

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
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- 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

Georgina

* Surname

Uwaifo

* Email (this won't be published)

georgina.uwaifo@blackrock.com

* Organisation name

255 character(s) maximum

BlackRock

* 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.

51436554494-18

* 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 |
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| <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 |
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| <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 |
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| <input type="radio"/> Azerbaijan | <input type="radio"/> France | <input type="radio"/> Mayotte | <input type="radio"/> Solomon Islands |
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| <input type="radio"/> Bahrain | <input type="radio"/> French Polynesia | <input type="radio"/> Micronesia | <input type="radio"/> South Africa |

- Bangladesh
- Barbados
- Belarus
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- 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.

The level of detail in the AIFMD implementing legislation and regulations means that there are no major practical differences in legislation and market practices. The most significant historical differences relate to requirements regarding marketing and pre-marketing which have already been considered as part of the adoption of Directive (EU) 2019/1160 and Regulation (EU) 2019/1156 on cross-border distribution of collective investment undertakings. We believe that ESMA and the European Commission should carry out an assessment of the effectiveness of this legislative package before taking further action under AIFMD. We note that there are still differences in the fees applied by NCAs. In the future, convergence on marketing practices and the development of a centralised notification repository could reduce the need for separate fees for the distribution of funds, recognising that AIFMD passport is limited to distribution to professional rather than to retail investors.

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 checked="" type="radio"/>	<input 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 type="radio"/>	<input checked="" 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.

Creating internal market for AIFs

Prior to the implementation of AIFMD the cross-border distribution of EU AIFs was subject to a complex web of private placement regimes. In many jurisdictions it was not possible to distribute EU AIFs on a cross-border basis. The AIFMD passport has considerably facilitated capital raising across the EU and reduced the costs of repeated annual surveys from legal counsel. Future initiatives such as publication of a comprehensive statement of national requirements on the NCA websites under Directive (EU) 2019/1160 and Regulation (EU) 2019/1156 will further reduce costs and reduce legal uncertainty.

Enabling monitoring risks to the financial stability – somewhat agree

Article 24 of the AIFMD has provided for extensive reporting obligations on AIFMs, allowing regulators to monitor risks that stem from the activities of AIFMs on both the asset and liability profile of AIFs. We are aware that a number of regulatory agencies have indicated that there are a number of remaining data gaps. We do however believe that these data gaps can be addressed by extracting relevant data points from parallel data reporting, such as existing central bank reporting, to avoid the costs and complexity of duplicate data reporting standards and by improved coordination with other regulatory reporting standards.

Providing high-level investor protection – fully agree

The combination of the focus on enhancing risk and liquidity management processes in AIFMD, the enhanced transparency to investors, the standardisation of duties on compliance process, and the management of conflicts of interest have all led to increased and robust standards for investor disclosure.

The AIFMD costs and benefits are balanced (in particular regarding the regulatory and administrative burden) – neutral

We note that the costs of applying the AIFMD regime were significant at the time. These requirements are now largely well understood. Regulatory reporting remains a significant ongoing burden and, in this response, we put forward a number of suggestions as to how the underlying administrative processes could be rationalised without losing the benefits of transparency to regulators.

The different components of the AIFMD legal framework operate well together to achieve the AIFMD objectives - somewhat agree

We believe that the components of the AIFMD legal framework largely operate well together, meet the AIFMD's objectives and have increased the ability of professional investors to access alternative asset classes. We believe the ongoing focus on supervisory convergence will continue to ensure effective

operation of the AIFMD regulatory regime if differences in interpretation arise.

The AIFMD objectives correspond to the needs and problems in EU asset management and financial markets – somewhat agree

The objectives of the AIFMD reflect the needs and problems in the EU asset management and financial markets. One outstanding area is the finalisation of the third country regime and the importance of allowing EU professional investors, such as pension funds, to coinvest alongside their non-EU peers in relevant investment opportunities. In this context it is important to ensure that individual national private placement regimes are not switched off before a workable third country access regime has been implemented and tested.

The AIFMD has provided EU AIFs and AIFMs added value - agree

We agree the AIFMD has contributed to a common understanding of the management of alternative investments by the European fund industry.

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 believe that from a regulatory perspective a clear line needs to be made between collective portfolio management for third party clients and dealing on own account. This approach is also consistent with the IFD/IFR where there is clear delineation between these activities.

Limitation on account dealing should be limited to legal entity level but not to underlying employees of the AIFM. Many institutional investors see investment by individual portfolio managers in the AIFs they manage as an effective incentive to promote the alignment of interests between manager and client.

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.

As noted in our answer to question 12.1 NCAs have different views on the capital requirements applicable to the performance of additional MiFID services and we believe that ESMA could look further at this point as part of its ongoing work on promoting supervisory convergence.

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.

We believe there should be a two-pronged approach. Fixed overhead capital requirements should be calculated at the entity level, i.e. that of the AIFM, taking into account the additional uncapped capital or PII requirement which exists in AIFMD.

