

Amundi contribution to The ESMA consultation on Implementing measures on the AIFM Directive

First of all, we would like to congratulate ESMA for the impressive task of consultation which has been achieved for AIFM level 2 implementing measures. As a member of EFAMA and AFG, Amundi supports the responses that have been made by these Associations to the consultation. However, we believe that it will be useful for ESMA to have the view of our Group on some particular aspects of the consultation which appear to be of most importance.

As you probably know, Amundi is a leading asset manager in Europe, with nearly 700 Bn Euros AUM.

Before going into the detail, we would like to express our concern about some major aspects of the implementing measures:

- The scope of the directive which covers all non-UCITS funds. As a consequence of this “yes or no” definition, the AIFM directive could have irrelevant and detrimental impact on a Company like Amundi with a large number of UCITS-like funds under management.
- The leverage valuation issues.
- Delegation and prevention from letter box companies and other abusive delegations.

1. Additional own funds :

In relation with Box 6, 2.b) ii., we do not think that the responsibility of the AIFM should be searched in case of “misrepresentations and misleading statements made to the investors by relevant persons” when the contact with this investor is assumed by a intermediary. Marketing of AIF to investors who are not direct clients of the AIFM is not of its responsibility.

Regarding Box 8, Amundi would be in favor of the option 1. i.e. percentage of the AUM for the calculation of additional own funds. We think that a percentage of relevant income would be difficult to enforce, due to the definition of such relevant income. But we would like to stress the fact that **additional own funds requirement cannot be at same level for hedge funds and private equity funds as for UCITS-like funds**. It seems very important to apply proportionality in such a matter. Amundi welcomes that the competent authority may lower the requirements for the additional own funds and we would consider appropriate to precise that such measure could especially apply in that respect of UCITS-like funds under management.

2. Due diligence requirements (Box 11) :

Amundi considers that due diligence requirements described in point 4. of Box 11 may be relevant for Private Equity funds but would represent an excessive and useless burden for other types of AIF, particularly for UCITS-like funds.

3. Liquidity Management :

In regard to Box 32, § 3(b), Amundi's comment is that, in various cases, the profile of AIFs' investor base is unknown to the AIFM. Amundi would favour reference to the type of investors targeted by the AIF instead of reference to the actual investor base.

Q20: Amundi considers gates as a normal liquidity management tool.

4. Requirements for retained interest :

Box 35, § 1, Box 37 to 41:

Instead of a contractual obligation for the AIFM to get the information on securitizations and, in particular, about the respect of the obligation for the originator, sponsor or original lender to retain at least 5% interest, we believe that such obligations of retention and of communication of information should be included in a regulation applicable to all actors in securitizations.

5. Implementing measures on Valuation :

Given heterogeneity of AIFs' population, Amundi understands ESMA's concern to select a method for calculating leverage and exposure that would be as conservative as possible.

- However, the proposed Gross method doesn't seem appropriate for reasons explained in the point 9.
- In addition, Amundi would like to stress the fact that a significant number of AIFs are UCITS-like funds. Thus, it would be pertinent to use the same method as the one proposed in UCITS Directive.
- Finally, recommendation to use two or even three methods could lead to confusion among investors. So, instead of having the Gross method as the mandatory method plus another one, Amundi would favour the possibility of choosing one single method of calculation among the three methods mentioned, leading to one single figure to be disclosed.

6. Delegation :

Q24: Do you prefer Option 1 or Option 2 in Box 65? Please provide reasons for your view.

Amundi has a preference for option 2 which is more precise than option 1. In addition, to cope with the conditions under which the AIFM would be considered as a **letter box entity**, we think that both cases described in Box 73 respond to a letter box entity, and more generally, when the entity is no longer capable of taking strategic decisions in relation to the management of the AIFM, we think it should be considered as a letter box.

7. Sub-delegation: Box 69

We think it would be necessary to precise that the delegate is responsible for the actions of sub-delegate in the same conditions that the AIFM is responsible for the actions of the delegate.

8. Definition of the financial instruments that should be held in custody :

Q32: Do you prefer option 1 or option 2 in Box 78? Please provide reasons for your view.

We would say that these two options cannot be exclusive one from the other. When there is a CSD in the country of domiciliation of assets, financial instruments in the scope of custody will be those which are registered in the CSD. But when there is no CSD, financial instruments deemed to be in custody will be those registered or held in an account directly or indirectly in the name of the depositary.

We think it is important to avoid a definition which could encourage countries without CSD to remain in such a situation.

Q34: How easy is it in practice to differentiate the types of collateral defined in the Collateral Directive (title transfer / security transfer)? Is there a need for further clarification of option 2 in Box 79?

The question of Treatment of Collateral from the point of view of the Custodian's scope of duty raises one main issue: which criterion should be retained to help determine whether an asset belonging to an AIF but subject to a collateral scheme remains subject to the relevant Custodian's safe-keeping duties.

ESMA offers a choice among three options.

Option 1 excludes only assets subject to a collateral scheme which involves a transfer of title, such as in a repurchase agreement or pursuant to an ISDA CSA subject to English law.

Option 3 excludes all assets subject to a collateral scheme as defined in the Directive 2002/47/CE on financial collateral arrangements (the "Collateral Directive") without making any further distinction among the various types of collateral schemes available.

Option 2 appears as a middle way among the options first above mentioned. It is also the only option that sticks to the criterion of possession of / control over the collateralized assets set forth by the Collateral Directive (Art. 2(2)).

Excluding the assets subject to a collateral scheme providing for a transfer of title to the benefit of the collateral taker raises no particular question – all three Options are in agreement on this point.

Yet, it is right in our view that, in addition to transfer of title schemes, collateral schemes involving a transfer of rights such as a security interest over the assets of an AIF also lead to a transfer of possession of / control over such assets, thus entitling the collateral taker to sell, pledge, rehypothecate, assign, invest, use... and even register such assets in its own name, as illustrated in the ISDA CSA subject to NY law (see Paragraph 6(c) in particular).

We are of the opinion, therefore, that Option 2 is the only choice in line with the Collateral Directive, and by way of consequence the most appropriate one.

9. Method for calculating the exposure of an AIF :

Amundi disagrees with ESMA's assessment concerning Value at Risk as in § 10 of the introductory text, page 192. VAR is a helpful methodology for the risk valuation of many products and in many market conditions. No single risk measure can explain portfolio risk, but VAR has the advantage of being a measure of expected outputs (i.e., the level of expected loss with a confidence interval), rather than a measure of inputs (i.e., gross leverage). Whilst VAR has its limitations, it is one of the more helpful measures of portfolio risk, when taken together with other appropriate portfolio analytics and attribution techniques.

Amundi disagrees with the gross methodology as described in Box 95. Such an indicator is both meaningless and misleading for investors, as it does not take into account any netting or hedging. For example, a monetary fund could have a 2x leverage by using this method (in the case the fund uses fixed-variable rate swaps).

Concerning structured funds, Amundi kindly requests that structured AIFs be authorized to use optional regime described in ESMA's Guidelines to competent authorities and UCITS management companies on risk measurement and the calculation of global exposure for certain types of structured UCITS published on 14 April 2011 (ESMA/2011/112).

Also, a similar **grandfathering clause** should be foreseen as the one in Guideline 1, § 4 of the same guidelines.

10. Objective reasons to contract a discharge:

Amundi have a preference for option 1 of the Box 92 regarding the objective reasons for a depositary to contract a discharge.