthermore, regulators in certain key jurisdictions for fundraising are not appropriately resourced to deal with the volume of NPPR registration applications. In many cases, regulators seem to be giving priority to AIFM authorisation applications from domestic managers. In addition to creating an unequal market for EEA and non-EEA AIFMs, this has resulted in the regulators being unable to meet their own deadlines for processing NPPR registration applications from non-EEA AIFMs. These uncertainties make it difficult for non-EEA AIFMs to draw up and adhere to fund formation and closing timetables.

In addition, the requirements as such vary from one Member State to the other.

The absence of a harmonised registration process means that AIFMs incur considerable duplication of costs for any non-EU fund which needs to be marketed across the EU as advice must be taken in each relevant jurisdiction and charges are incurred on a per-jurisdiction basis. It also imposes an unnecessarily onerous compliance burden on managers who, at a time when resources should be focused on raising funds for investment into the real economy, must instead divert certain of those resources towards ensuring that they meet their regulatory notification obligations across the EU.

*(2) Ongoing compliance and operational costs*

As ESMA will be aware, AIFMs which have registered under an NPPR must comply with certain ongoing obligations following registration. For above-threshold managers these obligations include making available to investors in the relevant AIF an AIFMD-compliant annual report, filing periodic reports with the regulator and complying with Articles 26 to 30 of the Directive (which set out the asset stripping and notification/disclosure obligations which apply to AIFMs when their funds acquire control of/holdings in certain EU companies).

Where the non-EEA AIFM has registered under multiple NPPRs it must comply with these requirements in each jurisdiction. The AIFM must, for instance, file 'Annex IV' periodic reports and notifications required under Articles 27 and 28 of the Directive with each Member State regulator and must comply with each Member State's interpretation of the applicable requirements. As a result, AIFMs incur significant costs and suffer an onerous administrative

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burden in order to ensure that they satisfy their regulatory obligations across the EU. EU AIFMs by contrast only need to file materials with a single regulator.

Indeed, there is no harmonisation on the procedures for submitting Annex IV reports, which means that non-EEA AIFMs have to use different reporting forms and online submission platforms to submit reports in different EEA jurisdictions, resulting in a significant and unnecessary increase in ongoing compliance costs. This has also resulted in the rather unusual result that non-EEA AIFMs (not subject to the full Directive) are subject to higher compliance burden than EEA AIFMs (subject to the full Directive) in this respect.

It is time-consuming and costly for firms to comply with a patchwork of local implementing laws, which often differ in their detailed requirements. A single registration/filing hub, managed by ESMA and to which Member State regulators would have access, would resolve many of the issues described above and is something which we, and our members, would strongly support. Such a hub would be most effective if it permitted AIFMs to file a single NPPR registration and submit only one version of any Annex IV report or notification required to be made under Articles 27 or 28 of the Directive.

Whilst we acknowledge that the implementation of such a hub would require Member State regulators to agree (perhaps through ESMA's Investment Management Standing Committee) on the interpretation of applicable parts of the Directive, we would strongly encourage regulators to seek to reach common views even prior to the implementation of any such hub in order to increase legal and regulatory certainty for third country managers and funds. (Such agreement, particularly on the scope and application of Articles 26 to 30 of the Directive, would also benefit EU managers and funds.)

*(3) Divergent local requirements*

The EVCA has published a guide for its members to the NPPRs in most Member States. We attach a copy as Annex 6. Amongst the divergent requirements in certain Member States are:

- A requirement, in effect, to comply with the whole of the AIFMD in respect of the third country fund and its manager.
- A requirement for staff of the manager to pass examinations which can be undertaken only in the local language.
- A requirement to appoint a depositary in respect of a third country fund. In some cases, this can be inconsistent with the custody rules applicable to the fund under its local laws or rules.
- A requirement to provide confirmation from the regulator in the jurisdiction of the third country fund that there is reciprocal market access. Few regulators in significant markets are willing to make the requisite assessment, let alone provide such confirmation.
- Local elaboration on the transparency requirements concerning remuneration of the staff of the AIFM, going beyond Article 42 AIFMD.