AUM-linked capital requirements should be calculated at the level of the relevant activity – AIFM or MiFID. Changing the cap would simply increase the level of AUM-linked capital for many firms whereas firms already have an additional uncapped AUM capital requirement under the additional requirement. No data or facts have been brought forward to justify the need for such an automatic increase in capital.

We note that there are currently different approaches by NCAs. We would recommend the Dutch (and what was the FCA approach, when the UK was subject to these rules) which means that capital required for the provision of MiFID services should be consistent with the K-Factor approach in IFD/IFR. However, as noted above we also consider that the AIFMD rules should prevail in respect of the fixed overhead rules which apply across all the book of business carried out by the relevant entity.

Finally, any changes should be carefully scoped to ensure that firms are not required to double count AUM and hold twice the level of permitted capital. This can happen in the case of delegated activities if both the delegate and delegator are required to hold regulatory capital against the same activity. IFD/IFR currently has an exemption from delegation to authorised firms subject to prudential requirements to avoid this occurring.

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.

We believe that if additional MiFID services are subject to the IFR capital requirements then the issue of a level playing field falls away.

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.

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 NCAs on their governance and controls frameworks 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.

Furthermore, the SREP is essentially designed to assess the risks arising on a group consolidated basis rather than on a solo firm basis and as such is ill suited to the make up of many firms. Those AIFMs which are part of a wider group are likely to already subject to some form of consolidated oversight under CRDV, Solvency II or IDF/IFR. As such, the incremental regulatory benefits of extending the SREP to AIFMs would be minimal compared to the cost of implementation.

In terms of assessing the costs and burdens of such a change it is important to understand the that firms cannot 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. The ICAAP is a time-consuming process taking many months and several hundred hours of FTE time to produce.
- 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 several hundred hours of 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, especially in light of the qualitative nature of the requirements.

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.

While this is not an option we use, we are aware that this option is used by specialist AIFMs and as such see no issues if AIFMs wish to retain this option.

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.

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.

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.

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.

The Directive and Regulation on cross-border distribution of collective investment undertakings has delivered additional harmonisation. In terms of further amendments, we recommend assessing the effectiveness of the recently adopted changes, before making further changes. As noted in our response to the Commission's recent ELTIF consultation, we note there are different approaches by NCAs, particularly in respect to the need for appointment of local distributors. We also believe it would be helpful to have further guidance from ESMA as to what is considered a material change and what updates must be sent to NCAs.

More broadly as set out in our answer to questions 21 and 22 we offer some suggestions for some targeted changes to the ability of investors to opt into professional status under MiFID. This would allow wider access to the AIFMD's passport regime.

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.

We support aligning the categorisation of investors and in AIFMD and MiFID to ensure legal certainty and minimise complexity in the sale of AIFs. We support action along these lines as part of the forthcoming MiFID review with an appropriate cross-reference to AIFMD.

We support reviewing the MiFID opt up rules to ensure that retail clients with Knowledge and Experience in financial markets should be able to opt-up to professional client status under MiFID. Relevant client types could include high-net-worth individuals, certain non-IORP pension funds and family offices.

We believe, however, that a new category of semi-professional clients could lead to a large number of changes to the entire MiFID framework, such as a wholesale client reassessment and repapering exercise and as such, the implementation costs are likely to outweigh the benefits.

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.

We suggest that retail clients with Knowledge and Experience in financial markets should be able to opt-up to professional client status under MiFID. We note that clients investing primarily in illiquid assets are very unlikely to meet the current quarterly (10) and annual transaction (40) limits. As such we suggest:

- Lowering the quarterly and annual threshold, e.g. to 2 transactions per year in case of illiquid instruments while maintaining the 10 transactions per quarter, i.e. 40 transactions over the previous year for more liquid or frequently traded securities .
- That the requirements for sufficient financial Knowledge and Experience could be extended to additional qualifications and expertise.

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.

BlackRock currently operates two ELTIFs and we believe that with some targeted changes to the ELTIF regime the EU will have established the foundation for effective retail access to alternative asset classes. We recommend prioritizing improvements to the existing ELTIF regime rather than starting the arduous task of defining a further set of retail product regulation for AIFs.

More specifically we support the conclusions of the High Level Forum on Capital Markets Union in June 2020 which included a number of recommendations for increasing retail client access. These included:

- Clarifying the ELTIF requirements for the assessment of retail investor's knowledge and experience and align with the requirements in MiFID II.
- Introducing more flexibility for investors to redeem their investment "at a mid-point", while reinforcing, where appropriate, liquidity requirements to address a higher risk of "client runs". However, the aim is not to turn ELTIFs into fully liquid open-ended funds.
- Looking at structural features that may encourage participation from a wider range of investors, such as lowering the current minimum entry ticket of €10,000 or finding ways to encourage the development of listed ELTIFs.
- Consider ways to encourage the use of the ELTIF in unit-linked insurance products as a way to widen the retail investor base further.

Given the multiple underlying assets classes we also believe it is preferable for the AIFMD to remain as a manager rather than a product directive.

