

1 July 2013

ESMA  
103 Rue de Grenelle  
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France

Dear Sir/Madam

**ESMA Consultation Paper: Guidelines on Reporting Obligations under Article 3 and Article 24 of the AIFMD.**

IMA represents the UK-based investment management industry. Our Members include independent asset managers, the investment management arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of around €6 trillion of assets, which are invested on behalf of clients globally. In particular, our members operate (or are the appointed investment managers of) a very wide range of investment vehicles that now fall within the scope of AIFMD. UK-domiciled AIFs alone number, we estimate, nearly 2,000.

I attach at Annex 1 IMA's response to the questions posed in the paper. The key issues we have identified are as follows:-

Scope of the Guidelines

Rather than simply clarify the requirements of the Directive and Regulation, ESMA has proposed that the information required to be reported by AIFMs according to the Regulation is supplemented by additional information in a number of areas. These are not obligations for AIFMs under the Level 2 Regulation and therefore we ask ESMA to justify its rationale for this. We do not agree that AIFMs should be required to report this additional information to national competent authorities.

Timing

We do not agree with the proposal for AIFMs to submit backdated information and question the usefulness of the requirement to commence reporting from 23 July. The requirement to report on a partial quarter (i.e. 23 July to 30 September) will increase complexity and costs for firms but result in only a few days' extra data for regulators. AIFMs should be allowed to report on the basis of whole months or quarters.

We suggest that each AIFM should commence reporting with effect from the first day of the quarter following its authorisation as an AIFM. For example, an AIFM authorised on

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1 February 2014 would commence reporting with effect from 1 April 2014 and submit its first report covering the period 1 April 2014 to 30 June 2014.

#### Client Identification

We disagree with the addition of the detailed client type identification requirements (which were dropped from the draft Level 2 requirements), rather than solely relying on retail/institutional split. This will be difficult and costly to meet and will require considerable register analysis.

#### Specific types of AIF

We urge ESMA to reconsider its approach regarding the reporting obligations for feeder AIFs that invest into a third party master AIF. In this case, it would be most difficult to report following the approach proposed by ESMA.

AIFMs should be given the option of providing reporting at an individual level or at an aggregate level.

We also seek clarification that there is no look-through requirement for Fund of Funds. This is implied by Paragraph 70, which states that *".....AIFMs may allocate investments in underlying collective investment schemes to a specific region if they have sufficient information on the portfolio of the collective investment scheme; if not, they should be allocated to the category supranational/multiple regions."* The creation of the type "Collective Investment Undertakings (CIU)" as a category of AIF holding also clearly implies that the AIFM is not required to look-through in reporting of the underlying fund holdings. A requirement for deeper look-through would place significant additional burdens on the AIFM.

#### Geographical Focus

We urge ESMA to clarify how cash should be treated for the purposes of the calculation of geographical focus.

#### Non-EU AIFMs

There are inconsistencies and uncertainties in the requirements to provide AIFM-level data to each Member State for non-EU AIFMs. Typically, different AIFs may be marketed in different Member States. However, the reporting appears to have been designed for AIFMs with a home Member State to report to (and to do so once per reporting period) for all AIFs it markets in the EU. It is not clear what a non-EU AIFM is supposed to report to each Member State in this situation and what would be considered valid.

For a non-EU AIFM operating under existing private placement regimes, it would seem logical to report only those AIFs marketed in a Member State to the NCA of that Member State, but this then gives rise to the question of what population of AIFs the should AIFM uses to answer AIFM level questions (i.e., should this be the aggregate of all AIFs marketed or managed in the EU or should it be for only those AIFs marketed in the Member State for that NCA?). An AIFM should provide the former as this is more consistent with the overall view of systemic risk and with what is reported by EU AIFMs

at the AIFM level, but that it should only report at an AIF level on those AIFs it has registered to market in the Member State in question.

Although a non-EU AIFM does not have a Home Member State in the EU, this is shown as a mandatory data element for the report. ESMA should provide clarification of the requirements in this situation.

We therefore ask ESMA to clarify the reporting requirements for non-EU AIFMs relying on the private placement regime in the transitional period and reporting to multiple NCAs. In particular, the data to be reported at an AIFM level in situations where different sets of AIFs are marketed in different Member States are unclear.

