



## CONSULTATION PAPER GUIDELINES ON REPORTING OBLIGATIONS UNDER ARTICLE 3 AND ARTICLE 24 OF THE AIFMD

**The Dutch Fund and Asset Management Association (DUFAS)** thanks ESMA for the opportunity to provide comments regarding the above mentioned topic.

Please find below our responses regarding the specific questions raised in the ESMA Consultation Paper. At the end of this document we provide some general comments.

### PROCEDURE WHEN REPORTING OBLIGATIONS OF AIFMS CHANGE

*Q2: 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 agree that ESMA should provide clarification on how AIFMs should manage changes in reporting frequency, however, we do not agree with the identified scenario.

In the decision matrix provided in ANNEX 5 (right lower side), it is stated that the goal "to acquire control" is a determining factor to either be obliged to start quarterly or annually reporting. We understand that "acquiring control" could be a risk reducing factor in terms of the goals of the AIFMD. Obtaining control is not a goal itself, however it could be a method to reach other goals. (sustainable goals). There are more goals which would strongly reduce risks. Therefore we cannot answer yes to this question.

Implementing a quarterly reporting cycle instead of an annual reporting cycle induced more costs

We believe that a "buy to hold"-strategy/goal should also be a factor of influence in determining the reporting frequency, rather than just looking at the goal of "acquiring control or not". As a buy to hold strategy reduces also risks which AIFMD aims to have in scope.

### 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.*

Regarding item 7 (two possibilities) we would like to remark that in case of master/feeder structures this will probably lead to an increase in the risk of double counting.

## 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.*

No, we do not agree.

On the high level approach we can understand the reasoning. On detailed level we see some ambiguity. For example when selecting the predominant AIF type. We find it hard to decide how to classify some funds. For example funds which invest in SPV's/fixed assets, but which are not specifically real estate investments. It could be seen as real estate (e./g. a Solar energy park) but could also be listed as "other" or as "private equity".

We see two possible solutions here: Either expand the categories available or give more guidance on the detailed classification.

Additional remark (page 26): When the legal AIF name is leading in identifying, what inception day would one take if the fund is the result of a merger and was previously know and traded under a different name? The inception date being the merger date or the oldest inception date of the (two) funds that made up for the merger?

## 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 an alternative approach for the identification of principal markets and instruments?*

No we do not agree. We propose to identify the principal markets for the AFIM as the market on which the pricing is based. (which is mostly the primary exchange, but there are exceptions).

Additional remark (page 44): It is unclear if under this sections the loans provided from one AIF to another AIF (managed by the same AIFM) should be excluded or not (Art 2-4 of the regulation)

## BREAKDOWN OF INVESTMENT STRATEGIES

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

Yes, we do. When investing in private equity loans the selection between private equity or fixed income fund is not easy to make.

We see two possible solutions here: Either expand the categories available or give more guidance on the classification.

Additional remark:

We miss a specific "buy and hold"-strategy. In our opinion this is a very specific strategy, which implies a total different approach than other strategies with a "hold to sell"-strategy or other much higher frequent trading strategies.

## 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?*

Yes, but further guidance is needed. For example, when investing in loans, what determines the geographical location of this loan. The location of the borrower or where the loan is used. And further, is the location of the collateral of influence?

Additional remarks:

(page 10): How do investments/loans need to be allocated to a geographical area, when these are invested in overseas area's. e.g. the Caribbean Islands?

(page 48): Reporting on investors concentrations is difficult when the fund is traded via distributors. These distributors keep the nature of the actual investor to themselves. This results in the fact that we have no insight in the nature of these "Retail"-investors. Amongst them large investors could be present but not reported under question 17

(page 48-51): How do we classify foreign exchange derivatives, held for portfolio hedging purposes only.

(page 53): On the transaction types we miss project finance and private equity (non listed) as an option => or would these both count as other?

## 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.*

No, we do not agree. Several systems are currently not fit to report on the number of transactions, especially not when the split up (see below under additional question) counts as a transaction as well.

We recommend to only include the number of transactions from a certain risk level as indicated under question 12a.

*Q11: 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 transaction that ESMA should add to the list?

