Frankfurt am Main
1 July 2013

**BVI's response to the ESMA consultation concerning guidelines on reporting obligations under Article 3 and Article 24 of the AIFMD dated 24 Mai 2013 (ESMA/2013/592)**

BVI[1] welcomes the opportunity to comment on the suggestions for specification of the reporting details applicable to AIFMs as presented by ESMA in the consultation paper at hand. We would like to express our full support for this initiative taken by ESMA with the prospect of EU-wide standardisation of reporting obligations. Development of supervisory guidelines on reporting is an essential element of the practical implementation of the AIFMD regime. It is necessary that AIFMs are provided with practical guidance for establishing and handling of reporting systems in accordance with the Level 2 requirements.

## Key issues

Before turning to detailed remarks on the questions for consultation, we would like to draw ESMA's attention to our key issues and concerns.

### I. Transitional arrangements (para. 9 of the draft Guidelines)

We believe that the transitional arrangements are drafted too narrowly and do not sufficiently take into account the national approaches to the general transitional period enshrined in Article 61(1) AIFMD. According to this provision, already existing AIFMs are granted a transitional period of one year for submitting the application for authorisation. A number of Member States, including Germany, have implemented or will implement this standard by requiring full application of the AIFMD requirements by the date of submitting the application and by 22 July 2014 at the latest.

It is obvious that the application of the reporting standards must be compatible with a company's general submission under the AIFMD regime in line with national law. Thus, we request ESMA to allow for more flexibility as regards the handling of the first round of reporting with regard to Article 61(1) AIFMD.

### II. Reporting of market risk measures (para. 99-101 of the draft Guidelines)

The suggestions in terms of reporting on the AIF's market risk profile go well beyond the requirements of the Delegated Regulation. This extension of scope runs counter to the declared purpose of the Guidelines which is ensuring "common, uniform and consistent

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application of the reporting obligations" stemming from Level 1 and Level 2 provisions (cf. para. 4 of the draft Guidelines).

The reporting template included in Annex IV to the Delegated Regulation 231/2013 (Level 2 Regulation) is part of directly applicable EU law which takes precedence over national provisions let alone administrative standards without binding effect. Therefore, it is compelling that the ESMA Guidelines observe the reporting limits defined in the Level 2 template which requires solely the reporting of Net Equity Delta, Net DV01 and Net CS01 for the measurement of market risk.

**Consequently, the proposed reporting of figures concerning Net FX Delta, Net Commodity Delta and the Vega exposure at different market levels has no foundation in the Level 2 text and should thus be waived. For the same reason, AIFMs must not be required to report on the VaR of the managed AIFs.** It must be pointed out that ESMA itself had rejected the industry's suggestions to report market risk profile on the basis of VaR figures when preparing its technical advice and instead had recommended different risk measures which were then endorsed by the Level 2 template.

In addition, it should be acknowledged that the suggested calculations of additional risk measures would place a significant burden upon the AIFM who anyway need to commit considerable resources to the implementation of the reporting duties. This pertains also to the calculation of VaR which according to the consultation paper shall be based on parameters different from those applicable under the UCITS Directive. Hence, should ESMA insist on maintaining the VaR reporting in spite of our legal arguments presented above, we believe that it should abstain from specification of the applicable parameters in order to reduce the administrative burden for the industry (for further details, cf. our response to Q 12 below).

## III. General compliance with the Level 2 template

As pointed out above, the reporting template included in Annex II to the Level 2 Regulation is part of directly applicable EU law which takes precedence over national provisions let alone administrative standards without binding effect. **Therefore, it should be considered a general principle that the ESMA Guidelines observe the reporting limits specified in the Level 2 template.**

A further example of excessive requirements is the suggestion to report on the use of high frequency trading in AIF management. Such reporting is not foreseen by the Delegated Regulation and hence should not be incumbent on AIFMs.

## IV. XML reporting format (Annex VI to the consultation paper)

The implementation of the XML reporting format might not be feasible for the first round of reporting depending on the final ESMA approach to the transitional period and the availability of the complete programming template sufficiently in advance. In any case, we believe that ESMA should grant certain leeway for submissions of regulatory reports in the first two quarters of 2014.

In this context, it should be noted that the IT guidance for XML filing presented in Annex VI to the consultation paper is not entirely consistent with the electronic version published by ESMA. However, a complete and correct electronic schema is necessary in order to allow for prompt and error-free programming of the reporting template.

