

Public consultation on the review of the alternative investment fund managers directive (AIFMD)

Fields marked with * are mandatory.

Introduction

The **short version** of this consultation is now available in **23 European Union official languages**.

Please use the language selector at the top of this page to choose your language for this consultation.

In the European Union, alternative investment funds (AIFs) are collective investment funds that are not covered by [Directive 2009/65/EC on undertakings for collective investment in transferable securities \(UCITS\)](#). AIFs vary in terms of their investment strategies, markets, asset types and legal forms. Alternative investment fund managers (AIFMs) manage the AIFs, which are often established for saving or income generating purposes while supporting broader economic activity, and include venture capital and private equity funds, real estate funds, hedge funds and fund of funds. The activities of AIFMs are governed by the [alternative investment fund managers Directive 2011/61/EU \(AIFMD\)](#).

The AIFMD aims to facilitate greater AIF market integration, improve coherence in the actions taken by supervisory authorities to address potential risks posed to the financial system while ensuring appropriate levels of investor protection. To this end, an AIFM is required to obtain licence from its home supervisor and adhere to the operational requirements laid down in the AIFMD and its supplementing [AIFMR](#), including taking measures to manage risks and to ensure the requisite transparency regarding the activities of their managed AIFs.

On 10 June 2020, the European Commission submitted its [report to the European Parliament and the Council on the scope and the application of the AIFMD](#). The report concludes that while the AIFMD has contributed to the creation of the EU AIF market, provided a high-level protection to investors and facilitated monitoring of risks to financial stability, there are a number of areas where the legal framework could be improved. Given the European Commission's ongoing efforts to develop the capital markets union (CMU), this consultation seeks the views of stakeholders on how to achieve a more effective and efficient functioning of the EU AIF market as part of the overall financial system.

Structure of the public consultation

First, this public consultation focuses on improving the utility of the AIFM passport and the overall competitiveness of the EU AIF industry. The analysed data indicates that the appropriate and balanced regulation of financial markets

benefits investors as well as the overall economy. The questions in the section on **authorisation/scope** seek views from stakeholders on the scope of the AIFM licence, its potential extension to smaller AIFMs and level playing field concerns in relation to the regulation of other financial intermediaries, like MiFID firms, credit institutions or UCITS managers that provide similar services.

The **investor protection** section raises questions on investor access that take into account the differences between retail and professional investors. The same consideration is raised in the questions on a potential EU law pre-calibration of an AIF that would be suitable for marketing to retail. Adequacy of disclosure requirements are covered including the specific requirements that could be added, changed or removed from the current rulebook. Other questions address the alleged ambiguities in the depositary regime and the lack of the depositary passport. Stakeholders are also invited to comment on potential improvements to the AIFMD rules on valuation.

The issue of a level playing field is also covered in the section dedicated to **international issues**. Views are sought on how best to achieve the equitable treatment of non-EU AIFs and securing a wider choice of AIFs for investors while at the same time ensuring that EU AIFMs are not exposed to unfair competition or are otherwise disadvantaged.

The section dedicated to **financial stability** seeks stakeholder views on how to ensure NCAs and AIFMs have the tools necessary to effectively mitigate and deal with systemic risks. Specific input regarding improvements to the supervisory reporting template provided in the AIFMR is requested with a particular focus on the increased activities of AIFs in the credit market. The consultation suggests the potential for more centralised supervisory reporting and improved information sharing among the relevant supervisors. A revised supervisory setup and cooperation measures among the competent authorities are another focus of this consultation.

The rules on **investment in private companies** are examined with a view to potential improvements and comments are sought on the effectiveness of the current rules and their potential enhancement.

The **sustainability** related section seeks input on how the alternative investment sector can participate effectively in the areas of responsible investing and the preservation of our planet.

Questions are posed as regards the treatment of **UCITS**, particularly where a more coherent approach may be warranted. This includes the question of a single licence for AIF and UCITS managers, harmonised metrics for leverage calculation and reporting on the use of liquidity management tools.

Finally, stakeholders are welcome to raise other AIFMD related issues and submit proposals on how to otherwise improve the AIFMD legal framework with regard to any issues not directly addressed in the consultation.

Given the broad nature of the questions, well-substantiated, evidence/data backed answers and proposals will be particularly instructive. Clearly linking responses to the contributions already received in the [public consultation reviewing MiFID II](#), informing digital strategy of the EU or any other relevant consultations would be particularly useful.

This public consultation aims to gather views from all interested parties, in particular collective investment fund managers and investment firms, AIF distributors, industry representatives, investors and investor protection associations. The questions 1, 2 and 3 as well as the section Investor protection, except for part (b) thereof, are available in all the EU official languages to gather citizens' views on these matters.

The consultation will be open for fourteen weeks.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-aifmd-public-consultation@ec.europa.eu.

More information on

- [this consultation](#)
- [the consultation document](#)
- [the consultation strategy](#)
- [the acronyms used in this consultation](#)
- [investment funds](#)
- [the protection of personal data regime for this consultation](#)

About you

* Language of my contribution

- Bulgarian
- Croatian
- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- Gaelic
- German
- Greek
- Hungarian
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian

- Spanish
- Swedish

* I am giving my contribution as

- Academic/research institution
- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* First name

Peter

* Surname

Capper

* Email (this won't be published)

peter.capper@theia.org

* Organisation name

255 character(s) maximum

The Investment Association

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

255 character(s) maximum

Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

5437826103-53

* Country of origin

Please add your country of origin, or that of your organisation.

- | | | | |
|---|--|--|--|
| <input type="radio"/> Afghanistan | <input type="radio"/> Djibouti | <input type="radio"/> Libya | <input type="radio"/> Saint Martin |
| <input type="radio"/> Åland Islands | <input type="radio"/> Dominica | <input type="radio"/> Liechtenstein | <input type="radio"/> Saint Pierre and Miquelon |
| <input type="radio"/> Albania | <input type="radio"/> Dominican Republic | <input type="radio"/> Lithuania | <input type="radio"/> Saint Vincent and the Grenadines |
| <input type="radio"/> Algeria | <input type="radio"/> Ecuador | <input type="radio"/> Luxembourg | <input type="radio"/> Samoa |
| <input type="radio"/> American Samoa | <input type="radio"/> Egypt | <input type="radio"/> Macau | <input type="radio"/> San Marino |
| <input type="radio"/> Andorra | <input type="radio"/> El Salvador | <input type="radio"/> Madagascar | <input type="radio"/> São Tomé and Príncipe |
| <input type="radio"/> Angola | <input type="radio"/> Equatorial Guinea | <input type="radio"/> Malawi | <input type="radio"/> Saudi Arabia |
| <input type="radio"/> Anguilla | <input type="radio"/> Eritrea | <input type="radio"/> Malaysia | <input type="radio"/> Senegal |
| <input type="radio"/> Antarctica | <input type="radio"/> Estonia | <input type="radio"/> Maldives | <input type="radio"/> Serbia |
| <input type="radio"/> Antigua and Barbuda | <input type="radio"/> Eswatini | <input type="radio"/> Mali | <input type="radio"/> Seychelles |
| <input type="radio"/> Argentina | <input type="radio"/> Ethiopia | <input type="radio"/> Malta | <input type="radio"/> Sierra Leone |
| <input type="radio"/> Armenia | <input type="radio"/> Falkland Islands | <input type="radio"/> Marshall Islands | <input type="radio"/> Singapore |
| <input type="radio"/> Aruba | <input type="radio"/> Faroe Islands | <input type="radio"/> Martinique | <input type="radio"/> Sint Maarten |
| <input type="radio"/> Australia | <input type="radio"/> Fiji | <input type="radio"/> Mauritania | <input type="radio"/> Slovakia |
| <input type="radio"/> Austria | <input type="radio"/> Finland | <input type="radio"/> Mauritius | <input type="radio"/> Slovenia |
| <input type="radio"/> Azerbaijan | <input type="radio"/> France | <input type="radio"/> Mayotte | <input type="radio"/> Solomon Islands |
| <input type="radio"/> Bahamas | <input type="radio"/> French Guiana | <input type="radio"/> Mexico | <input type="radio"/> Somalia |
| <input type="radio"/> Bahrain | <input type="radio"/> French Polynesia | <input type="radio"/> Micronesia | <input type="radio"/> South Africa |

- Bangladesh
- Barbados
- Belarus
- Belgium
- Belize
- Benin
- Bermuda
- Bhutan
- Bolivia
- Bonaire Saint Eustatius and Saba
- Bosnia and Herzegovina
- Botswana
- Bouvet Island
- Brazil
- British Indian Ocean Territory
- British Virgin Islands
- Brunei
- Bulgaria
- Burkina Faso
- Burundi
- Cambodia
- French Southern and Antarctic Lands
- Gabon
- Georgia
- Germany
- Ghana
- Gibraltar
- Greece
- Greenland
- Grenada
- Guadeloupe
- Guam
- Guatemala
- Guernsey
- Guinea
- Guinea-Bissau
- Guyana
- Haiti
- Heard Island and McDonald Islands
- Honduras
- Hong Kong
- Hungary
- Moldova
- Monaco
- Mongolia
- Montenegro
- Montserrat
- Morocco
- Mozambique
- Myanmar /Burma
- Namibia
- Nauru
- Nepal
- Netherlands
- New Caledonia
- New Zealand
- Nicaragua
- Niger
- Nigeria
- Niue
- Norfolk Island
- Northern Mariana Islands
- North Korea
- South Georgia and the South Sandwich Islands
- South Korea
- South Sudan
- Spain
- Sri Lanka
- Sudan
- Suriname
- Svalbard and Jan Mayen
- Sweden
- Switzerland
- Syria
- Taiwan
- Tajikistan
- Tanzania
- Thailand
- The Gambia
- Timor-Leste
- Togo
- Tokelau
- Tonga
- Trinidad and Tobago