### Assets Under Management

The Level 2 regulation, guidelines consultation and the template refer almost interchangeably to Assets, Instruments, Investment, Positions, Portfolio etc. It is therefore confusing as to which elements of the NAV are included or excluded (with Article 10 provisions then applied) outside the standard positive value portfolio positions (e.g. cash), short positions (liabilities?), other current assets/ liabilities, negative value derivative positions (liabilities?). ESMA should provide clear examples on what should be included and excluded.

### Inconsistencies between the Proposed Guidance and the xml schema

We appreciate and thank ESMA for the significant amount of work involved in drafting the guidance and schema, but do not support the additional requirements that ESMA has proposed.

There are inconsistencies between the Directive and the proposed guidance and xml schema. Data elements have been added that were not in the Level 2 template, and guidance was provided in the proposal and requirements imposed within the xml schema. The guidance does not address whether a group of elements that correspond to a question is required, and the schema and guidance do not entirely map into the structure of the Level 2 template. We would welcome a revised template, with the additional items not required under the Level 2 Regulation removed.

Notwithstanding the above, we have noted a number of inconsistencies in the guidance provided, the examples given in the guidance, the Annex VI guidance on the xml schema and the content of the xml schema itself. These are detailed in Annex 2 attached.

We understand from the discussion at the Open Hearing that ESMA is still reviewing the Guidelines for consistency with the AIFMD Level 1, AIFMD Level 2 as well as the XSD schemes of the Guidelines itself. We welcome this review and urge ESMA to remove the supplementary information not required by the Directive and Regulation.

We also ask ESMA to promote a higher level of consistency (including technology platform, security and authentication layers, data schemas, testing environments etc.) between the reporting systems used by each NCA than is provided by the current guidance. This will be critical to minimising the additional burden on non-EU AIFMs during the transitional period, one of the key goals of the Directive, as well as promoting accurate sharing of information across Member States. For example, an AIFM reporting

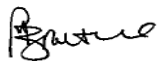
to NCAs in 10 different Member States will need to implement up to 10 different data encryption approaches and manage the potential for inconsistent business rules across 10 NCAs due to different data interpretations (e.g. differences in allowable values for certain items due to discrepancies between the guidance and schema).

ESMA has also provided very detailed xml reporting schema, which will help to create a common reporting framework across Member States and are welcome. The schema are highly complex in their design. As a practical point of note, any xml delivery to a receiving Regulator will need to go through testing, security and validation checks and other technical steps. Each Regulator will have its own methods to do this, which may require a change to the delivery format and method of the xml. They will also have their own timelines for making this available as they, too, will be designing their own systems. For non-EU AIFMs that need to report to multiple home state regulators (as they have no home state regulator to report to), this presents a major technology expense and critical time dependency. Will there be a centralisation of the delivery using one technical design (i.e. not delivered to each Regulator but to one repository perhaps at the ESMA level)? If not, will there be cooperation among Member States allowing sharing of one report? This would help to ensure consistency and would be more cost effective for Regulators and AIFMs alike.

Given the potential for confusion and the timeframe proposed for first reporting we would welcome further guidance to clarify these discrepancies in the near term so that the industry can develop reporting capabilities with as much certainty as possible.

As IT development continues, it would be beneficial to have a small dedicated user group between reporters and regulators, as we understand happened for MiFID/CRAAs to discuss technical delivery issues.

Yours faithfully



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**ESMA Consultation Paper: Guidelines on Reporting Obligations under Article 3 and Article 24 of the AIFMD - IMA Responses to specific questions**

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

We agree with the proposed approach for the reporting periods. However, we do not agree with the proposal for AIFMs to submit backdated information

We question the usefulness of the requirement to commence reporting from 23 July. The requirement to report on a partial quarter (i.e. 23 July to 30 September) will increase complexity and costs for firms but result in only a few days' extra data for regulators. AIFMs should be allowed to report on the basis of whole months or quarters.

The timing of the first reporting is particularly problematic for non-EU AIFMs. A non-EU AIFM marketing one or more AIFs into a number of Member States after 22 July 2013 would be expected by 30 January 2014 to report to many NCAs on each AIF it markets simultaneously, resulting in multiple reporting on the same AIFs. This is burdensome in its own right, but there is currently no final guidance on reporting obligations from ESMA and no guidance from any NCA on their specific implementations of reporting. Moreover, there is no certainty as to when final guidance from ESMA or specifications from the, now, 28 Member States might be forthcoming. As a consequence, it may not be possible between now and 31 December 2013 to develop and test adequately (both internally and with each NCA) the AIFM's reporting systems. For an AIFM reporting to one NCA, this timeline could be problematic, but for AIFMs that need for multiple NCAs to develop interfaces to the NCAs, to test them adequately with the NCAs and, ultimately, to submit reports successfully, this will be an insurmountable challenge given the timelines and current uncertainty of reporting requirements at an NCA level. We therefore urge ESMA to delay the first reporting to 1 July 2014. This should allow the various Member State NCAs sufficient time to finalise their reporting systems and publish their interfaces to AIFMs, and to provide adequate time for AIFMs to adapt their reporting systems to the nuances of each NCA's systems and properly to test their reporting interfaces with each NCA before the first reporting period.