Moreover, according to the explanation of the M/C/O column in Annex VI, some reporting elements are optional or conditional upon certain circumstances. We believe that the exact assignment of "C" and "O" marks should be reviewed by ESMA before finalising the XSD schema as does not appear consistent throughout the template. In any case, we would be grateful for clarification that the "O" attribute renders a reporting item truly optional for AIFMs who can decide whether or not to submit the specific information.

**V. Reference asset value for reporting purposes**

The basis for calculating the reporting items covered by the consultation paper is subject to considerable variations: some items shall be established with reference to the value or aggregated value of instruments (cf. para. 63, 72 and 79), other in relation to the NAV (cf. para. 86 and item 10 in Annex VI concerning investment strategy and HFT strategy). For a few reporting details, it is even suggested to apply both reference values (cf. para. 71). In some cases, the calculation basis remains unclear.

We believe that such great variety of reference points makes the reporting cumbersome not only for the affected AIFM, but also – and in particular – for the supervisory authorities who need to evaluate the reported figures against the background of diverging values. Therefore, we support greater consistency of the reporting base which in our view should be primarily linked to the funds' NAV.

**Specific comments**

With regard to the questions for consultation raised by ESMA, we would like to remark the following:

- **Reporting frequency and timings**

**Q1: Do you agree with the proposed approach for the reporting periods? If not, please state the reasons for your answer.**

We welcome the proposed approach to base the reporting periods on the calendar year. With the calendar year basis the timing of AIFM and AIF reporting will be consistent. Furthermore, in cases where AIFM manage several AIFs, this approach makes sure that regular reports have not to be submitted to the local authorities more often than quarterly. Moreover, selecting the calendar year basis will result in lower cost and lower risk of failure.

However, due to national holidays differing from TARGET calendar there might be days where no data are available at end of the (quarterly) period (if NAV for example is not calculated). In these cases it should be possible to use the last available business day.

Irrespectively of the reporting periods, we fully support the proposed principle that 31 December 2013 should be the first key date of reporting to national competent authorities. This approach reflects that reporting requires adjustments or even implementation of new IT structures. However, when establishing the first key date ESMA must take into due account the date of publication of the final guidelines. In our view, the final guidelines are expected to be published not before the third or fourth quarter. This could complicate the implementation process even further. Moreover, a complete and correct electronic schema is necessary in order to allow for prompt and error-free programming of the reporting template.

In this context, the implementation of the XML reporting format might not be feasible for the first round of reporting depending on the final ESMA approach to the transitional period and the availability of the complete programming template sufficiently in advance. In any case, we believe that ESMA should grant certain leeway for submissions of regulatory reports in the first two quarters of 2014. Therefore, we suggest using the XML file for the first report as an option but not as a compulsory requirement. For the first report, other kind of files, e. g. excel-files, should also be admissible.

Furthermore, as pointed out above, we believe that the transitional arrangements (cf. paragraph 9 of the proposed Guidelines) are drafted too narrowly and do not sufficiently take into account the national approaches to the general transitional period enshrined in Article 61(1) AIFMD. According to this provision, already existing AIFMs are granted a transitional period of one year for submitting the application for authorisation. A number of Member States, including Germany, have implemented or will implement this standard by requiring full application of the AIFMD requirements by the date of submitting the application and by 22 July 2014 at the latest.

It is obvious that the application of the reporting standards must be compatible with a company's general submission under the AIFMD regime in line with national law. Thus, we request ESMA to allow for more flexibility as regards the handling of the first round of reporting with regard to Article 61(1) AIFMD.

- **Procedure when reporting obligations of AIFMs change**

**Q2: Do you agree that ESMA should provide clarification on how AIFMs should manage change 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.**

**Q3: Do you think that ESMA should provide further clarification? If yes, please provide examples.**

We agree. It makes a lot of sense to provide clarification on this issue. The listed scenarios seem to be logical and complete.

Nonetheless, we see the need for further clarification as regards the following:

According to paragraph 12 of the draft Guidelines, the AIFM should report at the end of Q3 for the period covering Q1+Q2+Q3 if the authorization is granted in Q2. It is unclear whether the

AIFM should report once including the period covering Q1+Q2+Q3 at the end of Q3 or the AIFM should report three times at the end of Q3 (one report for the period Q1, one for the period Q2 and one for the period Q3). Hence, we would like to suggest ESMA to clarify this issue.

