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ESMA  
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**AFG response to ESMA consultation  
regarding Guidelines on reporting obligation under Article 3 and article 24 of the AIFMD**

The Association Française de la Gestion financière (AFG)<sup>1</sup> is grateful for the opportunity to respond to ESMA's consultation regarding Guidelines on key concepts of the AIFMD. The issues at stake, including the articulation of the AIFMD and the UCITS Directive, are indeed significant for AFG members, as France is the 3<sup>rd</sup> domiciliation centre in Europe for AIFs, with 360 billion euros worth of AIFs domiciled in France, and the 2<sup>nd</sup> domiciliation centre in Europe for UCITS, with 1,100 billion euros worth of UCITS domiciled in France (EFAMA International Statistical Release, Q3 2012).

**General comments**

The AIFM Directive and its implementing regulations have imposed to AIFMD reporting requirements to the national authorities responsible for relaying information to the benefit of ESMA. The purpose of this consultation focuses on the practical and technical arrangements to be put in place to implement the reporting requirements largely standardized by the Annexes to European implementing regulation

Managers emphasize the heaviness and excessive frequency of new obligations applicable to them, hence the high costs associated with essential developments necessary to implement them. More,

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<sup>1</sup> The Association Française de la Gestion financière (AFG) represents the France-based investment management industry, both for collective and discretionary individual portfolio managements. 600 management companies are based in France. They are entrepreneurial or belong to banking or insurance groups. AFG members manage 2,600 billion euros in the field of investment management, making the Paris fund industry the leader in Europe for the financial management of collective investments (with 1,500 billion euros managed from France, i.e. 17% of all EU assets managed in the form of investment funds) wherever they are domiciled in the EU. In the field of collective investment, our industry includes – beside UCITS – the whole range of AIFs, such as: employee savings schemes, regulated hedge funds/funds of hedge funds, private equity funds, real estate funds and socially responsible investment funds. AFG is an active member of the European Fund and Asset Management Association (EFAMA) and of PensionsEurope. AFG is also an active member of the International Investment Funds Association (IIFA).

considering very large variety of products involved in the Union it appears unlikely that the information collected and centralized by the European regulator can make a really usable mapping of systemic risk in Europe.

So there is a clear and significant disproportion between the means that the managers will have to implement and the results that can be extracted.

Managers insist also on the accumulation of different reporting requirements, to which they are now subject, in particular,

- reporting to investors
- reporting related "EMIR
- reporting to the AIFM directive
- the reporting regulations related to third countries (Dodd-Frank act in particular).

It is very unfortunate that coherence of these obligations is not insured (frequency content of the different sections and their aggregation, coding, .....).

Finally, the use of the new codification "LEI" now appears difficult and even premature in some instances given the schedule of the implementation of the requirements of the AIFM Directive in relation to the timing of implementation of the "LEI".

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### **Detailed comments**

Please find below AFG detailed comments.

#### **Q 1. Do you agree with the proposed approach for the reporting periods? If not, please state the reasons for your answer.**

AFG draws attention to the date of implementation of reporting for existing FIA. The date that should be taken into account is the date when the fund is declared as FIA and not the date of the products' creation which may be very old. Without this clarification, all uncoordinated funds have to submit a reporting AIFM from January 31, 2014.

The date for the presentation of the report is the last business day of each period. This date does not seem consistent for a number of funds including real estate funds. Indeed, the dates rents are calculated on the last day of the quarter or the month.

It is therefore requested that the dates are keyed to the last day of the quarter. It is recalled that in any case the FIA already calculated, for purposes of other reporting a net asset value on the last day of each calendar period (December 31, .....).

#### **Q 2. Do you agree that ESMA should provide clarification on how AIFMs should manage changes in reporting frequency? Do you agree with the scenario identified by ESMA and the guidelines provided? If not, please state the reasons for your answer.**

We need clarification about the transition period. ESMA's interpretation is unclear. First, it must be defined what is an "existing AIFM" (see #9 in the guidelines). Is it a regulated company, which

exists already and will become an AIFM or is an existing company only the regulated company after receiving the national regulator's approval.?

Second, the obligation to deliver the annex IV report should depend on the date of application or the change of the bylaws of an AIF and not on a fix date (end of January 2014). This does not correspond to the AIFMD.

