



50<sup>YEARS</sup>  
ELVINGER, HOSS & PRUSSEN  
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# Legal/Regulatory Update

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# AIFMD

- Approval process
- Two key issues:
  - Structuring
  - Procedures

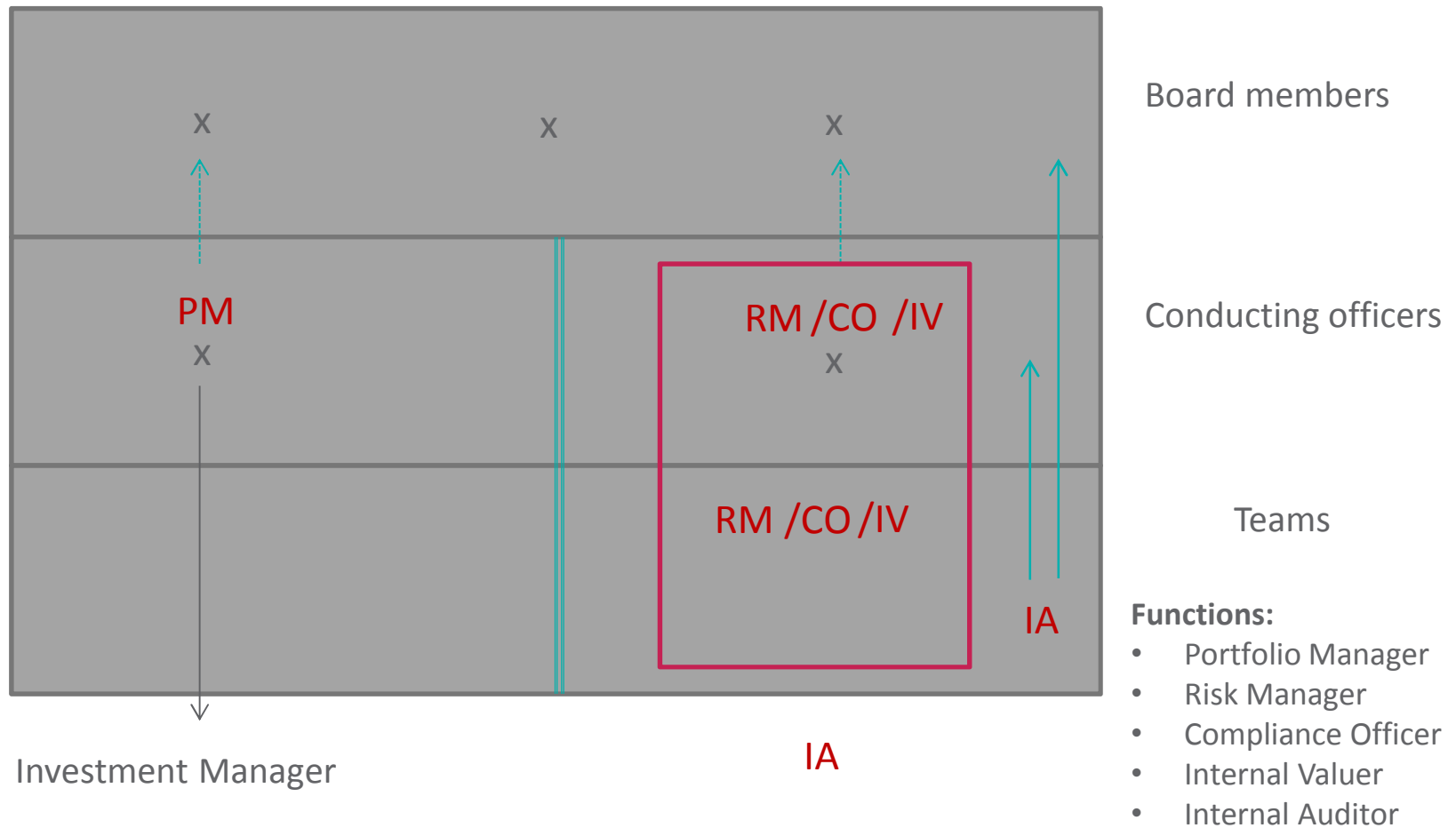
## Structuring (1/4) - Delegation: No Letter Box

- AIFM must retain necessary expertise and resources to supervise delegated functions
  - AIFM must keep power to take senior management decisions
  - AIFM may not delegate the performance of investment management functions to an extent that exceeds by a substantial margin the investment management functions performed by the AIFM itself
- Discretionary power of competent authority to assess the delegation on the basis of quantitative and qualitative criteria

