



ASSOGESTIONI

associazione del risparmio gestito

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European Securities and
Market Authority
103 Rue de Grenelle
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Reply to ESMA's Guidelines on reporting obligations under Article 3 and Article 24 of the AIFMD

Assogestioni⁽¹⁾ is grateful for the opportunity to comment on ESMA's Guidelines reporting obligations under Article 3 and Article 24 of the AIFMD.

We very welcome ESMA's approach providing clarification on the information that AIFMs should report to National Competent Authorities (NCAs) and we appreciate and support the introduction in the Guidelines of further examples with the aim of translating the regulatory principles in practical cases.

We wish however to express concern regarding to transitional arrangements and the introduction of additional reporting obligations.

With reference to transitional arrangements, we strongly agree with the introduction of a delay in the reporting obligation, but we suggest changing the Guidelines for different reasons in order to reduce burdens to AIFMs. The first time of reporting obligations should be in line with the national law stemming from the Directive and it should be granted a year to comply in full with the AIFMD, including the reporting obligation. Alternatively, we propose that reporting obligations cover the period starting from the 1st January 2014. Where ESMA does not agree with our proposals, we ask in any case that in the first reporting only information at the end of December 2013 should be indicated. Please see for details also point 1 below.

We welcome some of the new disclosures put forward in the proposed Guidelines to clarify the scope of the reporting table. However we disagree with the introduction of measures not strictly provided in the implementing Regulation such as further market risk measures (net FX Delta, net Commodity Delta, the Vega Exposure and the VaR) and information on high frequency trading (please see our response to Q7 and Q12 below). Although such measures may enhance transparency for certain strategies or AIFs, in general such supplementing information involves administrative burden and the discretion in the application may contribute to an unlevel playing field between AIFMs.

¹ Assogestioni is the Italian association of the investment fund and asset management industry and represents the interest of members who currently manage assets whose value is close to 1,300 billion euro in UCITSS, AIFs and discretionary mandate.



Please find below our general comments and a detailed response to the questions raised.

I. GENERAL COMMENTS

1. Transitional arrangements

The transitional arrangements request that all existing AIFMs as of 23 July 2013 and any AIFMs authorised or registered after this date should report the information required under Articles 3(3)(d) and 24 of the AIFMD to NCAs for the first time by 31 January 2014 (or by 15 February 2014 for fund of funds) on a retroactive basis for the period 23 July 2013 – 31 December 2013.

Although we understand the specific purposes of such transitional arrangements and strongly agree with the introduction of a delay in the reporting obligation, we suggest changing the Guidelines for existing AIFMs for the following reasons:

- due to the significant impact of the reporting obligations, AIFMs should be provided with adequate time in order to align their system, especially when the data are available in the non-accounting or management systems, whose connection to the reporting system may be complex. Primary condition for the beginning of such development is the publication of the final Guidelines with the explanation of how to fulfil the reporting template and the form of its transmission;
- the length of the delay period should take into account the moment in which the national competent authorities transpose the final Guidelines in their systems; this in order to avoid that AIFMs sustain unnecessary costs to update their operational processes;
- a request of information on a retroactive basis partially eliminate the benefit that AIFMs receive by the postponement of the first reporting obligation;
- the reporting period usually starts by the 1st of the month (quarter, half-year, year);

We ask therefore that the first time of reporting be in line with the national law stemming from the Directive. AIFMs should be granted a year to comply in full with the AIFMD, including the reporting obligation. Alternatively, we suggest that reporting obligations cover the period starting from the 1st January 2014 (no retroactive basis reporting). Where ESMA does not agree with our proposals, we ask in any case that in the first reporting only information at the end of December 2013 should be indicated (no information referring to the period 23 July -31 December).

2. Calculation of total value of assets under management

We appreciate the examples provided by the Guidelines and we support the provision of further examples also to clarify the method of calculation of assets under management in accordance with Articles 2 and 10 of the Regulation since different issues refer to those Articles [exemption under Article 3(2) of the Directive, reporting obligation frequency under Article 110 of the Regulation, indication of specific values (absolute amount or percentage) in the reporting templates].



We deem that examples are very helpful to translate the regulatory principles in practical cases.