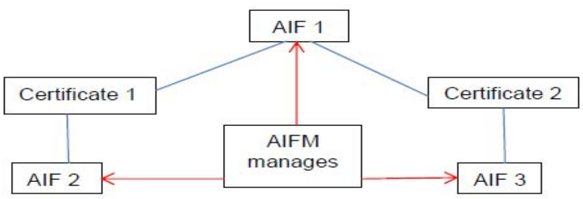
The proposed clarification on how AIFMs should manage changes in reporting frequency is linked to an increase or a decrease in the total value of assets under management. In addition to the proposed scenarios, ESMA should clarify the relevant time when authorised AIFMs are expected to change their reporting frequency (e.g. from half-yearly to quarterly reporting obligation, or the reverse). In order to determine whether there is an increase or a decrease in the total value of assets under management, in our view, it is necessary to consider the total value of assets under management as at the reporting date. In cases when AIFMs shift from registered AIFMs to authorised AIFMs the relevant time should always be the time of application for authorisation.

Moreover, ESMA should clarify how AIFMs are supposed to calculate the "**total value of assets under management**" for the purpose of determining whether there is an increase or a decrease. We would like to suggest that the calculation of the total value of assets under management as defined in Article 2 of the Level 2 Regulation should be used. The wording of the Level 2 Regulation which provides for cases laid down in Article 3 of the AIFMD (exemptions for small AIFMs) is not entirely clear as to its applicability to such cases. In the consultation paper ESMA only describes the method to calculate the "**value of assets under management**" for the purpose of reporting of specific types of AIF and refers to Articles 2 and 10 of the Regulation (cf. paragraph 39 of the drafted Guidelines, Annex III).

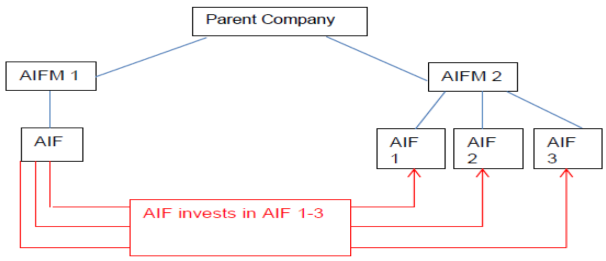
In this context, Article 2(4) of the Level 2 Regulation states:

> *"Where an AIF invests in other AIFs managed by the same externally appointed AIFM, that investment may be excluded from the calculation of the AIFM´s assets under management."*

We assume that Article 2(4) of the Level 2 Regulation is also applicable if investments were made indirectly. In the example shown below the AIFM manages AIF 1, AIF 2 and AIF 3. AIF 2 invests in certificate 1 which represents AIF 1 and AIF 3 invests in certificate 2 which represents AIF 1 as well. Here it is a question, whether AIF 1 shall be included in the calculation of the total value of assets under management three times or only once.



As another example, an AIF managed by AIFM 1 invests in AIFs managed by AIFM 2. AIFM 1 and AIFM 2 are part of the same affiliated group. We assume that Article 2(4) of the Level 2 Regulation is applicable for affiliated groups if all target funds (in chart below AIF 1-3) are reported.




- **Reporting of specific types of AIF**

**Q4: 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.**

Our understanding is that the proposed clarification with regard to feeder and master funds refers to the definition of "feeder AIF" under Article 4(1)(m) of the AIFMD. However, as regards treatment of feeder AIFs, we would prefer "option 2" as described in Annex II point 4 of the consultation paper, i.e. the possibility for AIFMs to report either per feeder or aggregated on master AIF level, depending what is more appropriate from an operational point of view.

We agree with the approach for the reporting obligation for umbrella AIFs. This approach is the logical consequence due to the fact that an umbrella structure does not represent a single fund, but combines several AIFs.

- **Identification of the AIFM and the AIF**

**Q5: 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.**

**AIFM Identification**
According to paragraph 28 of the draft Guidelines, ESMA proposes that for the name of the AIFM, AIFMs should provide the national identification code (code used by the competent authorities of home Member States) together with the Bank Identifier Code (BIC) and the Legal Entity Identifier code (LEI) or, if not available, AIFMs should use an Interim Entity Identifier (IEI). Unfortunately, it is not clear whether the AIFM is free in choosing only at least one of the identifiers mentioned in the template or whether it is required to list more or all codes mentioned in the template.

In these terms, we would like to suggest that AIFMs should only use one code to identify the name of the AIFM. Therefore, we propose to use the global LEI. As long as the final LEI is not available, the so called Pre LEI should be used for reporting purposes. In case neither LEI nor Pre LEI is available when reporting under AIFMD will commence at the beginning of 2014, we recommend not to use any identifier until the LEI is available.