We do not agree with the list.

A new definition of turnover is introduced. Why not use the international recognized "portfolio turnover ratio"?

Further, What is the definition of a transaction?

Does a disbursement under a loan contract count as a transaction? And does the same apply with a full repayment?

With a loan contract, it is common to disburse in tranches. Does a tranche count as a transaction? And does the same apply for a partial repayment?

When temporarily transferring money from a current account held with Bank A to a savings account held with Bank B, would that count as a transaction?

When buying a foreign exchange forward contract to hedge an investment, would that count as a transaction?

## 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?*

No, we do not agree.

We believe at first it should be determined, depending on the general profile of the AIF, if extensive risk measurement needs to be present. More information is not always leading to more efficiency/insight. After this distinction, appointing reporting requirements on risk KPI's can be done on a risk category basis. Otherwise straight forward funds with a very low system risk etc. are being confronted with reporting requirements on risk elements which are not relevant to them.

Additional remarks:

(Page 11): A lot of these KPI's are not applicable or not fit for buy and hold strategies or not well known or unable to be calculated

(Page 54): It is not always contractually possible to determine if a lender has re-hypothecated. How should be dealt with these type of situations?

(Page 55): As a manager, by means of that determined in the prospectus, have the hurdle of suspension, the answer to this question shall be the same as question 19 (CP page 55), but now including the current liquidity of the fund and possible credit lines. If this is not correct, I would suggest to expand the explanation provided on this topic.

(Page 56): Looking at the aim of this section, liquidity profile, this question can be viewed in two ways. From the side of the fund looking at the possibilities to redeem on investments done, or from the side of investors in the fund and their possibility to exit the fund. Which view is the correct one?

(Page 56): Reporting on investors concentrations is difficult when the fund is traded via distributors. These distributors keep the nature of the actual investor to themselves. This results in the fact that a fund manager has no insight in the nature of these "Retail"-investors. Amongst them large investors could be present but not reported.

(Page 57): According to the directive 24-4, only reporting is needed when there is a substantial basis of leverage. This has not been determined/disclosed.

(Page 57): What is defined as an open position. Would outstanding loans of which the collateral is lower than the nominal loan amount, classify as an open position?

(Page 57): What is defined as an open position. Should very brief short/long positions, resulting from timing differences between the execution of a foreign exchange contract and the repayment on the underlying loan be reported?

## OTHER IN GENERAL

We would like to see included that for AIFs with "evergreen"-investment policies, which have a buy and hold strategy, additional categories are being added that can exclude certain questions and lower the reporting load for these AIFs. Also the same for AIFs which only hold derivatives to cover interest and currency risks and do not hold these instruments in order to gain a profit.

(Page 26): It is unclear if under this sections the loans provided from one AIF to another AIF (managed by the same AIFM) should be excluded or not.

(Page 26-27): All AIFM's should convert values of AIF's into euro's by using the ECB rates, when different share classes are listed in different currencies. What if the reporting currency of a fund is Euro, but some share classes are registered in another currency and are converted with a different exchange rate table, should this be changed into usage of ECB rate data, though this is not stipulated in item number 45 on page 27?

Moreover regarding item 39 on this page 26: we prefer to use the London Fixings.

(Page 27-28): With regard to the fund strategies it is noted under item 52 that a brief explanation should be provided when the category "other" is selected. An operational question maybe but to which "other" category does this refer? Because when looking at table 3 (page 106) it could refer to the AIF type label (one choice namely "Other strategy") or it could refer to the AIF strategy label (five choices, namely one per AIF type label category). Could you please elaborate?

(Page 35): Under this item reference is made to section IX-II. Is here reference to item X-II meant?

(Page 40) items 107-108:

The classification in liquidity periods is not possible. For some instruments, for example single name credit default swaps, there are indicative data available. For other categories as bonds, this is not available and should be calculated case by case, which is in practice not feasible. A solution would be to report the stale price percentage on portfolio level.

(Page 41): Amongst the tables provided on page 108 (C.P.) under table 9 the group indicated as Employees and staff of the AIFM (as indicated under item 113 on page 41 of the C.P. is missing.