



# Private equity forum

26 November 2019



# Agenda

## **Introduction**

Nick Stevens

KPMG CI

## **A look at the PE cycle**

Nick Stevens

KPMG CI

## **The view from London**

Jonathan Martin

KPMG UK

## **KPMG's 2019 AIFMD report**

Ben Honeywood

KPMG CI

## **Substance considerations**

Paul Eastwood

KPMG CI

## **Q&A**

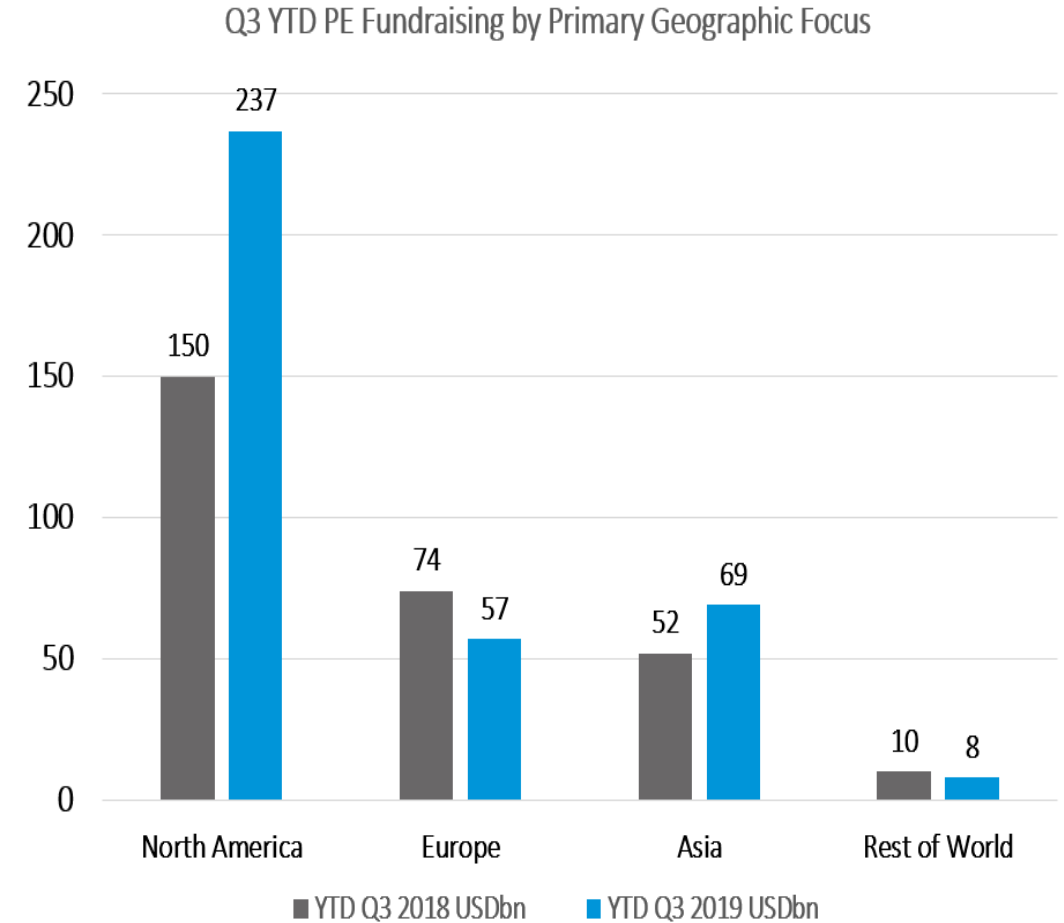
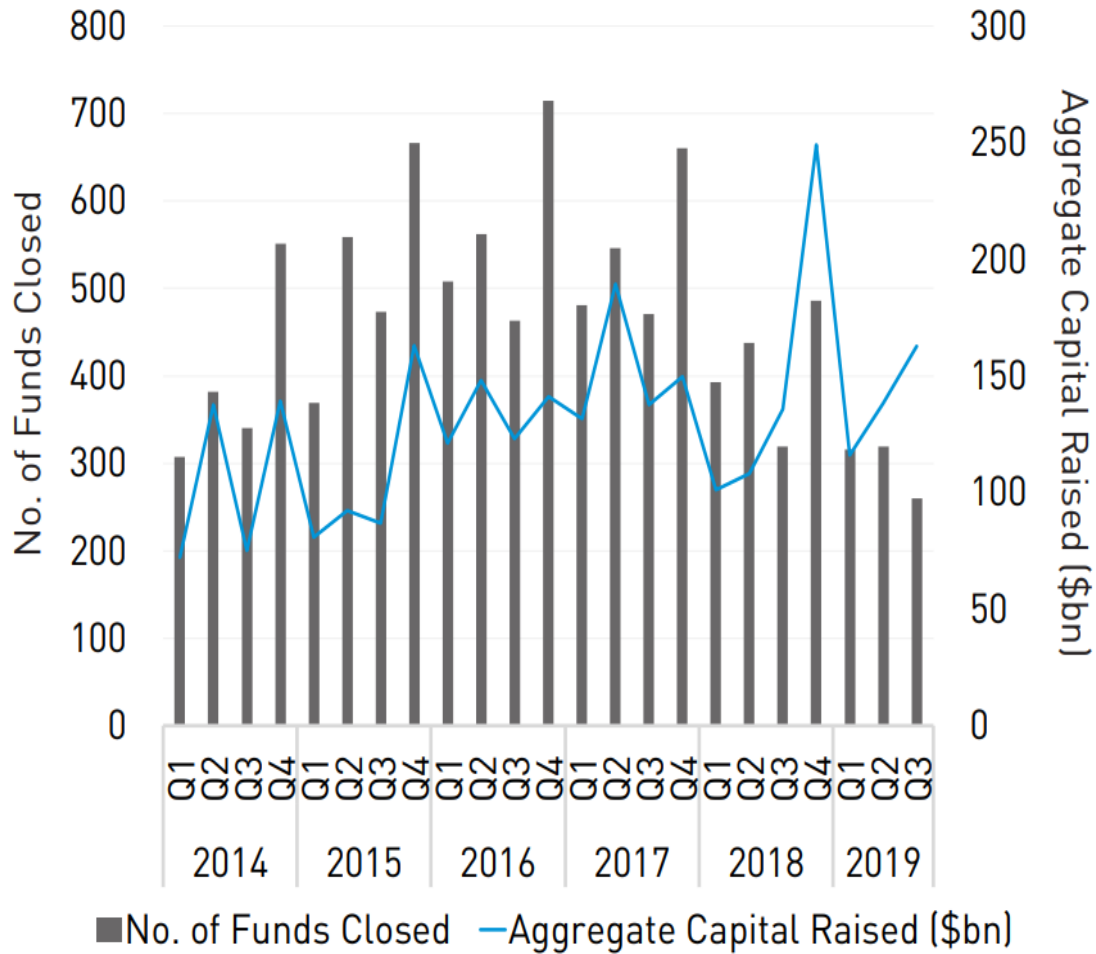