In this context, we strongly oppose the suggested use of BIC. Even though BIC is already in place for counterparties to use, the current BIC issuance is limited to a small segment of the market. As of today, mostly credit institutions which are a member of the SWIFT network carry a BIC. If ESMA requires the use of BIC for lack of alternatives a large number of market participants which by far exceeds the current number of BIC holders would need to apply for the identifier with the corresponding administrative effort and with no benefit for the global LEI approach. The vast majority of the EU based asset managers would need to be registered, which are about 30,000 entities in Europe. Additionally, there are 3,200 fund management companies at the end of 2012 many of which would need BICs too. All of these entities in the EU are currently not part of the BIC universe.

Taking also into account the position of the G20 with regard to the global LEI as the sole identifier for all legal entities engaged in financial transactions worldwide the decision to use the BIC in Europe must be also rejected from the standardisation perspective. BIC is an eleven digit identifier which cannot be used later within the LEI system following specifications agreed by the Financial Stability Board (FSB). Using the BIC as a first step means doubling the cost for each company by requiring registration now for the BIC and then for the global LEI. It is not fair to require most of the market participants outside the credit institution sector to go through the time and effort of double self-registration. The unnecessary double registration might also impair the level of support for the global LEI system in the market place.

Finally, this high number of entities would strain the resources of the BIC registration agency i.e. SWIFT to the maximum. According to SWIFT, adding only the 30,000 non-connected BIC's for the EU investment fund industry would double the current database of BIC1. If this needs to be done one by one under the FSB self-registration principle with the current process using e-forms and validation rules, SWIFT roughly estimates 2,000 man/days effort just to accord BIC1. If this effort is required, it would at the very minimum need some kind of automation but the requirements definition, development lead time and deployment would also need time and effort.

As a consequence, we suggest that delivery of the BIC and the national identification code should only be optional for AIFMs.

**AIF Identification**

For the same reasons as explained above, we also propose to use only the LEI for the identification of the AIF. However, shares classes of investment funds do not constitute in general any legal entity and should not obtain the LEI.

**Reporting between NCAs**

We support the proposed procedure for handling the reporting between the national competent authorities (cf. paragraph 10).

- **Principal markets and instruments in which it trades on behalf of the AIFs it manages**

**Q6: 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 alternative approach to the identification of principal markets and instruments?**

We agree with the proposed approach for the principal markets and instruments. It is important that the definition is unambiguous and clear. The proposed classes are feasible.

However, a more complete list or enhanced guidance for market classification and market codes should be provided for all types of AIFs (not only AIFs trading financial instruments). This classification should be aligned with MIFID and EMIR regimes. Moreover, we would appreciate if ESMA could provide further clarification and examples especially for dedicated asset classes like real estate.

In our view, asset types should also include the following categories:

- Macro Asset type: Securities
  Asset type: Sub-sovereign bonds (bonds issued or guaranteed by regional governments)
- Macro Asset type: Securities
  Asset type: Mortgage bonds (bonds secured by mortgage pools according to national covered bond legislation: Pfandbriefe, lettres de gages, cédulas etc.)

Furthermore, our members need more clarification as regards the classification proposal for derivative instruments. To be able to decide whether a short position in derivatives is uncovered or not, it has to be defined which long position can be seen as a cover for it. In particular, it should be clarified whether netting and hedging conventions are to be applied as described in Article 8 paragraph 3 of the Regulation.

- **Breakdown of investment strategies**

**Q7: 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.**

As pointed out above, we oppose to report information on high frequency trading. Such reporting is not foreseen by the Level 2 Regulation and hence should not be incumbent on AIFMs. The reporting template included in Annex II to the Level 2 Regulation is part of directly applicable EU law which takes precedence over national provisions let alone administrative standards without binding effect. Therefore, it should be considered a general principle that the ESMA Guidelines observe the reporting limits specified in the Level 2 template.

Furthermore, according to the Level 2 Template, AIFMs should only report the breakdown of investment strategies. High frequency trading is a technology, not a strategy. High frequency trading uses a wide range of strategies with very different characteristics and can be characterised as an advanced implementation of pre-existing strategies. Hence, it is not appropriate to report information of high frequency trading in connection with the breakdown of investment strategies.

