The NED

Independent intelligence on fund director issues

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AIMA Guide leaves unanswered questions

AIMA has published an updated Guide for fund directors. It examines some of the practical, legal and tax considerations when selecting and appointing fund directors and explains the basic tasks that they should carry out. But it steers clear of controversial areas regularly covered by The NED and makes hardly any mention of directors' responsibilities to investors.

In particular the decision not to address investors' interests, nor directors' responsibilities to investors, has left a number of people in this community scratching their heads. There are only a few references to investors in this 80 page AIMA Guide. But there is a short paragraph on investor expectations and they are also mentioned in the Guide's definition of the purpose of fund governance.

The Guide will be helpful for those wishing to become alternative fund directors for the first time. It will also be of assistance to managers and others unfamiliar with the issues or not necessarily up to date with them in the AIFMD era. (There is a section on AIFMD which many will find helpful.) And there is a useful series of appendices. Amongst other topics these are on: US funds, Irish funds, Luxembourg funds and Cayman funds. There is also information on tax issues in these jurisdictions.

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BEPS could change fund director geography

The location of board meetings and the residency of directors have traditionally been critical factors in determining a fund's tax position. That is likely to change under BEPS. Boutique managers are exempt from BEPS (Base Erosion and Profit Shifting). But this major change to the global tax system will impact fund structures in many ways and boutiques will not be immune.

According to the OECD the criteria for determining where a company is based for tax purposes dates back to the era of the League of Nations from the inter war years. Pascal Saint-Amans, Director for the OECD's Centre for Tax Policy and Administration, says that BEPS will change these long established current arrangements.

Governments of G20 countries, and many others, believe that the international tax system is no longer fit for purpose.

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AIMA updates its Guide for fund directors

AIMA has published an updated Fund Directors' Guide. The Guide, last published in 2008, takes account of regulatory and tax reforms since the financial crisis, such as AIFMD and FATCA, which have brought significant changes to the role and responsibilities of fund directors and boards.

The Guide is designed to be used by investment managers, fund promoters and existing and prospective fund directors. New sections have been added covering, among other topics, the general approach to fund governance, monitoring of trading practices and business continuity planning.

The basic tasks that fund directors should carry out are explained, while issues relating to the way in which fund directors manage their relationships with the fund's service providers are also discussed.

Guidance is provided on several important issues, including, for example, the review of annual audited accounts and issues relating to directors' and officers' liability insurance. In addition, the Guide assesses the impact of taxation on the fund, its service providers and its directors.

Jack Inglis, AIMA CEO, said: "The role and responsibilities of hedge fund directors and boards have changed significantly since the financial crisis."

See article page 1 for more.

"The role and responsibilities of hedge fund directors and boards have changed significantly since the financial crisis" *Jack Inglis*

Beneficial ownership register a threat to hedge funds

One of the last acts of the outgoing coalition government in the UK was to warn the Crown Dependencies and Overseas Territories that they only have until this November to create a public registry of beneficial owners. Letters were sent from the Treasury and the Foreign Office to the Crown Dependencies and Overseas Territories asking them to "improve transparency" and implement this new requirement. Bermuda, which already has a central register, was told to make the information more accessible.

But lobbying against the register has intensified since the election. The Cayman News Service website reports that at least eight donors to the Conservative party during the recent election campaign, who contributed more than £5.5m to the party, are fund managers or directors of hedge funds that have lobbied the Cayman government against the open register.

On top of which AIMA and the Managed Funds Association (MFA) both warned that a public register of beneficial ownership would damage the hedge fund industry. "If beneficial ownership information is made available to any member of the general public to access then it will be possible for private information on legitimate wealth to be accessed by competitors, family members with adverse interests, criminals and journalists," AIMA has said.

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Eliminate BEPS uncertainty with early adoption

Pascal Saint-Amans, one of the authors of BEPS and Director of the OECD Centre for Tax Policy, told a Jersey Finance conference in London that it will be advantageous for jurisdictions to be early adopters of BEPS. This will eliminate uncertainty – both for them and those that use the jurisdiction. Everyone will then know where they stand. “If we solve the problems now the tax agenda will go away,” he said.

He added that the golden rule on BEPS is activity. Businesses will need to be able to show that they have “real activity” in a particular jurisdiction, “that is what matters”.

He also made the point that tax affairs had always been regarded as being at the core of a country’s sovereignty. But governments have come to the conclusion that in today’s global economy their sovereignty over tax matters is only nominal. To have real sovereignty on tax cooperation between governments is required. This is new and has only happened since the market crisis.