In particular, we suggest introducing examples for clarifying the method of calculation of total value of assets under management for the following situations:

- a) AIFs whose AIFMs would not require to be authorised in accordance with the transitional provisions (see *sub. a*);
- b) AIFMs linked by common management or control (see *sub. b*);
- c) AIFs investing in other AIFs managed by the same externally appointed AIFM (see *sub. c*);
- d) AIFs using derivative instruments only for “hedging” purpose.

(Sub. a) Threshold and transitional provisions. It should be clarified whether AIFs whose AIFM would not require to be authorised in accordance with the transitional provisions set out in Article 61 (3) and (4) of the Directive are excluded from the calculation of the total value of assets under management and therefore they are not object of reporting obligations.

(Sub. b) Threshold and AIFMs linked by common management or control. It should be subject to clarification the meaning of the following part of Article 3(2)(a) and (b) “**AIFMs which either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management [...] in total do not exceed [...]**”. In our understanding, for the calculation of the threshold of an AIFM belonging to a group, the AIFM should aggregate its AIFs and not the AIFs managed by other AIFMs belonging to the same group. At this regard, Article 2 (1)(b) of the Regulation provides that, in order to meet the derogation of Article 3 (2)(a) and (b) of the Directive, an AIFM should aggregate only the portfolio of assets of those AIFs managed by the AIFM, and does not refer to the AIFs managed by AIFMs belonging to the same group.

(Sub. c) Investments in AIFs managed by the same externally appointed AIFM. The Guidelines refer often to Article 2 of the Regulation for reporting the value of assets under management with different level of aggregation (at level of AIF, Asset macro type, Asset type, Asset sub Type). In particular, Article 2 (4) gives the option to exclude investments by AIFs in other AIFs managed by the same externally appointed AIFM from the calculation of the AIFM’s asset under management. A similar provision is set out under Article 2 (5) for compartment. It should be clarified whether such provisions apply only to the calculation of the threshold or it could be also applied in the reporting table.

3. Calculation of the value of the instruments as of the last business day of the reporting period

The Article 110 of the Regulation provides, in general, that the frequency of the reporting obligations is based on assets under management regardless of the frequency of calculation of the NAV. The Guidelines require in different points that the value of the instruments should be calculated as of the last business day of the reporting period.

In our understanding where the date of calculation of the NAV is not the last business day of reporting there may be differences between the asset values used for the calculation of the NAV and those used for the reporting. An exception is introduced for physical real estate where par. 89 indicates for the asset category “real estate/tangible assets” that “[...] AIFMs do not need to obtain a new estimate of the value of physical real estate for the purpose of the reporting”.



Having said this, we fully agree with the statement introduced for physical real estate but we note that an update valuation of the assets may not be possible also for other type of assets, such as hedge funds or limited partnership in unlisted securities. We suggest therefore including in the Guidelines a general principle that for purpose of reporting AIFMs may rely on the latest information available where an updated valuation of the assets is not available.

4. Value of instruments

ESMA indicates that the value of instruments, unless otherwise specified, means valuation of instruments in accordance with Articles 2 (Calculation of the total value of assets under management) and Article 10 (Conversion methodologies for derivative instruments) of the Regulation.

In paragraphs 71 and 90 is indicated that information should be expressed as a percentage of the total value of the assets of the AIF calculated only in accordance with Article 2 of the Regulation and the Guidelines do not refer specifically to Article 10. In our understanding, also in this case the total value should be calculated taking into account Article 10 as it is referred to with Article 2 (3). We ask confirmation on whether our understanding is correct.

5. AIF data reporting under Article 24(2)

We support the introduction of some examples that explain distinction on reporting obligations under Article 24 (1) and (2).

6. Breakdown of investment strategies

In line with the Regulation, the Guidelines ask AIFMs to provide information on the breakdown of investment strategies (par. 51) and report the percentage of NAV (par. 53). The Guidelines specify that the strategies listed are mutually exclusive and the percentages should equal 100% (par. 53). We noted that the percentage is greater than 100%, when AIFs have borrowing. We suggest therefore eliminating the request that the percentage should equal 100% to correctly indicate the weight of the strategy towards the NAV (i.e. 150%).

Example AIF real estate

Assets		Liabilities	
Residential real estate	100	Borrowing	100
Commercial real estate	200	...	
...		Net assets	200
Total assets	300	Total liabilities	300
Interest rate swap derivatives	100		
Total value of assets	400		

% of NAV: 50% residential real estate and 100% commercial real estate.