However, if ESMA decides that it requires reporting from 23 July 2013, for questions that require data for the entire reporting period, i.e. performance, turnover calculations, subscriptions and redemptions, AIFMs should be able to choose to provide information back to the beginning of July where this would be a more efficient way of submitting the information.

We note that, given the timing requirements of reporting within 30 calendar days, it is likely that some of the data used for reporting may not have been signed off for use in the official book and records, though it will be the best available at the time the data is required in order to meet the 30-day timing for reporting. We suggest a longer timeframe for reporting, for example 3 months after the end of the reporting period.

The Level 2 templates separate fund of funds from private equity but subdivides fund of funds into private equity, hedge and other. The Level 2 Regulations allow for fund of funds to report within 45 days of the end of a reporting period. They also provide for

funds that are unleveraged and that invest in non-listed companies or issuers to report on an annual basis. If an AIFM has private equity fund of funds that are unleveraged, it seems reasonable to assume that these can be reported on an annual basis and on 45 calendar days after a calendar year-end, since these are private equity vehicles and no more systemically risky than a direct private equity fund. Reporting these quarterly would be extremely difficult given the dependence on underlying data that is not typically available on a quarterly basis with any accuracy. We urge ESMA to clarify this point.

**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.**

We agree that ESMA should provide clarification on how AIFMs should manage a change in reporting frequency. We agree with the scenario identified by ESMA and the guidelines provided.

As previously noted, we suggest that each AIFM should commence reporting with effect from the first day of the quarter following its authorisation as an AIFM. For example, an AIFM authorised on 1 February 2014 would commence reporting with effect from 1 April 2014 and submit its first report covering the period 1 April 2014 to 30 June 2014.

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

No further clarification is required.

**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.**

We urge ESMA to reconsider its approach regarding the reporting obligations for feeder AIFs that invest into a third party master AIF. In this case, it would be most difficult to report following the approach proposed by ESMA.

ESMA proposes a method to report at each individual feeder level, which means for these types of structures, NCAs would receive multiple reports for a structure we believe should be seen as one. A single feeder report would contain insufficient information for a regulator truly to understand its risk. AIFMs should be given the option of providing reporting at an individual level or at an aggregate level. This approach would cleanly align, and make more transparent, the reporting of risk and liquidity by aggregating the investor data and portfolio data across Feeder and Master Funds that are managed as a single collective undertaking and also would allow more complex fund structures with multiple master AIFs to fit cleanly within the reporting framework. Under the current ESMA proposal it would not be possible for a fund structure with multiple master funds that make different investments to be reported as a master feeder structure, which will lead to reporting that is less transparent.

Should all risk measures, including leverage be expected to be calculated at the level that is reported (e.g. at the level of the feeder AIF)?

What is the requirement if the feeder is not marketed in the EU? Also, what is the requirement if an Article 42 registrant is reporting in multiple jurisdictions and one feeder is offered in one jurisdiction and another in a second but neither is marketed in both? Is it acceptable to report the ownership of interests in the master and any cash and hedges at the feeder level?

We seek clarification on the requirement for sub-funds in the xml schema. Annex VI states that the share class national code is a unique reference identifying each AIF in the register of the national competent authority of the home Member State of the AIFM. This implies that each sub-fund should be reported separately as an AIF using the share class of the sub fund. However, the xml schema require all share class identifiers for an AIF within an AIF record to be included, which seems to conflict with the text in Annex VI.

We also seek clarification on the requirements for Fund of Funds. Paragraph 70 states that *".....AIFMs may allocate investments in underlying collective investment schemes to a specific region if they have sufficient information on the portfolio of the collective investment scheme; if not, they should be allocated to the category supranational/multiple regions."* The creation of the type "Collective Investment Undertakings (CIU)" as a category of AIF holding also clearly implies that the AIFM is not required to look-through in reporting of the underlying fund holdings. To do so would place significant additional burdens on AIFMs.