- Cameroon
- Canada
- Cape Verde
- Cayman Islands
- Central African Republic
- Chad
- Chile
- China
- Christmas Island
- Clipperton
- Cocos (Keeling) Islands
- Colombia
- Comoros
- Congo
- Cook Islands
- Costa Rica
- Côte d'Ivoire
- Croatia
- Cuba
- Curaçao
- Cyprus
- Iceland
- India
- Indonesia
- Iran
- Iraq
- Ireland
- Isle of Man
- Israel
- Italy
- Jamaica
- Japan
- Jersey
- Jordan
- Kazakhstan
- Kenya
- Kiribati
- Kosovo
- Kuwait
- Kyrgyzstan
- Laos
- Latvia
- North Macedonia
- Norway
- Oman
- Pakistan
- Palau
- Palestine
- Panama
- Papua New Guinea
- Paraguay
- Peru
- Philippines
- Pitcairn Islands
- Poland
- Portugal
- Puerto Rico
- Qatar
- Réunion
- Romania
- Russia
- Rwanda
- Saint Barthélemy
- Tunisia
- Turkey
- Turkmenistan
- Turks and Caicos Islands
- Tuvalu
- Uganda
- Ukraine
- United Arab Emirates
- United Kingdom
- United States
- United States Minor Outlying Islands
- Uruguay
- US Virgin Islands
- Uzbekistan
- Vanuatu
- Vatican City
- Venezuela
- Vietnam
- Wallis and Futuna
- Western Sahara
- Yemen

- Czechia
- Lebanon
- Saint Helena
Ascension and
Tristan da
Cunha
- Zambia
- Democratic
Republic of the
Congo
- Lesotho
- Saint Kitts and
Nevis
- Zimbabwe
- Denmark
- Liberia
- Saint Lucia

* Field of activity or sector (if applicable):

at least 1 choice(s)

- Accounting
- Auditing
- Banking
- Credit rating agencies
- Insurance
- Pension provision
- Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- Social entrepreneurship
- Other
- Not applicable

* Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

- Anonymous**
Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.
- Public**
Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

I agree with the [personal data protection provisions](#)

Choose your questionnaire

Please indicate whether you wish to respond to the citizens' version (3 general questions and 14 investor protection questions) or full version (102 questions) of the questionnaire.

The short version only covers the general aspects of the AIFMD regime and investor protection matters under the AIFMD.

The full version contains 85 additional questions addressing more technical features of the AIFMD regulatory regime.

Note that only the questions that are part of the short version are also available in all EU languages.

- I want to respond only to the **short version of the questionnaire** (3 + 14 questions)
- I want to respond to the **full version of the questionnaire** (102 questions)

I. Functioning of the AIFMD regulatory framework, scope and authorisation requirements

The central pillar of the AIFMD regulatory regime is a European licence or a so-called AIFM passport. EU AIFMs are able to manage and market EU AIFs to professional investors across the Union with a single authorisation. This section seeks to gather views on potential improvements to the AIFMD legal framework to facilitate further integration of the EU AIF market. The objective is to look at the specific regulatory aspects where their potential refining could enhance utility of the AIFM passport, gathering data on concrete costs and benefits of the suggested improvements, at the same time ensuring that the investor and financial stability interests are served in the best way. A number of questions focus on the level playing field between AIFMs and other financial intermediaries.

Question 1. What is your overall experience with the functioning of the AIFMD legal framework?

- Very satisfied
- Satisfied

- Neutral
- Unsatisfied
- Very unsatisfied
- Don't know / no opinion / not relevant

Question 2. Do you believe that the effectiveness of the AIFMD is impaired by national legislation or existing market practices?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 2.1 Please explain your answer to question 2, providing concrete examples and data to substantiate it:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

While we are aware that there have been some divergent practices across member states, in practice these issues have not proved material and these have already been significantly reduced through harmonisation initiatives between ESMA and NCAs. In our view, remaining divergences can be resolved through level 3 and 4 measures, and do not require legislative changes to resolve.

Question 3. Please specify to what extent you agree with the statements below:

The AIFMD has been successful in achieving its objectives as follows:

	1 (fully disagree)	2 (somewhat disagree)	3 (neutral)	4 (somewhat agree)	5 (fully agree)	Don't know - No opinion - Not applicable
creating internal market for AIFs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
enabling monitoring risks to the financial stability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
providing high level investor protection	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Other statements:

	1 (fully disagree)	2 (somewhat disagree)	3 (neutral)	4 (somewhat agree)	5 (fully agree)	Don't know - No opinion - Not applicable
The scope of the AIFM license is clear and appropriate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The AIFMD costs and benefits are balanced (in particular regarding the regulatory and administrative burden)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the AIFMD legal framework operate well together to achieve the AIFMD objectives	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
The AIFMD objectives correspond to the needs and problems in EU asset management and financial markets	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The AIFMD has provided EU AIFs and AIFMs added Value	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 3.1 Please explain your answer to question 3, providing quantitative and qualitative reasons to substantiate it:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The AIFMD has proved successful in achieving its key objectives of creating an EU market for AIFs, giving authorities greater visibility on the activities of AIFMs active in the EU and providing greater protections for investors. Despite implementation challenges, the final AIFMD text achieved an appropriate balance between providing greater investor protection and transparency on their activities to regulators, while still providing enough flexibility to enable AIFMs to continue to service the needs of European professional investors through the provision of appropriate AIF products. The development of a Pan-European passport allowing distribution of EU AIFs at scale to EU professional investors has reduced fragmentation in EU markets, contributing to the broader goals of capital markets union. It also enabled AIFMs to continue to offer suitable AIFs to retail investors, subject to additional national requirements. Indeed, there has been a proliferation of EU AIFs brought to market since the AIFMD came into force in 2013. It is also to be noted that the EU AIF industry coped with a significant shock, in the form of the Covid Pandemic in 2020, with almost no examples of failure, which is a testament to the good functioning of the AIFMD framework.

This balance between ensuring appropriate protections for both investors and financial stability, (especially with the focus on risk and liquidity management and comprehensive regulatory reporting), and ensuring the framework retains enough flexibility to continue to ensure that the EU AIFM industry can remain competitive and offer attractive AIF products to professional, and where appropriate, retail investors, is a delicate one. The present AIFMD framework has achieved this. There is a risk of disturbing this balance through introducing inappropriate additional measures, particularly where the EU Commission's Report on the Operation of the AIFMD, published in 2019, and its Report to the Council and European Parliament and the accompanying Staff Working Document, published in June 2020, identified that the AIFMD had worked well and had succeeded in achieving its objectives. We therefore urge policy makers to adopt a cautious approach to reviewing the AIFMD – changes to what has proved a successful framework may, however well intentioned, damage the competitiveness of the EU AIFM industry and lead to adverse outcomes for EU investors.

Question 4. Is the coverage of the AIFM licence appropriate?

- Yes
- No
- Don't know / no opinion / not relevant

Question 5. Should AIFMs be permitted to invest on own account?

- Yes
- No

- Don't know / no opinion / not relevant

Question 5.1 Please explain your answer to question 5:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not believe that it is necessary to make any changes to the AIFM directive to permit AIFMs to invest on their own account. A critical contributor to the relative financial stability of the asset management sector is that asset managers, including AIFMs, do not trade on their own account. This significantly reduces the interconnectedness in asset management, the changes of a failure of an asset manager having a systemic impact and ensures greater protection of investors, since the assets of AIFs are segregated from those of the asset manager.

It is important to draw a distinction between AIFMs investing on their own account and operations of the AIFM that may result in them holding small positions in their own AIFs, such as for seeding purposes or for box management purposes (where a principal model is used for investors buying and selling units in an AIF – this model is not widely used in the EU). These are important functions for the management of AIFs and AIFMs must not be prevented for undertaking these. In particular, the ability of the AIFM to seed new AIFs is crucial to bringing new AIFs to market, and ultimately ensures a competitive market in the EU for AIFs and increased choice of investment strategies for investors. Seed capital is committed to AIFs to support the viability of new AIFs until they reach scale, rather than to generate trading profits for the AIFMs, and seed capital is maintained in the AIF for a long period, usually 12-24 months. Hence seeding is distinct from own account investment, which seeks to make profits for the firm from trading in short term positions.

Neither should restrictions on own account investment prevent employees of the AIFM investing alongside third-party investors in an AIF, a precondition set by many professional investors to ensure alignment of interests between manager and investor.

Question 6. Are securitisation vehicles effectively excluded from the scope of the AIFMD?

- Yes
- No
- Don't know / no opinion / not relevant

Question 7. Is the AIFMD provision providing that it does not apply to employee participation schemes or employee savings schemes effective?

- Yes
- No
- Don't know / no opinion / not relevant

Question 8. Should the AIFM capital requirements be made more risk-sensitive and proportionate to the risk-profile of the managed AIFs?

- Yes
- No
- Don't know / no opinion / not relevant

Question 9. Are the own funds requirements of the AIFMD appropriate given the existing initial capital limit of EUR 10 million although not less than one quarter of the preceding year's fixed overheads?

- Yes
- No
- Don't know / no opinion / not relevant

Question 10. Would the AIFMD benefit from further clarification or harmonisation of the requirements concerning AIFM authorisation to provide ancillary services under Article 6 of the AIFMD?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 10.1 Please explain your answer to question 10, presenting benefits and disadvantages of the entertained options as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Article 6 of the AIFMD enables AIFMs to perform limited ancillary services in respect of collective portfolio management. The ability to perform these ancillary services through their AIFM entity is valuable to some AIFMs, who perform some activities in this area, but not enough to justify establishing a separate MiFID entity within their corporate group. The scope of these ancillary services is clear for our members, who understand the limitations of these relative to using a separate entity with a full MiFID licence, and can choose which model is appropriate for them. We do not believe that further clarification or changes are needed to the scope of article 6 of the AIFMD to clarify the performance by AIFMs of ancillary services.

Question 11. Should the capital requirements for AIFMs authorised to carry out ancillary services under Article 6 of the AIFMD be calculated in a more risk-sensitive manner?

- Yes
- No
- Don't know / no opinion / not relevant

Question 12. Should the capital requirements established for AIFMs carrying out ancillary services under Article 6 of the AIFMD correspond to the capital requirements applicable to the investment firms carrying out identical services?

- Yes
- No
- Don't know / no opinion / not relevant

Question 12.1 Please explain your answer to question 12, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Given that the ancillary services that AIFMs can be authorised to perform under Article 6 are far more limited than those that investment firms with a MiFID licence can perform, we do not believe any changes are required to the AIFMD capital requirements of those AIFMs authorised to perform ancillary services under Article 6 of the AIFMD.

It is important to ensure that in any arrangements, no firms are required to double count their AUM and therefore hold twice the level of permitted capital, as might be the case if a delegator and delegatee were both to be required to hold regulatory capital against the same activity.

Question 13. What are the changes to the AIFMD legal framework needed to ensure a level playing field between investment firms and AIFMs providing competing services?