# A look at the PE cycle

Nick Stevens

# Global fund raising activity up to Q3 2019

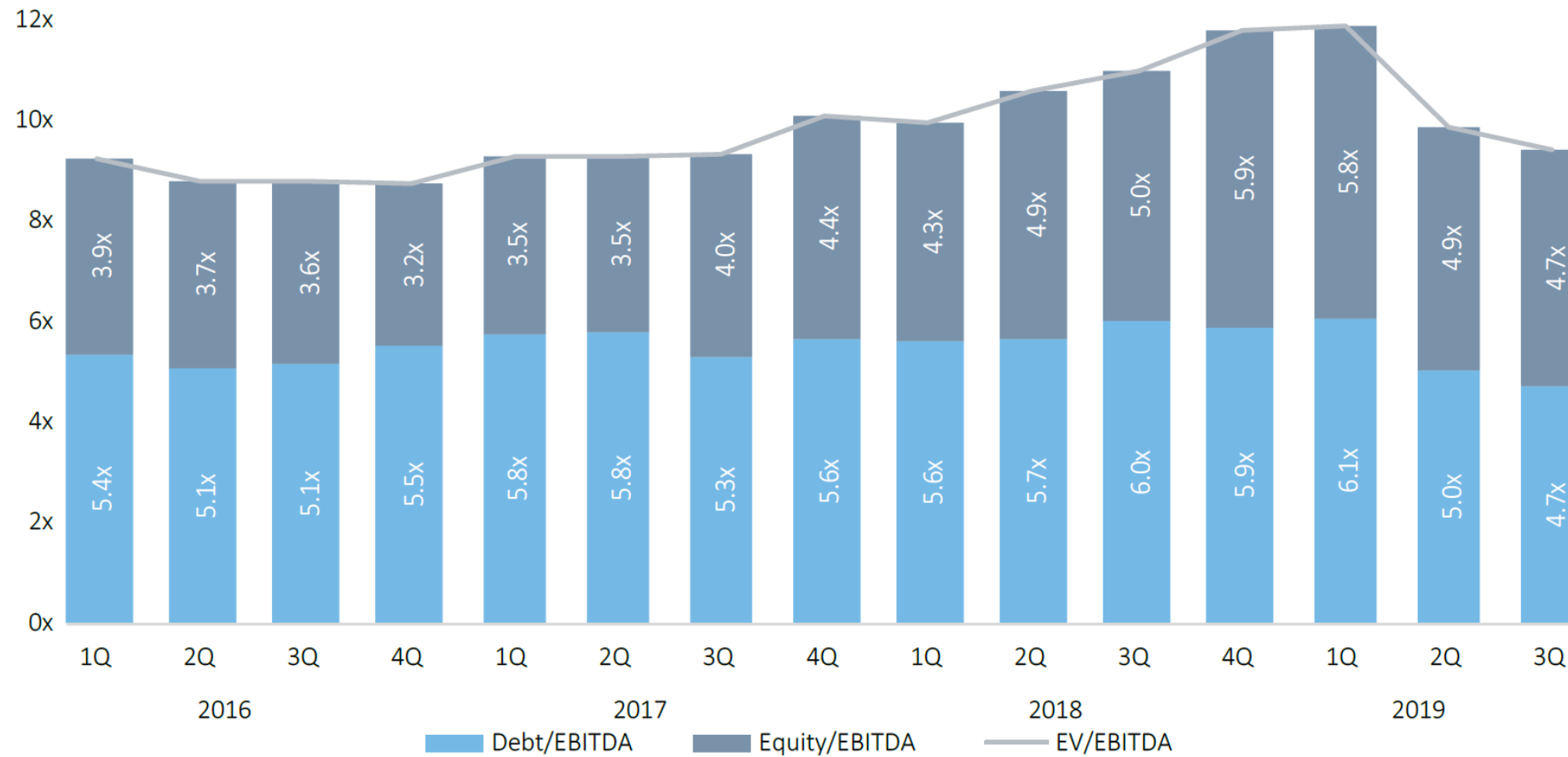


Source: Pitchbook / Preqin



# Multiples - European buyout sector

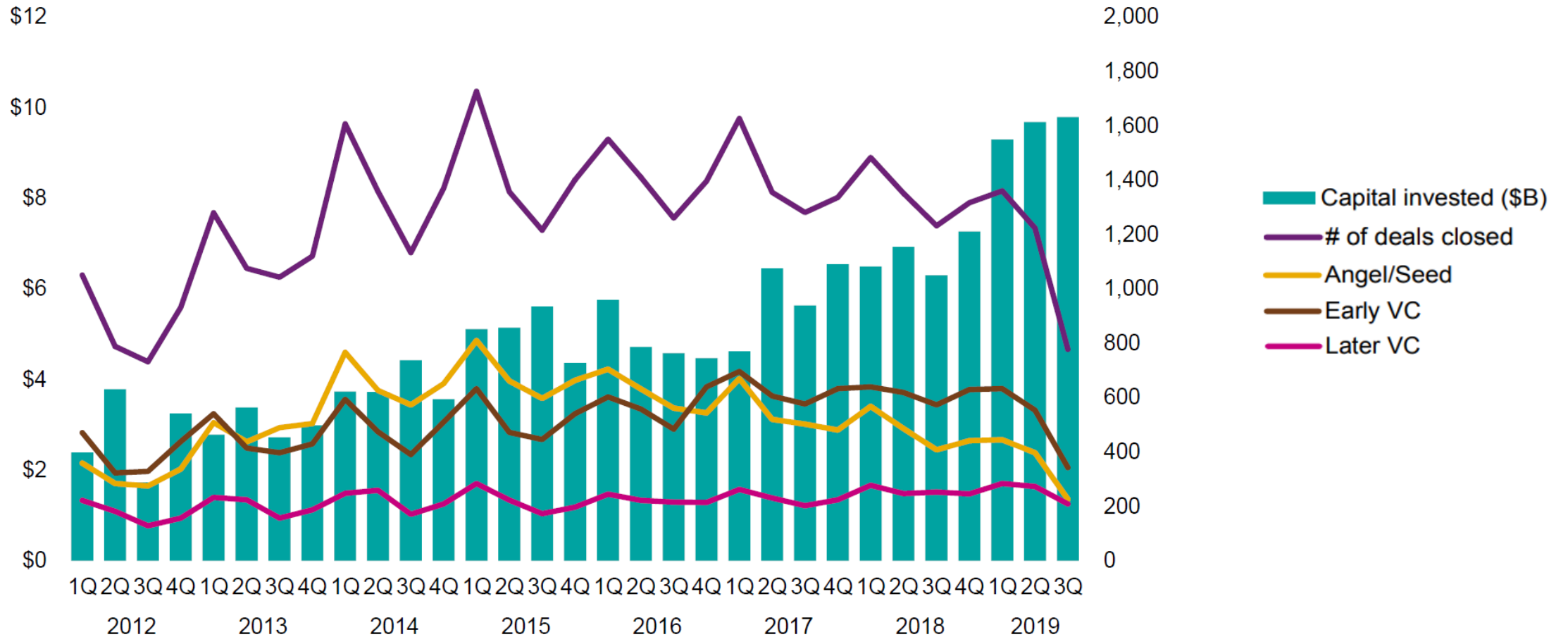
Rolling four-quarter median PE buyout EV/EBITDA multiple – Europe, to Q3 2019



# European venture capital on the rise in 2019

## KPMG's Venture Pulse - Global report on quarterly VC activity:

<https://home.kpmg/xx/en/home/campaigns/2019/10/venture-pulse-q3-2019.html>





# The view from London

Jonathan Martin

# Fundraising

- Steady as she goes....
- If you have momentum
- Try something else...
- So why not London?
- Where's the lure?
- Further afield..



