

# Gernandt & Danielsson

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# Navigating Private Placement Regimes for non-EEA AIFMs– Sweden, Finland and Norway–

With kind contribution from  
Dittmar & Indrenius in relation to Finnish law  
and Wiersholm in relation to Norwegian law

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# Agenda

- Marketing of funds via private placement by non-EEA AIFMs
- Definition of marketing
- Requirement for marketing license of non-EEA AIFMs
- Activities deemed as marketing
- Territorial scope of the requirements
- Reverse enquiries
- Requirements for a marketing license
- Ongoing compliance requirements

# Agenda

- Consequences of breaches of any of the private placement requirements
- Future regulatory changes for private placement rules

# Marketing of funds via private placement by non-EEA AIFMs

## *Sweden*

- Funds can be marketed in Sweden via private placement regime based on article 42 of the AIFMD
- The main legislation which applies to marketing of funds is the Alternative Investment Fund Managers Act (2013:561), which entered into force on 22 July 2013

## *Finland*

- Funds can be marketed in Finland via private placement regime based on article 42 of the AIFMD
- The main legislation which applies to marketing of funds is the Act on Alternative Investment Fund Managers (162/2014), which entered into force on 15 March 2014

# Marketing of funds via private placement by non-EEA AIFMs

## *Norway*

- Funds can be marketed in Norway via private placement regime based on article 42 of the AIFMD
- The main legislation which applies to marketing of funds is the Alternative Investment Fund Managers act (20. June 2014 no 28) which entered into force on 1 July 2014

# Definition of marketing

## *Sweden*

- The definition of marketing in the Swedish AIFM Act is “*direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or with investors domiciled or with a registered office in the EEA*”

## *Finland*

- The definition of marketing in the Finnish AIFM Act is “*direct or indirect offering or placement at the initiative or on behalf of the AIFM of units or shares of an AIF it manages to or with Finnish investors*”



# Definition of marketing

## *Norway*

- The definition of marketing in the Norwegian AIFM Act is “*direct or indirect offering or placement of units or shares in alternative investment funds on the initiative of the manager or on behalf of the manager*”

# Requirement for marketing license of non-EEA AIFMs

## *Sweden*

- Sweden has implemented article 42 of the AIFMD
- In Sweden a marketing license is required for a non-EEA AIFM which seeks to market units or shares in a fund to professional investors in Sweden

## *Finland*

- Finland has implemented article 42 of the AIFMD
- In Finland a marketing license is required for a non-EEA AIFM which seeks to market units in a fund to professional investors in Finland

# Requirement for marketing license of non-EEA AIFMs

## *Norway*

- Norway has implemented article 42 of the AIFMD
- In Norway a marketing license is required for a non-EEA AIFM which seeks to market units or shares in a fund to professional investors in Norway

# Activities deemed as marketing

*Sweden, Finland and Norway*

- Examples of activities that are likely to be deemed as falling under the term “marketing” are
  - a) cold calls (including calls, emails, faxes, etc.) to prospective investors,
  - b) arranging meetings from outside your jurisdiction with prospective investors via phone, email, etc.,
  - c) one on one visits with prospective investors held inside your country,
  - d) having a website that discloses fund information in the local language, and
  - e) distributing the manager’s monthly newsletter or other materials cross border from outside your jurisdiction or from within your jurisdiction.

# Activities deemed as marketing

*Sweden, Finland and Norway*

- Examples of activities that are likely *not* to be deemed as falling under the term “marketing” are
  - a) providing draft offering documents of a fund yet to be established, and
  - b) marketing of a strategy/idea of a fund yet to be established.

However, prior to any investment the AIFM must have obtained a marketing license in Sweden, Finland or Norway as relevant.