7. Geographical focus

We strongly agree with par. 70 of the Guidelines regarding the geographical focus in underlying collective investments scheme where AIFMs may allocate investments in underlying CIU to a specific region if they have sufficient information on the portfolio of the CIU; if not they should be allocated to the category "supranational/multiple regions".

We suggest the criteria for cash, deposit and foreign exchange derivatives should be clarified. For avoiding overuse of the category "supranational/multiple regions", we suggest



also introducing a generic category for financial derivatives instruments without a domicile of the underlying assets (for example interest rate derivatives).

For the sum of the percentage of NAV to 100, please see our equivalent comment in point. 6.

Should ESMA also require a breakdown of geographical focus for the total value of the assets of the AIFs (calculated in accordance with Articles 2 and 10 of the Regulation), it should be clarified if the following example comply with the reporting indications.

Example AIF real estate

Assets		Liabilities	
Europe (other than EEA)	100	Borrowing	100
Europe (EEA)	200	...	
...		Net assets	200
Total assets	300	Total liabilities	300
Interest rate swap derivatives	100		
Total value of assets	400		

% of Total value of assets: 25% Europe other than EEA, 50% Europe EEA, 25% Supranational/multiple region (for IRS).

Please take into account a misprint in the reporting file, where the description of technical guidance refers to "AUM rate expressed as ..." also for NAV rate.

8. Investor concentration

The Regulation indicates the reporting obligation regarding the most important concentrations. We suggest Guidelines dealing with AIFs listed on a trading venues (for example real estate funds). In this case it might be difficult for AIFMs to know who the investors on the reporting date are without an excessive cost. We propose to exclude this reporting obligation for such AIFs (for example with the introduction of a new field where is requested the indication of quotation) or otherwise to specify that AIFMs may report the latest information available (for example information on investor that owned AIFs before the listing).

9. Instruments traded and individual exposures

Cash and cash equivalent. In our understanding the definition of this category is broader than that provided in Article 7 (a) of the Regulation. Therefore also deposit that provide a return greater than the rate of a 3 month high quality governance bond may be included in this category. We ask confirmation on whether our understanding is correct.

Unlisted equities: "unlisted equities are those that are not listed on a regulated market". In our understanding equities that are listed only on a MTF should be considered as unlisted equities. We ask confirmation on whether our understanding is correct.

Fixed income derivatives: we notice that the exact meaning of the asset type category indicated in the Regulation and in Annex VII, Table I is missing. Instead it is envisaged that bond derivatives should be indicated in the category "Corporate bonds" or "Sovereign bond". We ask to clarify whether the synthetic exposure for bond derivatives should be aggregated with the physical exposure to bond or it should be indicated in the category "Fixed income derivatives".



Investments in funds: it should be clarified where CIUs managed by an external related AIFMs should be classified. In our understanding such CIUs should be classified under the sub-asset type “Investment in CIU not operated/managed by the AIFM”.

Value of derivatives. In the explanation on the single categories there are some indications on how the value of derivatives should be calculated; for example “total notional value for futures”. Where it is not the intention of ESMA to introduce a method of calculation on derivatives different from the one indicated in Article 10 [or Art 2 (3)] of the Regulation, we suggest excluding from the text any indication regarding the method of calculation to avoid any confusion.

Investments in limited partnership (private equity AIF): it should be clarified where investments in limited partnership should be classified.

10. Value of turnover

The value of the turnover should be reported for each sub-asset category as defined in Annex VII – Table 2 where also the asset type “Cash and Cash equivalent” is indicated (par. 91). We suggest excluding cash from the reporting or otherwise we suggest explaining the method of turnover calculation.

Please refer to answer n. Q10 for the request of turnover expressed in number of transaction (par. 94).

Please take into account a misprint in the reporting file, where the description of technical guidance refers to “[...] Table 1 [...]” instead of “[...] Table 2 [...]”.

11. Currency exposure

When reporting information on the currency exposure of a CIU, the same principle already indicated for the geographical focus reporting should be applied. In particular, AIFMs may allocate investments in underlying collective investment scheme to a specific currency if they have sufficient information on the portfolio of the CIU; if not they should allocate them into the category “other”.

