

Submitted via web portal

29 January 2021

Dear Sirs and Madams,

CREFC Europe Response to Public Consultation on the Review of the AIFMD

The Commercial Real Estate Finance Council Europe (“**CREFC**”) is a trade association promoting a diversified, sustainable and successful commercial real estate (“**CRE**”) debt market in Europe that can support the real economy without threatening financial stability. Our membership includes a wide range of bank and non-bank lenders, investors both in real estate and in real estate debt, and firms that provide advisory, intermediary and other services to support the CRE finance market.

CREFC, assisted by international law firm (and CREFC member) Paul Hastings, welcomes and appreciates the opportunity to provide feedback on the European Commission’s “Public consultation on the review of the alternative investment fund managers directive (AIFMD)”.

We submit this letter alongside the completed response form to provide a little relevant background and context for our responses, and to provide some reasoning for particular responses where the response form would not allow us to do so.

Rationale for this submission

As a trade association, we focus on the CRE finance market as a whole. We are not partisan as between the role that can be played by commercial banks, non-bank lenders of different types, or the securitisation and wider capital markets. On the contrary, we believe that there are significant benefits if there is a range of different sources of credit for CRE markets, especially in European markets where banks have traditionally had very dominant positions. These benefits include:

- benefits for investors: those managing or allocating capital have a range of options for accessing the risk and return available from CRE debt (whose illiquidity premium is especially attractive in a persistently low interest rate environment);
- benefits for the real economy: the owners and operators of CRE assets have a range of options for accessing credit, rather than only sources of credit that are likely to pursue similar strategies and respond to market signals in the same way, for example because they are regulated in the same way (a potential problem in markets that are excessively dominated by banks);
- benefits for financial stability: the existence of a range of types of credit sources will provide greater systemic resilience because of their diversity (deploying capital with different time horizons, risk preferences and investment goals, and not subject to the same regulatory drivers and constraints); and
- benefits for banks: a well-functioning securitisation market and the presence of specialist non-bank lenders (and independent loan servicers) allows banks to distribute CRE debt that they originate and to reduce exposures (whether performing or non-performing) which no longer suit their regulatory and commercial requirements, freeing up capital and resources for other business.

The benefits of a flourishing non-bank CRE finance market are especially clear at the present moment. The need to repurpose and adapt many workplaces, retail, leisure and hospitality assets for society's changing needs as we recover from the pandemic will require considerable capital expenditure by the owners of commercial buildings. The urgent need to decarbonise the built environment and tackle climate change will also require considerable expenditure on retrofitting existing buildings. Debt will undoubtedly have an essential role to play in delivering on both those fundamental objectives over the coming years. Investors should be able to participate, and the debt requirement should not fall entirely on banks.

CREFC Approach to Consultation Response

In responding to this consultation, we have focused exclusively on those questions of particular relevance to the CRE debt funds. Where they are not in conflict with our own representations, we are broadly supportive of the submissions made by certain other industry associations whose memberships and interests overlap with ours, including INREV and AREF.

- **CREFC agrees with both the KPGM Report¹ and the European Commission's report² that the AIFMD has broadly been successful in creating a domestic market for AIFs and harmonising the marketing and management of AIFs.**
- Consistent with this, **CREFC does not see the need for any radical changes to the AIFMD framework** and believes improvements can be made to increase operational efficiency without re-opening the level 1 text.³ In all areas, updates and improvements may be achieved by either increased cooperation between EU National Competent Authorities ("NCAs") to promote the harmonisation of approach towards aspects of the AIFMD or level 2 measures. CREFC notes that CRE AIFMs have worked hard implementing policies and procedures to ensure AIFMD compliance. Amendments to the framework, even where parts may be imperfect, risk creating additional regulatory complexity and burden by requiring adjustments to carefully created systems. That would be especially unwelcome at a time when fund managers, like other businesses, should be focusing their resources on supporting investment and economic recovery.
- **CREFC strongly disagrees with the proposal to create a harmonised framework within the scope of the AIFMD to cater for loan originating funds** and would respectfully note that no bespoke regime has been created for other types of AIFs, such as hedge funds. Such a regime targeting loan originating funds is neither necessary nor appropriate, given the important part that such funds play in the financial ecosystem and the low level of prudential risk that they represent.
- **CREFC strongly disagrees with proposals to harmonise the AIFMD and UCITS frameworks.** Given that the UCITS regime was always intended for retail investor participation, CREFC believes that product-level regulation of UCITS products is appropriate. The AIFMD was originally intended to cover funds that fall outside the UCITS regime and that cater to a largely institutional investor base. CREFC believes that the regulatory oversight provided through the regulation of AIFMs is appropriate and sufficient, and that product-level coverage in this market would unnecessarily and disproportionately increase costs for investors, with little or no benefit. It is possible that such a change could even act as a disincentive to using EU structures, increasing the likelihood that managers would seek to domicile funds outside the EU.
- **CREFC believes that reforms to the AIFMD framework to permit retail participation should be limited so as not to require an increase in the regulatory obligations on AIFMs managing AIFs that**