Please present benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As stated in our response to Q12.1, the scope of the services that can be performed by AIFMs authorised to provide ancillary services under Article 6 of the AIFMD are more limited than the services that can be provided by investment firms with a MiFID licence. Given this limited scope, we do not believe that changes are needed to the AIFMD, as the scope for AIFMs to compete with investment firms on providing investment services is limited.

Question 14. Would you see value in introducing in the AIFMD a Supervisory Review and Evaluation Process (SREP) similar to that applicable to the credit institutions?

- Yes
- No
- Don't know / no opinion / not relevant

Question 14.1 Please explain your answer to question 14, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The risk to market, client, and firm of an AIFM do not correspond to the risks that are applicable for credit institutions, therefore it would be inappropriate to apply a similar regime to AIFMs, including SREPs.

Introducing a complex supervisory assessment framework such as the SREP would only be justified in the event of clearly established failures in the governance and management of risk by AIFMs. Continued regulatory focus on ensuring a consistent approach to substance in management company already requires a detailed focus by management companies on risk management and controls, including ongoing operational risk. In practice, management companies regularly provide detailed information to their NCAs on governance and controls framework as part of existing ongoing supervisory review processes under AIFMD. As such the AIFMD already provides a comprehensive governance and supervisory framework suited for the agency business model of AIFMs. We are not aware of failures in the AIFMD supervisory oversight regime which warrant significant change.

In terms of assessing the costs and burdens of such a change it is important to understand that firms can't isolate the SREP from a series of other detailed requirements which need to be in place before a SREP can commence. The typical steps leading to a SREP, drawing from member experience in applying the CRD process, typically include:

- Pillar 1 required capital assessments
- Pillar 2 internal assessment of the firm's market risk, credit risk, operational risk and other risks (for which it may not hold capital), based on the firm's own risk methods for modelling risk (with guidance on the methods from the NCA and ongoing review of industry standards). This is achieved through an Internal Capital Adequacy Assessment Process ('ICAAP'). This process, which is required to be fully documented sets out how the firm intends to mitigate risks identified and how much current and future capital is necessary having considered other mitigating factors. Under CRD this is generally produced on an annual basis..
- Still under Pillar 2 the SREP is then the process by which the relevant NCA reviews the firm's internal methods. A typical SREP process will require several hundred hours of FTE commitment, including by senior staff, to produce and complete as well as significant time commitment by NCAs to review and assess the SREP and including follow up testing of the assumptions put forward in the SREP and review of internal procedures.
- This process is accompanied by detailed Pillar 3 disclosures which in turn require significant FTE commitment to produce disclosures to the required standard.

Taken together these steps will be extremely burdensome, particularly in terms of time commitment and need for additional headcount, by both AIFMs and NCAs alike to run such a process. Without a significant increase in the specialist staff within NCAs required to assess firm SREPs, given the qualitative nature of the requirements, the process will be meaningless.

Question 15. Is a professional indemnity insurance option available under the AIFMD useful?

- Yes
- No
- Don't know / no opinion / not relevant

Question 15.1 Please explain your answer to question 15, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The option to use professional indemnity insurance is useful for some AIFMs to ensure they have appropriate capital cover.

Question 16. Are the assets under management thresholds laid down in Article 3 of the AIFMD appropriate?

- Yes
- No
- Don't know / no opinion / not relevant

Question 17. Does the lack of an EU passport for the sub-threshold AIFMs impede capital raising in other Member States?

- Yes
- No
- Don't know / no opinion / not relevant

Question 17.1 Please further detail your answer to question 17, substantiating it, also with examples of the alleged barriers:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Our members are generally full scope AIFMs, rather than sub-threshold AIFMs. However, we are not aware that the lack of a passport has been a significant barrier to sub-threshold AIFMs raising capital, noting they will typically target their fundraising in their own home state, and will normally rely on reverse-solicitation when receiving investment from investors outside their home state

Question 18. Is it necessary to provide an EU level passport for sub-threshold AIFMs?

- Yes
- No
- Don't know / no opinion / not relevant

Question 18.1 Please explain your answer to question 18:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As such a passport would not be available to UK sub-threshold AIFMs, it is not appropriate for us to offer a formal view on this question. However, as noted in our response to question 17.1, we are not aware that the lack of an EU passport has been a significant barrier to sub-threshold AIFMs raising capital.

Question 19. What are the reasons for EuVECA managers to opt in the AIFMD regime instead of accessing investors across the EU with the EuVECA label?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not have a view on this. Our members are generally full scope AIFMs, rather than sub-threshold AIFMs, and therefore have not generally used the EuVECA label.

Question 20. Can the AIFM passport be improved to enhance cross-border marketing and investor access?

- Yes
- No
- Don't know / no opinion / not relevant

Question 20.1 Please explain your answer to question 20:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In our members' experience, the barriers to cross-border marketing and investor access are generally due to issues at national level and in local markets, rather than due to the AIFMD framework, and it is not apparent to us that this can be addressed by changes to the AIFMD framework. Given the recent implementation of the Cross-border distribution of funds regulation, which has yet to come into effect, we recommend the EU Commission allows time for this regulation to bed-in before undertaking any further reviews of the cross-border marketing of AIFs.

II. Investor protection

The AIFMD aims to protect investors by requiring AIFMs to act with the requisite transparency before and after investors commit capital to a particular AIF. Conflicts of interest must be managed in the best interest of the investors in the AIF. AIFMs must also ensure that the AIF's assets are valued in accordance with appropriate and consistent valuation procedures established for an each AIF. The AIF assets are then placed in safekeeping with an appointed depositary that also oversees AIF's cash flows and ensures regulatory compliance.

Questions in this section cover the topic of investor categorisation referencing to MiFID II, stopping short of repeating the same questions that have been raised in its [recent public consultation on MiFID II](#), rather inviting comments on the most appropriate way forward. Views are also sought on the conditions that would make it possible to open up the AIF universe to a larger pool of investors while considering their varying degrees of financial literacy and risk awareness. Examples of redundant or insufficient investor disclosures are invited.

Greater clarity on stakeholders' views of the AIFMD rules on depositaries is sought in particular where such rules may require clarification or amending. The introduction of the depositary passport is desirable from an internal market point of view, but stakeholders are invited to propose other potential legal solutions, if any, that could address the issue of the short supply and concentration of depositary services in smaller markets.

a) Investor classification and investor access

Question 21. Do you agree that the AIFMD should cross-refer to the client categories as defined in the MIFID II (Article 4(1)(ag) of the AIFMD)?

- Yes
- No
- Don't know / no opinion / not relevant

Question 21.1 Please explain your answer to question 21:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is important that there is a consistent framework for the distribution of financial services and products to investors, and therefore the AIFMD client categories should be consistent with those defined in MiFID II. Having separate categories would introduce additional complexity as distributors would have to navigate different regimes for different product types, creating additional barriers to the distribution of AIFs.

Question 22. How AIFM access to retail investors can be improved?

Please give examples where possible and present benefits and disadvantages of your suggested approach as well as potential costs of the change:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The AIFMD is a directive fundamentally aimed at the management of collective investment undertakings marketed to professional investors. As such, the IA is of the view no changes are needed to the AIFMD to improve AIFM access to retail investors. Article 43 provides the right balance of permitting member states to allow retail investors access to AIFs in their own jurisdictions and, if required, to set additional local requirements on AIFs that are marketed to retail investors. This recognises the diversity of AIFs structures traditionally marketed to retail investors in different member states.

One key barrier to selling AIFs to retail investors is the response to Section 10 Question 1 in the ESMA Q&As on MiFID II and MiFIR investor protection and intermediaries topics. This states that all non-UCITS collective investment undertakings must be treated as complex products, requiring a suitability or an appropriateness test, and excludes the possibility of these being assessed as non-complex under Article 25 (4)(iv) of the MiFID II Directive (Directive 2014/65/EU), in accordance with article 57 of the MiFID II Org Regulation (Commission Delegated Regulation (EU) 2017/565). This is a strict interpretation of the MiFID II requirements. A more flexible interpretation of these requirements would allow AIFs to be assessed under the criteria in article 57 of the MiFID II Org Regulation. This would facilitate easier access to retail investors to those AIFs that have strong investor protection and straightforward investment strategies, particularly

those AIFs that have investment power rules and investor protection rules similar to UCITS, while ensuring those AIFs with more complex features are subject to suitability and appropriateness requirements.

Question 23. Is there a need to structure an AIF under the EU law that could be marketed to retail investors with a passport?

- Yes
- No
- Don't know / no opinion / not relevant

Question 23.1 Please explain your answer to question 23:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Retail AIF structures have evolved in different jurisdictions to meet the varying requirements of local markets and the different regulatory frameworks. We are not aware of any significant demand for a pan-EU retail AIF structure, and the limited take up of the ELTIF is indicative of this.

In addition, the AIFMD is structured as a management company directive, intended to govern the management of investment funds primarily aimed at professional investors. It is not a product directive, and this proposal risks changing the nature of the AIFMD and jeopardising what has proved to be a successful framework.

b) depositary regime

Question 24. What difficulties, if any, the depositaries face in exercising their functions in accordance with the AIFMD?

Please provide your answer by giving concrete examples identifying any barriers and associated costs.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We are not aware of any significant difficulties faced by depositaries in exercising their functions. The introduction of the depositary requirement in the AIFMD has introduced a valuable layer of investor protection to AIFs, ensuring that external oversight is performed on the activities of AIFMs, in particular over the monitoring of cash flows in and out of the AIF and the proper segregation of the AIF assets from those of the AIFM.

We understand that some issues around the interpretation of the AIFMR requirements have been raised by depositaries, such as in the interpretation of whether certain assets such as collective investment

undertakings should be considered as custodial assets under Article 88 of the AIFMR, and in respect of the interpretation of the look-through provisions in Articles 89(3) and 90(5) of the AIFMR. These requirements should be interpreted in a manner that allows depositaries to carry out their safekeeping obligations in a manner that is practical and pragmatic. Our understanding is that these issues can be resolved through additional guidance at level 3, and do not require changes to the AIFMD legislative framework to resolve.

Question 25. Is it necessary and appropriate to explicitly define in the AIFMD tri-party collateral management services?