In addition, the German AIFMs do not engage in high frequency trading themselves. Usually they pass their orders to brokers with the objective of obtaining best-execution. Assuming that high frequency trading by brokers is irrelevant for reporting purposes, no volumes were to be entered in the Template. In our view, there is no added value of such zero reports.

Should ESMA insist on obtaining reports in terms of high frequency trading, we would like once again to ask for clarification that high frequency trading conducted by third parties such as brokers to which orders are routed for execution must not be considered for this purpose.

Reporting on high frequency trading might be difficult even if applying the suggested restriction. Especially in cases of outsourcing of the portfolio management function, the AIFM is generally not in the position to determine which trades were executed by using high frequency trading technology.

Moreover, we not agree with the definition of high frequency trading which is not fully aligned to MiFID II and might potentially cover a wider range of algorithmic trading or other technically automated trading processes. In Germany there is also a separate law on high frequency trading with further definitions in place. Hence, providing different definitions of the same term it is not helpful for ensuring consistency of reporting.

Lastly, the suggested use of the AIF's NAV as a measure for the extent of high frequency trading seems not helpful. The NAV typically changes over the course of the reporting period and thus does not reflect a common basis. One would have to report e.g. an average value. At the very least, maybe it would be more helpful to report the absolute numbers of trades.

**Q8: Do you think that the list of investment strategies should be widened? If yes, please provide ESMA with suggestions of additional investment strategies**

In our view, the predetermined list of investment strategies provided by the Level 2 Regulation does not need to be widened. We believe that the strategy list is long enough. Obviously, it depends on the purpose of the information requested on the one hand and on the ability to deliver on the other. Incidentally, the German national competent authority (BaFin) wants to use the information on investment strategies to verify the professional qualification of the managing directors of the AIFM which is suitable for this purpose.

It is suggested that AIFMs report for Hedge Fund, Private Equity and real Estate AIF types the percentage of NAV represented by all relevant strategies of the AIF. When reporting the percentage of NAV breakdown, it should be made clear that this necessarily applies to the fund´s target allocation as the allocation of actual values usually cannot meet the 100%

requirement. By way of example, some real estate AIFs hold available significant parts of their portfolios in cash and securities. Nevertheless, we assume that in any case the fund's strategy is best described as a real estate strategy.

Finally, BVI rejects the reporting on breakdown of AIF holdings by specific categories of investors as proposed in paragraph 113 of the draft Guidelines. Such detailed information is not covered by the Level 2 template and, at the very least, should be considered only optional. In addition, the Level 2 template makes clear that further specifications are conditional upon the information being known or available to the AIFM. In jurisdictions allowing for the issuance of fund units as bearer shares, the AIFM has generally no access to information on the fund ownership structure; this applies in particular to retail AIFs marketed via mass distribution channels.

Thus, requirements for investor classification should be reviewed and guidelines should be provided how to proceed if this information is difficult or impossible to establish. There is also an inconsistency between paragraph 113 of the draft Guidelines and Annex VII, Table 9 with the category "employees and staff of the AIFM" contained only in paragraph 113.

- **Principal exposures and most important concentration**

**Q9: Do you agree that AIFMs should also calculate the geographical focus based on the total value of the assets of the AIF?**

We disagree with the proposed approach that AIFMs should calculate the geographical focus based on the total value of the assets of the AIF. In our view, it is preferable to calculate the geographical focus based on the NAV.

We understand that reporting just on a NAV basis can understate derivatives due to low market values. Reporting on the total value of the assets could, on the other hand, cause an overstatement of derivatives due to high notional values and therefore high equivalents. Since the suggested figures are requested for a special due date, reporting only on a NAV basis should give a sufficient insight to the AIF's geographical risk profile, because it shows which regions could cause a higher risk in terms of losses to the AIF's market value.

Furthermore, "country of risk" should only be considered where available. For example: underlyings of securitised products are in country A, but the issuer of the product is domiciled in country B. This is in line with the example in paragraph 70 of the draft Guidelines about investments of CIS. Thus, ESMA should provide more guidance on how to determine the geographical focus for specific asset classes. Especially the look through principle for CIS should be treated as optional.

There is an additional question: According to „Sample Guidance for AIFMs when completing pro-forma" in the ESMA's final report on possible implementing measures to the AIFMD, interest rate and foreign exchange derivatives should be excluded from the numerator and denominator. Please give advice whether this rule should be applied.

- **Instruments traded and individual exposures**

**Q10: 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 disagree that information on the turnover should also be expressed in number of transactions. Number of transaction can be high due to technical reasons (e.g. because of partial executions) with low or no effect on transaction costs.