¹ https://ec.europa.eu/info/publications/190110-aifmd-operation-report_en

² The Commission report assessing the application and the scope of the AIFMD on AIFMs (COM (2020) 232 final)

³ Alternative Investment Fund Managers Directive (2011/61/EU)

target professional, institutional investors. CREFC believes that existing structures, such as the ELTIF, might be more susceptible to being improved so as to encourage retail investor participation in alternative assets. We would not want to see an overhaul of the AIFMD framework in pursuit of an objective (retail investor participation) that is quite different from its fundamental purpose (as a regime to provide protection that is proportionate to the needs of institutional investors).

We hope that our responses are helpful and are received with our good intentions that the AIFMD framework continue to encourage capital flows, economic recovery, investment and robust investor protection within the EU. We would be happy to speak further on any of the above should you have any questions and remain at your disposal should you wish to discuss any aspects of our response or, indeed, the operations of CRE AIFMs managing loan originating funds.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Peter Cosmetatos', written in a cursive style.

Peter Cosmetatos
CEO, CREFC Europe

ADDITIONAL EXPLANATION IN RELATION TO SPECIFIC QUESTIONS

The comments below should be read conjunction with our responses to the relevant questions in the online response form. They cover Questions 6 (securitisation vehicles), 51 and 54 (delegation rules) and 85 (loan originating AIFs).

Securitisation vehicles

Question 6. Are securitisation vehicles effectively excluded from the scope of the AIFMD?

Response: Yes.

Additional explanation

We note that the existing exemption for securitisation vehicles defines “securitisation special purpose entities” (SSPE) for these purposes by cross-referring to Regulation (EC) No 24/2009 of the European Central Bank of 19 December 2008 (which since has been recast as Regulation ECB/2013/40 of 18 October 2013, the ECB Regulation). This SSPE exemption works in practice, but we would suggest both an update and an expansion of its scope, in order to reflect changes in EU legislation since the AIFMD exemption was put in place. Specifically:

- (i) the existing cross-reference should be updated to refer to the recast ECB Regulation; and
- (ii) an additional limb should be added to the exemption, cross-referencing the SSPE definition in Regulation (EU) 2017/2402, the EU Securitisation Regulation. This expansion of the exemption is required to reflect regulatory changes since the AIFMD framework was put in place, and specifically the introduction in 2019 of a robust regime of transparency and supervision for SSPEs and securitisations within the scope of the EU Securitisation Regulation.

For the avoidance of doubt, we would not advocate replacing the reference to the SSPEs within the ECB Regulation with a reference to SSPEs within the EU Securitisation Regulation – the two definitions are not the same, and unintended consequences could arise if the scope of the exemption were changed in that way. We are advocating an expansion of the exemption to refer to SSPEs whose sole purpose is to carry on a securitisation or securitisations within the meaning of the ECB Regulation and/or the EU Securitisation Regulation.

Delegation rules

Question 51. Are the delegation rules under the AIFMD appropriate to ensure effective risk management?

Response: Yes.

Additional explanation

We believe that the Article 20 requirements for delegation provide a sound and robust basis for delegation arrangements, balancing the ability for functions to be delegated where they can best and most efficiently be performed whilst also ensuring strong investor protection and AIFM oversight.