- Yes
- No
- Don't know / no opinion / not relevant

Question 25.1 Please explain your answer to question 25:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We understand that issues arise for depositaries in respect of tri-party collateral management services, particularly in respect of the nature of the appointment and how these interact with the custody chain. Where an AIFM decides to engage in securities lending transactions on behalf of an AIF that necessitates the use of a tri-party collateral agents, the AIFM should ensure that their agents are entering into the lending of cash or securities with highly creditworthy counterparties, accepting a diverse and liquid pool of collateral at or above the value of the transaction, and have appropriate tools in place to reconcile and report collateral received. The collateral delivery method and associated legal framework (ie title transfer or security interest), specific types, ratings or amounts of an individual security permitted should be determined by the AIFM, or designated to the Agent/Asset Manager and communicated to the Depositary.

Our sense is that these services do not need to be explicitly defined in the AIFMD, but depositaries safekeeping duties regarding tri-party collateral arrangements should be interpreted in a way that is practical and pragmatic. Depositaries may benefit from additional clarity in respect of these services through some additional guidance at level 3 on their safekeeping duties regarding tri-party collateral arrangements.

Question 26. Should there be more specific rules for the delegation process, where the assets are in the custody of tri-party collateral managers?

- Yes
- No
- Don't know / no opinion / not relevant

Question 26.1 Please explain your answer to question 26, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We are not aware that the current delegation process has caused significant issues for AIFMs. We understand that some issues have arisen for depositaries in respect of tri-party collateral management arrangements, due to the nature of the appointment and the interaction of tri-party collateral managers with the custody chain. Given the importance of collateral management in the use of derivatives and securities financing transactions, it is essential for AIFMs that these services can function appropriately within the AIFMD framework and that the requirements are applied to depositaries in a pragmatic and proportionate manner. In this respect, we recognise there may need to be further clarity for depositaries in respect of these arrangements. Given the technical nature of this issue, this clarity should be addressed using level 3 measures rather than amendments to the AIFMD, which could be fraught with difficulty and problematic to amend if the measures introduced prove unsuccessful in resolving the identified issues.

Question 27. Where AIFMs use tri-party collateral managers' services, which of the aspects should be explicitly regulated by the AIFMD?

Please select as many answers as you like

- the obligation for the asset manager to provide the depositary with the contract it has concluded with the tri-party collateral manager
- the flow of information between the tri-party collateral manager and the depositary
- the frequency at which the tri-party collateral manager should transmit the positions on a fund-by-fund basis to the depositary in order to enable it to record the movements in the financial instruments accounts opened in its books
- no additional rules are necessary, the current regulation is appropriate
- other

Question 28. Are the AIFMD rules on the prime brokers clear?

- Yes
- No
- Don't know / no opinion / not relevant

Question 29. Where applicable, are there any difficulties faced by depositaries in obtaining the required reporting from prime brokers?

- Yes
- No
- Don't know / no opinion / not relevant

Question 30. What additional measures are necessary at EU level to address the difficulties identified in the response to the preceding question?

Please explain your answer providing concrete examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

N/A

Question 31. Does the lack of the depositary passport inhibit efficient functioning of the EU AIF market?

- Yes
- No
- Don't know / no opinion / not relevant

Question 31.1 Please explain your answer to question 31:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We are not aware that the lack of a depositary passport has in any way inhibited the efficient functioning of the EU AIF market. For example, the number of active depositaries in the UK increased significantly following the implementation of AIFMD, providing competition for depositary services and a broad market choice for UK AIFMs. There is also significant competition for depositary services in the main AIF centres in the EU.

Question 32. What would be the potential benefits and risks associated with the introduction of the depositary passport?

Please explain your position, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Given the strong competition in the main EU AIF centres, and the ability of depositaries to establish and operate as branches in other EU member states, we see limited potential benefits in the introduction of a depositary passport. There are substantial risks with offering a depositary passport – in particular this is likely to create challenges for national competent authorities of EU AIFs, who will not be supervising the depositary that is performing key oversight obligations in respect of the AIF. Addressing this concern could result in inappropriate investor protection measures for AIFs marketed to professional investors.

We do not see that an empirical case has been made for a depositary passport, and given the risks involved with introducing a depositary passport, we recommend this proposal is not taken forward unless substantial evidence of the likely benefits of such a passport is presented.

Question 33. What barriers are precluding introducing the depositary passport?

Please explain your position providing concrete examples and evidence, where available, of the existing impediments:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As noted in our response to Q32, there are significant risks to the proposal to introducing a depositary passport and we recommend this proposal is not taken forward unless substantial evidence of the likely benefits of such a passport is presented.

Question 34. Are there other options that could address the lack of supply of depositary services in smaller markets?

Please explain your position presenting benefits and disadvantages of your suggested approach as well as potential costs of the change:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not have any recommendations on other options that could be used. As stated in our response to Question 31, we are not aware of any material supply issues of depositary services in key AIF markets.

Question 35. Should the investor CSDs be treated as delegates of the depositary?

- Yes
- No
- Don't know / no opinion / not relevant

Question 35.1 Please explain your answer to question 35, providing concrete examples and suggesting improvements to the current rules and presenting benefits and disadvantages as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We recognise that CSDs are an essential part of the market infrastructure in many markets (market CSDs), and when performing this role they should not be treated as delegates of the depositary. However, where CSDs are not performing this market role, they are providing custodial services (investor CSDs), and it is not

in the interest of AIF investors that they are exempted from being considered as delegates of the depository merely due to their being a CSD.

There should also be a level playing field with investor CSDs and other custodial service providers. When not acting as a top tier market CSD, CSDs providing custodial services should not be able to use the CSD Regulation to avoid assuming the liabilities applicable as a delegate of a depository.

c) transparency and conflicts of interest

Question 36. Are the mandatory disclosures under the AIFMD sufficient for investors to make informed investment decisions?

- Yes
- No
- Don't know / no opinion / not relevant

Question 37. What elements of mandatory disclosure requirements, if any, should differ depending on the type of investor?

Please explain your position, presenting benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The mandatory disclosures given under the AIFMD provide the important information needed by professional investors. Other regulatory frameworks interact with the distribution of AIFs to retail investors, and provide the necessary mandatory disclosures needed by these investors. For example, the MiFID II requirements ensure that retail investors obtain the additional information they need through the distribution chain, such as on costs and charges and risk factors. The PRIIPs Regulation also applies to AIFs sold to retail investors, and will ultimately address the additional mandatory disclosures needed by retail investors for AIFs. There are flaws with the PRIIPs Regulation that need to be addressed, particularly on performance scenarios and costs and charges disclosures. It is important that these issues with the current PRIIPs rules are resolved so that meaningful disclosures are given to retail investors. We note that in a number of EU member states, adaptations of the UCITS KIID are being successfully used to provide key disclosures relating to AIFs to retail investors.

Given that the differing information requirements for professional and retail investors are being met through the wider EU financial services regulatory framework, no changes are needed to the AIFMD to meet these differing disclosure needs.

Question 38. Are there any additional disclosures that AIFMs could be obliged to make on an interim basis to the investors other than those required in the annual report?

- Yes
- No
- Don't know / no opinion / not relevant

Question 39. Are the AIFMD rules on conflicts of interest appropriate and proportionate?

- Yes
- No
- Don't know / no opinion / not relevant

d) valuation rules

Question 40. Are the AIFMD rules on valuation appropriate?

- Yes
- No
- Don't know / no opinion / not relevant

Question 41. Should the AIFMD legal framework be improved further given the experience with asset valuation during the recent pandemic?

- Yes
- No
- Don't know / no opinion / not relevant

Question 42. Are the AIFMD rules on valuation clear?

- Yes
- No
- Don't know / no opinion / not relevant

Question 43. Are the AIFMD rules on valuation sufficient?

- Yes
- No
- Don't know / no opinion / not relevant

Question 44. Do you consider that it should be possible in the asset valuation process to combine input from internal and external valuers?

- Yes
- No
- Don't know / no opinion / not relevant

Question 44.1 Please substantiate your answer to question 44, also in terms of benefits, disadvantages and costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In our experience, it is already possible within the existing AIFMD valuation rules for AIFMs to combine input from internal and external valuers. Critically, under the existing AIFMD requirements, AIFMs have established independent valuation committees that oversee and ultimately decide on the valuation, which are independent of the portfolio management function, and therefore provide overall governance of the valuation process. The establishment of these independent valuation committees has enabled AIFMs to consider valuation inputs both internally, eg from the portfolio management function, in-house dealing teams, etc, and also from external sources such as independent price feeds, external valuers, etc, in order to come to an ultimate determination of the valuation of the AIF.

Question 45. In your experience, which specific aspect(s) trigger liability of a v a l u e r ?

Please provide concrete examples, presenting costs linked to the described occurrence:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We are not aware of any instances where the liability of a valuer has been triggered. As noted in our responses to Questions 40.1 and 44.1, AIFMs have typically assumed this liability, using independent valuation functions to ensure robust governance over the valuation process.

Question 46. In your experience, what measures are taken to mitigate/offset the liability of valuers in the jurisdiction of your choice?

Please provide concrete examples, presenting benefits and disadvantages as well as costs of the described approach:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Please refer to our response to Question 45.

III. International relations

Considering the global nature of financial services, the AIFMD interacts with the third country regulatory regimes. By adopting the AIFMD the EU co-legislators sought to put in place a legal framework for tackling risks emanating from AIF activities that may impact the EU financial stability, market integrity and investor protection. The questions below are seeking views on where to strike the balance of having a functioning, efficient AIF market and ensuring that it operates under the conditions of a fair competition without undermining financial stability. Besides posing general questions on the competitiveness of the EU AIF market, this section seeks views on how the EU market could interact with international partners in the area governed by the AIFMD. The focus is on the appropriateness of the AIFMD third country passport regime and delegation rules.

Question 47. Which elements of the AIFMD regulatory framework support the competitiveness of the EU AIF industry?

Please explain providing concrete examples and referring to data where available:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The AIFMD has helped make EU AIFs more attractive to a wider range of professional investors, both in the EU and internationally, through introducing greater investor protections and also facilitating an internal market for AIFs. This is evidence by the significant increase in the size of the EU AIF industry since the implementation of the AIFMD. The AIFMD has allowed the innovation of new AIF structures creating new opportunities for the EU AIF industry, such as the Reserved Alternative Investment Fund (RAIF) in Luxembourg.

As noted in our response to Question 3, there is a balance to maintain between appropriate investor protection and financial stability measures, and ensuring sufficient flexibility to allow AIFMs to provide professional investors with investment funds that meet the investment objectives and strategies they wish to pursue. The current AIFMD regulatory framework achieves this balance.