# Regulatory

- The future of tax
- HMRC
- FRC Ethical Standard

# The Market

- Multiples
- What's en vogue
- Fees and carry



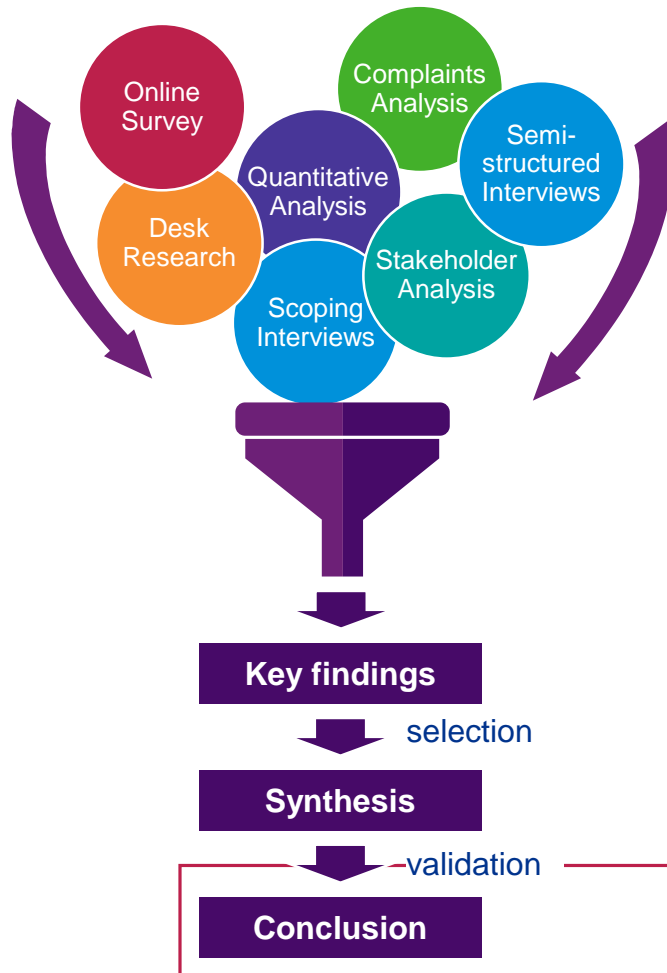
# AIFMD – KPMG EU report

**Report on the Operation of the Alternative Investment Fund Managers Directive (AIFMD) – Directive 2011/61/EU**

Published by the European Commission

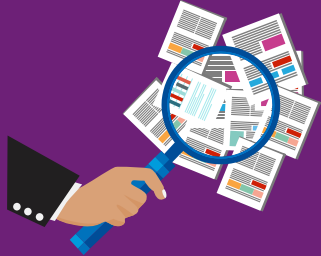
**Ben Honeywood**

# Methodological framework



- Collection of qualitative and quantitative data in a step-by-step process:
  - **Stakeholder analysis** - identification of most relevant stakeholders such as AIFMs, depositaries, professional investors.
  - Initial round of 17 **scoping interviews** with national, EU and international associations and NCAs in France, Germany, Ireland and Luxembourg.
  - **Online Survey** – generated with 478 useable response sets from all relevant stakeholder groups, in 15 EU Member States using KPMG’s exclusive survey tool.
  - **Desk Research** - analysis of legal texts, secondary literature, policy background papers and data published by national and EU bodies.
  - **Quantitative Analysis** - quantitative data were collected from ESMA, NCAs, national and EU associations.
  - 80 **semi-structured interviews** with key stakeholders.
- Evidence chain on key findings.
- Synthesis of findings from qualitative and quantitative data collection, linking the results of our research to the initial policy intentions.
- Development of sound and reliable conclusions.

# Overall assessment



**AIFMD has played a major role in helping to create an internal market for AIFs and a harmonised and stringent regulatory and supervisory framework for AIFMs.**

**Most areas of the provisions have contributed to the achievement of the AIFMD's objectives in an effective and efficient way. There are, however, aspects that have not contributed, or may be counter to, the achievement of these aims.**

**The assessment revealed some crucial points which may potentially be the focus of further consideration by the EC, including in relation to disclosures to investors and marketing.**

# Select key findings

## Marketing

The EU **marketing passport** is suffering from the different approaches taken by local regulators – undermining the primary purpose of the single market.

Therefore, it is clearly of added value that national private placement regimes (NPPRs) are permitted to continue to operate.