BEPS has also come into being because double taxation treaties have been abused. They have become so successful they have become “double non taxation” treaties. People are using them as a way of avoiding paying tax anywhere. And if BEPS were to fail Saint Amans fears governments will take more unilateral action to preserve their tax base in future. This would not be helpful to the global economy’s future development. He cited the UK’s Diverted Profits Tax (DPT) as an example of the kind of unilateral action that could happen on a more frequent basis if there was to be no BEPS.

The vast majority of nation states have now signed up to BEPS, he said. “Even Luxembourg is moving fast from a position of non-compliance”. Panama, a few Pacific islands and the US are the only countries not to have jumped on board to date.

But signing up to the agenda is one thing; implementing it will be another, suggested Saint Amans. He is concerned that one or two Caribbean jurisdictions might drag their feet at the implementation stage. For example, he said he is aware of one Caribbean jurisdiction that came over to see the OECD in Paris and said it would implement BEPS but then went around various jurisdictions in Europe to see what could be done to present a common front to stop this from happening. “Words are words; action will be what counts.”

See article page 1.

Matthew Feargrieve joins Directors Chambers

Matthew Feargrieve has joined the Directors Chambers team. Directors Chambers co-founder Petri Tuokko said, “Matthew adds value to the Directors Chambers team as an experienced lawyer, and also as our first member based in Switzerland.”

Matthew is the founder of MF Consultancy, an asset management advisory boutique in Switzerland. His 16 years of experience as a corporate and funds lawyer in the UK and Switzerland enables him to draw upon comprehensive commercial and technical knowledge when acting as an independent director.

News from the domiciles

Cayman

Investors must do due diligence on Cayman directors - KB Associates

"Increasingly, the importance of investors conducting their own extensive due diligence upfront and on an ongoing basis into fund governance issues and directors (in Cayman) is critical," states KB Associates in a recently released paper on the implications of the Weavering case for fund governance in Cayman.

"The due diligence expectations in the area of corporate governance extends beyond the skill set and experience of the director and includes information on any conflicts of interest, the capacity of the director based on his or her existing portfolio of funds, the role the director performs on the board, whether the director is from a regulated firm and the reputation and regulatory status of that firm," KB Associates writes.

The various twists and turns of the Weavering case are covered in the KB paper. It states that "the latest turn of the events in the Weavering case is unlikely to affect the expectations of Cayman courts and regulators regarding the standards now established for Cayman fund boards. The important findings in the original judgement still stand.

"Increasingly, the importance of investors conducting their own extensive due diligence upfront and on an ongoing basis into fund governance issues and directors (in Cayman) is critical"

Cayman to establish an AIFMD-compliant regime

Cayman's Ministry of Financial Services has confirmed that Government and CIMA are finalising a new AIFMD-compliant regime for the Cayman Islands. This follows the response from CIMA to consultation initiated in November 2014 by ESMA, regarding extending the AIFMD passport regime to non-EU funds and non-EU managers.

According to ESMA, on 22 July 2015 it will make a recommendation to the European Commission regarding this extension; if its recommendation is to extend the regime, ESMA also will name a first round of jurisdictions to which the passport should be extended.

The compliance of a country's AIFMD regime will be a material factor in ESMA's consideration of first-round jurisdictions, says CIMA.

The NED's sister publication, the AIFMD Tracker, reported recently that there was confusion as to whether Cayman responded to ESMA's consultation on the AIFMD passport. It was not listed on the ESMA website as having done so. However ADI has learnt that CIMA did in fact make a submission. But, for some unknown reason, it decided to make its submission confidential.

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Luxembourg

Luxembourg drops its opposition to tax transparency

Luxembourg and Austria were the last two EU countries that have opposed the EU's tax transparency agenda. Both have now withdrawn their opposition. In response to the news Herman Van Rompuy, the European Council's president, said that "banking secrecy is set to die".

The EU's tax transparency rules come into effect next year. A range of information will be automatically exchanged by European national tax authorities from that point.

Luxembourg and Austria had resisted the transparency agenda because they feared losing customers to jurisdictions like Switzerland and Lichtenstein. But in the wake of the fallout from the Lux-leaks scandal it was always going to be difficult to resist the EU. There remains considerable anger in various EU states over Luxembourg's behaviour since the scandal was revealed last November. Xavier Bettel, Luxembourg's prime minister, said that his country's conditions had been met and described the deal as a "defining moment".

There is an active campaign in European fund jurisdictions to keep Cayman funds off the non EU passport extension list, most notably in Luxembourg. And ALFI, the Luxembourg fund industry association, has written to ESMA to say that abolishing national private placement regimes must be a perquisite before extending the AIFMD passport to non EU managers. And it thinks that extending the passport now would be premature. ALFI believes that what it calls "a parallel system" would distort the market "by putting EU AIFMs at a clear disadvantage."