The current delegation framework has been of critical importance to the competitiveness of the EU AIF industry. The ability for EU AIFMs to delegate key functions, in particular portfolio management and operational functions, to entities with the appropriate expertise both inside and outside the EU, has been important in providing investor choice and sourcing operational efficiency, ensuring EU AIFs are considered best of breed. As we explore further in our response, any substantial changes to this delegation model, including the imposition of further restrictions on delegation, are likely to impact negatively on the competitiveness of the EU AIF industry.

Question 48. Which elements of the AIFMD regulatory framework could be altered to enhance competitiveness of the EU AIF industry?

Please explain providing concrete examples and referring to data where available:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not consider that changes to the AIFMD regulatory framework are needed in order to enhance its competitiveness. As noted in Question 47, the AIFMD framework has contributed to the competitiveness of the EU AIF industry, but this has been achieved through a careful balance of the investor protection and financial stability requirements and ensuring sufficient flexibility to allow AIFs to be manufactured that meet the needs of professional investors. There is a risk that any changes to the AIFMD, however well intentioned, may upset this balance and have the effect of making the EU AIF industry less, rather than more, competitive.

Question 49. Do you believe that national private placement regimes create an uneven playing field between EU and non-EU AIFMs?

- Yes
- No
- Don't know / no opinion / not relevant

Question 50. Are the delegation rules sufficiently clear to prevent creation of letter-box entities in the EU?

- Yes
- No
- Don't know / no opinion / not relevant

Question 51. Are the delegation rules under the AIFMD/AIFMR appropriate to ensure effective risk management?

- Yes
- No
- Don't know / no opinion / not relevant

Question 52. Should the AIFMD/AIFMR delegation rules, and in particular Article 82 of the Commission Delegated Regulation (EU) No 231/2013, be complemented?

- Yes
- No
- Don't know / no opinion / not relevant

Question 53. Should the AIFMD standards apply regardless of the location of a third party, to which AIFM has delegated the collective portfolio

management functions, in order to ensure investor protection and to prevent regulatory arbitrage?

- Yes
- No
- Don't know / no opinion / not relevant

Question 53.1 Please explain your answer to question 53:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As per Article 75 of the Delegated Regulation, the EU AIFM is wholly and entirely legally responsible for any delegated activity and remains accountable for ensuring compliance with the relevant provisions of the AIFMD and its implementation measures, including that where portfolio management functions are delegated this is carried out as per the investment policy of the AIF. The IA does not support the extension of AIFMD requirements directly to the third party through changes to AIFMD or the AIFMR as this is already guaranteed through the contractual relationship between the delegating and receiving entity and would amount to an extra-territorial application of AIFMD beyond the EU.

Question 54. Do you consider that a consistent enforcement of the delegation rules throughout the EU should be improved?

- Yes
- No
- Don't know / no opinion / not relevant

Question 54.1 Please explain your answer to question 54, presenting benefits and disadvantages of the current rules and where available providing concrete examples substantiating your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The IA supports greater consistency in approach between national authorities in applying the provisions of the AIFMD and its delegated measures. Where delegation is carried out under strict supervision of a national authority, delegation is demonstrated to function well and operates efficiently in the interests of the end investors. We note that ESMA has a number of tools available to it in order to promote further consistency, including the use of Peer Review, its Supervisory Convergence Network, and as a last resort, the issuance of additional specific guidance to national authorities.

Question 55. Which elements of the AIFMR delegation rules could be applied

t o

U C I T S ?

Please explain your position, presenting benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not believe there is a need at present to revisit the UCITS delegation framework. In practice, high standards are applied to UCITS delegation by supervisors, and as noted in our response to question 50.1, member states have applied the standards recommended in the ESMA 2017 Opinion on the implications on Brexit for Investment Managers.

The UCITS framework has been one of the greatest successes of the EU financial framework, creating a UCITS brand that is regarded globally as the gold standard for retail investment funds. The brand has proved popular not only with EU investors, but with investors globally, with EU UCITS being distributed in many key international markets, such as East Asia and Latin America. This can be partly attributed to the ability to delegate portfolio management outside of the EU, leading to UCITS funds that utilise global portfolio managers including those based in Asia and the US. Changes to the UCITS requirements inevitably cause concerns among investors in these key markets. In particular, changes to the delegation framework could make UCITS less attractive to those who use it as the vehicle of choice to offer products utilising their portfolio management services in those markets, potentially damaging the UCITS brand.

Given the existing delegation framework for UCITS has proved effective, particularly when complemented the strict requirements imposed by NCAs on delegation for UCITS at national level, we suggest that EU policy makers should be cautious at revisiting the delegation rules for UCITS, and in particular take into consideration any implications for the perception of UCITS as a global brand.

IV. Financial stability

One of the main objectives of the AIFMD is to enable supervisors to appreciate and mitigate systemic risks building up in financial markets from different sources. To this end, AIFMs are subject to periodic reporting obligations and supervisors are equipped with certain market intervention powers to mitigate negative effects to the financial stability that may arise from the activities on the AIF market.

The section below invites opinions whether the intervention powers and a tool-kit available to the relevant supervisors are sufficient in times of severe market disruptions. Shared views on the adequacy of the AIFMR supervisory reporting template will be important in rethinking the AIFM supervisory reporting obligations. According to the FSB report, markets for leveraged loans and CLOs have grown significantly in recent years exceeding pre-crisis levels ([FSB, Vulnerabilities associated with leveraged loans and collateralised loan obligations \(CLOs\), PLEN/2019/91-REV, 22 November 2019](#)). While most leveraged loans are originated and held by banks, investment funds are also exposed to the leveraged loan and CLO markets. In order to assess risks to the financial stability and regulatory implications associated with leveraged loans and CLOs it would be commendable to continue collecting the relevant data and monitoring the market. The stakeholders are invited to cast their views on the matter.

With particular regard to the loan originating AIFs, suggestions on the optimal harmonisation of the rules that could apply to these collective investment vehicles are welcome. Finally, questions are raised whether leverage calculation

methods could benefit from further standardisation of metrics across the AIF market and potentially also across the UCITS for the supervisors to have a complete picture of the level of leverage engaged by the collective investment funds.

a) macroprudential tools

Question 56. Should the AIFMD framework be further enhanced for more effectively addressing macroprudential concerns?

- Yes
- No
- Don't know / no opinion / not relevant

Question 56.1 Please explain your answer to question 56:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not believe that any fundamental changes are needed to the AIFMD Framework. This already provides a number of tools to allow for supervisory monitoring of liquidity and intervention by NCAs. As noted, it is important that AIFMs have a broad and consistent toolkit in all EU member states that can be deployed as appropriate in varying situations, but this is best achieved through level 3 and 4 initiatives rather than at the level of the directive or regulation, which could result in unhelpful limitations and constraints at legislative level. We do support enhanced supervisory cooperation in this area, but that can be achieved under the existing framework.

The availability of a full suite of liquidity tools is important for AIFMs in each jurisdiction, although it should not be compulsory for AIFMs to make every tool available for each fund. In this regard, we note that many EU member states, in particular the key fund domiciles, have now made more liquidity management tools available to AIFMs, and therefore we believe it is no longer necessary to address this at EU level. It is important that AIFMs have the flexibility to identify the tools that are suitable for particular funds, having regard to the characteristics and liquidity profile of the assets the fund invests in and the knowledge and behaviour of the investor base. It is also important that AIFMs are able to select tools they can operationally utilise – for example, some tools that are practical with small numbers of investors are not practical for funds with larger investor bases. It is important that AIFMs retain the flexibility to use those tools that are most appropriate for their AIF types and markets, and for this reason we believe these are better addressed at a local level. We suggest ongoing benchmarking of initiatives by member states on the availability of liquidity management tools in their jurisdictions could be undertaken to encourage action at national level.

We note that the concept of Funds Investing in Inherently Illiquid Assets (FIIA) has been introduced for UK authorised investment funds. This concept remains to be tested on how effective it proves in assisting investors in understanding the illiquid nature of those assets, and we do not recommend that any legislative definitions on inherently liquid or inherently illiquid assets are added to the AIFMD as these are likely to prove difficult to define, given the fluidity of liquidity.

Question 57. Is there a need to clarify in the AIFMD that the NCAs' right to require the suspension of the issue, repurchase or redemption of units in the public interest includes financial stability reasons?

- Yes
- No
- Don't know / no opinion / not relevant

Question 57.1 Please explain your answer to question 57, presenting benefits and disadvantages of the potential changes to the existing rules and processes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In nearly all circumstances, the decision to suspend an AIF is best taken by the AIFM, who has the closest knowledge of the portfolio and its underlying assets, its investor base and their likely intentions. The AIFM already has a statutory obligation to manage any conflicts of interest and act in the interests of investors in this regard. As such, the power for NCAs under the NCAs to require the suspension of dealing in AIFs in the public interest is a tool that is only required, and should only be used, in extreme cases. In our view, there is no need to further clarify this right in the AIFMD, as protecting financial stability can clearly be regarded as being in the public interest, and we would only expect suspension to be mandated for financial stability reasons where it meets the public interest test.

Question 58. Which data fields should be included in a template for NCAs to report relevant and timely data to ESMA during the period of the stressed market conditions?

Please provide your suggestions, presenting benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Ultimately this is a matter for NCAs and ESMA to determine, in view of the information they require. However, any template should make use of the considerable information that is already reported by AIFMs to NCAs and other public authorities, rather than imposing further reporting burdens onto AIFMs.

Question 59. Should AIFMs be required to report to the relevant supervisory authorities when they activate liquidity risk management tools?

- Yes
- No
- Don't know / no opinion / not relevant

Question 59.1 Please explain your answer to question 59, providing costs, benefits and disadvantages of the advocated approach:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There is a need to differentiate between those Liquidity Management Tools (LMTs) that are employed by AIFMs in the ordinary course of the management of the AIFs, and those that are employed in emergency circumstance. LMTs that are always used, such as notice periods, would not need to be notified, as they would form part of the fund's original application or change application if it was to be introduced. We also do not see any benefit to reporting the activation of LMTs to NCAs used by AIFMs on a regular basis, in particular pricing mechanisms, such as entry/exit fees, dilution levy or swing pricing. The use of these LMTs can be covered by the NCA's regular supervisory monitoring program.

We do recognise that, as presently required under the AIFMD, there is a need for NCAs to be notified of the suspension of issue and redemption of units in an AIF, and support the continuation of this notification requirement. However, there should not need to be an automatic requirement to notify NCAs of the activation of most other LMTs.