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 issues concerning the depositary regime which would require legislative changes.

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 do not believe that explicit definition of AIFMD tri-party collateral management services is required. The administration of tri-party collateral supports efficient collateralisation to mitigate credit exposure to underlying counterparties.

The underlying contractual structure and operational processes are well established in financial markets and have been widely used by EU regulated funds such as AIFs and UCITS for many years now. The Triparty Collateral Agent is appointed by contract and is typically unaffiliated with the Collateral Receiver or Collateral Provider and serves both sides of the relationship.

Market practice for clients engaging in secured financing trades that necessitate the use of Triparty Collateral Agents (e.g. Triparty Repo, Securities Lending) is to ensure that their asset manager or lending agent is 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 (i.e. title transfer or security interest), specific types, ratings or amounts of an individual security permitted should be determined by the AIFM, or designated Agent/Asset Manager and communicated to the Depository.

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 do not recommend introducing further prescription regulating the delegation process, where the assets are in the custody of tri-party collateral agents. We think that the existing framework provides sufficient clarity and flexibility when defining roles and responsibilities between the various stakeholders. As such it should be left to the individual AIFM's Agent/Asset Manager to instruct the Depositary to enter into the appropriate agreement to delegate custody of the collateral, with a power of attorney issued in favour of the Agent or Asset manager to operate the account as required.

Depending on the legal framework (which may differ per Triparty Manager) the Asset Manager or Agent may or may not be party to the agreement. What is critical is to ensure is that the assets are clearly custodied on behalf of the underlying AIFM(s) and are ringfenced away from the assets of the Triparty Manager or those of the Asset Manager or Agent.

Commission Delegated Regulation 2018/1618 has already set out a number of key principles, after consultation with ESMA and industry, and clarified a number of points especially in regards to the depositary's books and records obligations, including where the safekeeping of financial instruments held in custody (including collateral assets) is delegated to a tri-party collateral agent.

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.

We are not aware of any difficulties requiring further measures.

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.

In the jurisdictions where we have domiciled AIFs we have found there to be sufficient competition among depositary providers in terms of quality of service and breadth of relevant asset servicing

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.

We believe that the benefits would, at best, be marginal. We believe there are considerable benefits for both investors and regulators in the depositary being located in the same jurisdiction as the AIF. These include improved communication between regulator and depositary on fund assets and maintaining a coherent approach to local market standards and practice. In the event of any claim engaging the depositary's liability, it also simplifies the process for an investor to make a claim in a single jurisdiction. Finally, in the event of market disruption it facilitates the work of NCAs to reduce the number of jurisdictions where coordination is required.

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.

No comments in addition to the risks highlighted in our response to Question 32.

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.

No comment.

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 believe that when CSDs, especially those acting as investor CSDs, are appointed to act as custody delegates of a depositary they should be subject to the same liability regime as other banking delegates under the AIFMD.

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 36.1 If not, what elements of the mandatory disclosures under the AIFMD could be amended?

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.

Article 22 (3) AIFMD – The requirements under this article currently require the application of generally accepted accounting principles (“GAAP”) of the home member state or country of domicile of the AIF to the annual report of an AIF. This ignores the needs of investors, which may neither be from the home member state or country of domicile of the AIF. We would propose that a third limb is added to Article 22 (3). This will give AIFMs freedom to select a GAAP that is meaningful and understandable to the intended investors by specifying the nature of the relevant GAAP in the AIF rules or instruments of incorporation. The inclusion of “generally accepted” in the sentence would then be to ensure that only generally recognised accounting rules are laid down in the AIF rules or instruments of incorporation.

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:

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

We understand the need for a different disclosure regime for retail investors in an AIF as opposed to professional investors. However, we recommend updating the existing ELTIF framework rather than creating a new framework for retail investors.

We also note that retail AIFs distributed under national regimes are obliged to provide a PRIIPs KID setting out key investor information requirements. We support ongoing messaging from trade associations as to improvements which are required to the PRIIPs regime in particular in respect of the presentation of past performance, performance scenarios and cost disclosure in order to improve the retail investor experience. We recommend addressing these issues before considering further changes to AIFMD.

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 43.1 Please explain your answer to question 43, explaining what rules on valuation are desirable to be included in the AIFMD legal framework:

5000 character(s) maximum

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

The AIFMD legal framework distinguishes between internal valuer (the AIFM itself) and external valuer. However, Section 7 of the AIFMR is not sufficient in that it does not reflect that different models for valuation are used for different asset classes particularly in respect of illiquid asset classes.

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.

Where an AIF invests in illiquid assets, AIFMs would prefer to appoint an external valuer as a matter of good governance and to reflect best market practice. However the current model of having the AIFM as valuer (internal valuer) due to liability reasons rather than relying on an external valuer in many illiquid asset classes, particularly real estate, should evolve to recognise the depth of expertise available in external valuers which is unlikely to be replicated in any single AIFM. We believe it would be beneficial to explore further whether it is feasible to create a valuation process whereby an AIFM values the AIF's assets but it carries out valuations using inputs from an external valuer. In this way, the AIFM would still retain flexibility to deliver internal inputs if they have additional information about an asset. This could result in a valuations process which benefits from the breadth of expertise of external valuers.