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Finally, the EVCA would like to note that while the ESMA questions focus on the obstacles encountered by third country managers (or managers of third country funds) when trying to register under Member States' NPPRs, sub-threshold EEA AIFMs too are adversely affected by the new requirements to meet when marketing EEA AIFs under other Member States' NPPRs as compared to a pre-AIFMD scenario.

**Q18: What have been the costs?**

The costs of operating under the NPPRs have varied significantly depending on the number of jurisdictions an AIFM has/or is potentially planning on marketing to. In addition, the differences and fragmentation referred to above necessitate taking relatively expensive (legal and other professional) advice whenever 'marketing' may be deemed to take place within a particular Member State.

**Q19: Have you exited countries since the entry into force of the AIFMD NPPR – and if so, why?**

Based on feedback from our members, a number of third country managers have ceased to market at all in the EEA, with the effect that EEA investors will have been denied access to them and the investment opportunities they might provide.

A second significant group, for whom EEA investors represent a more significant part of their investor base, have chosen to register for marketing only in a handful of jurisdictions in which (a) the NPPRs are most accessible such as Finland, The Netherlands, Sweden and the UK; and (b) they have a significant number of prospective investors likely to make sizeable commitments.

A third group, notably including the very largest global multi-strategy asset management firms and some Channel Islands headquartered managers have chosen to go through the trouble and expense of complying with a somewhat larger number of NPPR regimes, perhaps up to ten.

Very few have gone further.

**Q20: Have you been deterred from undertaking private placement, and if so why?**

See above.

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## QUESTIONS ON THE FUNCTIONING OF BOTH REGIMES

**Q21: What is the possible impact of an eventual extension of the passport to non-EU AIFMs on competition?**

The answer to this question depends to a large extent on the manner in which the passport is extended to non-EEA AIFMs and whether and if so how Member States revise existing rules regarding marketing by non-EEA AIFMs without the passport.

In principle, extension of the passport to non-EEA AIFMs (while keeping in place national private placement regimes) should increase competition, since extending the passport to non-EEA AIFMs should encourage more non-EEA AIFMs to market interests in the AIFs they manage in more Member States than they would otherwise do. This development would be very welcome, since EU investors would benefit from more investment options and the AIFMs' cost savings realized by using the passport.

The benefits of extending the passport to non-EEA AIFMs could be undermined, however, unless ESMA and the Commission

(i) address problems that have emerged with the passport for EEA AIFMs;
(ii) take an efficient, common-sense (and tailored) approach to the special/specific requirements that will apply only to non-EEA AIFMs; and/or
(iii) clarify how certain AIFMD provisions whose full application to non-EEA AIFMs with a small proportion of EEA investors (e.g., those relating to remuneration and capital) would be disproportionate should apply to non-EEA AIFMs making use of the passport.

The benefits of extending the passport to non-EEA AIFMs would also be undermined if and to the extent Member States that currently allow non-EEA AIFMs to market AIF interests without the passport restrict or eliminate this possibility upon extension of the passport to non-EEA AIFMs. The result of such a restriction or elimination would be to reduce competition, especially if the problems discussed below are not solved. This is the case because some non-EEA AIFMs only market in one or two EU countries and such managers are likely to stop marketing their product in those countries if they had to go through the whole EU AIFMD process which would be too costly and not efficient given they had only a few investors in Europe and they are already subject to supervision in their home country.

The problems that have emerged with the EU AIFM passport are discussed in response to questions 2 to 4.

Specifically in relation to non-EEA AIFMs, the EVCA has identified **four** main issues that will need to be addressed for the passport to work as intended: appropriate grandfathering/transition rules; determination of the Member State of reference; the requirement for OECD model tax convention-compliant agreements; and the requirement for guidance on proportionate application of certain AIFMD provisions to non-EEA AIFMs. Each of these issues is discussed in more detail below.