Luxembourg is campaigning in Brussels to prevent any passport extension before the termination of private placement regimes, expected to occur in 2018. ■

Time to hear from the investors

The views of investors are rarely heard in research and industry discussions on fund director matters. The NED is correcting this. It is conducting the first entirely independent research survey with the world's largest allocators to alternatives on governance. In preparation for this project it publishes here the views of investors and the increasingly influential investor consulting firms on alternative fund director matters.

The role of hedge fund directors is coming under growing scrutiny not just from institutional investors but also from investment consultants that advise many of the large alternative fund allocators. Operational due diligence practices are becoming more robust and granular, with a heavy emphasis on sound fund governance and alignment of interests.

The NED has spoken to a range of allocators and investment fund consultants, representing more than $100bn in hedge fund assets, about what they look for in a prospective fund's board of directors – and, in particular, where they think that there is room for improvement.

"Investors have previously been more focused on transparency, but fund governance and the underlying board of directors is now a hot topic," said Nick Spencer, alternatives consulting director for EMEA at Russell Investments.

"Fund governance is now a hot topic"

Nick Spencer, Russell Investments

Investment consultants, the gatekeepers for much institutional capital, increasingly serve not just as advisers but as active managers via fiduciary management services – adding yet more prominence to their views on what constitutes a strong board.

"It is important to appreciate that being a director is a profession that requires a significant commitment," said Julian Mant, principal at Mercer Investment Consulting. "It is not a retirement hobby – the Weavering case reminded us of that."

Independents on the board

All interviewees, reflecting wider investor sentiment, now expect the majority of board members to be independent from the fund manager.

"We have seen a huge professionalisation of directorships particularly post-2008 and when we are looking at a hedge fund, having a majority of independent directors is a minimum starting point," said Russell Investments' Spencer.

Furthermore, interviewees wanted to see independent directors across all a manager's funds – not just the offshore versions, demonstrating a push for an industry-wide standard practice, regardless of jurisdiction or what is required for legal and/or tax purposes.

"Ideally we would like to see independent directors on the boards for a manager's Cayman master funds, offshore feeder funds and onshore feeder funds," said Mant. "Most hedge funds have

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What constitutes a truly independent director? This question is being asked more often by investors

independent directors on the offshore feeder and the Master fund but bizarrely many onshore US based feeder funds do not."

For Russell Investments, it's "critical" to see independent fund directors across the whole structure-offshore funds and master funds, according to Spencer.

An investment professional at a UK-based multi-family office said that he would theoretically accept two funds out of the three (i.e. master, offshore, onshore) having independent directors, but only if an advisory board is set up.

"These are more common in the private equity industry, but they can be useful when master funds are set up as partnerships and lack a board of directors," he said. "The board is mandated for certain governing responsibilities at the master fund level – the extent of their mandate can be negotiated and it demonstrates to the investor that there is an independent governance mechanism at play," he explained.

But what constitutes a truly independent director? This question is being asked more often by investors, says the CIO of a mid-sized pension fund in California. The general consensus is that board members who work for the fund administrator or a law firm or indeed any entity doing work as a service provider to a fund management organisation are not truly independent. They may be non-executive directors but they are not independent non-executives.

Number of directorships

The number of directorships held by one individual remains a key talking point amongst investors. Interviewees acknowledged, however, that the number of directorships held depends on the size and complexity of the fund.

"We always have the capacity conversation with managers and fund directors," said Nadia Salih, operational due diligence manager at Cardano. "We don't have an optimum number of directorships that should be held by an individual but we like to understand the mindset."

"It is important to see it in the context of how many individual relationships these directorships add up to – if a director is on a number of boards within the same hedge fund manager, I would count that as one," said the California-based CIO.

A number of interviewees said they don't like to see directors sitting

on boards that are all from the same stable. Also, they like to see directors physically visit the manager at least once a year, if not more often. If there are differences in remuneration packages, there needs to be an explanation about why. "It is a question of how much value you get from directors on cheap rates," explained Mant.

Composition of the board

Interviewees said they look for a good mix of legal, investment, regulatory and accounting credentials in directors. "The board of directors is a bit like a football team – there is no point in having 11 highly skilled goalkeepers," explained Mant.

"It is never usually a case of doubts about a fund directors' experience," said Salih, "in our experience fund directors are of a high calibre on paper. It is more a case of whether or

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Time to hear from the investors

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not they are being vocal enough; will they challenge the manager? How do they add value for the investor?"

Chris Goodeve Ballard, UK head of operational due diligence at Aon Hewitt, said he asks directors for their "war stories" and details of what directorships they have turned down. "I ask them, what sort of due diligence they do on the managers before accepting a position on the board."