Question 60. Should the AIFMD rules on remuneration be adjusted to provide for the de minimis thresholds?

- Yes
- No
- Don't know / no opinion / not relevant

b) supervisory reporting requirements

Question 61. Are the supervisory reporting requirements as provided in the AIFMD and AIFMR's Annex IV appropriate?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 61.1 Please explain your answer to question 61:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The AIFMD Annex IV reporting requirements have proved burdensome to the industry, but having implemented the processes and systems required to deliver this reporting, our members do not see any benefit in changing these requirements. The implementation costs to the industry of the Annex IV reporting were particularly high and still have to be amortized, and it has not been apparent to our members that this data has been extensively used by NCAs, ESMA or other public authorities in their supervisory work.

The information reported by AIFMs in Annex IV reporting is fairly comprehensive and should be sufficient, if properly used, for supervisors to monitor key risks arising from the activities of AIFMs, complemented by other sources of reported data, in particular:

- fund annual reports and semi-annual reports
- fund inventories already provided to National Central Banks (e.g. Banque Centrale de Luxembourg, Banque de France).

Given the high costs and disruption of changes to reporting, and the significant work in obtaining and providing additional data, we expect supervisors to make full use of the existing data provided before requiring the reporting of further data. As an exception, we recognise the mandatory reporting of LEIs would be beneficial to supervisors, especially when comparing data across various reports, and therefore as noted in our response to questions 63 to 65 we are supportive of the proposal for the reporting of LEIs in Annex IV reports to be mandatory.

In practice, one area of improvement might be to improve data sharing between Central Banks and Securities Regulators, at national and EU levels. From this perspective, we would advise a better sharing of:

- AIFMD Annex IV reported data
- Fund annual and semi-annual report data
- Fund inventories, as already provided to National Central Banks.

This sharing of data should be between national supervisors, central banks and with European authorities including the ESMA, the EBA and the ECB. We suggest that analytical big data software tools could be utilised to make better use of the range of data already collected by national and European authorities.

Question 62. Should the AIFMR supervisory reporting template provide a more comprehensive portfolio breakdown?

- Yes
- No
- Don't know / no opinion / not relevant

Question 63. Should the identification of an AIF with a LEI identifier be mandatory?

- Yes
- No
- Don't know / no opinion / not relevant

Question 63.1 Please explain your answer to question 63, presenting benefits and disadvantages as well as costs associated with introducing such a requirement:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

AIFs will almost always have some exposure to financial instruments that are subject to transaction reporting by the investment manager under Article 26 that will need to identify the fund as the buyer or seller; and many will be counterparties to derivatives and/or securities financing transactions for which the fund would need to be identified as the reporting counterparty. In each case, such identification must be already provided by way of the LEI for the fund.

Mandating that an AIF must have an LEI from the outset will mean that its investment manager(s) will be able to trade immediately in the knowledge that it will be possible to fulfil the associated reporting obligations.

The costs of obtaining and maintaining an LEI varies depending on the "Local Operating Unit" selected to assign it with, but competition among LOUs keeping these costs to €50-100 initial and less than that per annum thereafter. These would be negligible as expenses to any financially viable fund.

The existing AIFMD Annex IV reporting template already provides the data fields needed to report LEIs for AIFs, currently as optional fields, so no material system changes will be needed to accommodate the mandatory reporting of LEIs.

Question 64. Should the identification of an AIFM with a LEI identifier be mandatory?

- Yes
- No
-

Don't know / no opinion / not relevant

Question 64.1 Please explain your answer to question 64, presenting benefits and disadvantages as well as costs associated with introducing such a requirement:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As noted in our response to Question 63.1 many AIFs will be counterparties to derivatives and/or securities financing transactions for which the fund would need to be identified as the reporting counterparty. Currently, SFT reporting also requires the AIFM to be identified as the entity responsible for the reporting, while ESMA has proposed that a similar field be added to EMIR reporting from the end of 2022, in the light of changes introduced by the EMIR Refit legislation.

The costs of obtaining and maintaining an LEI varies depending on the "Local Operating Unit" selected to assign it with, but competition among LOUs keeping these costs to €50-100 initial and less than that per annum thereafter. These would be negligible within the overall cost base of an AIFM.

The existing AIFMD Annex IV reporting template already provides the data fields needed to report LEIs for AIFMs, currently as optional fields, so no material system changes will be needed to accommodate the mandatory reporting of LEIs.

Question 65. Should the use of an LEI identifier for the purposes of identifying the counterparties and issuers of securities in an AIF's portfolio be mandatory for the Annex IV reporting of AIFMR?

- Yes
- No
- Don't know / no opinion / not relevant

Question 65.1 Please explain your answer to question 65, presenting benefits and disadvantages as well as costs associated with introducing such a requirement:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

In line with our responses to Questions 63 and 64, we support the mandatory reporting of LEIs where these are available. Since the implementation of AIFMD, the use of LEIs has been widely adopted internationally. We recognise that the mandatory provision of LEIs will greatly assist supervisors in their monitoring of the financial system across various existing reporting requirements, and this will assist supervisors in optimising and cross-referencing existing data without the need for substantial additional reporting by AIFMs.

The AIFMD Annex IV reporting template already provides data fields for these identifiers, so the mandatory reporting of LEIs should not require any significant changes to the AIFMD reporting framework. Provision should be made for the reporting of any exception cases where LEIs for counterparties are not available.

Question 66. Does the reporting data adequately cover activities of loan originating AIFs?

- Yes
- No
- Don't know / no opinion / not relevant

Question 66.1 Please explain your answer to question 66:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Loan originating AIFs are a fairly niche area, and the existing AIFMD reporting requirements already adequately cover these AIFs.

Question 67. Should the supervisory reporting by AIFMs be submitted to a single central authority?

- Yes
- No
- Don't know / no opinion / not relevant

Question 67.1 Please explain your answer to question 67:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We see no need to change the existing framework, where AIFMs report to their home state NCA. AIFMs have relationships with their NCAs, who are best placed to take local market nuances into consideration. Given Annex IV reports are shared with ESMA, other NCAs and can be shared with other public authorities, we do not see any benefit in changing the existing framework.

Question 68. Should access to the AIFMD supervisory reporting data be granted to other relevant national and/or EU institutions with responsibilities in the area of financial stability?

- Yes
- No
- Don't know / no opinion / not relevant

Question 68.1 If yes, please specify which one:

- ESRB
- ECB
- NCBs
- National macro-prudential authorities
- Other

Please specify to which other relevant national and/or EU institutions the access to the AIFMD supervisory reporting data should be granted:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Data should be shared with all of the following bodies:

ESRB

ECB

NCBs

National macro-prudential authorities

Given that systemic risks typically arise at a global level, consideration should also be given to sharing information with third country NCAs and international public authorities, in particular IOSCO. There should equally be an expectation that the sharing of information should be reciprocal, hence information should also be shared by third country NCAs and international supervisory bodies.

Question 68.2 Please explain your answer to question 68.1:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is important that data already currently gathered by supervisors and public authorities, is shared so that they can optimise their sense of any systemic risks emerging on a global scale, without having to duplicate information requests to firms. The sharing of data should be mutual between supervisors and public authorities, as noted in our response to question 61.1.

Financial regulators, central banks and the government should cooperate in each jurisdiction to highlight the risks to financial stability and mitigate them. Analysis of growing trends will enable this work to be carried out effectively. The provision of information to EU-wide and global bodies can enable trends in different geographical areas to be highlighted and for supervisors to work in conjunction to mitigate the risks identified.

As above, this would be beneficial for the purposes of data sharing between authorities within the home jurisdiction, as well as across jurisdictions.

Question 69. Does the AIFMR template effectively capture links between financial institutions?

- Yes
- No
- Don't know / no opinion / not relevant

Question 69.1 Please explain your answer to question 69:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The existing AIFMD reporting, when used in conjunction with other reporting such as EMIR, SFTR and MiFID, provides sufficient information to capture links between financial institutions. The mandatory reporting of LEIs, as proposed in our responses to Questions 63 to 65, will enable supervisors to more easily identify and monitor those linkages, and further changes to the AIFMD reporting should not be necessary.

Question 70. Should the fund classification under the AIFMR supervisory reporting template be improved to better identify the type of AIF?

- Yes
- No
- Don't know / no opinion / not relevant

Question 70.1 Please explain your answer to question 70:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

It is not clear to us that AIF classification can be readily improved. In practice, defining particular AIF types, such as hedge funds, has proved significantly problematic. We therefore don't propose any changes to the AIF classifications, but consider that some further guidance on these could be provided at level 3.

Question 71. What additional data fields should be added to the AIFMR supervisory reporting template to improve capturing risks to financial stability:

Please select as many answers as you like

- value at Risk (VaR)
- additional details used for calculating leverage
- additional details on the liquidity profile of the fund's portfolio
- details on initial margin and variation margin
- the geographical focus expressed in monetary values
- the extent of hedging through long/short positions by an AIFM/AIF expressed as a percentage
- liquidity risk management tools that are available to AIFMs
- data on non-EU master AIFs that are not marketed into the EU, but which have an EU feeder AIF or a non-EU feeder marketed into the EU if managed by the same AIFM
- the role of external credit ratings in investment mandates
- LEIs of all counterparties to provide detail on exposures
- sustainability-related data, in particular on exposure to climate and environmental risks, including physical and transition risks (e.g. shares of assets for which sustainability risks are assessed; types and magnitudes of risks; forward-looking, scenario-based data)
- other

Question 72. What additional data fields should be added to the AIFMR supervisory reporting template to better capture AIF's exposure to leveraged loans and CLO market?

Please explain your answer providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not believe that any additional fields are needed to capture AIFs' exposures to these asset classes.

Question 73. Should any data fields be deleted from the AIFMR supervisory reporting template?

- Yes
- No
- Don't know / no opinion / not relevant

Question 74. Is the reporting frequency of the data required under Annex IV of the AIFMR appropriate?

- Yes
- No
- Don't know / no opinion / not relevant

Question 75. Which data fields should be included in a template requiring AIFMs to provide ad hoc information in accordance with Article 24(5) of the AIFMD during the period of the stressed market in a harmonised and proportionate way?

Please explain your answer presenting the costs, benefits and disadvantages of implementing the suggestions:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The IA does see scope for better coordination between NCAs in times of crisis, and some standardisation of information requests would be helpful for AIFMs, many of whom are part of groups that operate in several member states. Our members reported being asked to provide adhoc information during the crisis with some variations in requirements at short notice, making this more difficult for AIFMs to provide at a time they were trying to cope with stressed market conditions and a sudden move to remote working.