To take the case of real estate valuations as an example, we would consider making adjustments to the real estate valuer's pricing in event of a major event which impacts the price (e.g. finishing of a development of a property). As such it would make more sense to be able to combine the inputs from both external and internal valuations.

It is also important to bear in mind the standard setting role of external valuers in setting market expectations. For example, in 2020, "material valuation uncertainty" reports by external valuers led to regulatory and market action to suspend real estate funds for several months until external valuers were in a position to raise caveats regarding pricing uncertainty.

We support other industry calls for Level 2/3 interpretation by qualifying the circumstances in which the external valuer's negligence is engaged by reference to serious error or intentional failure. If AIFMs could accept external valuations for specific asset classes (e.g. real estate) without the external valuer having to take on liability for the whole fund, then we expect there would be greater willingness to act as external valuers of the fund.

Question 45. In your experience, which specific aspect(s) trigger liability of a valuer ?

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 have not yet had to trigger liability of a valuer.

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.

In the light of the current “liability” standard of care, we have found that valuation experts in various sectors are generally unwilling to be appointed as an independent valuer. We, therefore, have not seen practical application of mitigation measures for independent valuers in practice.

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 ability to passport EU AIFs on a cross-border basis has provided opportunities for economies of scale, meaning that AIF structures do not have to be replicated across different EU jurisdictions. This has meant that BlackRock AIFMs have been able to offer a wider range of AIFs to professional investors in many more jurisdictions than was previously possible.

The AIFMD has also encouraged the development of innovations such as professional fund structures such as the IRISH QIAF and Luxembourg RAIF within the broader AIFMD framework.

Both EU and third country investors should continue to be allowed to invest in EU AIFs. The ability to delegate portfolio management to third country managers subject to the AIFM governance, oversights and risk management requirements is a key component in developing fund structures which are attractive to this client base. Conversely, EU professional investors should still be permitted to coinvest alongside other third country professional investors in third country AIFs subject to appropriate notification and transparency requirements.

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.

The adoption of the EU third country passport or a successor regime to the existing framework of national private placement regimes would allow EU professional investors to invest in best in class investment opportunities globally while maintaining high levels of investor protection. However, we underline the importance of ensuring that any move to adopt the passport is done on an individual third country by third country basis (or by groups of countries). This requires a sufficiently long transition period for applications to be made and transitions made from national private placement regimes, thereby avoiding an arbitrary cut off period. As such, it is important to recognise that many AIFs have limited dealing windows and investors require clarity that they can continue to invest in relevant third country AIFs throughout any transition period.

AIFMs are subject to restrictions on investing in non-EU securitisations on two counts. Firstly, we note the continued lack of alignment in the risk retention requirements for securitisations between EU and US regulation and secondly there continues to be a lack of clarity on the transparency requirements for non-EU issuers and the extent to which AIFMs should satisfy themselves that these requirements have been met. We believe the market would benefit from further regulatory guidance on the extent to which various types of US securitisations could meet the requirements of AIFMD.

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.

We note that the rules in AIFMD and AIFMR cover the delegation of collective portfolio management regardless of the location of the delegation and that no additional rules are required. These rules mean that the AIFM remains responsible to investors in the AIF and to the home state of the AIF for the performance by the delegate of its mandate. The AIFM's liability to investors is not affected by such delegation.

Furthermore, delegation to third-country managers is contingent on local registration but also can only proceed on the condition that a cooperation arrangement exists between the relevant home and third country authorities to ensure that the authorisation or registration requirement meets the necessary standards and that the authorities can intervene when needed. These cooperation arrangements are based on a standard model established by ESMA and agreed with third country regulators, such as the most recently published standard MoU with the UK's FCA which contains extensive data access rights and provisions for joint supervision.

Given the strength of this model we do not believe that further amendments to the AIFMD are required to apply additional standards to delegates. If there are additional issues of public interest, the current process of exporting those through changes to the contractual terms between the AIFM and delegate should continue. There is a continuing role for ESMA to promote best practices and supervisory convergence through its ongoing peer review process and common supervisory actions.

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 55. Which elements of the AIFMR delegation rules could be applied to UCITS?

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

Given the differences between UCITS and AIFs we do not see a benefit in amending the Level 1 or Level 2 text. We believe it is more efficient for NCAs to provide clarification at level 3 and ensure consistency in the given frameworks following guidance from ESMA.

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 believe there are number of lessons to be learnt from the recent crisis shows but we do not believe that they need to result in additional changes to the primary Level 1 legal framework.