Access to directors

A lack of easy access to the board of directors was a bone of contention among some interviewees. There is a push to bypass the manager and speak to directors of the investor's choosing as and when this is required.

Goodeve Ballard said he asks to speak to at least one independent director every time he has a review call with the fund manager. This tends to be every 12 to 18 months, with a call lasting around 30 to 40 minutes. He has been offered letters signed by the director, but says that this is no substitute for speaking to board members directly.

"I want unrestricted access to the independent directors, but at the same time they need to have the time to talk to the managers and service providers in order to do their job effectively," he said. "I am aware it is all about striking the right balance."

"We always have the capacity conversation with managers and fund directors"

Nadia Salih, Cardano

Other interviewees said they don't necessarily speak to board directors, but that they should have the right to do so if necessary. And if there are problems then it will be necessary. "Having access blocked is a definite red flag," said Spencer.

Background checks

"We have asked our clients if they'd like us to run background checks on directors, but these are expensive and inevitably the clients decline," explained Mant, reflecting the experience of a number of other allocators The NED spoke to.

Open the lines of communication

Bev Durston, principal of Sydney-based advisory consultant, Edgehaven, would like to see a formal record of the board agendas, meetings and minutes being tabled with investors.

As it stands, the meeting agendas and minutes are not disclosed widely to investors by managers and the onus is on the investor to have to request information, according to Durston, who is the former head of alternative investments at the British Airway Pensions Scheme and is currently building out The Royal Mail Pension Plan's growing alternatives exposure.

"Having access blocked is a definite red flag"

Nick Spencer, Russell Investment

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"I would also like to see a charter or terms of reference of the board made available for the investors so that they can see what the objectives of the board are and how they are seeking to achieve these in the fund," she added.

"In the long term not looking after investors will be very poor for the reputation of the fund and investors will redeem," she warned.

Cardano, a consultancy that offers both investment advice and discretionary management, implemented a new operational due diligence framework in January and will be looking at the issue of directorships in much greater detail going forward. "We would like to see directors engage more with the investor and act in an advisory capacity to the fund," said Salih.

When managers deny direct contact with the directors due to their time constraints, Cardano is considering asking for an annual advisory conference call set up between directors and the underlying investors. This would involve some insight and commentary from the director on what has been happening with the fund, followed by a Q&A.

"Since implementing our new framework in January, those managers that are open in answering our questions on directors have been forthcoming in offering us their direct contact details," said Nadia Salih, operational due diligence manager at Cardano, "but there are still a number of managers who need to be more transparent on this." ■

> "I ask them, what sort of due diligence they do on the managers before accepting a position on the board"
>
> *Chris Goodeve Ballard, Aon Hewitt*

AIMA Guide leaves unanswered questions

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Some of the information in the Guide could be considered a little superficial, and controversial areas are ignored. This applies to the section on conflicts of interest. The Guide says that “directors should, generally speaking, and so far as possible, seek to avoid any potential conflicts of interest.” It splits its coverage of conflicts of interest into two: conflicts affecting a Director, and conflicts affecting the investment manager or service providers.

But neither of these sections addresses the question of whether an organisation that provides services to an investment management group, in addition to directorships, is a conflict of interest. And on this point if an organisation receives revenue from an investment management group for services other than directorships, can it claim to be providing independent directorship services to that firm?

The Guide says that a Board should document all disclosed conflicts in the Board meeting minutes, specifically. But whilst it does give some examples of possible conflicts it is not an exhaustive list. However it does say that conflicts of interest are not always easy to identify. But the example cited above is easy to identify and the Guide makes no comment on this matter.

On the topic of independent directors the Guide states the following: “Independence of one or more Directors has become a key, if not essential, element of a Board as far as investor expectations are concerned …….The definition of what constitutes “independence” differs depending on the context. Which definition is important when establishing a Fund depends on the particular circumstances. Factors that may be relevant in this regard include:

- the regulatory regime(s) governing the investment manager;
- the Fund’s jurisdiction of formation;
- the regulatory regime(s) applicable directly or indirectly to the Fund;
- any applicable codes of corporate governance; and
- whether the Fund is to be listed on an exchange.”

The Guide will be helpful for those wishing to become fund directors for the first time

The NED believes it would have been helpful if this Guide had provided more guidance, and perhaps even a definition, on independence of directors. There are people who claim to be independent directors who perhaps are not and this Guide would have done well to address the topic. As AIMA states this is a key area of the business today.