However, such standardisation should not be mandated at a legislative level, either through level 1 or level 2 measures. The circumstances leading to requests for adhoc information will vary depending on the circumstances that have resulted in the stressed conditions, and the information needs are likely to vary depending on those circumstances. We recommend that firstly, NCAs should use information that has previously been reported to them. In many cases, that is likely to prove sufficient, and in any case should help NCAs to narrow down to those AIFMs they need to request more information from. Further adhoc requests, and the standardisation of these, should be coordinated through level 3 and level 4 measures, in particular developed through coordination between NCAs. In this vein, it would be useful for NCAs to share with AIFMs some indication of the likely information to be requested during stressed conditions, and the likely format of data submissions, so that they can develop processes for these that can be activated when required.

Question 76. Should supervisory reporting for UCITS funds be introduced?

- Yes
- No
- Don't know / no opinion / not relevant

Question 76.1 Please explain your answer to question 78, also in terms of costs, benefits and disadvantages:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Given the stricter rules that apply to UCITS, and in particular the investment restrictions that limit the investment risk that can be taken on by UCITS, we do not see the need for an equivalent supervisory reporting regime for UCITS. We note that the UCITS directive already requires UCITS management companies to file their derivatives risk management processes with their home state NCAs annually, and that many member states have already standardised the reporting of these. In addition, some the central

banks of several member states already require the reporting of information by UCITS management companies operating in their jurisdictions. Therefore, NCAs and other supervisory authorities are already receiving substantial information on UCITS.

Question 77. Should the supervisory reporting requirements for UCITS and AIFs be harmonised?

- Yes
- No
- Don't know / no opinion / not relevant

Question 77.1 Please explain your answer to question 79, also in terms of costs, benefits and disadvantages:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As a product directive, the UCITS directive imposes far stricter requirements on the management of UCITS, including strict investment restrictions that limit the investment risk that can be taken on by UCITS and stronger investor protection requirements than the AIFMD. We therefore do not see any case for requiring the more extensive supervisory reporting requirements for AIFs to be applied to UCITS.

Should any future reporting frameworks be proposed, these should utilise and be compatible with existing reporting frameworks to limit the need for new system development.

Question 78. Should the formats and definitions be harmonised with other reporting regimes (e.g. for derivatives and repos, that the AIF could report using a straightforward transformation of the data that they already have to report under EMIR or SFTR)?

- Yes
- No
- Don't know / no opinion / not relevant

c) leverage

Question 79. Are the leverage calculation methods – gross and commitment – as provided in AIFMR appropriate?

-

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 79.1 Please explain your answer to question 79 in terms of the costs, benefits and disadvantages:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There are some difficulties with the existing measures, especially the tendency of these to overstate leverage in AIFs. Nonetheless, these figures are relatively straightforward to produce, and give NCAs a quick indication on the overall use of derivatives and, in the case of the commitment calculation, which AIFs are employing the most leverage. Considerable resource has been invested by AIFMs in educating their investors in helping them understand these measures and what they mean, and our members report that investors are now largely comfortable with these.

It is worth noting that the European regime is already considerably more advanced in the calculation and reporting of leverage than most international fund centres. The gross and commitment measures already align with the gross notional exposure and net notional exposure measures advocated by IOSCO in its December 2019 report on leverage measures for funds.

Question 80. Should the leverage calculation methods for UCITS and AIFs be harmonised?

- Yes
- No
- Don't know / no opinion / not relevant

Question 80.1 Please explain your answer to question 80:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As UCITS have more investment restrictions than AIFs, and are in particular subject to limits on their overall global exposure, we do not believe there is a pressing need to harmonise the leverage measures used in UCITS and AIFMD. Both frameworks have been established for some time, and overall are working well. These allow the appropriate measurement and calibration of exposure risks relevant to their respective products. The methodologies are used for different purposes across these directives, and attempting to

harmonise methodologies could have unintended and undesirable outcomes for UCITS, eg limiting their ability to manage portfolio risks through the use of hedging instruments.

Should the Commission believe it appropriate to take steps to harmonise these measures, such a process should be conducted with input from risk management experts from the asset management industry as well as supervisors.

Question 81. What is your assessment of the two-step approach as suggested by International Organisation of Securities Commissions ('IOSCO') in the [Framework Assessing Leverage in Investment Funds published in December 2019](#) to collect data on the asset by asset class to assess leverage in AIFs?

Please provide it, presenting costs, benefits and disadvantages of implementing the IOSCO approach:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Overall, we support the two-step approach outlined in IOSCO leverage framework. This approach will allow supervisors to focus on the relatively small population of AIFs that use high levels of leverage, and may potentially (though not necessarily) pose some systemic risks through their use of leverage. However the AIFMD leverage framework is already relatively advanced – as we note, these measures already align to the gross and net measures proposed by IOSCO, and the guidelines issued by ESMA in December 2020 on the application of Article 25 of the AIFMD implements the two-step approach. As such, we believe the key recommendations issued by IOSCO are now covered by the AIFMD framework. We do not advocate introducing any further reporting on leverage by an asset by asset class basis, at least for the majority of AIFs that do not employ leverage on a substantial basis.

Question 82. Should the leverage calculation metrics be harmonised at EU level?

- Yes
- No
- Don't know / no opinion / not relevant

Question 82.1 Please explain your answer to question 82, presenting the costs, benefits and disadvantages of your chosen approach:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Given the AIFMD leverage calculation metrics are already harmonised at EU level, we assume this question refers to a harmonisation of leverage metrics across other EU financial services legislation. We do not advocate this – there are significant differences to how leverage presents in AIFs compared to in other parts of the financial sector, particularly banking, and the leverage measures used in banking are unlikely to be suitable for AIFs and vice versa.

Consistency on the application of the AIFMD leverage requirements has largely been achieved through level 3 and 4 measures, and any remaining inconsistencies are best addressed through these mechanisms.

Question 83. What additional measures may be required given the reported increase in CLO and leveraged loans in the financial system and the risks those may present to macro-prudential stability?

Please provide your suggestion(s) including information, where available, on the costs and benefits, advantages and disadvantages of the proposed measures:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not believe additional measures are required in respect of these products. Although CLOs and leveraged loans are typically regarded as being higher risk assets from an investment perspective, these do not create additional leverage exposure at the level of the portfolio. The existing risk management framework for AIFMs is already adequate to capture the risks associated with these products.

Question 84. Are the current AIFMD rules permitting NCAs to cap the use of leverage appropriate?

- Yes
- No
- Don't know / no opinion / not relevant

Question 85. Should the requirements for loan originating AIFs be harmonised at EU level?

- Yes
- No
- Don't know / no opinion / not relevant

Question 85.1 Please explain your answer to question 85:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not see that there is any need to further harmonise the requirements for loan originating AIFs at EU level. This is still a relatively small part of the overall AIF market, but is already providing a vital alternative to bank lending to provide finance to the real economy, particularly to mid-sized enterprises. Typically, only professional investors, who understand the credit and liquidity risks associated, will invest in these AIFs. As shown in research undertaken by the Alternative Credit Council, such as its 2019 report on Non-bank Lending in the European Union (<https://www.aima.org/educate/aima-research/non-bank-lending-in-the-european-union.html>), loan origination funds are typically closed-ended with relatively low levels of leverage therefore presenting low levels of risk of credit transformation.

There is a risk that the development of this sector, which could prove a vital source of capital funding to European enterprises, could be inappropriately stifled by aggressive measures such as those proposed by ESMA in its 2017 report.

V. Investing in private companies

The AIFMD rules regulating investing in private companies aim to increase transparency and accountability of collective investment funds holding controlling stakes in non-listed companies. This section seeks insights whether these provisions are delivering on the stated objectives and whether there are other ways to achieve those objectives more efficiently and effectively. Private equity industry has been growing for years from a few boutique firms to € 3,7 T global industry. The questions are raised therefore whether the AIFMD contains all the relevant regulatory elements that are fit for purpose.

Question 86. Are the rules provided in Section 2 of Chapter 5 of the AIFMD laying down the obligations for AIFMs managing AIFs, which acquire control of non-listed companies and issuers, adequate, proportionate and effective in enhancing transparency regarding the employees of the portfolio company and the AIF investors?

- Fully agree
- Somewhat agree
-

- Neutral
- Somewhat disagree
 - Fully disagree
 - Don't know / no opinion / not relevant

Question 86.1 Please explain your answer to question 86, providing concrete examples and data, where available:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Although our members are active investors in private markets, they do not typically manage AIFs which acquire control over non-listed companies, and as such we are unable to give a view on these questions.

We do, however, caution against the involvement of securities regulators in the regulation of activities involving the running of individual companies.

Question 87. Are the AIFMD rules provided in Section 2 of Chapter 5 of the AIFMD whereby the AIFM of an AIF, which acquires control over a non-listed company, is required to provide the NCA of its home Member State with information on the financing of the acquisition necessary, adequate and proportionate?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 87.1 Please explain your answer to question 87, providing concrete examples and data, where available:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 88. Are the AIFMD provisions against asset stripping in the case of an acquired control over a non-listed company or an issuer necessary, effective and proportionate?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 88.1 Please explain your answer to question 88, providing concrete examples and data, where available:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 89. How can the AIFMD provisions against asset stripping in the case of an acquired control over a non-listed company or an issuer be improved?

Please provide your suggestion(s) including information, where available, on the costs and benefits, advantages and disadvantages of the proposed measures:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not have a view on this question.

VI. Sustainability/ESG

Integrating sustainability factors in the portfolio selection and management has a double materiality perspective, in line with the [non-financial reporting directive \(2014/95\)](#) and the [European Commission's 2017 non-binding guidelines on non-financial](#). Financial materiality refers in a broad sense to the financial value and performance of an investment. In this context, sustainability risks refer to potential environmental, social or governance events or conditions that if occurring could cause a negative material impact on the value of the investment. For example, physical risks from the consequences of climate change may concern a single investment/company, e.g. due to potential supply chain disruptions or scarcity of raw materials, and may concern welfare losses for the economy as a whole. Non-financial materiality, also known as environmental and social materiality, refers to the impacts of an investment/corporate activity on the environment and society (i.e. negative externalities). Still, there is also a financial dimension to non-financial materiality. Notably, so-called transition risks arise from an insufficient consideration for environmental materiality, for instance due to potential policy changes for mitigating climate change (e.g. to regulatory frameworks, incentive structures, carbon pricing), shifts of supply chains and end-demand, as well as stakeholder actions for mitigating climate change.