Our recent ViewPoint Lessons from COVID-19: Liquidity Risk Management is Central to Open-ended Funds (<https://www.blackrock.com/corporate/literature/whitepaper/viewpoint-lessons-from-covid-19-liquidity-risk-management-central-open-ended-funds-november-2020.pdf>) sets out a number of recommendations to improve the operation of the market framework for funds including AIFs, we believe improvements can be made without changing the AIFMD level 1 and Level 2 framework. For example, while we call for the full liquidity management toolkit to be made available to AIFMs, we believe that this is best done at national level given that many of the changes also require changes to national corporate law. Furthermore, as outlined below we believe there are efficiencies to the process of regulatory data sharing between NCAs and ESMA.

Finally, we would recommend further use of ESMA's supervisory convergence tools on key areas such as the use of liquidity management tools.

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.

We believe that existing powers already cover this point. Ultimately it is up to the relevant NCAs in discussion with AIFMs to decide whether suspension is appropriate, taking into account a full assessment of the relevant AIF's assets and liabilities and distribution network.

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

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.

During stressed market situations it is common practice for NCAs ask for additional information to monitor the situation which includes fields such as large redemption reporting. The type of reporting needs may differ depending on the event causing the stressed conditions. From our perspective it is less a question of defining individual fields but ensuring that data collection request are discussed at ESMA with a view to ensuring the same questions are asked by NCAs using a common template rather than asking firms to report using multiple templates. This mechanism has proven to work well and does not require any changes to the AIFMD reporting.

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.

We note that it is common practice in most member states to notify NCAs of any intention to suspend dealing in a fund. However, there is a vast variety of ex ante and ex post liquidity management tools. Many of these tools, such as swing pricing are used in the day to day management of the fund and the AIF's depositary will be well aware of the processes used. In our ViewPoint Lessons from COVID-19: Liquidity Risk Management is Central to Open-ended Funds (<https://www.blackrock.com/corporate/literature/whitepaper/viewpoint-lessons-from-covid-19-liquidity-risk-management-central-open-ended-funds-november-2020.pdf>) we set out a number of these tools drawn from IOSCO's 2018 work on assessing the use of liquidity management tools. We also note the extent to which tools such as swing pricing have been used in normal and in stressed market conditions. This shows the operational complexity of reporting each and every use of these tools to NCAs. If additional reporting is required, we recommend that this is done on a pre-defined exceptions basis.

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.

AIFMs have spent a significant amount of time and resources on the implementation of ANNEX IV reporting and it continues to be a time-consuming process to prepare and review, despite having automated reporting to the extent possible. It is difficult to assess the efficacy of the existing reporting without receiving ongoing statistics and results of ESMA and NCA's findings on the appropriateness of the data received.

We would prefer to maintain the reporting in its current format and rather review the data points and ensure common definitions across NCAs and increased use of standard formats (e.g. number of decimals etc). For example, uncertainties around the definition of AUM, which includes grossed up and absolute value components, persist and can skew any risk measurements data. This definition could be aligned with other international standards such as the SEC's Form PF or relevant international accounting methodologies to drive greater consistency.

We can see value in the inclusion of certain standing data points, which would only require a one-off update, such as the addition of categories for Fund Type or Investment objectives, provided the changes are manageable and provide useful data to NCAs.

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.

NCA's already issue numbers for AIFs which are used as the identifier for the purposes of submission. As such it is unclear what benefit would come from making the LEI mandatory. However, in our case, we provide LEIs, so implementation would not be a burden.

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.

NCAAs already issue numbers for AIFMs which are used as the identifier for the purposes of submission. As such it is unclear what benefit would come from making the LEI mandatory. However, in our case, we provide LEIs, so implementation would not be a burden.

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.

ISINs are generally used for Counterparties and these are common across multiple platforms and systems. A move to LEIs as a new standard in identifying counterparties could become costly and cumbersome in introducing the need to update all such systems.

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.

We believe it is unnecessary to add a list of loans originated by the AIF as in the current format, the largest of these would be already included in the Top 10 holdings. Should an NCA require more detail, full portfolio holdings can be provided. However, it should be noted that it is often a subsidiary entity that originates the loans rather than the AIF itself, although both models exist.

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 If yes, which one:

- ESMA
- other options

Please explain your choice, particularly substantiating 'other options', and provide information, where available, on the benefits, disadvantages and costs of implementing each proposition:

5000 character(s) maximum

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

We believe there are many benefits in developing a centralised repository for regulatory data reporting, which all NCAs could access and retrieve the necessary data for their supervisory obligations. This could sit with any regulatory body (including ESMA) or even an outsourced provider. It is not proposed to change the AIFMD supervisory model, but rather to streamline the submission of filings and to allow a single filing per AIF in a consistent format. As noted above Article 36 and Article 42 AIFs are required to make multiple filings in the same period using different reports and there would be benefits to them filing a single report to which all relevant NCAs have access.

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 Please explain your answer to question 68:

5000 character(s) maximum

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

We understand that eurozone national central banks already receive detailed portfolio level data so prior to responding to this question, it is important to assess which supervisory data reporting is planned to be shared in addition to that already reported on. We have no issues in the sharing of aggregated data.