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## 1. Appropriate Grandfathering / Transition Rules

Articles 37 and 41 set out the requirements under which a non-EAE AIFM can manage an EEA AIF under the passport regime. **It is crucial that appropriate grandfathering rules be in place if the passport is introduced for non-EEA AIFMs.** For example, a transition rule will be required for funds which were marketed already prior to the introduction of the passport. As long as an AIFM has started marketing an AIF before the passport was introduced, it should be able to continue to market that fund until it has its final closing (which can sometimes be more than a year after first close). For example, such a transition rule could foresee that for two years after the introduction of the passport, any AIFs which were marketed already prior to such date can continue to be marketed under the old rules until the expiration of this two-year period. This would mirror the transitional provisions under Article 61(1) when the AIFMD started to apply in July 2013.

A transitional provision is important for closed-ended funds such as private equity funds because, in the current market, it can sometimes even take between 18 to 24 months from the start of marketing (in the non-AIFMD sense) to reach final close. Without an appropriate transitional rule these non-EEA AIFMs are under pressure to finish their closing before the passport is introduced as they would otherwise have to interrupt their fundraising process until they have obtained the passport.

## 2. Determination of Member State of Reference

Another area of specific relevance to non-EEA AIFMs is the mechanism for designating a Member State of reference. The AIFMD and the Level 2 measures adopted so far do not provide a reasonable level of legal certainty where a non-EEA AIFM intends to market AIF interests in multiple Member States. In practice, any third country manager wishing to commit to the EU market and obtain authorisation is sure to want to market in more than one EU Member State. According to Article 37 AIFMD, the determination of Member State of Reference in many circumstances is linked to the concept of “effective marketing”, i.e. the Member State of Reference is one of the Member States where the AIFM intends to develop effective marketing. It is important that regulatory authorities apply a reasonable and predictable approach in relation to the interpretation of that concept and, in particular, that they should respect the decision of a particular competent authority in the Member State of Reference to authorise the AIFM. Since the AIFMD is a maximum harmonization measure, supported by the European Commission Delegated Regulation with direct effect and directly binding Regulatory Technical Standards and Implementing Technical Standards and which provides for very limited Member State discretion, there is no risk of regulatory arbitrage.

The EVCA feels strongly that ESMA needs to **develop simple and practical criteria** for determining when there is deemed to be an “intention to develop effective marketing” in a Member State, especially in those cases where a non-EEA AIFM intends to market interests in one or more non-EEA AIFs in several or even all Member States (Article 37(4)(f) and (h) AIFMD). A fund management group will often already have some EU entities and personnel even if they are not responsible for AIF portfolio management or risk management. For example, a PE/VC fund management group may:

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(a) have one or more EU-headquartered portfolio companies or an investment strategy focusing on certain countries or regions;
(b) typically use, to organise its holdings, special purpose acquisition vehicles in an EU Member State; or
(c) have an affiliate providing advisory and transaction arrangement services to the non-EEA AIFM or AIF. These factors should be taken into account when confirming that the intention to develop effective marketing in a particular Member State exists.

Furthermore, the procedures should also expressly **recognize the possibility for an AIFM to request a change in its Member State of Reference**, which may be appropriate for instance where the AIFM's marketing or investment strategy has evolved since the original request (as already contemplated in Article 37 AIFMD). On the other hand, the non-EEA AIFM should not be required to change its Member State of Reference because the criterion which was relevant for determining the Member State of Reference changes or does not pan out as expected (for example, if few or no prospective investors in the Member State of Reference ultimately decide to invest); ESMA should provide specific guidance clarifying that this should not be viewed as a 'change in marketing strategy' for the purposes of paragraph 11(a) of Article 37.

### 3. Requirement for OECD Model Tax Convention-compliant agreements

Several Articles of the Directive concerning non-EEA AIFMs and AIFs require that there should be in place between third countries and EU Member States OECD Model Tax Convention-compliant agreements. Examples include Article 35(2)(c) and Article 37(7)(f).