**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.**

Non-EU AIFMs domiciled in recognised jurisdictions should be allowed to use their National Identifiers, e.g. for a US AIFM, the use of SEC codes for the AIFM and AIF should be allowed.

Paragraph 40 requires the reporter to provide the "code used by the competent authorities of home Member States." How would this work for an Article 42 registrant, which could have multiple "home Member States" for reporting purposes? Could the AIFM end up with multiple identifiers?

We understand that where ESMA refers to "interim entity identifiers" it is referring to pre-LEIs as defined to by the LEI Regulatory Oversight Committee (ROC) recently established by the FSB.

We believe ESMA and the NCAs should accept anything that meets the principles laid down by the ROC, which includes measures to ensure uniqueness.

We request clarification on whether the requirement to report the AIF ISIN/CUSIP/SEDOL etc. codes apply to the base share class of the AIF and therefore that the equivalent "share class" codes relate to the other share classes of the AIF.

Finally, the AIF is required to report using the legal name of the AIF. What are the requirements for a sub-fund or compartment of an umbrella fund? Will sub-funds have their own identifier codes?

**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?**

The guidance on principal markets should be clarified by ESMA as the guidance and xml schema are inconsistent and this could create significant problems for a non-EU AIFM reporting to multiple NCAs if they adopt different interpretations. Specifically, for Principal Instruments of an AIFM, the Asset sub-type and AUM amount are shown as mandatory in the guidance, but the examples given show these can be blank, and in the xml schema it is clear that the AUM Amount can be omitted. Similarly, for Principal Markets of an AIF, the AUM amount is shown as mandatory, but the examples show this can be blank and in the xml schema it is clear this can be omitted.

For Main Instruments in which the AIF is trading, the guidance instructs to use AII for OTC products and ISIN for products with ISINs and otherwise to use names to identify the instrument. This is problematic for a number of reasons:

- AII is a European concept that primarily supports exchange-traded options and futures rather than OTC products. For non-EU AIFM, this may be unfamiliar as a concept and require significant work to implement. We suggest that this is an option rather than a requirement for AIFMs.
- In many cases the products which fall into these categories may also have an ISIN. In these cases it would be more logical to use this.
- For US traded securities, the AIFM may be using the CUSIP identifier and not have the ISIN.
- More generally, the AIFM may have the RIC code, Ticker, SEDOL and not the ISIN.
- Elsewhere in the guidance and schema, ESMA allows identification of funds and classes of funds using all of these identifiers and, for the purposes of consistency, it makes sense to do the same in this question as the alternative could be onerous and is inconsistent

We disagree with the requirement to "sum the absolute values of the instruments and then report the five main markets per value". This ignores the purpose of transactions undertaken for risk management and hedging.

Is the requirement to provide the five most important portfolio concentrations based upon NAV or AUM per Article 2? The XML templates seem to request the % and value based on two calculations (presumably, AUM per Article 2 and NAV?). However, there is no specific mention in the consultation paper. Calculations should be based on AUM as per the Directive.

For a Fund that invests partially or fully in other underlying Funds that are not traded on recognised markets, what would be the correct way to reflect in Principal Markets reporting?

**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.**

We disagree with the proposal to report information on high frequency trading as this is beyond the requirements of the Regulation.

Notwithstanding this, the definition of high frequency trading seems far wider than those currently under discussion in the review of MiFID. We also have serious concerns with *ad hoc* algorithmic execution being confused with high frequency trading.

In relation to the calculation of Assets Under Management, the Level 2 definition and accompanying guidance, in particular the reference to 'liabilities', is not normal industry parlance and there are a number of queries about how to calculate this. It is an important definition as it drives a number of answers. A few worked examples provided by ESMA across fund types would be helpful.

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

We do not agree with widening the list of investment strategies.

We ask ESMA to clarify the correct codes to be used for identifying the primary strategies as the guidance and the xml schema use different codes.

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

We believe that where it makes sense to calculate the geographical focus based on AUM, there should be no additional requirement also to calculate it based on NAV.

We note that some of the reporting is to be based on NAV and percentages must add to 100. For AIFs with borrowings, we assume the calculations should be based on total assets rather than net assets, otherwise the percentage would sum to more than 100%?

Of particular importance is how cash should be treated for the purposes of the calculation of geographical focus. We urge ESMA to clarify this point.

We would also like ESMA to clarify the guidance on Principal Exposures and most important concentration.

**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 do not agree that information on turnover should also be expressed in number of transactions. This would not distinguish between transactions undertaken to implement specific policy decisions and those which manage subscriptions and redemptions for open-ended funds.