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.

It is unclear which additional links supervisors wish to capture - the AIFMD already captures top counterparty positions. Is there an intention to require all counterparty reporting and to distinguish between cleared and uncleared derivatives? For example, EMIR reporting captures derivative transactions by funds. It appears that rather than requiring more reporting there is an opportunity to ensure more consistency between different sectoral reporting templates to ensure network risks can be adequately assessed.

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 If yes, the AIF classification could be improved by:

Please select as many answers as you like

- permitting multiple choice of investment strategies in the AIFMR template
- adding additional investment strategies
- other
- it cannot be improved, however, if a portfolio breakdown is provided to the supervisors this can be inferred

Please explain why you think the AIF classification could be improved by adding additional investment strategies, providing information, where available, on the costs, benefits and disadvantages of this option:

5000 character(s) maximum

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

The existing "Other" category could be broken down further. In particular, we would support the addition of Private Debt as a main category and subcategories of Real Estate Debt, Infrastructure Debt etc. Other one-off standing data changes could also be considered to cover other trending investments, especially in the area of sustainable investment, or the addition of a free text field when "Other" is selected, with ESMA guidance on how to complete to avoid inconsistencies in interpretation by individual AIFMs.

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

Please explain what **other data fields should be added to the AIFMR supervisory reporting template, providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages of this option:**

5000 character(s) maximum

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

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.

If a more detailed portfolio breakdown is provided, we do not believe additional fields are required but ultimately this is a question for ESMA and NCAs to determine.

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

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

Question 73.1 Please explain your answer to question 73, presenting the costs, benefits and disadvantages of each data field suggested for deletion:

5000 character(s) maximum

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

We believe this is a matter for the NCAs and ESMA to determine, depending on the use of the current data and whether any data fields are superfluous. Certain fields could be aggregated, such as the requirement for monthly subscriptions and redemptions which could be added as quarterly data to match the reporting frequency.

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.

We believe that ESMA could coordinate additional ad hoc reporting by NCAs depending on the nature of the relevant stressed market.

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.

We note that national central banks and NCAs already collect significant data on UCITS. We believe that it is first important to have a common understanding of what data points are or are not being collected and if they are collected whether there is a more efficient way of collecting and disseminating relevant data.

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.

While there may be a number of overlaps with data collection under AIFMD we also note that UCITS is also a product regulation which imposes limits on exposures and on access to investments with oversight and control by the depositary in the event of breach of these limits. We also note that much of the relevant information on UCITS portfolios is already collected by Eurozone central banks, so the question may be more of collecting existing data in a format which can be more readily shared with securities regulators rather than creating new reporting requirements. Please see our earlier comments on the benefits of a single regulatory data reporting repository.

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

Question 78.1 If yes, please explain your response indicating the benefits and disadvantages of a harmonisation of the format and definitions with other reporting regimes:

5000 character(s) maximum

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

We recommend more consistency in the use of definitions as this may facilitate the potential reuse of data and minimise the variations of data that needs to be stored or recalculated. "AUM" is an example where the definitions used across multiple reports often vary.

It should, however, be noted that the existence of a data set used for a certain regulatory filing does not necessarily mean that it is easily available or transformable for other reporting requirements. Each regulatory report is built for purpose and may have layered-on calculations to come to the requirements and definitions provided in that filing guidance. AIFMR is a wide reaching report and data is collated into a single report either manually or in a semi-automated fashion from several underlying functional systems so

changes to core definitions should be subject to consultation with sufficient lead-in team to build appropriate systems changes.

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.

We believe that gross notional exposure figures provide no more than an aggregate footprint of leverage and would be better expressed on an asset class by asset class basis. There are also a number of recommended changes to the calculation of commitment methodology to avoid overstatement of leverage.

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.

The UCITS product framework deliberately contains a wider range of investment restrictions which is not reflected in AIFMD which focusses on the AIFM's governance and controls framework. Given the overall

global exposure limit in UCITS, we do not believe it is necessary to harmonise the leverage measures used across both directives.

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.

We are supportive of the overall IOSCO approach which has drawn on much of the EU experience in assessing leverage in AIFMD. As such, we do not believe there needs to be fundamental changes to the EU framework for assessing leverage. We do, however, believe that the framework could be supplemented by permitting NCAs to allow a fund to adjust the notional amounts of interest-rate derivatives to the duration of a ten-year bond equivalent and to delta adjust options exposures. In addition, we believe a more useful way of looking at gross exposures would be to follow the IOSCO recommendation by classifying them by broad asset categories and long and short positions. In practice AIFMs will internally segment data this way in order to calculate the aggregate gross positions.

The use of duration adjustments would provide for a more representative presentation of economic risk and leverage. The use of delta adjustments to adjust options exposures for risk is likely to provide a more realistic reflection of derivatives risk, and assist NCAs by reducing the number of false positives associated with the overstatement linked to unadjusted notional amounts.

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.