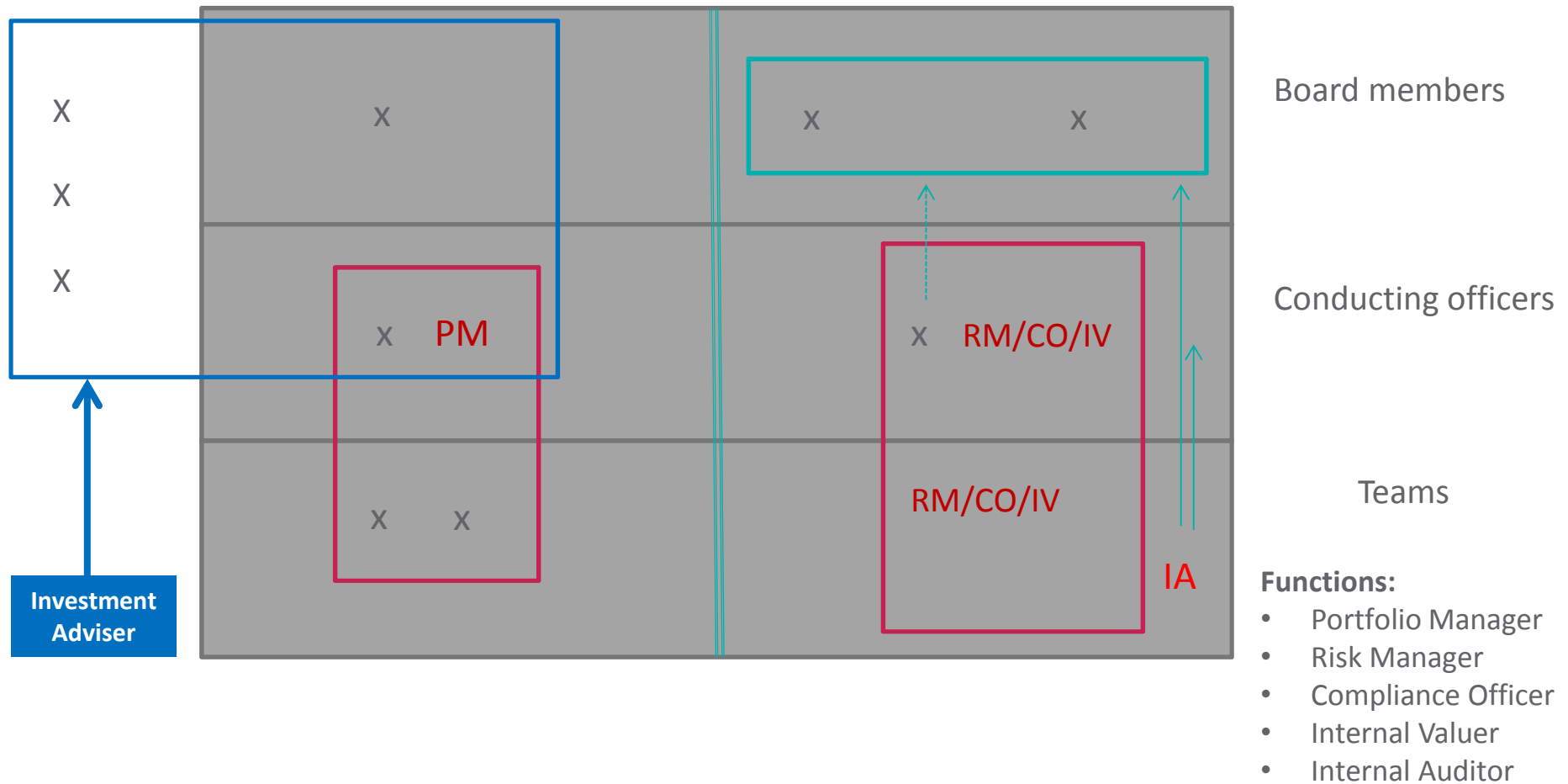
## Structuring (2/4) - Incompatibilities

- Portfolio Manager – other functions (RM/CO/IV/IA)
- Internal Auditor – other functions (PM/RM/CO/IV)
- Any control function (RM/CO/IA) – board member

## Structuring (3/4) - Liquid / Delegation of portfolio management



## Structuring (4/4) - Illiquid / No delegation of portfolio management



## Procedures (1/6)

- article 57: General requirements
- article 58: Electronic data processing
- article 59: Accounting procedures
- article 60: Control by the governing body, senior management and supervisory function
- article 61: Permanent compliance function
- article 62: Permanent internal audit function
- article 63: Personal transactions

The above articles refer to Level II Regulation

## Procedures (2/6)

- article 64: Recording of portfolio transaction
- article 65: Recording of subscription and redemption orders
- article 66: Records keeping requirements
- articles 38 to 45: Risk management
- articles 46 to 49: Liquidity management
- articles 16 to 29: Operating conditions
- articles 67 to 74: Valuation policy and procedures
- Remuneration policy and comparative table (Appendix II of the 2013 Law and ESMA Guidelines 2013/201)

The above articles refer to Level II Regulation



## Procedure (3/6)

- article 17: Duty to act in the best interests of the AIF or the investors in the AIF and the integrity of the market
- article 18: Due diligence
- article 19: Due diligence when investing in assets of limited liquidity
- article 20: Due diligence in the selection and appointment of counterparties and prime brokers

The above articles refer to Level II Regulation

## Procedures (4/6)

- article 21: Acting honestly, fairly and with due skills;
- article 22: Resources
- article 23: Fair treatment of investors in the AIF;
- article 24: Inducement
- article 25: Effective employment of resources and procedures - handling of orders
- article 26: Reporting obligations in respect of execution of subscription and redemption orders

The above articles refer to Level II Regulation

## Procedures (5/6)

- article 27: Execution of decisions to deal on behalf of the managed AIF
- article 28: Placing orders to deal on behalf of AIFs with other entities for execution
- article 29: Aggregation and allocation of trading orders

The above articles refer to Level II Regulation

## Procedures (6/6)

### *Main procedures to obtain the authorisation*

- Risk management process
- Liquidity procedures
- Investment process
- Remuneration procedure and comparative table
- Valuation policy and procedure
- Due diligence procedures