When reporting turnover, volume is the pivotal number. Information on the turnover should be expressed in volume (and not in number of transactions), and, at the very least, only where available and as an option. This is standard in other reports. For example, the German audit report on investment funds shall include information about the turnover rate the calculation of which is defined in national regulation and which is not based on numbers of transactions (cf. Paragraph 25(1) No. 14 and Annex 2 of the so called "Investment-Prüfungsberichtsverordnung", InvPrüfbV). In the interest of better regulation, such inconsistencies in reporting should be avoided.

In this context, a further need for clarification arises with reference to paragraph 88 of the draft Guidelines which states:

> *"According to the AIFMD, AIFMs subject to reporting obligations of Article 24(2) shall report the information for each EU AIF they manage or AIF they market in the Union. This means that, unlike under Article 24(1), AIFMs should report information under Article 24(2) only for the AIFs they market in the Union."*

In our view, it is unclear how to treat EU AIFs which are marketed only outside EU. They are covered in first sentence, but no longer in second sentence. The conclusion in paragraph 88 of the draft Guideline therefore needs to be clarified*:*

> ***"Therefore, AIFs not marketed in the Union by AIFMs are not covered by the reporting obligations of Article 24(2) of the AIFMD (except Master AIFs as explained in paragraph 24 above)."***

**Q11: Do you agree with the proposed list of types of transactions and the respective definitions? If not, please state the reason for your answer. Can you think of any other type of transactions that ESMA should add to the list?**

BVI has no comments on the proposed list of types of transactions that managers of private equity AIFs may report or the respective definitions. Our members are currently not involved in the management of private equity funds.

- **Risk profile of the AIF**

**Q12: 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?**

As pointed out above, BVI strongly disagrees with the introduction of additional measures of market risk profile because it exceeds the requirements of the Level 2 Regulation. Consequently, the proposed reporting of figures concerning Net FX Delta, Net Commodity Delta and the Vega exposure at different market levels should be waived as it has no foundation in the Level 2 text. For the same reason, AIFMs must not be required to report on the VaR of the managed AIF.

The Level 2 Template requires only information about the Net Equity Delta, the Net DV01 and the Net CS01. It is extremely burdensome to report these key figures. The suggested calculations of additional risk measures would place an even more significant burden upon the AIFMs who anyway need to commit considerable resources to the implementation of the reporting duties. In detail:

**Net DV01, CS01 and Net Equity Delta**
In order to facilitate a uniform application of the reporting obligations ESMA should clarify under which conditions reporting of each risk measure does not make sense for the specific fund strategy. For instance, the net commodity delta could clearly be discarded for real estate funds. On the other side, the requested treatment of measures such as CS01, DV01 etc. is less clear for this strategy type: Indeed, real estate funds hold significant parts of their portfolios in securities. However, real estate as the typically predominant fund's asset type in this case would not be reflected in the corresponding measure values.

To avoid any uncertainty in applying these standards ESMA could define certain threshold values (e.g. as a percentage of NAV or Total AuM) that would trigger/eliminate the obligation to report the particular risk measure values.

**Value at Risk of the AIF**
According to the consultation paper, the calculation of VaR shall be based on parameters different from those applicable under the UCITS Directive. Hence, should ESMA insist on maintaining the VaR reporting, we believe that it should abstain from specification of the applicable parameters or at least align the calculation methodology with the UCITS approach in order to reduce the administrative burden for the industry.

For example, pursuant to paragraph 101 of the draft Guidelines, the VaR for reporting purposes shall be calculated with an interval of confidence of 99% over a period of 500 days and a with 1-day holding period. According to Box 15 of the CESR Guidelines on Risk Measurement & Calculation of Global exposure and Counterparty Risks for UCITS, an effective observation period of risk factors of at least 1 year (250 business days) is required. There is no reason why the VaR of an AIF and the VaR of a UCITS should be calculated with different periods. In our view, it might be better to provide the same flexibility in parameter setting as for UCITS to facilitate a uniform approach. The parameters (interval of confidence, time horizon and holding period) shall be flexible which should include shorter time horizons like 250 days. As the used parameter could be reported to the authorities, it should be possible to assess scaling to other parameters besides length of historical time window. Basically, AIFMs shall be allowed to report their VaR used for regulatory risk monitoring. The regulatory risk monitoring is in line with the AIF’s risk profile and accepted by auditors as well as the national authorities.