Question 54. Do you consider that a consistent enforcement of the delegation rules throughout the EU should be improved?

Response: No.

Additional explanation

We are not aware of any AIFM failures of risk management in the context of delegation. ESMA's recent sanctions report shows that there were no sanctions or penalties imposed by NCAs in relation to delegation breaches or concerns suggesting that NCAs have found, in practice, that delegation does create risks that require remedial action. We note that ESMA has called for a harmonisation of approach in terms of sanctions in the report but the absence of any sanctions/penalties in this area suggests that NCAs are harmonised in their view that delegation does not, under the provisions of the AIFMD, present a systemic risk. We believe that amendments to the delegation framework on the basis of concerns should only be made when there is empirical evidence that delegation creates a systemic risk. On the basis of ESMA's own findings, such empirical evidence does not exist and therefore the systemic risk that delegation is purported to pose seems to be hypothetical and not tied to current use of the delegation model by market participants.

We believe that the monitoring of delegation arrangements and the provision of additional requirements should be the preserve of NCAs and local legislatures, as we have seen in recent years with enhanced delegation requirements in Luxembourg and Ireland.⁴ We note that the AIFMD already provides for ESMA to issue guidelines to ensure consistent assessment of delegation structures and would argue that if there is found to be due cause for concern, ESMA should provide guidance in this area rather than re-opening the directive texts.

If there is concern about delegation of portfolio management to third country managers subject to substantive regulation in their home jurisdiction, we suggest that this is a matter for ESMA to examine the memoranda of understanding with third countries in order to ensure that it permits NCAs to request sufficient information on the third country delegate where the NCA has substantive concerns.

Loan originating AIFs

Question 85. Should the requirements for loan originating AIFs be harmonised at EU level?

Response: No (as further elaborated in response to Question 85.1).

Additional explanation: limiting interconnectedness with other financial intermediaries to support harmonisation

We do not think limiting interconnectedness with other financial intermediaries would support harmonisation, and would advise against such a move.

We understand that the development of the private credit market with loans originated by AIFs has created concerns for NCAs with respect to potential cross-contagion in the banking sector, and agree that this is a risk that policymakers should continue to monitor. However, we agree with the perspectives of other trade bodies, notably AIMA, which advocate that any work in this area should first be examined in the context of reforming regulation applicable to the banking sector rather than the asset management sector.

⁴ CSSF Circular 18/698 and the CBI Fund Management Companies Guidance.

Additional explanation: imposing leverage limits to support harmonisation

We respectfully submit that centralised leverage limits would not provide additional investor or borrower protection, for the following reasons.

In common with other types of AIF investing in illiquid assets, many loan originating AIFs use 'subscription line' loan facilities to allow them to deploy capital committed by investors more quickly. These AIF level borrowings do not constitute true "leverage" and are typically relatively short-term and backed by the undrawn commitments of investors, meaning that exposure is covered by the assets of the AIF. Such facilities should therefore generally pose lower systemic risk than other secured loans in the banking sector.

In terms of leverage used other than typical subscription lines, we respectfully note that, on average, the level of leverage used by CRE loan originating funds remains modest. Combined with that commercial reality, the requirements under the AIFMD for each AIFM to set a maximum level of leverage to be employed on behalf of each AIF (and to monitor and report it to NCAs), as well as the powers of NCAs to impose overriding leverage limits where they deem this necessary, should provide more than adequate protection on this point. To our knowledge, no NCA has sought to impose an overriding leverage limit in the context of a CRE loan originating fund, which we believe demonstrates that the risks posed by loan originating AIFs using leverage are not such as would warrant additional restrictions/limitations, nor are they material from a macro-prudential perspective.

Additional explanation: imposing additional organisational requirements for AIFMs to support harmonisation

We believe that the existing framework is adequate and provides for robust regulation of AIFMs managing loan originating AIFs within the EU, and would advise against the imposition of additional organisational requirements.

