

The Alternative Investment Association Austria (VAI) is representing national and international Alternative Investment houses totalling more than € 103,5 bn Assets under Management with more than € 6,9 bn exposure to the Austrian Alternative Investment market. Members of the association are institutions under the authority of FMA or their national financial market authority.

The goal of the Alternative Investment Association Austria (VAI) is to enable members to offer products that comply with the Directive which is applied in a flexible manner so as product innovation is not inhibited and at the same time all investments are consistent with investor protection principles.

Austria has a vibrant alternative investment community with a history reaching back to 1989/90 and investors are well aware of the merits of absolute return products.

This is our response to the Call for evidence on implementing measures on the Alternative Investment Fund Managers Directive:

Question 1: In Austria mainly the following different types of AIF/AIFM will fall under the scope of the AIFMD: Spezialfonds (special funds for institutional investors), real estate investments, venture capital funds, private equity funds, Hedge Funds.

Question 2: Implementing measures should be adopted in the form of regulations rather than directives. Thus, a level playing field in the various member states will be ensured. Also, in case of delegation of power of decision to Member State Supervisory Authorities, not too much leeway shall be given to the authorities. ESMA shall give guidelines to authorities based on which decisions shall be taken.

Question 3: A source for information on the types of AIF/AIFM in Austria is the New-Issue Calendar under the Capital Markets Act, administrated by Oesterreichische Kontrollbank AG.

Issue 1 b – Article 3 Exemptions

In regard to how to treat AIFM whose total assets under management occasionally exceed and/or fall below the relevant threshold in a given calendar year and for the AIFM to have time to develop the necessary steps same principles as for other EC directives should apply (e.g. Accounting Directive (78/660/EEC): Therefore the application of AIFM shall affect if the AIFM exceeds the relevant threshold in two consecutive financial years.

Issue 3 – Article 12 General Principles and

Issue 4 – Article 14 Conflicts of interest

Regulations here should be consistent with MiFID/UCITS directives. For Market Participant, holding several licenses, it is important not to have to play by a different set of rules in regard to the management of AIF. Of course, depending on the type of AIF, some amendments might be necessary.

Issue 5 – Article 15 Risk Management

With regards to Risk Management of AIFM, Regulation in this key area needs to take into account the diversity of investment strategies of AIFM and the special characteristics of (a number of) AIF concerning their risk / return profile. One of the main challenges thereby is the fact that risk measures assuming “simple” mathematical distributions such as Gaussian / Normal Distribution are not necessarily sufficient for all types of AIF, especially hedge funds. Thus, a compulsive measure such as VaR, for example, would fall short of the goal to capture all risks relevant to each AIF investment strategy and all risks to which each AIF is or can be exposed. A principle based approach might thus be the preferred approach to Risk Management Regulation for AIFM.

With regards to the Due Diligence Process, a guidance such as “Good Practices in Relation to Investment Managers’ Due Diligence When Investing in Structured Finance Instruments”, which was published by IOSCO’s Technical Committee in July 2009, complemented by illustrative Due Diligence Questionnaires, e.g. such as the ones AIMA has published, might help to develop a level playing field within the industry.

Issue 6 – Article 16 Liquidity Management

In regard to liquidity management, the following principles (or an enhanced version of those principles) should be applied: The average trading volume of each holding of an AIF in the time period corresponding to the liquidity frequency (daily, weekly, monthly,...) of the AIF should be ascertained. Then the number of investments in these holdings (shares, bonds...) should be divided by the average trading volume during the liquidity period. The derived numbers determines the period (days, weeks, months) to liquidate the portfolio position. The number of average days/weeks/months in which investments may be redeemed shall be weighted according to the proportion of each holding in the AIF to the total holdings to arrive at the portfolio's liquidity. Thus, the overall liquidity of the underlying investments in relation to the liquidity of the AIF shall be ascertained. To simulate exceptional liquidity conditions, the calculated period to liquidate the entire portfolio shall be doubled.

Issue 7 – Article 17 and Article 61 Investment in securitisation positions

We refer to the provisions of the Capital Requirements Directive.

Issue 8 – Section 2 Organisational requirements, Article 18 General principles

We refer to UCITS and MiFID directives as maximum benchmark, adapted to the requirements of AIFM. ESMA should issue a guideline on organisational requirements, keeping in mind the principle of proportionality. The ESMA guideline should form the minimum standard.

Issue 9 – Article 19 Valuation

The AIFM, together with the depositary, set down the procedures for valuation of the AIF. This valuation method is published in the prospectus and transparent to the investor. Especially for illiquid assets, standard valuation rules cannot be determined. The consistency of the valuation in adherence to the initially laid down valuation procedure as agreed by the AIFM and the depositary is essential.

In case of internal valuation, the competent authority of the home Member State of the AIFM may require the AIFM to have its valuation procedures verified by an external valuer. The discretion of the supervisory authorities in regard to verification of valuation should be limited to clearly pre-defined circumstances, as not to undermine the AIFM's independent valuation of assets.

Issue 10 – Article 20 Delegation of AIFM functions

The AIFM has to be able to justify its entire delegation structure with objective reasons. ESMA should lay down objective criteria according to which a delegation of AIFM functions is possible. "Delegation that results in the AIFM becoming a letter-box entity" shall be construed restrictively by the competent authorities.

Issue 13 – Depositary functions

There should be a list detailing which institutions/persons should be entitled to act as depositary in regard to certain AIF in each member state. Also, financial auditors should be allowed to carry out depositary functions.

Issue 19 – Article 4 Definition of Leverage

This is a very difficult question to be asked and is actually strategy dependant. However, we need a pragmatic approach to calculate leverage for all strategies equal. We therefore propose:

Leverage shall be calculated by value of Longs divided by NAV. The value of longs for derivatives shall be determined using delta adjusted exposures.

Example 1: NAV = 100, Long = 120€, Short = 40€. Leverage = $120/100 = 1,2$

Example 2: NAV = 100, Long = 500€, Short = 500€. Leverage = $500/100 = 5$

Remarks:

Short puts due to delta exposure would be counted in the Long exposure. -100 puts

Delta -0.5 = +50 Exposure

Issue 23 – Article 25 Use of information by competent authorities, supervisory cooperation and limits to leverage

In order to ensure the stability and integrity of the financial system, financial market supervisory authorities may, after notifying ESMA and ESRB, impose limits on leverage. ESMA should create standards detailing

-) objective criteria defining risks that jeopardize the financial system

-) in which specific case a limitation of leverage shall be justified

In assessing the risk for the financial system, the number of players should be taken into account, the liquidity of the AIF concerned, as well as the concentration on the financial market.

A single-handed approach of national supervisory authorities in regard to limitations of leverage shall not be encouraged.

Vienna, 14th January, 2011