We need clarification about the following point :

*“For example, if the AIFM is granted authorisation in Q1, it should not report at the end of Q1 but at the end of Q2 for the period covering Q1+Q2; thereafter the AIFM should report in Q3 and in Q4. If the authorisation is granted in Q2, the AIFM should report at the end of Q3 for the period covering Q1+Q2+Q3, following which the AIFM should report in Q4. If the authorisation is granted in Q3, the AIFM should report at the end of Q4 covering the period Q1+Q2+Q3+Q4. Finally, if it obtains authorisation in Q4, the AIFM should report in Q4 for the period Q1+Q2+Q3+Q4.”*

(Consultation paper p. 22, § 12)

Does it mean for example that the reporting done for the last period applies to all quarters or be established at the end of the last reporting period one relating to each past period?

In all cases, the reporting elements required by the regulator need the use of a large number of tools: systems holding position (turnover, number of transactions ...), systems risk management (Var, sensitivities, liquidity ...), systems management liability.

Timely implementation of reporting seems too short given this complexity.

**Q 3. Do you think that ESMA should provide further clarification? If yes, please provide examples.**

No comment

**Q 4. Do you agree with the proposed approach for the reporting obligations for feeder AIFs and umbrella AIFs? If not, please state the reasons for your answer.**

France has widely used the opportunity to create feeders that invest their assets in a master UCITS. It is requested that the non “look-through” approach be extended for this type of master funds. Similarly the non “look through” approach lack of transparency-should be extended to all masters' including those who are not declared "AIFM" established outside Europe.

**Q 5. Do you agree with the approach proposed by ESMA? If not, please state the reasons for your answer? Do you think ESMA should provide further clarification? If yes, please give examples.**

Professionals are concerned about the requirement to use the LEI codes whose implementation will not be completed at the launch of reporting. It is requested to make possible the use of internal codes when LEI codes are not available.

**Q 6. Do you agree with the proposed approach for the principal markets and instruments in which AIFMs are trading on behalf of the AIFs they manage? If not, what would you propose as an alternative approach for the identification of principal markets and instruments?**

Managers are concerned about the need to use for the purpose of reporting MIC codes. Indeed it appears that the use of these codes may be charged by the operators of these codes, and creates an unacceptable situation. In addition, redistribution of these codes is contractually prohibited.

It is thus requested that, in general, the use of codes for reporting imposed by the authorities can not in any case generate costs of fees for AIFM.

Given this requirement, the use of some ISIN codes should also not be imposed as they are also subject to fees. Last to grant the possibility to use the CIC codes, which are free of duty.

**Real Estate business:** Do we have to cover only market values of real estate or also loans and the underlying value of derivatives?

**Q 7. Do you agree that AIFMs should report information on high frequency trading? If not, please state the reasons for your answer. If yes, do you agree that this information should be expressed as a percentage of the NAV of the AIF? If not, please state the reasons for your answer and identify more meaningful information that could be reported.**

What is the concept of HTF? What funds are involved? How to distinguish this type of strategy in relation to others, including on the same instrument? there are no easy or official answers to this question.

**Q 8. Do you think that the list of investment strategies should be widened? If yes, please provide ESMA with suggestions of additional investment strategies**

We agree with the proposed classifications.

**Q 9. Do you agree that AIFMs should also calculate the geographical focus based on the total value of the assets of the AIF?**

The managers would like the geographical origin to be clearly the location of the issuer (with code).

The regulation provides only that the calculation is made on the NAV. We do not want the calculation to be extended to another base.

**Q 10. Do you agree that information on the turnover should also be expressed in number of transactions? If not, please state the reasons for your answer.**

We do not want the "turnover" to be also calculated based in the number of transactions. This calculation is not provided for in the European text.

**Real estate**

Turnover is should only be related to the most important markets: in real estate : how should the cash position in a real estate funds be handled? Every cash exchange with the bank when managing a property (tax payments, cash call for capex or for any other need of the property manager, interest payments...)? We suggest only to refer to transactions on the cash account

**Q 11. Do you agree with the proposed list of types of transaction and the respective definitions? If not, please state the reason for your answer. Are there any other types of**

No comment

**Q 12. Do you agree with the introduction of additional measures of market risks? If not, please state the reason for your answer. If yes, do you believe that ESMA should further clarify how these measures should be computed?**

The integration of this analysis in the current reporting under the European regulation does not seem consistent.

In any event, if the law were changed, it would then, and only then, integrate other concepts of VAR (including parametric VAR, .....

We need to exclude from the “Market Risk” reporting’s scope the case of Fund of hedge funds where the underlying funds transparency is not available.

Which is the calculation frequency requested for the Market Risk indicators (VAR included)?