It is important that as soon as possible ESMA collate and **publish a table summarising which third countries have** – in their view - **entered into OECD Model Tax Convention-compliant agreements with EEA Member States**, in much the same way as ESMA helpfully published the matrix of supervisory cooperation arrangements for the purposes of Articles 42 and 36. Alternatively, we are aware of a list of agreements at http://eoi-tax.org/; ESMA could confirm that it regards this as an authoritative list. However, not all agreements listed on that website have been reviewed for OECD compliance, so the list is not a complete one and ESMA would need to supplement it.

We also note that there appear to be a number of Member States which have not entered into compliant Tax Information Exchange Agreements with important third countries, limiting the usefulness of the passport for third country fund managers, and continues the existing fragmentation of the EU market.

### 4. Requirement for guidance on proportionate application of certain AIFMD provisions to non-EEA AIFMs

Even before the introduction of the AIFMD, EEA investors represented a small proportion of the investors in most global funds. The obstacles created by the NPPR regimes discussed above have likely reduced the proportion of EEA investors still further. The extension of the passport to non-EEA AIFMs has the potential to increase competition and investor choice if done in an effective way. However, full application of certain AIFMD provisions that diverge significantly

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from global regulatory norms – in particular those relating to remuneration and capital requirements – would be disproportionate. ESMA and the European Commission have stressed in their delegated regulations and guidance under the AIFMD that the AIFMD should be applied in a proportionate, tailored way. We submit that this principle should also apply to the application of the AIFMD to non-EEA AIFMs in the event the passport is extended to them and we invite ESMA to provide guidance on these points. Otherwise, global AIFMs will be unlikely to make use of the AIFMD passport and EEA investors will continue to suffer from reduced competition and choice.

**Q22: What are the risks of an eventual extension of the passport to non-EU AIFMs in relation to market disruptions and investor protection?**

The EVCA submits that an **appropriate and efficient introduction of the passport for non-EEA AIFMs would not create any risk of market disruption or undermine current levels of investor protection**, but would instead increase market efficiency by encouraging more non-EU AIFMs to market interests in more Member States than they otherwise would. If the passport is extended to non-EEA AIFMs but without sufficiently addressing the issues raised in response to question 21, the passport will not live up to its potential. In fact, if these issues are not solved and Member States use the extension of the passport to limit or eliminate the current possibility for non-EEA AIFMs to market AIF interests without the passport, the net effect on the market will be negative.

**Q23: Is there any particular non-EU country where, as a consequence of the regulatory environment (financial regulation, supervision, tax and anti-money laundering provisions), an eventual extension of the passport would put EU AIFMs and UCITS management companies at a disadvantage vis-a-vis the AIFMs from that country? Please specify and explain.**

It is important that ESMA should keep in mind that most of the main international financial centres now operate in accordance with common international protocols and there are numerous types of laws (regulatory requirements and tax provisions across jurisdictions) relevant to the establishment, marketing and operation of private equity and venture capital funds. The regulatory requirements are one aspect of the framework in which an AIFM has to operate.

Such laws include:

- laws governing the vehicle(s) used to establish the fund, such as limited partnership laws;
- tax laws applicable to investors and/or fund vehicles;
- tax reporting or filing obligations e.g. FATCA and the Common Reporting Standard;
- laws concerning permissible investments by investors e.g. CRD IV, Solvency II, the Volcker rule and ERISA;
- laws concerning the preparation, audit and publication of accounts e.g. the EU Accounting Directive;

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- laws concerning the prevention of financial crime including the identification of investors and sanctions laws; and
- in some cases, local product regulation (although this is the exception not the rule).

Quite properly, the AIFMD seeks only to normalise (and to an extent harmonise) certain limited aspects of the operation of alternative investment funds, including the fitness and propriety of the AIFM (and its staff), its governance, certain aspects of the conduct of its business and transparency towards regulators (for the purposes of systemic risk oversight) and investors.

In our view, it would be beyond the scope of ESMA's review to seek to understand the various laws which affect the competitive landscape relevant to the extension of the passport. For reasons given elsewhere, we believe that ESMA should focus instead on removing barriers to entry and competitive distortions created by the AIFMD and described in the preceding sections of this response.