As noted in our responses above, we believe that market norms (such as such loan originating AIFs largely being structured as closed-ended vehicles with maturity matching) provide a sound framework for the operation of such AIFs. We note that the ESMA Loan Origination Opinion queried whether sub-threshold AIFMs should be permitted to manage loan originating AIFs or whether all loan originating AIFs should be required to be managed by AIFMs that are fully authorised and subject to the full requirements of the AIFMD. We believe that sub-threshold AIFMs provide a vital source of stable financing to SMEs, which will be especially important in the post-Covid recovery period. Requiring full compliance would make it difficult for such AIFs to offer loan financing at competitive rates (due to the increased cost of compliance as a proportion of revenues for these smaller AIFMs), and act as a barrier to entry to this market, thus reducing the available pool of capital to SMEs, increasing concentration of exposures among larger firms, and reducing competition amongst market participants, potentially leading to higher arrangement fees and margin requirements. Sub-threshold AIFMs are also, in our view, less likely to use true leverage in their structures.

Additional explanation: allowing only closed-ended AIFs to originate loans to support harmonisation

We do not think that only closed-ended AIFs should be allowed to originate loans, for the following reasons.

The large majority of CRE loan originating AIFs are closed-ended because that works from a market perspective. As noted above, even where a loan originating fund is considered to be open-ended, it is uncommon for the constitutional documentation of such an AIF to permit unlimited and unrestricted redemptions. Normal commercial restrictions (such as 'lock up' periods) means that many AIFs purported

to be open-ended are in fact deemed closed-ended under the AIFMD (for example, because they provide no ability to redeem within the first five (5) years).

It is far more typical that liquidity is managed, particularly in times of market turbulence, through the use of redemption gates and deferrals, thus protecting the underlying investments of the AIF from fire sales. We also note that the legislation covering non-bank lending in numerous jurisdictions, such as Germany, only allows loan origination by AIFs that are closed-ended – demonstrating that this is a matter that can be addressed by the use of NCA discretion. We note that the AIFMD already requires AIFMs to have liquidity management arrangements for their AIFs that match with the liquidity profile of their underlying assets and that liquidity must be actively monitored and disclosed to investors.

In the aftermath of the Global Financial Crisis, the Association of Real Estate Funds in the United Kingdom commissioned a report, “Unlisted funds – lessons from the crisis”.⁵ One of the key points from this was that many institutional investors were investing in open-ended funds not because they wanted liquidity but because they wanted to invest for the long-term without the cliff-edge of the end of life of a closed-ended fund. This has resulted in the development of funds with different liquidity characteristics.

Originating loans is no different to investing in any other inherently illiquid assets. IOSCO set out guidance for open-ended funds investing in illiquid assets in 2018.⁶ IOSCO’s focus is on ensuring:

- (i) consistency between a fund’s redemption terms and its investment strategy; and
- (ii) that managers have appropriate liquidity risk management tools.

This would appear to us to be a more appropriate approach than attempting to restrict the type of funds that can invest in particular types of underlying assets. We believe that the IOSCO guidelines, along with general commercial terms governing open-ended AIFs, already provide sufficient parameters for such AIFs without additional regulatory revisions.

Additional explanation: providing certain safeguards for borrowers to support harmonisation

We do not think additional safeguards for borrowers would be helpful.

We respectfully submit that borrowers are subject to substantive protections against enforcement and compulsory refinancings as dictated under both EU and member state law. We do not think adding additional AIF-specific protections is warranted or necessary and to do so would prejudice the important role loan originating AIFs play in financing the CRE (and more general) economy, in direct contradiction of the aims of the Union’s capital markets union project. Borrower protections (and insolvency regulation) should be a matter for member states, which are best equipped to handle insolvency and enforcement risk in their jurisdictions and should apply irrespective of the nature of the lender.

Additional explanation: permitting marketing only to professional investors to support harmonisation

We do not think any such restriction is required, because the investor base for loan originating AIFs is already made up to a large degree by institutional and professional clients. Accordingly, further regulation in this area is unlikely to have any substantive effect as it would not change the status quo. As noted earlier, the ELTIF regime provides for retail participation in AIFs that originate loans – we recommend that further work be undertaken to ensure that ELTIFs are viewed as appropriate and workable investment vehicles for retail participation in debt.

⁵ See <https://www.pwc.co.uk/assets/pdf/unlisted-funds-lessons-from-the-crisis.pdf>

⁶ See <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD591.pdf>

Additional explanation: imposing diversification requirements to support harmonisation.