Another missed opportunity is the lack of coverage of governance questions at AIFM third party ManCo platforms. Regular readers will know that this is a subject that has been covered a lot in The NED. For example in The NED’s February issue an article was published on this topic under the headline, “ManCo governance: the fund industry’s Balkans?” The article suggested that this is an important matter for the industry address in the AIFMD era. It said that, “The only way to avoid problems is to make sure that there is fully separate governance between the underlying fund and the ManCo platform, including entirely segregated boards.” That does not happen often enough today.

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AIMA Guide leaves unanswered questions

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But the Guide makes no mention of it.

The same point applies to other matters of immediate interest to directors of funds on ManCo platforms, such as the need to make sure that there is functionally and practically tested risk management structure. Directors should be looking for practical examples of how risk management works in practice, as well as in theory, on a ManCo platform.

Again, risk management supervisory issues for AIFM boards is a topic that The NED has covered frequently over the last few years. As we have written many times, boards have always had a risk oversight role but those that fall under the AIFMD now bear additional responsibilities that are codified by the Directive. Written rules have taken the place of general principles. AIFM fund boards have to be able to demonstrate independence from the portfolio manager. According to information received by The NED it is not clear that they are all doing so. If an AIFM fund runs into problems this could become a very big issue.

The Guide is silent on this matter. Under its section 'AIFMD considerations for Directors' it provides the following advice for directors: "Receive and consider a copy of the AIFM's risk management policy to enable the Board to better understand the nature of the AIFM's obligations and to inform the Board's thinking; consider the effectiveness of the risk management system and confirm that its key focus is on the types of risks inherent in the AIF in question; monitor compliance with any adopted risk limits from time to time; and if the Board's view of a given situation varies from the investment manager's, consider setting scenario tasks for the investment manager to consider." There is therefore no mention of the particular importance for directors of risk supervisory issues on the boards of AIFM funds.

A missed opportunity is the lack of coverage of governance questions at AIFM ManCo platforms

The most serious omission is the lack of coverage of investment issues. The Guide states the following on this topic: "Fund governance ensures that the Fund operates optimally and in the best interests of its stakeholders. Fund governance should assist in aligning the interests of a Fund and its many stakeholders in order to achieve best the stated goals of the Fund. In most cases, the protection of the Fund equates to the protection of investors, but there could be significant divergence, such as when investors disagree or in the anticipation of insolvency, a scenario that requires a balance amongst all interests."

But the Guide doesn't give guidance on what directors should do in this situation nor on what level of contact directors should have with investors. For example whether, or in what circumstances, directors should have direct contact with investors is not explored. Also, perhaps more recognition of the interests of investors in the governance process would have been helpful.

AIMA is hosting presentation and discussion on its Guide for directors in early June. The NED would have liked to attend this event so it could have asked the authors of the Guide why they have taken the approach that they have. But, unfortunately, The NED's request to attend has been turned down by AIMA. It remains to be seen whether we will find out why AIMA has not covered the topics referred to here, or indeed others. ■

It would have been helpful if the Guide had provided more guidance, and perhaps even a definition, on independence of directors

BEPS could change fund director geography

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The OECD has been given the task of doing something about it. Pascal Saint-Amans claims that double taxation treaties have become "double non taxation treaties". Since the market crash, which led to ballooning budget deficits in almost all major economies, politicians have liked to put forward the view that the system is broken and is being reformed. For example in the recent UK general election campaign politicians on the right as well as the left promised copious amounts of extra spending on the back of clamping down on tax avoidance.

Pascal Saint-Amans has said BEPS will require companies to pay more tax in the countries where their revenues are really created. Stopping the sheltering profits in overseas subsidiaries is a major objective of BEPS. There is much focus in BEPS on transfer pricing issues and countering what the OECD calls "harmful tax practices". Pascal Saint-Amans claims that "the golden era of 'we don't pay taxes anywhere' is over." He added that this is a "once in a century" opportunity to overhaul the rules.

Speaking in London in early May Pascal Saint-Amans emphasised that the key determinant for tax decisions in the BEPS era will be who does what where. It is about activity rather than where the board meeting might take place. But BEPS will not apply to fund management groups with less than 250 employees worldwide. The overwhelming majority of asset

Everyone agrees that there will be many unintended consequences for the fund industry from BEPS

managers that have funds domiciled in jurisdictions that will be affected by BEPS (such as Ireland, Luxembourg and the offshore centres) will therefore be below the BEPS' size threshold.

However, when speaking in London about BEPS, Pascal Saint-Amans cheerfully accepted that no one knows "where all this will lead." He made the point that there will doubtless be amendments and reforms to BEPS once it is up and running. He said that will be "well before" 2020. This November the G20 is expected to sign off the programme of implementation. At present the OECD is engaged in an extensive consultation programme on its BEPS' so-called 'Action Plans' (details of which can be found on its website).