Moreover, there are the following inconsistencies between the UCITS regime and the proposed approach regarding the VaR methodology:

- As type of VaR ESMA allows only only historical and Monte Carlo simulation. In addition, we suggest that Delta-Normal-Approach shall be allowed as well. A third methodology should be added (variance covariance). For example, for plain vanilla equity portfolio, analytic, parametric VaR approach based on linear sensitivity to a set of risk factors using a variance / covariance approach should be considered as appropriate.
- What about hybrid approaches if historical simulation is for example not based on full valuation and based instead just on current parametric exposures and actual observed historical market changes?
- It should be discussed if snapshot values as of the end of the reporting period are sufficient and the only option or whether it shall also be possible to use or to add average values for the reporting period (in parallel to the reporting of leverage for UCITS) or max/min/avg values (as required for VaR reporting of UCITS).

Further, the VaR may not be a meaningful method of calculation for all types of AIF (for example real estate funds and private equity funds). It also requires setting up of monitoring systems, internal limit systems and data quality management besides back testing and model validation requirements especially for VaR (cost/benefit analysis). Hence, at the very least, we would appreciate that ESMA acknowledges that some of the risk measures are not relevant for some strategies. Therefore, the use of VaR should in any case not be mandatory. Moreover, we assume that the possibility to report values equal to “0” is basically given for all of these measures.

**Net FX Delta, Net Commodity delta or the Vega Exposure**
Furthermore, at the very least, we strongly believe that ESMA should clarify how some risk measures are to be computed, in particular Net Equity Delta and Net FX Delta.

We also strongly disagree with the requirement for reporting of “Vega Exposure” in paragraph 99 of the draft Guidelines such as:

> *“The Vega exposure at current market levels, with market 10% lower and market 10% higher.”*

The reference to “with market 10% lower and market 10% higher” should be deleted. It is very complicated to calculate the Vega exposure at market levels, with market 10 % lower and market 10 % higher. This would require enormous effort according to available data. Hence, higher technical requirements must be met to calculate the Vega exposure according to these specifications. Moreover, the Vega exposure transports in the overwhelming majority of the AIF types no meaningful content, has a special burdensome implementation load even for funds with no or few options included and exceeds the requirements of the Level 2 regulation.

However, all sensitivity figures are defined by ESMA in Annex III, Art. II as "portfolio sensitivity to a change in ...". According to ESMA XML scheme these sensitivities have to be expressed in money amounts. Nonetheless, these amounts are depending on the change factors, which are not defined precisely by ESMA yet. ESMA should provide the factors to be used, for example to use a change factor of 1% for equity delta by providing a more precise definition like "Net equity delta is a change in portfolio NAV if all equities rise by 1%". These change factors are presumably 1 bp rise (or fall?) of currency yield curves for DV01 and credit spread curves for CS01, 1% rise in FX rates for currency delta and 10% change (rising or falling) of implied volatility curves for Vega Exposure.

Therefore, the description "vega exposure at current market levels, with market 10% lower and market 10% higher" should be deleted. However, at the very least, ESMA should not provide a precise definition of "Vega exposure". Instead, each AIFM should have the freedom to define its own parameters for calculation of the sensitivities. In these cases, there should be room for disclaiming these parameters as otherwise results are not comparable.

## Further Comments and Questions

We would like to ask for further clarification regarding the following topics:

- **Annex VI: IT guidance for XML filing**

  – According to the ESMA's technical advice on possible implementing measures to the AIFMD, Annex V, page 490, units of measurement should be thousands. According to the XML file description, this is not the case. Please confirm that units of measurement and reporting should be the real amounts without decimals as stated in the XML file description and not thousands.

  – With reference to paragraph 47 of the draft Guidelines, which funding sources are considered in this field? The reporting template explicitly excludes units or shares of the AIF bought by investors. What would be the funding source of a fund just containing equity and cash? The IT guideline requires at least one answer.

  – With reference to paragraphs 111-112 of the draft Guidelines: Do we have to mention the effective redemptions or the frequency of possible redemptions? The consultation paper contradicts the reporting template regarding which frequency must be reported if the AIF consists of several share classes. Highest redemption frequency vs. largest share class by NAV. Which statement is correct?

**AIFM Reporting File**

- ID 1 of the AIFM Reporting File (AIF EEA flag): EEA Flag is defined via EEA Flag of AIFM according to Annex VI, 24.1 Item 4 Id 1. Thus the same for all AIFs of an AIFM, therefore the flag should be optional and not mandatory.