We do not think diversification requirements should be imposed, for the following reasons.

We believe there is strong alignment of interest between AIFMs, AIF investors and other market participants to ensure that loan originating AIFs do not become over-exposed to too few borrowers where the default risk may have a detrimental impact on the AIF and its investors. For this reason, it is entirely market standard that the constitutional documentation governing loan originating AIFs provide for robust diversification requirements in the AIF's portfolio – not least in terms of borrower concentration but also in relation to geographic focus, industry focus, etc. We would also note that many loan originating AIFs are within the Luxembourg RAIF regime or Irish regime which provides, as a matter of law, for portfolio diversification.⁷

Specifically as regards commercial real estate debt funds, diversification can be a complex concept that cannot be approached in the same way as it is in the case of other, more granular forms of lending. Commercial real estate assets and loans are often large; loans are often non-recourse to the borrower-landlord's wider business and assets; and debt service ultimately depends on the rent-paying occupiers of the assets financed by the fund. Furthermore, certain occupiers, such as a government entity, may present inherently lower credit risk (despite 'concentration') than a diversified mix of retailers. As a result, diversification needs to be approached thoughtfully and flexibly – something the institutional investment market is generally perfectly capable of doing.

Accordingly, we do not believe that the imposition of regulatory requirements vis-à-vis diversification is required where the market itself has developed appropriate diversification requirements as a standard, or such requirements can operate effectively at the national level. It is also unclear why diversification requirements should be imposed on loan originating AIFs where it is not proposed that limits should be placed on other kinds of AIFs investing in illiquid assets.

⁷ A RAIF may not invest more than 30% of its assets or commitments in securities of the same type issued by the same issuer.

Public consultation on the review of the alternative investment fund managers directive (AIFMD)

Fields marked with * are mandatory.

Introduction

The **short version** of this consultation is now available in **23 European Union official languages**.

Please use the language selector at the top of this page to choose your language for this consultation.

In the European Union, alternative investment funds (AIFs) are collective investment funds that are not covered by [Directive 2009/65/EC on undertakings for collective investment in transferable securities \(UCITS\)](#). AIFs vary in terms of their investment strategies, markets, asset types and legal forms. Alternative investment fund managers (AIFMs) manage the AIFs, which are often established for saving or income generating purposes while supporting broader economic activity, and include venture capital and private equity funds, real estate funds, hedge funds and fund of funds. The activities of AIFMs are governed by the [alternative investment fund managers Directive 2011/61/EU \(AIFMD\)](#).

The AIFMD aims to facilitate greater AIF market integration, improve coherence in the actions taken by supervisory authorities to address potential risks posed to the financial system while ensuring appropriate levels of investor protection. To this end, an AIFM is required to obtain licence from its home supervisor and adhere to the operational requirements laid down in the AIFMD and its supplementing [AIFMR](#), including taking measures to manage risks and to ensure the requisite transparency regarding the activities of their managed AIFs.

On 10 June 2020, the European Commission submitted its [report to the European Parliament and the Council on the scope and the application of the AIFMD](#). The report concludes that while the AIFMD has contributed to the creation of the EU AIF market, provided a high-level protection to investors and facilitated monitoring of risks to financial stability, there are a number of areas where the legal framework could be improved. Given the European Commission's ongoing efforts to develop the capital markets union (CMU), this consultation seeks the views of stakeholders on how to achieve a more effective and efficient functioning of the EU AIF market as part of the overall financial system.

Structure of the public consultation

First, this public consultation focuses on improving the utility of the AIFM passport and the overall competitiveness of the EU AIF industry. The analysed data indicates that the appropriate and balanced regulation of financial markets

benefits investors as well as the overall economy. The questions in the section on **authorisation/scope** seek views from stakeholders on the scope of the AIFM licence, its potential extension to smaller AIFMs and level playing field concerns in relation to the regulation of other financial intermediaries, like MiFID firms, credit institutions or UCITS managers that provide similar services.