## non-listed investments

Area of particular criticism:

- i. The extent of the notifications to local regulators was viewed as overly burdensome given the typical small scale of operations of PE / VC firms.
- ii. It remains unclear what the local regulators are doing with the information

## Depo

- i. Applied inconsistently across EU member states
- ii. “One size fits all” approach, not considering the asset class or geography.

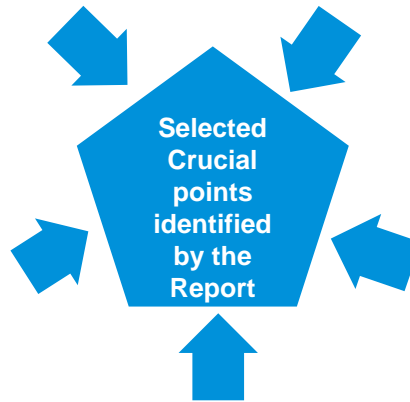
## Disclosure

- I. There remains ambiguity around the application of certain disclosure requirements, notably regarding remuneration
- II. excessive disclosures prevent investors from obtaining a clear understanding of the AIF’s investment proposal, yet remains insufficient in core areas such as fees, costs and charges

## Reporting to local regulators

Large volumes of data are submitted by AIFMs to local regulators - but **not all the data may be essential, some may be insufficient and some are duplicative.**

c50% felt there was an inconsistent understanding of this requirement.



# Marketing of AIFs



## Objective: develop the Single Market in AIFs

- Efficiency of the **EU marketing passport** is suffering from the different approaches taken by NCAs (as recognised in the EC Cross-Border Distribution Proposal):
  - Lack of transparency with regard to the differing national rules and NCA processes.
  - Additional costs for the industry and investors.
- Marketing of non-EU AIFs heavily dependent on national measures and demand by professional investors in the Member State for non-EU AIFs, which varies.
  - It has been of EU added value that national private placement regimes (NPPRs) are permitted to operate.
  - Calls for the non-EU passport to be introduced but NPPRs to remain

# Disclosure rules



**Objective: proper monitoring and limitation of micro-prudential risks & common approach to protect professional investors**

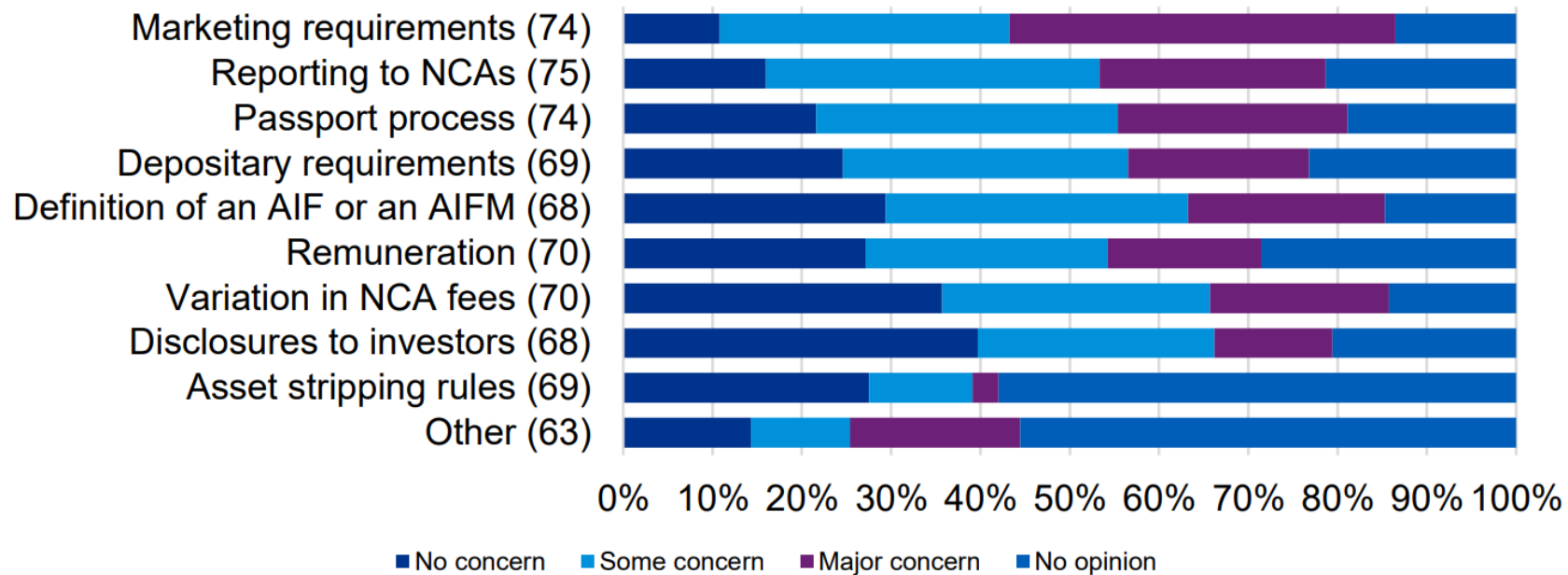
- Not clear whether the AIFMD provisions have enabled more informed investment decisions by AIF investors.
- Experienced and well-informed investors have different reporting needs.
- Insufficient or non-standardised disclosures of all fees, costs and charges in e.g. private equity investment AIFs.
- Requirements on disclosures to investors are excessive in quantity and therefore are ignored or prevent investors from obtaining a clear understanding of the AIF's investment proposal.
- AIFMD requirements are more extensive than, but not inconsistent, with the UCITSD provisions.