We suggest that turnover should be calculated as follows for open ended funds:  $[(\text{total purchases} + \text{sales}) - (\text{total creations} + \text{total cancellations})] / \text{average fund value}$ .

**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?**

We agree with the proposed list of types of transactions and the respective definitions. It is not necessary to add any further types of transactions to the list.

**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?**

We disagree with the proposal to report on the additional measures of market risk as this is beyond the requirements of the Level 2 Regulation.

Moreover, there are a number of fund types captured within the scope of AIFMD where the calculation of VaR is impractical and could be impossible. For example, funds that invest in private asset classes where it is not possible to source risk factor data to deliver VaR in accordance with the methodology specified - a nil return would have to be reported in these instances.

VaR makes little sense for private equity, real estate and index funds. It appears from the guidance that this is a required attribute instead of optional. We seek clarification from ESMA. We also seek clarification in the guidance on types of VaR, as the options in the xml schema are different and more extensive than those referenced in the guidance. We ask ESMA to clarify whether only Historical and Monte Carlo methods are allowed, as the guidance suggests.

Could ESMA confirm that "0" can be submitted as a response for VaR where it is not relevant?

The VaR calculation should not be mandated and, instead, be flexible so as to allow it to be calculated using different time horizons, deploying those confidence levels and holding periods deemed appropriate to the fund's terms and trading patterns.

Paragraphs 67 & 68 allude to a box where AIFMs must state whether a position is uncovered or not. This is not a requirement under the level 2 Regulation and therefore should not be included.

Clarification is required on the exact meaning of "cover". For example, does this mean an exact hedge, something similar or where an asset can be converted to cash?

The Directive is not clear about whether non-EU AIFMs will be required to report stress test information and as the calculation of these is a requirement of the provisions on risk management, to which non-EU AIFMs are not subject, we assume that these are not obligatory for non-EU AIFM. In the guidance and xml schema, these are shown as mandatory. Accordingly, we seek clarification from ESMA on the intent and rationale, given that these are obligations for AIFMs that are not authorised and thus not subject to the requirements until at least 2015.

The xml schema allows for all the other Risk Measures that may be provided to be optional. However, the guidance document suggests that these should be provided in all

cases, but in situations where these are not computed that an AIFM may enter zero as a value and provide a description of the reason for not calculating a specific measure. We ask ESMA to consider making these measures optional per the xml schema because using zero is potentially misleading. An AIF might have a non-zero sensitivity to a factor but this sensitivity may not have been computed because the AIFM does not believe a factor is relevant.

### Detailed inconsistencies

- The Short position flag for Main Instruments is missing in the xml schema
- Jurisdiction of first funding source is shown as mandatory in the guidance but this does not make sense and it is shown as optional in the xml schema
- The xml schema requires each AIF to report all share classes of the AIF and supports multiple share classes within a single AIF. However, this conflicts with the proposed guidance.
- The types of fund used in the breakdown of investment strategy are named differently, e.g. PEQF in the guidance and PRIV in the xml schema.
- Home Member State is referred to throughout the schema but this concept does not exist for a non-EU AIFM.
- For Principal Instruments of an AIFM, the Asset sub-type and AUM amount are shown as mandatory, but the examples show these can be blank and in the xml schema it is clear they can be omitted.
- For Principal Markets of an AIFM, the AUM amount is shown as Mandatory but the examples show this can be blank and in the xml schema it is clear this can be omitted.
- For the Five Most Important Concentrations question, the Market Code Types allowed in the guidance include "NOT" if there are no more concentrations to report, but the xml schema allows this to be omitted altogether, which is inconsistent and makes it unclear whether to omit or set to "NOT".
- For Predominant AIF Type, the xml schema uses the word Predominate and the guidance says Predominant.
- In Main Instruments in which the AIF is trading, the guidance instructs to enter N/A for data if there are fewer than five instruments, but the xml schema requires selection of NONE for the Instrument Type in this case.
- For VaR Calculation Method, the guidance says only two methodologies can be used (Monte Carlo and Historical), but the xml schema allows for four (Monte Carlo, Historical, Parametric and Other). Which is correct?
- For performance reporting, the Level 2 form asks for Net and Gross Performance over the reporting period. However, the xml schema provides twelve months, labelled Month 1, Month 2 etc. It is not clear whether a quarterly reporter should report each quarter in Month 1, Month 2 and Month 3.
- AIF AUM is shown as optional