The **investor protection** section raises questions on investor access that take into account the differences between retail and professional investors. The same consideration is raised in the questions on a potential EU law pre-calibration of an AIF that would be suitable for marketing to retail. Adequacy of disclosure requirements are covered including the specific requirements that could be added, changed or removed from the current rulebook. Other questions address the alleged ambiguities in the depositary regime and the lack of the depositary passport. Stakeholders are also invited to comment on potential improvements to the AIFMD rules on valuation.

The issue of a level playing field is also covered in the section dedicated to **international issues**. Views are sought on how best to achieve the equitable treatment of non-EU AIFs and securing a wider choice of AIFs for investors while at the same time ensuring that EU AIFMs are not exposed to unfair competition or are otherwise disadvantaged.

The section dedicated to **financial stability** seeks stakeholder views on how to ensure NCAs and AIFMs have the tools necessary to effectively mitigate and deal with systemic risks. Specific input regarding improvements to the supervisory reporting template provided in the AIFMR is requested with a particular focus on the increased activities of AIFs in the credit market. The consultation suggests the potential for more centralised supervisory reporting and improved information sharing among the relevant supervisors. A revised supervisory setup and cooperation measures among the competent authorities are another focus of this consultation.

The rules on **investment in private companies** are examined with a view to potential improvements and comments are sought on the effectiveness of the current rules and their potential enhancement.

The **sustainability** related section seeks input on how the alternative investment sector can participate effectively in the areas of responsible investing and the preservation of our planet.

Questions are posed as regards the treatment of **UCITS**, particularly where a more coherent approach may be warranted. This includes the question of a single licence for AIF and UCITS managers, harmonised metrics for leverage calculation and reporting on the use of liquidity management tools.

Finally, stakeholders are welcome to raise other AIFMD related issues and submit proposals on how to otherwise improve the AIFMD legal framework with regard to any issues not directly addressed in the consultation.

Given the broad nature of the questions, well-substantiated, evidence/data backed answers and proposals will be particularly instructive. Clearly linking responses to the contributions already received in the [public consultation reviewing MiFID II](#), informing digital strategy of the EU or any other relevant consultations would be particularly useful.

This public consultation aims to gather views from all interested parties, in particular collective investment fund managers and investment firms, AIF distributors, industry representatives, investors and investor protection associations. The questions 1, 2 and 3 as well as the section Investor protection, except for part (b) thereof, are available in all the EU official languages to gather citizens' views on these matters.

The consultation will be open for fourteen weeks.

Please note: In order to ensure a fair and transparent consultation process **only responses received through our online questionnaire will be taken into account** and included in the report summarising the responses. Should you have a problem completing this questionnaire or if you require particular assistance, please contact fisma-aifmd-public-consultation@ec.europa.eu.

More information on

- [this consultation](#)
- [the consultation document](#)
- [the consultation strategy](#)
- [the acronyms used in this consultation](#)
- [investment funds](#)
- [the protection of personal data regime for this consultation](#)

About you

* Language of my contribution

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- Czech
- Danish
- Dutch
- English
- Estonian
- Finnish
- French
- Gaelic
- German
- Greek
- Hungarian
- Italian
- Latvian
- Lithuanian
- Maltese
- Polish
- Portuguese
- Romanian
- Slovak
- Slovenian

- Spanish
- Swedish

* I am giving my contribution as

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- Business association
- Company/business organisation
- Consumer organisation
- EU citizen
- Environmental organisation
- Non-EU citizen
- Non-governmental organisation (NGO)
- Public authority
- Trade union
- Other

* First name

Peter

* Surname

COSMETATOS

* Email (this won't be published)

pcosmetatos@crefceurope.org

* Organisation name

255 character(s) maximum

Commercial Real Estate Finance Council (CREFC) Europe

* Organisation size

- Micro (1 to 9 employees)
- Small (10 to 49 employees)
- Medium (50 to 249 employees)
- Large (250 or more)

Transparency register number

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Check if your organisation is on the [transparency register](#). It's a voluntary database for organisations seeking to influence EU decision-making.

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* Country of origin

Please add your country of origin, or that of your organisation.