12. Counterparty risk profile

In par. 106 the Guidelines indicate that AIFMs should report any type of net exposure to counterparty and this includes not only loans but also bonds, shares or derivatives.

It should be clarified whether AIFMs should take into consideration also debt or equities securities issued by counterparty and margin posted to counterparty (also to clearing house or CCP).

Where information on the counterparty risk are requested also for assets different from “securities” we suggest clarifying also the meaning of counterparty for real estate AIFs and in particular whether as counterparty only the conductors or also other type of counterparty (e.g. construction companies, suppliers...) should be included.

13. Portfolio liquidity profile

Regarding the portfolio liquidity profile, par. 108 of the Guidelines provides that “*each investment should be assigned to one period only and such assignment should be based on the shortest period during which such a position could reasonably be liquidated at or near its*



carrying value.” The periods foreseen in the Regulation are: 1 day or less, 2-7 days, 8-30 days, 31-90 days, 91-180 days, 181-365 days, more than 365 days.

In our understanding, the Guidelines specify that each investment should be assigned to one period only even if AIFs may liquidate a part of their position earlier. For example, if AIFMs assume not to liquidate listed securities more than a certain percentage of their trading volume, it is possible that due the amount hold by the AIF the shortest period in which the entire position (e.g. 10%) could be liquidated is 10 days. In the reporting table should be indicated therefore 10% in the bucket 8-30 days.

Should our understanding be correct, we consider this information to be too conservative. In addition, it could be misleading whenever this table is compared with the table of investor liquidity profile (see Regulation, point 21 of reporting template under Article 24(2) of the Directive) because the AIF could every day liquidate a part of the entire position; we deem that in the reporting table, 1% in the bucket 1 day, 7% in the bucket 2-7days, 2% in the bucket 8-10 days should be indicated.

We propose therefore that each investment should be assigned to different period in function of the estimate made by the AIFMs.

Further, we suggest indicating that the percentage of portfolio capable of being liquidated should be made under the assumption that the liquidation starts on the first day following the end of the reporting period. Such clarification may be important to harmonize the calculation of the number of days for AIFs investing in hedge AIFs, where notice period is also applied.

14. Investor liquidity profile

It should be clarified that the period indicated should be based on the NAV valuation date rather than the date paid to investor.

15. Historical risk profile

The Regulation in Point 32 a) and b) of the reporting template under Article 24(2) of the Directive require the indication for each month of the reporting period (1st Month, 2nd Month...) respectively of the gross investment returns or of the net investment return.

Further clarification should be provided for AIFs that do not value their assets every month (for example real estate AIF with an half-year asset valuation) notwithstanding the general principle that the reporting obligation does not require a new valuation of the assets.

16. Reporting XML files

We agree that the format of the information sent to NCAs by AIFMs should be standardised with an XML file. Notwithstanding, an excessive cost for the preparation of the XML file should be avoided to AIFMs. For example, it should be provided a product that allows AIFMs to prepare an XML file in a user friendly way, especially when the information to be reported is minimal. In addition we suggest a form being made available online for manual input.

A diagnostic program for verifying XML file would also be well accepted.



II. ANSWER 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 that the reporting periods are based on the calendar year. Please refer to our general comments regarding the calculation of the value of the instruments as of the last business day of the reporting period (see point 3).

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 with the scenario identified.

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 agree with the proposal.

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.

In general, we agree with the way to identify AIFMs and AIFs and we do not see a major additional cost including information on the NAV, even if it is not envisaged by the Regulation.

We have some observations regarding currency conversion and share classes.

As regard currency conversion, AIFMs should indicate the exchange rate between the base currency of the AIF and the Euro using the ECB conversion rate (see par. 46) when the base currency is one of the currencies for which the exchange rates are euro reference rates published by the ECB (see technical guidance). AIFMs should be free to use a different exchange rate in line with the own assets valuation policy, notwithstanding the disclosure of the exchange rate used in the reporting template.

As regard share classes, ESMA clarifies in par. 45 that AIFs with several share classes denominated in different currencies should choose one base currency for the purpose of the reporting obligations and this base currency should be used across the reporting. We suggest clarifying whether also the net investment return or IRR of the AIF [see Regulation, point 32. b) of reporting template under Article 24(2) Directive] should be provided at the level of the AIF and not for each share class.