We note that the leverage provisions in these directives have overlapping rather than identical objectives, which explains the current differences in approach. The UCITS rules include considerable focus on investor protection as part of the wider rules on eligible assets while also restricting excessive leverage. The primary focus of AIFMD is safeguarding financial stability by limiting excessive levels of leverage.

We note in particular that the UCITS leverage calculation methods enable UCITS to choose either a commitment approach, calculated using similar rules to those set out in AIFMR, or a value-at-risk (“VaR”) approach. The VaR approach is well established for many funds with detailed guidelines on the use of relative or absolute VaR and when combined with the manager’s risk management programme provides NCAs with considerable insight into how a fund uses leverage to implement its investment objective and strategy and the control framework around this.

We do, as noted in our response to Question 81 see benefits in implementing the IOSCO recommendations on permitting adjustments of interest-rate derivatives to a ten-year bond equivalent, permitting delta adjustments of options, and assessing fund leverage exposures by broad asset categories and long and short positions.

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.

As we noted in our August 2019 Policy Spotlight: Non-Bank Lending (<https://www.blackrock.com/corporate/literature/whitepaper/policy-spotlight-non-bank-lending-a-primer.pdf>), bank loan vehicles, including closed-end funds and CLOs, are not exposed to liquidity risk because they typically do not have pre-specified redemption time frames. While CLOs often conjure images of pre-crisis collateralized debt obligations (CDOs), salient differences distinguish the CLO market of today from the CDO market pre-crisis. Specifically, CLOs lack ‘leverage on leverage’, and the collateral for CLOs are the loans themselves, not the most subordinate tranche of pools of loans. Another significant difference is that today, leverage is not concentrated in the banking industry since loans are dispersed broadly across a wide range of end-investors.

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 If yes, which of the following options would support this harmonisation:

Please select as many answers as you like

- limit interconnectedness with other financial intermediaries
- impose leverage limits
- impose additional organisational requirements for AIFMs
- allow only closed-ended AIFs to originate loans
- provide for certain safeguards to borrowers
- permit marketing only to professional investors
- impose diversification requirements
- impose concentration requirements
- other

Please explain what other option would support this harmonisation.

Please provide information, where available, on the costs and benefits, advantages and disadvantages of this option. Concrete examples are welcome:

5000 character(s) maximum

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

We believe there are two perspectives to consider. Firstly, from the perspective of product regulation we note that moves to harmonise the structure of loan originating AIFs would require significant assessment of the different characteristics of member state regimes for loan originating funds. We believe that any steps on harmonised product regulation should be considered as separate regulatory initiative, as is the case for ELTIFs. Any such moves should take into account that loan originating funds are typically closed-ended, with low levels of leverage and are sold to a professional investor client basis, thereby minimizing the risks of credit transformation and wider financial stability concerns.

Secondly, from an investment perspective, the ability of loan originating funds to mobilise cross-border capital in the EU and providing long term financing to European SMEs requires further consideration. While a number of jurisdictions have established loan originating funds, the ability to originate loans in member states outside the domicile of the AIF, is in practice limited by the need to apply for local loan originating licenses. These can be time-consuming to apply for and unless the market and opportunity is sufficiently large, managers may simply not look at opportunities as it will not be cost-effective to register on ad hoc basis. Individual local markets then lose out on additional and incremental funding opportunities offered by cross-border AIFs. Concepts such as a cross-border loan origination license, where the AIFM meets a number of standards such as proven expertise in originating loans and strong risk management controls in place, constitute an alternative approach. This would also have the benefit of reducing the risk of fragmentation of EU markets and encourage greater cross-border flows of assets within the EU by reducing the need to apply for multiple individual national licences. This, we suggest, could be done without the complexity of harmonising individual national product rules into a single European standard.

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.

We recommend retaining the existing rules governing non-listed companies. While the AIFMD had the benefit of formalising the information flow (towards both employees and investors) and providing a new legal foundation, we note that prior market practice was already to provide regular reporting.

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.

We are aware of the requirement to inform NCAs on the financing of an acquisition to ensure effective control and supervision. We are not aware of any particular issues or difficulties in extracting and providing this information.

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.

We believe that the current regulatory framework is sufficient to address concerns regarding the break-up of companies for purely economic reasons, i.e. to maximise returns. We believe that there is clear industry understanding of how reporting requirements should be met.

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.

No comment

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.

We believe the disclosure requirements on AIFMs should be consistent with the requirements on other financial sector participants investing in the same underlying asset class. AIFMs invest in a very broad range

of asset classes ranging from listed equities and bonds to illiquid private and non-financial assets. The data quality needed for meaningful quantification varies significantly by asset class, especially for assets other than public market financial market instruments where sustainability reporting standards, if applicable, vary considerably in scope and substance. We also believe that that the primary focus should be on the provision of high quality sustainability-related data to all investors, using a standard format to avoid the risk of multiple data reporting standards over the same asset class. BlackRock supports more widespread and standardised adoption of sustainability reporting. We believe that enhanced reporting is critical to the ability of companies and investors to take into consideration material environmental, social and governance (ESG) risks and opportunities. Company valuations can be significantly influenced by these factors, also known as intangibles. Better quality reporting and data would support more accurate asset pricing and enhance understanding of the drivers of risk and value in companies' business models.