# The main criticism....

Consistency of application – more than half of respondents felt AIFMD has been inconsistently applied across member states

Figure 21: Inconsistent application of AIFMD with regard to specific issues



Source: KPMG (2018). Note: This topic was discussed during the semi-structured interviews. The number of respondents varied from 63 to 75.

# Other practical considerations

- Costs for AIFM services overall have increased according to the majority (75%) of respondent AIFMs;
- The vast majority (84%) of institutional investors and trade bodies representing institutional investors (including some bodies in third countries), AIFMD had not influenced their decisions to invest through AIFs;
- Most of the interviewees that deemed obtaining an AIFM authorisation takes longer than the three months set out in the Directive.

# Latest update from the authors

- There remains no news on 3rd country passport
- The current 'review' of AIFMD has been very slow, which should have finished by now. In all likelihood, the conclusions of the review will take place once the UK has lost all influence, which means the 3<sup>rd</sup> country passports may be deleted from the directive.....
- However, there is no indication that NPPR will be turned off.

..... but what does this mean for Jersey

### **Faster, cheaper and easier....**

A Jersey fund structure remains generally faster, cheaper and easier to establish and run when comparing to an EU domiciled fully AIFMD regulated AIF.

### **NPPR remains relevant in most situations**

EU statistics show that 97 per cent of fund managers market to three or fewer EU member states, largely negating the need for a costly marketing passport for the majority – notably when the EU passport does not in fact offer seamless marketing across the EU, referencing elements that 'hinder cross-border distribution'.

When the fund will only be marketed to a small number of EU member states, Jersey remains v relevant option - lower costs, ease and speed of establishment.



# Substance considerations

Paul Eastwood

# Where are we?

- Economic Substance Law – enacted and in-force
- Amendment to Law adopted by the States Assembly and approved by the Privy Council
  - Amendments necessary to ensure law was OECD compliant
- EU “whitelisted” Jersey in March 2019 – recognition that this is an ongoing process
- OECD agreed that Jersey’s legislation meets the global economic substance requirement in June 2019
- OECD also agreed that Jersey has a fully equipped monitoring mechanism – important for exchange of information