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- Western Sahara
- Yemen

- Czechia
- Lebanon
- Saint Helena
Ascension and
Tristan da
Cunha
- Zambia
- Democratic
Republic of the
Congo
- Lesotho
- Saint Kitts and
Nevis
- Zimbabwe
- Denmark
- Liberia
- Saint Lucia

* Field of activity or sector (if applicable):

at least 1 choice(s)

- Accounting
- Auditing
- Banking
- Credit rating agencies
- Insurance
- Pension provision
- Investment management (e.g. hedge funds, private equity funds, venture capital funds, money market funds, securities)
- Market infrastructure operation (e.g. CCPs, CSDs, Stock exchanges)
- Social entrepreneurship
- Other
- Not applicable

* Publication privacy settings

The Commission will publish the responses to this public consultation. You can choose whether you would like your details to be made public or to remain anonymous.

Anonymous

Only your type of respondent, country of origin and contribution will be published. All other personal details (name, organisation name and size, transparency register number) will not be published.

Public

Your personal details (name, organisation name and size, transparency register number, country of origin) will be published with your contribution.

- I agree with the [personal data protection provisions](#)

Choose your questionnaire

Please indicate whether you wish to respond to the citizens' version (3 general questions and 14 investor protection questions) or full version (102 questions) of the questionnaire.

The short version only covers the general aspects of the AIFMD regime and investor protection matters under the AIFMD.

The full version contains 85 additional questions addressing more technical features of the AIFMD regulatory regime.

Note that only the questions that are part of the short version are also available in all EU languages.

- I want to respond only to the **short version of the questionnaire** (3 + 14 questions)
- I want to respond to the **full version of the questionnaire** (102 questions)

I. Functioning of the AIFMD regulatory framework, scope and authorisation requirements

The central pillar of the AIFMD regulatory regime is a European licence or a so-called AIFM passport. EU AIFMs are able to manage and market EU AIFs to professional investors across the Union with a single authorisation. This section seeks to gather views on potential improvements to the AIFMD legal framework to facilitate further integration of the EU AIF market. The objective is to look at the specific regulatory aspects where their potential refining could enhance utility of the AIFM passport, gathering data on concrete costs and benefits of the suggested improvements, at the same time ensuring that the investor and financial stability interests are served in the best way. A number of questions focus on the level playing field between AIFMs and other financial intermediaries.

Question 1. What is your overall experience with the functioning of the AIFMD legal framework?

- Very satisfied
- Satisfied

- Neutral
- Unsatisfied
- Very unsatisfied
- Don't know / no opinion / not relevant

Question 2. Do you believe that the effectiveness of the AIFMD is impaired by national legislation or existing market practices?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 2.1 Please explain your answer to question 2, providing concrete examples and data to substantiate it:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 3. Please specify to what extent you agree with the statements below:

The AIFMD has been successful in achieving its objectives as follows:

	1 (fully disagree)	2 (somewhat disagree)	3 (neutral)	4 (somewhat agree)	5 (fully agree)	Don't know - No opinion - Not applicable
creating internal market for AIFs	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
enabling monitoring risks to the financial stability	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
providing high level investor protection	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Other statements:

	1 (fully disagree)	2 (somewhat disagree)	3 (neutral)	4 (somewhat agree)	5 (fully agree)	Don't know - No opinion - Not applicable
The scope of the AIFM license is clear and appropriate	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The AIFMD costs and benefits are balanced (in particular regarding the regulatory and administrative burden)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The different components of the AIFMD legal framework operate well together to achieve the AIFMD objectives	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The AIFMD objectives correspond to the needs and problems in EU asset management and financial markets	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
The AIFMD has provided EU AIFs and AIFMs added Value	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

Question 3.1 Please explain your answer to question 3, providing quantitative and qualitative reasons to substantiate it:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 4. Is the coverage of the AIFM licence appropriate?

- Yes
- No
- Don't know / no opinion / not relevant

Question 5. Should AIFMs be permitted to invest on own account?

- Yes
- No
- Don't know / no opinion / not relevant

Question 5.1 Please explain your answer to question 5:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 6. Are securitisation vehicles effectively excluded from the scope of the AIFMD?

- Yes
- No
- Don't know / no opinion / not relevant

Question 7. Is the AIFMD provision providing that it does not apply to employee participation schemes or employee savings schemes effective?