In this context we believe it is appropriate for sustainability risks to be disclosed using a combination of qualitative and quantitative information. As data availability improves over time greater quantification, and thereof comparability, of sustainability risks will be possible.

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.

We believe that a transversal approach for this issue should be adopted which applies to all investors in the same asset class. This is particularly important under AIFMD given the heterogeneity of the underlying asset classes which means the ability to assess adverse impact differs significantly by asset class.

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.

We believe the approach to the integration of adverse impacts in the quantification of sustainability risks should remain consistent with that in SFDR and continue to distinguish between investments in sustainable assets versus investment in assets with ESG characteristics. Any assessment of whether to progress with further action on whether AIFMs' investment decision processes integrate non-financial considerations should follow on from consideration of the implementation of ongoing work to identify, measure and disclose adverse sustainability impacts under SFDR. Given the very broad universe of investments made by AIFMs, a level of proportionality is needed to reflect the vastly different levels of underlying data availability.

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.

As noted above, the relevance of assessing sustainability-related impacts applies across all types of investors and should apply horizontally to investors in a specific asset class, not just to AIFMs. Any assessment of application of sustainability impact to a given mandate is highly dependent on underlying data availability to all investors.

BlackRock recognises the urgent need to address the information gap in relation to the impact of climate change and the transition to a low carbon economy on the global economy and individual companies. Global convergence towards the TCFD framework for reporting climate risks and opportunities, demonstrated through the growth in voluntary and regulatory initiatives, provides a solid foundation for developing reporting standards.

Reporting on impact also requires greater data availability from underlying issuers. Double materiality, or the impact of a company on the economy, environment and people, is an important concept and initiatives such as those from the Global Reporting Initiative provide a useful standard for companies to report such information.

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.

BlackRock supports the EU's efforts to build the taxonomy framework, and we welcome ongoing efforts to drive its longer-term development.

We are excited to see dialogue and momentum at the international level to accelerate change in finance and the real economy. We see greater standardisation of the definitions and concepts that underpin sustainable investment as an important component of these efforts.

As a tool to aid financial investment decisions, today (recognising it is still in the early stages of development) we see the taxonomy as a robust tool to substantiate 'green' investment claims. As it is developed further in the coming years, a well-structured taxonomy can underpin a range of different investment approaches that have gained popularity amongst investors, many of which are important in

helping to support broader sustainability-related investment goals. Currently the Taxonomy Regulation supports the reporting on standards under Article 8 and 9 of SFRD and is not applicable to all AIFs. Prior to the finalisation of the taxonomy framework and the related issuer disclosures (which will be necessary for the operationalisation of the disclosure requirements for many investment products), the first set of taxonomy technical screening criteria can be applied most readily to specialist AIFs where investors have clear visibility at the use-of-proceeds-level, especially the green bond universe, and in direct, real asset investments.

- The taxonomy is an important milestone for the Green Bond market. With the initial focus on climate change adaptation and mitigation, the initial taxonomy criteria aligns well with some of the principal aims of many green bond financing objectives, and as such, should be a foundational framework for a regulatory label for green bonds.
- Another clear use case for the criteria as they stand today is in the real assets space, where we manage investments in real estate and infrastructure. The focus on real estate energy efficiency and building renovation in the draft technical screening criteria is welcome, given the importance of investment in these areas in meeting climate goals.

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.

BlackRock strongly supports the framework developed by the Task Force on Climate-related Financial Disclosure (TCFD) and the metrics identified by the Sustainability Accounting Standards Board (SASB). In January 2020, we asked companies in which we invest to publish SASB- and TCFD aligned disclosures, an ask we reiterated in Our 2021 Stewardship Expectations. (<https://www.blackrock.com/corporate/literature/publication/our-2021-stewardship-expectations.pdf>)

We welcomed the joint statement on 9 September 2020 by a group of five sustainability reporting organisations - SASB, the Global Reporting Initiative (GRI), the International Integrated Reporting Council

(IIRC), the CDP (formerly the Carbon Disclosure Project) and the Carbon Disclosure Standards Board - that they plan to work together to develop “a comprehensive global corporate reporting system.” The group of five organizations introduced the concept of nested materiality to explain the gradation between core financial information already reported in financial statements, to ESG information relevant to enterprise value creation, to information on the impact on society of a company’s operations, products and services. Also captured within the concept map produced by the partnering organisations is the concept of dynamic materiality, whereby the factors recognised as material change over time based on facts and circumstances as well as increased understanding of the drivers of risk and value in a company’s business model.

We note that many assets in which AIFs invest are not issuers which are as yet captured by these standards as such a proportionate approach by asset class is required.

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 AIFMs 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 AIFM 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.

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.

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

Useful links

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[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)

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