**Q24: Is there any particular non-EU country that imposes heavier requirements for EU AIFMs or UCITS management companies in comparison to those that non-EU AIFMs have to comply with in order to do business in the EU? Please specify and explain.**

The EVCA is unaware of any instances where EU AIFMs or UCITS management companies are subject to heavier requirements than their non-EU competitors in order to do business in the EU.

Based on a high-level review, it seems that the only specific additional requirements are national requirements for marketing, e.g. in the UAE having a local introducer, or local regulated entity. However, this is no different if you are a non-EEA or EEA manager looking to raise funds in the UAE.

**Q25: Have you experienced difficulties or limitations in establishing or marketing AIFs or UCITS in any non-EU country? Please specify the non-EU country and the specific difficulties or limitations that you have encountered.**

We are not aware of any such difficulties or limitations.

**Q26: Do you have evidence showing that existing difficulties or limitations in non-EU countries have deterred fund managers in your jurisdiction from deciding to establish or market AIFs or UCITS they manage in the non-EU country? Please specify the non-EU country and explain the difficulties or limitations.**

Please refer to our response to Question 23 above.

**Q27: Could you please identify the non-EU countries that, in your opinion, grant market access to EU AIFMs and UCITS management companies under broadly equivalent conditions?**

Prominent non-EEA jurisdictions including the U.S. and Channel Islands have both manager and product-based regulation.

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In recent years, significant non-EEA fund domiciles have strengthened both manager and fund related regulation with a focus around investors. For example, the Alternative Investment Funds (Jersey) Regulations 2012, AIFMD Rules 2013 in Guernsey, and Dodd-Frank in the U.S.

These regulations either incorporate the AIFM rules into the non-EEA fund regulations, or regulate the fund industry with the same effect as the AIFMD.

Alternative funds are largely marketed towards professional investors as either institutional investors or HNWI, and the additional regulations reduce the systemic risks to those investors.

The requirements for EEA and non-EEA AIFMs accessing the EEA are largely a level playing field among significant non-EEA fund domiciles.

As at 1 January 2015 and on the basis of information provided by the Jersey Financial Services Commission, the number of Jersey established entities which are engaged in EEA marketing for the purpose of the AIFMD in accordance with Jersey's AIFMD-compliant regime include 60 Jersey AIFMs and 186 Jersey AIFs, with Jersey depositories acting in relation to 14 AIFs.

Furthermore, as at 1 January 2015, the Guernsey Financial Services Commission ("GFSC") has confirmed that 45 Guernsey AIFMs are marketing 96 AIFs by way of private placement into the EEA. Please note that the figures provided by the GFSC do not include the marketing of Guernsey AIFs by non-Guernsey AIFMs.

**Q28: What are the conditions that EU AIFMs and UCITS management companies have to comply with in order to manage or market AIFs or UCITS in your jurisdiction? Please specify.**

N/A

**Q29: In what way is your current regime (regulatory, tax etc.) different from the EU framework? Please explain.**

Please see above.

**Submission**

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*About the PAE*

*The Public Affairs Executive (PAE) consists of representatives from the venture capital, mid-market and large buyout parts of the private equity industry, as well as institutional investors and representatives of national private equity associations (NVCAs). The PAE represents the views of this industry in EU-level public affairs and aims to improve the understanding of its activities and its importance for the European economy.*

*About EVCA*

*The EVCA is the voice of European private equity.*

*Our membership covers the full range of private equity activity, from early-stage venture capital to the largest private equity firms, investors such as pension funds, insurance companies, fund-of-funds and family offices and associate members from related professions. We represent 650 member firms and 500 affiliate members.*

*The EVCA shapes the future direction of the industry, while promoting it to stakeholders such as entrepreneurs, business owners and employee representatives.*

*We explain private equity to the public and help shape public policy, so that our members can conduct their business effectively.*

*The EVCA is responsible for the industry's professional standards, demanding accountability, good governance and transparency from our members and spreading best practice through our training courses.*

*We have the facts when it comes to European private equity, thanks to our trusted and authoritative research and analysis.*

*The EVCA has 25 dedicated staff working in Brussels to make sure that our industry is heard.*

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