



European Securities and  
Markets Authority

REPONSE AFG

## **Reply form for the Guidelines on asset segregation under the AIFMD**



## Responding to this paper

The European Securities and Markets Authority (ESMA) invites responses to the specific questions listed in the ESMA Consultation Paper - Guidelines on asset segregation under the AIFMD, published on the ESMA website.

### **Instructions**

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, please follow the instructions described below:

- i. use this form and send your responses in Word format;
- ii. do not remove the tags of type <ESMA\_QUESTION\_G\_AIFMD\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
- iii. if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses are most helpful:

- i. if they respond to the question stated;
- ii. contain a clear rationale, including on any related costs and benefits; and
- iii. describe any alternatives that ESMA should consider

### **Naming protocol:**

In order to facilitate the handling of stakeholders responses please save your document using the following format:

ESMA\_CE\_G\_AIFMD\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

E.g. if the respondent were ESMA, the name of the reply form would be ESMA\_CE\_G\_AIFMD\_AIXX\_REPLYFORM or ESMA\_CE\_G\_AIFMD\_AIXX\_ANNEX1

Responses must reach us by **30 January 2015**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input/Consultations’.

### **Publication of responses**

All contributions received will be published following the end of the consultation period, unless otherwise requested. **Please clearly indicate by ticking the appropriate checkbox in the website submission form if you do not wish your contribution to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure.** Note also that a confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

### **Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Disclaimer’.



**Q1: Which of the two identified options do you prefer?**

<ESMA\_QUESTION\_G\_AIFMD\_1>

French asset managers have a clear preference for option 1 that really implements individual segregation at the level of the sub-custodian and enables an immediate identification of holdings per depositary. It protects the fund holders from any contagion and negative impact in case of default of another depositary that would use the same sub-custodian or delegate custodian. AIFs are of very different nature and risk profiles and depositaries as well may not have the same level of financial and operational strength in different countries. Thus, in our view it is a good policy to separate holdings per initial depositary in order for the fund manager to be immune from a risk arising from a fellow depositary (which is totally unknown to him) acting for other AIFs and that might default. Some may argue that it is the depositary's responsibility to safe keep assets and that it is irrelevant for the asset manager to worry about the segregation at the level of the sub-custodian. We do not agree as there is a real difference between immediate knowledge of one's position and long procedures to get confirmation of the reality of the assets when merged with accounts of other master custodians. The more so if the chain goes one or several steps further with sub-delegates.

In addition, we consider that Article 99 of the implementing regulation does not allow option 2. Indeed this text states that the third party has to distinguish assets of the depositary's AIFs from "its own assets, assets of its other client,..." According to our reading of this article, another depositary is "another client" of the third party. Also the second option mixing assets coming from different depositaries does not comply with the Level 2 Regulation.

In the end we believe that it will be inappropriate having a difference between ségrégation under AIFM and segregation under UCITS V (art. 22bis 3. c).

Therefore, option 1 appears as the only workable compromise between the five options (notwithstanding, the fifth option offering the highest segregation level should be open only in specific cases (see questions 2 and 5 below)

<ESMA\_QUESTION\_G\_AIFMD\_1>

**Q2: Would you suggest any alternative option which is compatible with the AIFMD and its implementing measures? If yes, please provide details.**

<ESMA\_QUESTION\_G\_AIFMD\_2>

We believe that ESMA should explicit the fact that the guidelines develop the minimum requirement under AIFMD and leave it to AIFs and their managers to implement stricter rules, for example option 5 discussed under question 5 below.

<ESMA\_QUESTION\_G\_AIFMD\_2>

**Q3: Do you have knowledge of the impact that each of the two options identified would have on your business in terms of restructuring of existing delegation arrangements in Europe and third countries? Please quantify the one-off and ongoing costs as well as the type of costs for each of the two options or any alternative option that you may prefer.**

<ESMA\_QUESTION\_G\_AIFMD\_3>

AFG's members do not believe that depositaries should bear extra cost for segregation of their AIF's clients' assets in the book of their sub-custodian. They will have to change their arrangements with their delegates but, in any case, AIFMD requires them to do so. On a running basis, we even consider that option 1 will help reconciliations and produce a gain of time and energy for a limited initial investment.

<ESMA\_QUESTION\_G\_AIFMD\_3>

**Q4: Do you see merit in foreseeing a specific treatment for certain types of arrangement (e.g. collateral management arrangements)? If yes, please specify how your proposal would ensure compliance with the relevant requirements of the AIFMD and Level 2 Regulation.**

<ESMA\_QUESTION\_G\_AIFMD\_4>



This possibility is not sufficiently discussed in the consultation paper. Yes, some activities might require specific arrangements. Collateral management is probably a good example where some flexibility might be useful. However AIFMD is quite prescriptive and has not prepared any carve out of the segregation requirement. Thus the flexibility will be limited to the level of omnibus custody that is allowed, i. e. all the AIFs of a same depositary.

<ESMA\_QUESTION\_G\_AIFMD\_4>

**Q5: Do you agree with ESMA's approach to discarding the third, fourth and fifth options described in Section 5 of the CBA? If not please provide data and information that support your view.**

<ESMA\_QUESTION\_G\_AIFMD\_5>

Yes, ESMA has rightly disregarded options 3, 4 and 5. The first two do not provide sufficient security to the funds holders and we consider that comingled assets are not segregated and in our reading do not comply with AIFMD level 1 requirement. As for option 5 it represents a super segregation level that is not prohibited by AIFMD and should be possible if a fund manager requires it. It might happen in the case of a large dedicated fund where the end investor is very concerned about the contagion risk and asks for its assets to be immediately identifiable in the books of each of the custodians and delegates in the chain. ESMA did not mention along the same line, the case of segregation per asset manager (AM) where the AM would ask the depositary not to mix the holdings of the AIFs it manages with other AIFs that might have a very much higher risk level. This is certainly a possibility asset managers may consider but it represents an extra step and goes beyond the minimal requirement expressed in AIFMD.

We believe that ESMA should explicit the fact that the guidelines develop the minimum requirement under AIFMD and leave it to AIFs and their managers to implement stricter rules.

<ESMA\_QUESTION\_G\_AIFMD\_5>