The information on the frequency of investor redemption does not seem to be aligned with the provisions of the Regulation *"[...] (if multiple classes of shares or units, report for the largest share class by NAV)"* par. 112 of Guidelines *"[...] If an AIF is comprised of several share classes with different redemption frequencies, only the highest redemption frequency should be indicated"*.



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?

Further clarification should be provided on the proposed approach for the principal markets.

The Guidelines specify that: i) the AIFMs should group their instruments by market (par. 29); ii) the value of the instruments should be calculated as of the last business day of reporting period (par. 29); iii) instruments that are not traded on a specific market should be grouped under the code XXX (par. 30).

We suggest clarifying whether AIFMs should identify the principal markets as of the assets hold the last business day of the reporting period or whether it should refer to the transactions occurring in the whole reporting period (for example quarter).

In the first case where some trades have been executed both in a trading venues and OTC, it should be clarified that AIFMs should allocate instruments in a specific market on a best effort basis. In the latter, AIFMs should be allowed to use the value of the amount transacted rather than the value of the instruments calculated as of the last business day of the reporting period (see par. 29).

In any case, we suggest clarifying the market type's classification that AIFMs should use for instruments listed in a trading venues where trades are made outside markets (OTC).

We suggest also explaining in par. 30 of the Guidelines that an asset that has no market (e.g. real estate), different from OTC instruments, should use the code XXX to identify the market (par. 33 - example 1b).

As regards the main instruments in which the AIF is trading, we do not agree with the introduction of the indication about the uncovered short position because equivalent asking information in addition to those provided in the Regulation.

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 do not agree that AIFMs should report information on high frequency trading (par. 62). This information is not foreseen in the Regulation and the definition indicates it does not appear to be aligned to the MiFID2 and seems potentially to cover a wider range of algorithmic trading.

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

No, we do not think that the list of investment strategies should be widened.

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

We agree with the indication based on the total value of the assets of the AIF, even if this information is not foreseen in the Regulation because it allows ESMA to better understand the characteristics of some AIFs (e.g. real estate AIFs).



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.

The Guidelines request the turnover expressed in number of transactions (par. 94), information not foreseen in the Regulation. As the reporting obligations are already burdensome for AIFMs we do not agree with this new reporting requirement. Furthermore we do not deem this information appropriate because the number of transactions also depends on the frequency of subscription/redemption and, for the same value of turnover, AIFs with daily subscription/redemption would show a higher number of transactions rather than AIFs with monthly subscription/redemption. A high turnover is not necessarily synonymous of a strong activism of the portfolio manager.

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

We have no observations.

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 introduction of measures of market risks that are not foreseen in the Regulation such as the net FX Delta, the net Commodity Delta, the Vega exposure and the VaR.

The need to minimise the administrative burden should be taken into account and the necessity to report a “0” value and the justification of such 0 value should be avoided when such market risk measures are not relevant for the AIFs. We are referring, for instance, to the case in which AIFs invest in assets for which the level of interest rates or credit spreads is not a risk factor (e.g., stocks, commodities) or in which AIFs invest in illiquid assets whose value is influenced by risk factors without time series on which to base the statistical assumptions necessary for the calculation (e.g. AIF that invest in non-performing loans or in public administration credit).

Regarding VaR it should also be considered that in relation to AIFs that use commitment approach for the calculation of exposure, such measure may not be in use.

Where ESMA does not agree with our suggestion and a VaR is requested, AIFMs should be free to indicate the method of computation as a function of their risk management policy, and AIFMs may also not use the indication set out in par. 25 (confidence interval of 99% over a time horizon of 500 days and with a 1-day holding period).

In any case we suggest that ESMA clarifies that all these risk indicators do not apply to funds of funds, including funds of hedge funds, because they cannot be calculated without the complete look-through of the portfolios of the underlying funds, which is not generally available. Specifically, in relation to VaR, such indicator cannot be calculated on a 1-day horizon, without the look-through, where the underlying funds have a valuation period of one month.

In addition we would ask for further detailing on how the measures, different from VaR, should be computed, with indication of what kind of assets should be applied, as well as formula or parameters.



We hope that our observations will be of help and remain at your disposal for any clarification on the comments made in this response.

Yours sincerely

IL DIRETTORE GENERALE