  However, the general obligation to use ECB FX Reference Rates for conversion into EUR ( see for example paragraph 39 of the draft Guidelines and Annex VI, 24.1 Item 7 No. T, AIFM Item 3 No 3)) seems to be too strict. There should be more flexibility in choosing adequate FX rates. For example using the same FX rates as in NAV calculation should be allowed.

- ID 11, 13, 14 of the AIFM Reporting File (Main instruments): The reference to Article 3 (of the Level 2 Regulation) presumably has to be replaced by Article 2.

- ID 14 of the AIFM Reporting File: The Asset aggregated value (for portfolio concentration) is defined as the aggregated value of instruments without netting, but in the xml example the aggregated value is lower than the AUM amount for long and short positions. Can you please clarify whether this is an error in the example or explain the definition of aggregated value in more detail.

**AIF Reporting File**

- ID 18a of the AIF Reporting File (Direct Clearing through CCPs): In case of "no", Annex IV directly refers to question 21. Is this really the intended proceeding?

- Within the XML reporting template an "O" indicates that the corresponding entry is optional. This is e.g. the case for ID 19-23 and 25-27 of the AIF Reporting file. As a matter of principle, we assume that elements labeled by "O" can be left without any further explanation.

- ID 22 of the AIF Reporting file (Investor redemptions): Here, a definition of the "ordinary course" is missing.

- ID 23b of the AIF Reporting File (Special arrangements and preferential treatment): It must be further clarified when assets are deemed to have an illiquid nature. This is especially essential for instruments such as real estate that are not traded on a specific market. Liquidity assumptions are not easily derived for such asset types and should be subject to a common standard.

- ID 29 of the AIF Reporting File (Legal structures controlled by the AIF): We assume that real estate companies that were created for the express purpose of holding the real estate investment for the fund as defined in the consultation paper (see p. 37) are not captured here. The financial and legal structures defined in Recital 78 of the AIFMD in connection with Art. 6(3) of the Level 2 Regulation are those that "are specifically set up to directly or indirectly increase the exposure at the level of the AIF". The principal purpose of the real estate companies mentioned above is, in contrast, to invest into real estate for the fund. So, real estate funds should typically not be addressed.

- **Annex VII: Table of enumerated reporting fields values**

We kindly request ESMA not to make any more changes to the table of enumerated reporting fields values. As AIFM already need to start with programming, any changes would render the implementation process even more complicated. Nonetheless, ESMA should be taken into account the following remarks:

- **Table 2 of Annex VII**: ESMA should also define the asset sub type of "Corporate bonds issued by financial institutions".

- **Table 1 vs Table 2**: The codes of "sub-asset type" are defined differently in Table 1 and Table 2 (see below the red markings). Therefore, the Tables for the final report should be harmonised as follows:

| Label | Code Table 1 (ESMA CP, Annex VII) | Code Table 2 ESMA CP, Annex VII |
|---|---|---|
| Corporate bonds not issued by financial institutions-Investment grade | SEC_CBN_INVG | SEC_CBN_ IVG |
| Corporate bonds not issued by financial institutions-Non-investm. grade | SEC_CBN_NIVG | SEC_CBN_NIG |
| Municipal bonds | SEC_MBN_MNPL | SEC_MUN_MUN |
| Convertible bonds | SEC_CBN_CBN | SEC_CBD_CBD |
| Fixed income derivatives | DER_FID_FIXI | DER_FID_FID |
| Foreign exchange (for investment purposes) | DER_FEX_INVT | DER_FEX_INV |
| Foreign exchange (for hedging purposes)) | DER_FEX_HEDG | DER_FEX_HED |
| Interest rate derivatives | DER_IRD_INTR | DER_IRD_IRD |
| Other derivatives | DER_OTH_OTHR | DER_OTH_OTH |
| Physical: Commodities | PHY_CTY_PCTY | PHY_CTY_CTY |
| Physical: Timber | PHY_TIM_PTIM | PHY_TIM_TIM |
| Physical: Art and collectables | PHY_ART_PART | PHY_ART_ART |
| Physical: Transportation assets | PHY_TPT_PTPT | PHY_TPT_TPT |
| Physical: Other | PHY_OTH_OTHR | PHY_OTH_OTH |
| Total Other | OTH_OTH_OTHR | OTH_OTH_OTH |

We trust that ESMA will take our suggestions into account when refining the future regulatory guidance for reporting obligations and remain at your disposal for any questions that may arise.

Your sincerely

Marcus Mecklenburg Peggy Steffen