### **Real estate**

We suggest N/A if real estate and not to use one of the measures in #99

### **Harmonize risk measures between UCITS and AIFMD**

In this case, we must harmonize risk measures applied to these two fund families: the choice of VaR should be left to the discretion of the AIFM as measures differ from management style to another. In addition, a measure of VaR must be complemented by a backtest, which is the guarantor of the quality of the measurement of risk.

### **Stress tests**

Moreover, and this is very clear in the UCITS regulations, stress tests should be performed on various risk factors. Demand regulator on the sensitivities appears to be incomplete and inadequate because it delivers only a local measure of portfolio exposures without taking into account the effects of convexity.

### **look-through for funds of funds**

About fund of funds, the issue of look-through in the analysis of assets underlying funds arises: this exercise may be possible, but time consuming and costly if the fund of funds invested in other AIFM of the AIFMD. It appears, however, quite impossible when the AIF invests in external AIFM. The collection of transparency with external managers is indeed an impossible task on time and very difficult to implement, not only because of the difficulty of managers to disclose the

details of their assets but more funds because of technical difficulties to integrate external investment in systems, particularly for alternative investments.

## **Q 13. Other Questions about Real Estate**

### **Tabel 1 – AIFM**

28. BIC Code: as real estate management firm company, we haven't such code. Dedicated for banks!  
LEI Code: is it compulsory to be registered ( additional costs for mgt firm)
- Interim Entity Identifier (IEI) : what could it be? Registration code (code d'immatriculation aux greffes)
29. Aggregated value : look-through for real estate only ? or for each securities asset?
- Datas on last business day : for accounting purpose, we are on last day of the quarter : impact : accrual on interest product and real estate (rent and charges)
30. For real estate split between commercial and residential : question when mixed (predominant use or split by area)? Our recommendation is to take the predominant use  
Confirmation that Commercial = retail + office

### **Tabel 2 - AIF Data Reporting**

42. Date of inception : starting business – not the creation date (=the date is has been traded? Or the date when the first investors incorporate cash in the fund)?

### **Tabel 3 - for AIF (when AIFM below threshold)**

Point 8 in the table: Jurisdiction of the 3 main funding sources : In the case of Real Estate funds (excluding shares/units bought by investors). Do we have to disclose all bank details if the fund is leveraged ?

### **Tabel 4 - AIF Data Reporting**

79. Concentration for real estate: do we have to answer only about real estate everywhere or do we have to focus on cash available to identify the most important concentration?  
Shouldn't there be threshold and if the value of cash is less than a defined amount it should not be relevant to describe it ?  
It seems very different from the objective. It should be more relevant to answer point 89 instruments and individual exposures ?
89. Portfolio detail
- For other cash and cash equivalents: does it include cash on cash (bank) account?
  - Loan : loans held by the fund – does it mean that this does not include bank debt for leverage (passive side of the balance sheet)?
  - For real estate split between commercial and residential : question when mixed (predominant use or split by area)?
  - In Other asset : shareholder loan with subsidiaries?

90. Should all positions be considered as long for real estate ?
91. Turnover should only be related to the most important markets. In real estate : how should the cash position in a real estate funds be handled? Should every cash exchange with the bank be counted when managing a property (tax payments, cash call for capex or for any other need of the property manager, interest payments...)? We suggest only to refer to transactions on the cash account
94. Is the number of transactions, the number of events (1 sale with 50 shares sold is it 1 event or 50 events ?...or in the case of cash: is each movement on the bank account an event?)

106. Top Five Counterparties

- For real estate: do we have to state our biggest tenants or is it related to other topics (i.e. derivatives and loans)?
- Including loan – bank debt?

115. Borrowing and exposure risk

- Borrowing and exposure risk : only gross notional exposure without interest accrual?
- Bank borrow for real estate is to be record as cash borrowing ?

118- Open position?

- number of assets and contracts?
- For real asset : number of assets hold by company under control

119- Investment Return

- what it is gross Investment return = performance of the NAV?
- When distribution : perf dividend reinvested? Or real?

121 : Subscription/redemption

For real estate: number of subscription and redemption? Or the global amount

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Would you require further information, please feel free to contact our Head of International Affairs Division, Stéphane Janin, at +33 1 44 94 94 04 ([s.janin@afg.asso.fr](mailto:s.janin@afg.asso.fr)), our Deputy Head of International Affairs Division, Carine Delfrayssi, at + 33 1 44 94 96 58 ([c.delfrayssi@afg.asso.fr](mailto:c.delfrayssi@afg.asso.fr)) or myself at +33 1 44 94 94 29 ([p.bollon@afg.asso.fr](mailto:p.bollon@afg.asso.fr)).

Sincerely yours,

(Signed)

Pierre Bollon