Tim Hames, Director General of the BVCA, said at Guernsey's recent London Funds Forum that his members are "not worried enough" about BEPS, which he referred as being a central part of what he called the "taxulation" era that is ahead. He added that investors are beginning to wake up to BEPS and have become concerned about tax risk in general. He believes that BEPS will change fund structuring fundamentally.

Everyone agrees that there will be many unintended consequences for the fund industry from BEPS – good ones as well as bad. For example many people in the Channel Islands are embracing BEPS as they believe it will lead to a boom in substance and

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BEPS could change fund director geography

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more real fund management activity in Guernsey and Jersey.

On the other hand Robert Mellor, a tax partner at PwC, believes that ManCo platforms will be threatened by BEPS. Third party ManCo platforms, developed first for UCITS funds, are booming in the AIFMD era, especially in Dublin and Luxembourg. The problem is that whilst ManCo platforms might be an obvious way for managers to go in order to meet their AIFMD requirements they could raise a number of complicated tax issues under BEPS. For large managers ManCo platforms could well fail the substance, staff and activity tests of BEPS.

The biggest worry is that investors will become more concerned about tax risk

However the biggest worry is that investors will become more concerned about tax risk, as BVCA's Tim Hames fears will happen. If that really does occur it would not take long for the asset management industry to fundamentally restructure its funds to alleviate that concern. Should that occur it would not be good news for offshore fund directors.

BEPS could still be many years off

But all is not lost. Despite what Pascal Saint-Amans says implementation of BEPS could still be many years off. And then there is the US. Americans are slowly waking up to BEPS and many of them don't like it. They don't want the rest of the world telling them what to do on tax. The Hill.com ran an article recently with the headline: "Overseas action fuels US tax fears". The article went to say, "The corporate community is increasingly sounding the warning to Congress: Europe is coming after us on taxes."

Republicans don't like the idea that The OECD, "a group of almost three-dozen mostly European economies", as The Hill quotes them as saying, will have more powers to interfere with taxes paid by US corporations overseas.

Pascal Saint-Amans is highly critical of the US position on BEPS. "The US is not the elephant in the room, it is outside it", he said in London this May. Whether inside or outside the room the Americans have the power to kick BEPS into the long grass or to water down the OECD's 15 point "Action Plan" – or both. If they do they will have a lot of friends in the offshore fund director community. ■

Fund governance trends in Cayman

Analysis of SEC Form D on 2,525 Cayman funds by Sound Fund Advisors

The following is taken from Sound Fund Advisors Best Practices Series in which Jon Morgan, CEO of the firm, has collected and analysed 2014 SEC data on 2,525 Cayman domiciled funds to get an indication of governance trends in the world's largest hedge fund domicile.*

SUMMARY

SFA analysis of 2014 SEC Form D on 2,525 Cayman funds shows an acceleration in the trends toward external control of fund boards and the move toward "split boards" where external directors work for different firms (and therefore are more likely to be independent of each other.)

- A majority (53%) of funds with two external directors now have split boards – up from only 39% in 2012.
- Despite these improvements, US-manager practices continue to lag the UK, European and other Commonwealth countries where boards are more likely to be diverse and have a majority of external directors.
- This year's SFA data includes information on changes in existing boards. The data shows a higher than-expected level of activity on existing fund boards – more than 20% made some change to their external directors.
- Larger firms ($1B+ in AUM) were more likely to make changes to their external directors. Larger firms made up 54% of the universe of "changers" while comprising only 46% of the total fund universe.
- About half the funds making changes to their external directors were "swapping" externals. This move to change directors seems driven both by the desire to split their boards as well as elevated turnover at directorship firms.

Larger firms ($1B+ in AUM) were more likely to make changes to their external directors

- While fund boards continue to diversify, fund boards where the manager is based in the US typically lack directors with investment or risk backgrounds. Market and risk backgrounds are more common on European funds, especially the larger ones.

**Sound Fund Advisors was founded by Jonathan Morgan in 2011 to provide focused and active directorship services to asset management firms and institutional hedge funds. The firm's approach brings market, risk and hedge fund investing experience to a small number of firms that are interested in best practices in fund governance.*

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Fund governance trends in Cayman