# Territorial scope of the requirements

## *Sweden*

- Marketing in Sweden or marketing directed towards investors having residence in Sweden is likely deemed as marketing requiring a marketing license

## *Finland*

- Marketing in Finland or marketing directed towards investors having residence in Finland is likely deemed as marketing requiring a marketing license

# Territorial scope of the requirements

## *Norway*

- Marketing in Norway or marketing directed towards investors having residence in Norway is likely deemed as marketing requiring a marketing license

# Reverse enquiries

## *Sweden*

- Reverse enquiries are recognised in Sweden
- There is no definition set out in the law, but from the preparatory works it follows that it is not considered “marketing” if the investor on his own initiative contacts the AIFM
- Very limited guidance is provided in the preparatory works

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# Requirements for a marketing license

## Sweden

- Application for an article 42 marketing license must contain, *inter alia*,
  - a) how the AIFM will fulfil certain transparency requirements (annual reporting, disclosure to investors and reporting to authorities) and obligations applicable where the fund acquire control of non-listed companies and issuers,
  - b) a business plan on the marketing,
  - c) fund rules or equivalent regulations and offering documents, and
  - d) information on the measures the AIFM has adopted and taken to prevent units and shares in the fund from being marketed to non-professional investors.

Application fee is SEK 22,000 per fund. Handling time maximum 60 days.

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  - a) how the AIFM will fulfil certain transparency requirements (annual reporting, disclosure to investors and reporting to authorities) and obligations applicable where the fund acquire control of non-listed companies and issuers,
  - b) fund rules or equivalent regulations and offering documents, and
  - c) basic information about the marketed funds and the AIFM for regulatory reporting purposes.

Application fee is EUR 2,600 per fund. No fixed handling time.

# Requirements for a marketing license

## Norway

- Application for an article 42 marketing license must contain, *inter alia*,
  - a) how the AIFM will fulfil certain transparency requirements (annual reporting, disclosure to investors and reporting to authorities) and obligations applicable where the fund acquire control of non-listed companies and issuers,
  - b) fund rules or equivalent regulations and offering documents,
  - c) basic information about the marketed funds and the AIFM for regulatory reporting purposes, and
  - d) information on the measures the AIFM has adopted and taken to prevent units and shares in the fund from being marketed to non-professional investors.

# Requirements for a marketing license

## *Norway*

No application fee. No fixed handling time. Standard application form available at the Norwegian regulator's web site, [www.finanstilsynet.no](http://www.finanstilsynet.no)

# Ongoing compliance requirements

## *Sweden*

- Certain regulatory and ongoing investor reporting
- Information to the regulator without delay of any changes to the information provided for regulatory reporting purposes and the investors of any material changes to the earlier disclosed information
- Information to the regulator of material changes to the information provided in the application
- For certain funds there is also a requirement for ongoing tax reporting

# Ongoing compliance requirements

## *Finland*

- Certain regulatory and ongoing investor reporting
- Information to the regulator without delay of any changes to the information provided for regulatory reporting purposes and the investors of any material changes to the earlier disclosed information
- Notify Finnish authorities of any suspicious transactions in connection with the marketing of the funds in Finland

# Ongoing compliance requirements

## *Norway*

- Certain regulatory and ongoing investor reporting
- Information to the regulator without delay of any changes to the information provided for regulatory reporting purposes and the investors of any material changes to the earlier disclosed information
- Information to the regulator of material changes to the information provided in the application



# Consequences of breaches of any of the private placement requirements

## *Sweden*

- The Swedish FSA would most likely first approach the AIFM and then order the entity to cease with the marketing. Such an order may be combined with a conditional fine.

## *Finland*

- The Finnish FSA would most likely first approach the AIFM and order it to cease the marketing. The AIFM may commit a criminal offence under Finnish law if it continues the marketing or markets without a license.

# Consequences of breaches of any of the private placement requirements

## *Norway*

- The Norwegian FSA would most likely first approach the AIFM and then order the entity to cease with the marketing. The AIFM may commit a criminal offence under Norwegian law if it continues the marketing or markets without a license.

# Future regulatory changes for private placement rules

## *Sweden*

- The implementation of the possible changes foreseen in the AIFMD, i.e. the possibility for non-EEA managers to make use of an EU-passport from 2015 and the possibility for revocation of the private placement rules in 2018.
- The relevant laws regarding these two possible changes were adopted in Sweden in 2014, but have not yet entered into force.
- It should be noted that the Swedish laws may need to be adjusted in order to be consistent with ESMA's advice (see ESMA's advice to the European Parliament, the Council and the Commission on the application of the AIFMD passport to non-EU AIFMs and AIFs, 18 July 2016, ESMA/2016/1140).

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## *Finland*

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- No laws regarding these two possible changes have yet been adopted.

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