# Where are they?

- **Blacklisted: Vanuatu**
- **Grey Listed: Bahamas, Bermuda, BVI and Cayman Islands**
  - Required to adapt legislation to deal with economic substance regarding funds
  - **Barbados** has until end of year to deal with economic substance law
- Legislation now effective in all criterion 2.2 jurisdictions
- Subtle differences in scope and interpretation
- GNs in most jurisdictions including CDs, BVI, Cayman and Bermuda
- Only CDs and Cayman have received clearance from OECD that they have a fully equipped monitoring mechanism (strictly Cayman “in-principle” clearance)

# Relevant Activities + Economic Substance Test



## Economic Substance Test

### i. Directed & Managed in Jersey

This part of the test is similar, but not identical, to the familiar “central management and control” test, but is more prescriptive in its application.

### ii. CIGA

Resident companies are required to conduct all CIGA in Jersey. The ESL provides a list of what constitutes CIGA separately for each relevant activity.

Where CIGA is carried out by another entity (outsourcing), the relevant company is required to monitor and control the carrying out of that activity.

### iii. Adequacy requirements with regard to the level of relevant activity carried on in Jersey

Companies carrying on a relevant activity must demonstrate adequate levels of **(qualified) employees** (whether or not employed by the relevant company or by another company) and **annual expenditure** in Jersey, as well as that there are adequate **physical assets** in Jersey.



# CD Guidance Notes v2.0

- v2.0 of the CD Guidance Notes issued 22 November 2019
- Likely to be the last Guidance Notes issued – progress on that basis
- Number of helpful clarifications:
  - Regulated CIVs out of scope
  - 2020 exclusion will not extend to self-managed CIVs, which will be in as a fund manager, but will there be any income from that activity?
  - Where decisions are the CIGA: “...isolated decisions may be taken outside the Island provided that it can be evidenced that the decisions taken and the CIGA undertaken in the Island are of a quality and quantity to clearly outweigh the question that the CIGA involving the decisions in undertaken outside the Island.”
  - XYZ Ltd example survived



# CD Guidance Notes v2.0

- Confirmation of treatment of PCCs and ICCs
- Further information on sanctions – penalties & info exchange
- (Pure Equity) Holding Company – addressing EU concerns regarding attempts to “hide” other relevant activities within pure equity holding company
- Distribution and service centre – limitation of non-main activity exclusion – is it profitable?
- Guidance now provided in context of IP holding, insurance and shipping
- Do not answer every question/address every issue on economic substance



# Are you prepared?

## What should you be doing?

- Establish which rules apply
- Classification
- Gap analysis
- Taking action to fill any gaps identified
- Collating information for tax returns
- Preparing tax returns
- Retaining documentation – 6 year enquiry window





# Q&A





Thank you

# Your contacts at KPMG in the Channel Islands



**Nick Stevens**  
**Partner, Private Equity Group**  
T: +44 (0)1534 608441  
E: [nstevens@kpmg.com](mailto:nstevens@kpmg.com)



**Paul Eastwood**  
**Director, Tax**  
T: +44 (0)1534 608433  
E: [peastwood@kpmg.com](mailto:peastwood@kpmg.com)



**Jonathan Martin**  
**Partner, FS AM Aud Cassidy**  
T: +44 (0)207 3114630  
E: [jonathan.m.martin@kpmg.co.uk](mailto:jonathan.m.martin@kpmg.co.uk)



**Ben Honeywood**  
**Director, Private Equity Group**  
T: +44 (0)1534 608455  
E: [benhoneywood@kpmg.com](mailto:benhoneywood@kpmg.com)



The information contained herein is of a general nature and is not intended to address the circumstances of any particular individual or entity. Although we endeavour to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation.

© 2019 KPMG Channel Islands Limited, a Jersey company and a member firm of the KPMG network of independent member firms affiliated with KPMG International Cooperative ("KPMG International"), a Swiss entity. All rights reserved.

The KPMG name and logo are registered trademarks or trademarks of KPMG International.