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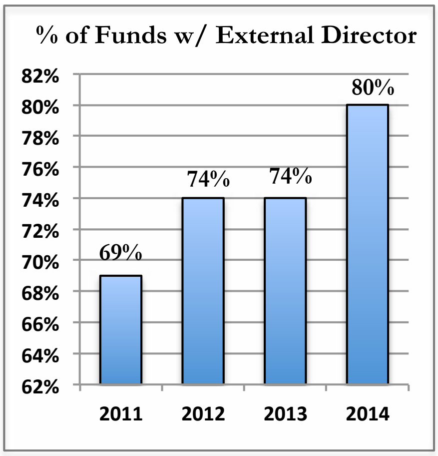
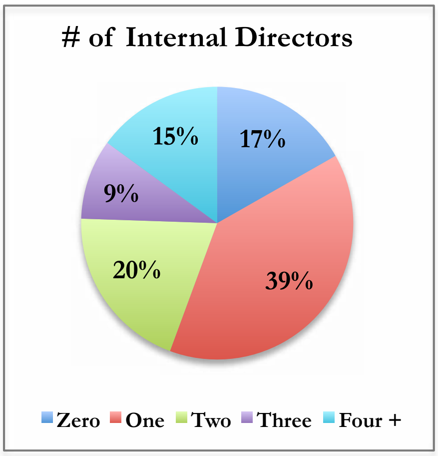
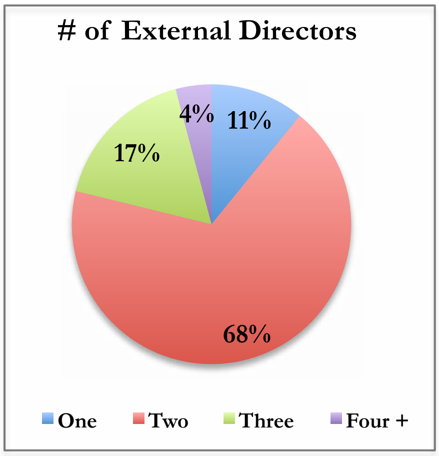
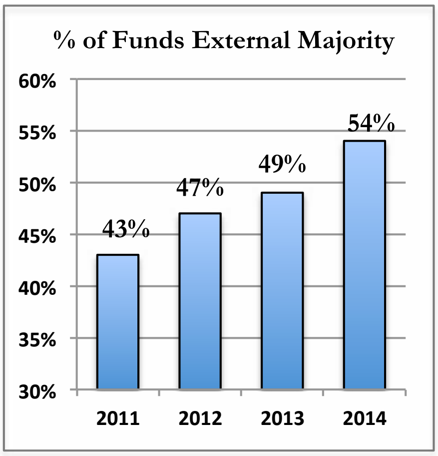
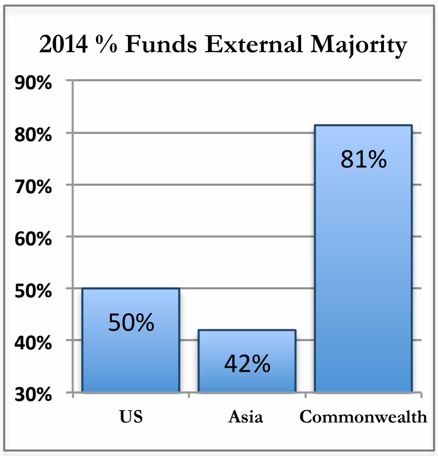
Summary of the findings