The [disclosure regulation 2019/2088](#) requires a significant part of the financial services market, including AIFMs, to integrate in their processes, including in their due diligence processes, assessment of all relevant sustainability risks that might have a material negative impact on the financial return of an investment or advice. However, at the moment AIFMs are not required to integrate the quantification of sustainability risks. Regulatory technical standards under the disclosure regulation 2019/2088 will specify principal adverse impacts to be quantified or described. This section seeks to gather input permitting better understand and assess the appropriateness of the AIFMD rules in assessing the sustainability risks.

Question 90. The [disclosure regulation 2019/2088](#) defines sustainability risks, and allows their disclosures either in quantitative or qualitative terms.

Should AIFMs only quantify such risks?

- Yes
- No
- Don't know / no opinion / not relevant

Question 90.1 Please substantiate your answer to question 90, also in terms of benefits, disadvantages and costs as well as in terms of available data:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The IA fully support the integration of sustainability risks as part of risk management on a fund level, however we do not welcome sustainability risks to be assessed only in a quantitative capacity. AIFMs should have the flexibility to provide both quantitative and qualitative disclosures.

In addition to posing significant data challenges (given the lack of data for some categories of underlying assets, or sufficiently sophisticated data), it is our view that disclosing sustainability risks in quantitative terms only would restrict firms from disclosing sustainability risks meaningfully.

The IA would welcome an approach that aligns with the disclosure regulation and therefore would allow AIFMs to always disclose in both quantitative and qualitative terms. In addition, the Commission is set to publish the Delegated Acts on the integration of sustainability risks in UCITS and AIFMD and should look at the assessment and implementation of the L2 measures instead of triggering changes at the Level of the AIFMD Review.

Finally, the IA advocates for clarity and consistency, which includes encouraging there to be alignment of reporting standards globally and ensuring reporting standards are relevant on an asset class by asset class basis.

Question 91. Should investment decision processes of any AIFM integrate the assessment of non-financial materiality, i.e. potential principal adverse sustainability impacts?

- Yes
- No
- Don't know / no opinion / not relevant

Question 91.1 Please substantiate your answer to question 91, also in terms of benefits, disadvantages and costs. Please make a distinction between adverse impacts and principal adverse impacts and consider those types of adverse impacts for which data and methodologies are available as well as those where the competence is nascent or evolving:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

AIFMs' investment decision processes integrate non-financial considerations when these are relevant, material to financial performance, consistent with the objectives of the investments and aligned with the preferences expressed by the client. Broadening the scope of this assessment and introducing a specific requirement for AIFMs to integrate the assessment of non-financial materiality into their investment decisions could limit meaningful sustainable investment decisions by limiting the flexibility of making these decisions and therefore introducing risk of not acting in the best interest of the end client.

Until there is more clarity on how to identify, measure and disclose adverse sustainability impacts under SFDR, AIFMs would benefit from the flexibility to consider sustainability impacts in their investment decision processes on the basis of a materiality assessment.

Question 92. Should the adverse impacts on sustainability factors be integrated in the quantification of sustainability risks (see the example in the introduction)?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 92.1 Please explain your answer to question 92:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The IA emphasises the importance to ensure legal clarity and consistency and we strongly recommend alignment with SFDR and the relevant definitions regarding sustainability risks and principle adverse impacts. We also warn against disclosure in a solely quantitative capacity.

At this stage, quantifying sustainability risk and those adverse impacts are difficult as regulations are not yet clear, consistent and applicable across the value chain. Firms should, therefore, have flexibility in the way they conduct their risk assessment and consider adverse impacts.

Question 93. Should AIFMs, when considering investment decisions, be required to take account of sustainability-related impacts beyond what is currently required by the EU law (such as environmental pollution and degradation, climate change, social impacts, human rights violations) alongside the interests and preferences of investors?

- Yes
- No
- No, ESMA's current competences and powers are sufficient
-

Don't know / no opinion / not relevant

Question 93.1 Please explain your answer to question 93:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Requiring AIFMs to take account of sustainability-related impacts beyond what is currently required by the EU law stretches beyond AIFMs' fiduciary duty. AIFMs cannot, and should not, be required to take into account interests and preferences other than those expressed by investors. This includes consideration of adverse impacts of investment decisions on sustainability, which should not be required for all investments but only when this is deemed materials and/or is in line with end-investors preferences.

Question 94. The [EU Taxonomy Regulation 2020/852](#) provides a framework for identifying economic activities that are in fact sustainable in order to establish a common understanding for market participants and prevent green-washing. To qualify as sustainable, an activity needs to make a substantial contribution to one of six environmental objectives, do no significant harm to any of the other five, and meet certain social minimum standards. In your view, should the EU Taxonomy play a role when AIFMs are making investment decisions, in particular regarding sustainability factors?

- Yes
- No
- Don't know / no opinion / not relevant

Question 94.1 Please explain your answer to question 94:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

The EU Taxonomy inclusion in every AIFMs investment decision would be a mistake. It may not be in line with the sustainability preference of the end client and it carries the risk to severely restrict the investment universe. .

Furthermore, a clear connection between EU taxonomy and AIFMs' investment decisions is inappropriate as elements of compliance with the taxonomy remain unclear. We have yet to see the breadth and quality of reporting by listed and non-listed investee companies, as well as the introduction of social objectives, in addition to environmental objectives covered by the Taxonomy.

Question 95. Should other sustainability-related requirements or international principles beyond those laid down in Regulation (EU) 2020/852 be considered by AIFMs when making investment decisions?

- Yes
- No
- Don't know / no opinion / not relevant

Question 95.1 Please explain your answer to question 95, describing sustainability-related requirements or international principles that you would propose to consider.

Please indicate, where possible, costs, advantages and disadvantages associated therewith:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

As expressed in our answers to previous questions - if this is in line with the sustainability preference of a client, it is justified to include sustainability related requirements as laid down in Regulation 2020/852. We do not see a practical merit in including any further sustainability related requirements.

VII. Miscellaneous

This section contains a few questions on the competences and powers of supervisory authorities. It also opens up the floor for any other comments of the stakeholders on the AIFMD related regulatory issues that are raised in the preceding sections. Respondents are invited to provide relevant data to support their remarks/proposals.

Question 96. Should ESMA be granted additional competences and powers beyond those already granted to them under the AIFMD?

Please select as many answers as you like

- entrusting ESMA with authorisation and supervision of all AIFMs
- entrusting ESMA with authorisation and supervision of non-EU AIFMs and AIFs
-

enhancing ESMA's powers in taking action against individual AIMFs and AIFs where their activities threaten integrity of the EU financial market or stability the financial system

- enhance ESMA's powers in getting information about national supervisory practices, including in relation to individual AIMF and AIFs
- no, there is no need to change competences and powers of ESMA
- other

Question 97. Should NCAs be granted additional powers and competences beyond those already granted to them under the AIFMD?

- Yes
- No
- Don't know / no opinion / not relevant

Question 98. Are the AIFMD provisions for the supervision of intra-EU cross-border entities effective?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 98.1 Please explain your answer to question 98, providing concrete examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We are not aware of any significant issues in the supervision of intra-EU cross-border entities. Certainly, no significant examples of supervisory failings have been raised with respect to cross-border entities, suggesting the delineation between the responsibilities of home and host-state NCAs is well understood.

Question 99. What improvements to intra-EU cross-border supervisory cooperation would you suggest?

Please provide your answer presenting costs, advantages and disadvantages associated with the suggestions:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We do not believe that any changes are needed to the AIFMD legislative framework to improve intra-EU cross-border supervisory cooperation. We have observed significant improvements in supervisory cooperation between ESMA and NCAs under the existing AIFMD framework in recent years, suggesting the right framework is already in place to facilitate supervisory cooperation between NCAs. That said, the coordination between NCAs in the early stages of the Covid crisis could have been better, and we would encourage ESMA and the NCAs to continue on focusing on building the right communication channels between each other, relevant third country NCAs and international agencies to improve coordination on a regular basis and in particular during crisis periods.

Question 100. Should the sanctioning regime under the AIFMD be changed?

- Yes
- No
- Don't know / no opinion / not relevant

Question 101. Should the UCITS and AIFM regulatory frameworks be merged into a single EU rulebook?

- Yes
- No
- Don't know / no opinion / not relevant

Question 102. Are there other regulatory issues related to the proportionality, efficiency and effectiveness of the AIFMD legal framework?

Please detail your answer, substantiating your answer in terms of costs /benefits/advantages, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

There are no other regulatory issues related to the proportionality, efficiency and effectiveness of the AIFMD legal framework we wish to raise at this stage beyond the subjects covered in this consultation.

We do have further comments on some the questions raised in the consultation, which we are attaching in a separate document and we ask that these also be taken into consideration.

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

The maximum file size is 1 MB.

You can upload several files.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

**7ff9524a-efd0-43ae-95d1-8c0980eb4149/AIFMDReviewConsultation_IAAdditionalFeedbackJan2021.pdf
e873b4e3-4c8d-41b6-8272-0791e643b8f7/Position_Paper_-_Delegation_of_Investment_Management_Functions__final_.pdf**

Useful links

[More on this consultation \(https://ec.europa.eu/info/publications/finance-consultations-2020-aifmd-review_en\)](https://ec.europa.eu/info/publications/finance-consultations-2020-aifmd-review_en)

[Consultation document \(https://ec.europa.eu/info/files/2020-aifmd-review-consultation-document_en\)](https://ec.europa.eu/info/files/2020-aifmd-review-consultation-document_en)

[Consultation strategy \(https://ec.europa.eu/info/files/2020-aifmd-review-consultation-strategy_en\)](https://ec.europa.eu/info/files/2020-aifmd-review-consultation-strategy_en)

[List of acronyms used in this consultation \(https://ec.europa.eu/info/files/2020-aifmd-review-acronyms_en\)](https://ec.europa.eu/info/files/2020-aifmd-review-acronyms_en)

[More on investment funds \(https://ec.europa.eu/info/business-economy-euro/growth-and-investment/investment-funds_en\)](https://ec.europa.eu/info/business-economy-euro/growth-and-investment/investment-funds_en)

[Specific privacy statement \(https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement_en\)](https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement_en)

[More on the Transparency register \(http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en\)](http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

Contact

fisma-aifmd-public-consultation@ec.europa.eu