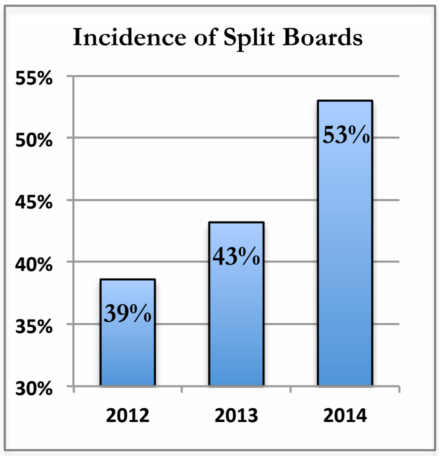


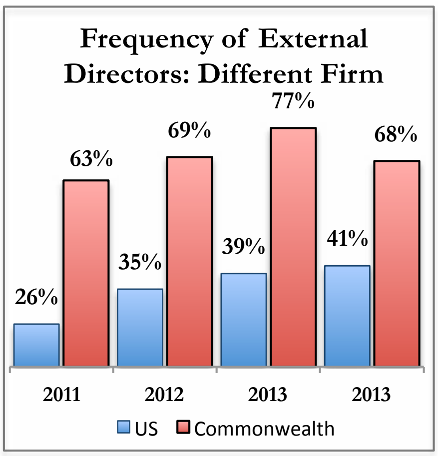


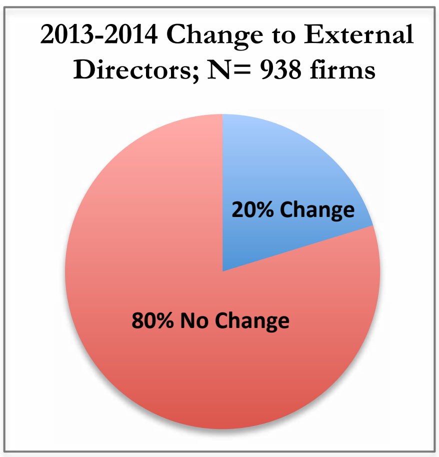


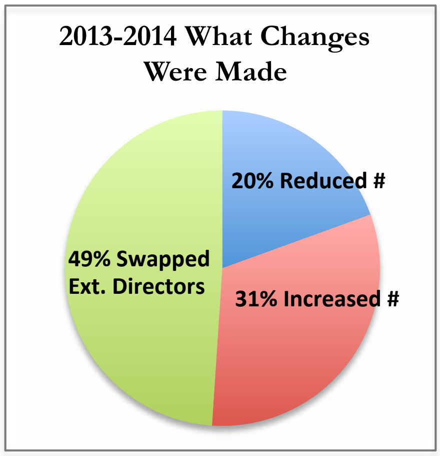












AIFMD Tracker Service

Track AIFMD's impact on Europe's alternative fund business

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AIFMD Investor Barometer

Quarterly surveys of alternative allocations by European institutions (both regulated AIFs and other fund categories). Pension and insurance funds, family offices and private banks polled regularly.

ManCo Monitor

Independent AIFMD ManCo development will be monitored regularly. In particular, how these structures are used by managers, and their acceptance in the market, will be covered.

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The impact of AIFMD on alternative manager and board risk supervision. The use of third party specialists by managers and boards will also be analysed.

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The domiciliation trends of alternative funds for European distribution. This will include the progress of AIFMD compliant regimes in offshore centres such as the Channel Islands.

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How depositary arrangements bed down in the alternative industry, especially in private equity, will be featured. 'Depo lite' will also be covered.

Technology Tracker

Information on the systems on the market that are aimed at helping managers, service providers and fund directors with AIFMD.

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Help shape IFI Global's bi-annual AIFMD research surveys and participate at its events. Every 6 months Tracker subscribers will be consulted on IFI Global's AIFMD surveys and will then be invited to attend its post research events, along with investor and manager interviewees.

The AIFMD Tracker Service is:

- Email alerts on AIFMD related news
- Monthly in-depth analysis (in ADI)
- Research: bi-annual industry studies (with subscribers consulted on survey questionnaires)
- Events: bi-annual events for survey interviewees, managers and other industry leaders
- Listings of firms offering AIFMD related services

Benefits of joining the AIFMD Tracker Service

- Listing of subscriber firms offering AIFMD related services to the fund industry
- Incomparable industry intelligence – in summary every week and in detail every month
- Opportunity to influence survey questionnaires
- Opportunity to participate at events and meet others influencing the structure of Europe's alternative industry

Non Executive Fund Directors Database

The NED is compiling a global database of non executive fund directors. It is being put together to assist investors and managers with their director searches.

To be included in database you need to have at least 10 years experience in the fund industry and/or a professional qualification.

(Please note that it is not obligatory to answer all questions.)

If you would like to be included please would you complete this questionnaire and return it to Tamara Sims sims@ifiglobal.com

This questionnaire can be completed, saved and submitted using Acrobat Reader.

1 Contact details

Name: ....

Please provide phone and email details that you would like to be included in the directory:

Phone: .... Email: ....

Country base: ....

2 Type of organisation *(please tick)*

- ◯ a) Independent director with no other roles in the asset management industry
- ◯ b) Director services company
- ◯ c) Fund industry service provider (ie administrator, lawyer, consultant etc)
- ◯ d) Investment manager

3 Professional background

What area(s) of the industry are you (or were you) in before becoming a non executive director?

- ☐ a) Administration
- ☐ b) Auditor
- ☐ c) Investment management
- ☐ d) Legal
- ☐ e) Other, please state: ....

Continued on next page >>

Non Executive Fund Directors Database

Continued from previous page >>

4 Personal

a) Education: ....

b) Areas of expertise: ....

c) Languages *(if any in addition to English)*: ....

5 Regulatory authority

a) Are you approved by a regulatory authority? ☐ Yes ☐ No

b) If yes, which one? ....

6 Fund directorship information

a) How many promoter relationships do you maintain that provide you with fund directorships?

....

b) How many entities do you act as a non executive director for?

....

c) Are your directorships held in an individual or corporate capacity?

....

d) Do you have a D&O policy?

....

e) Do you use a director services agreement?

....

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- The NED Directory. Subscribers are welcome to be included in the NED Directory of fund directors on nedglobal.com.

This form can be completed and saved in Acrobat Reader and then emailed to Tamara Sims

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