- Yes
- No
- Don't know / no opinion / not relevant

Question 8. Should the AIFM capital requirements be made more risk-sensitive and proportionate to the risk-profile of the managed AIFs?

- Yes
- No
- Don't know / no opinion / not relevant

Question 9. Are the own funds requirements of the AIFMD appropriate given the existing initial capital limit of EUR 10 million although not less than one quarter of the preceding year's fixed overheads?

- Yes
- No
- Don't know / no opinion / not relevant

Question 10. Would the AIFMD benefit from further clarification or harmonisation of the requirements concerning AIFM authorisation to provide ancillary services under Article 6 of the AIFMD?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree

- Fully disagree
- Don't know / no opinion / not relevant

Question 10.1 Please explain your answer to question 10, presenting benefits and disadvantages of the entertained options as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 11. Should the capital requirements for AIFMs authorised to carry out ancillary services under Article 6 of the AIFMD be calculated in a more risk-sensitive manner?

- Yes
- No
- Don't know / no opinion / not relevant

Question 12. Should the capital requirements established for AIFMs carrying out ancillary services under Article 6 of the AIFMD correspond to the capital requirements applicable to the investment firms carrying out identical services?

- Yes
- No
- Don't know / no opinion / not relevant

Question 12.1 Please explain your answer to question 12, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 13. What are the changes to the AIFMD legal framework needed to ensure a level playing field between investment firms and AIFMs providing competing services?

Please present benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No response / no opinion.

Question 14. Would you see value in introducing in the AIFMD a Supervisory Review and Evaluation Process (SREP) similar to that applicable to the credit institutions?

- Yes
- No
- Don't know / no opinion / not relevant

Question 14.1 Please explain your answer to question 14, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 15. Is a professional indemnity insurance option available under the AIFMD useful?

- Yes
- No
- Don't know / no opinion / not relevant

Question 15.1 Please explain your answer to question 15, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 16. Are the assets under management thresholds laid down in Article 3 of the AIFMD appropriate?

- Yes
- No
- Don't know / no opinion / not relevant

Question 17. Does the lack of an EU passport for the sub-threshold AIFMs impede capital raising in other Member States?

- Yes
- No
- Don't know / no opinion / not relevant

Question 17.1 Please further detail your answer to question 17, substantiating it, also with examples of the alleged barriers:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 18. Is it necessary to provide an EU level passport for sub-threshold AIFMs?

- Yes
- No
- Don't know / no opinion / not relevant

Question 18.1 Please explain your answer to question 18:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 19. What are the reasons for EuVECA managers to opt in the AIFMD regime instead of accessing investors across the EU with the EuVECA label?

Please explain your answer:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No response / no opinion.

Question 20. Can the AIFM passport be improved to enhance cross-border marketing and investor access?

- Yes
- No
- Don't know / no opinion / not relevant

Question 20.1 Please explain your answer to question 20:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

II. Investor protection

The AIFMD aims to protect investors by requiring AIFMs to act with the requisite transparency before and after investors commit capital to a particular AIF. Conflicts of interest must be managed in the best interest of the investors in the AIF. AIFMs must also ensure that the AIF's assets are valued in accordance with appropriate and consistent valuation procedures established for an each AIF. The AIF assets are then placed in safekeeping with an appointed depositary that also oversees AIF's cash flows and ensures regulatory compliance.

Questions in this section cover the topic of investor categorisation referencing to MiFID II, stopping short of repeating the same questions that have been raised in its [recent public consultation on MiFID II](#), rather inviting comments on the most appropriate way forward. Views are also sought on the conditions that would make it possible to open up the AIF universe to a larger pool of investors while considering their varying degrees of financial literacy and risk awareness. Examples of redundant or insufficient investor disclosures are invited.

Greater clarity on stakeholders' views of the AIFMD rules on depositaries is sought in particular where such rules may require clarification or amending. The introduction of the depositary passport is desirable from an internal market point of view, but stakeholders are invited to propose other potential legal solutions, if any, that could address the issue of the short supply and concentration of depository services in smaller markets.

a) Investor classification and investor access

Question 21. Do you agree that the AIFMD should cross-refer to the client categories as defined in the MIFID II (Article 4(1)(ag) of the AIFMD)?

- Yes
- No
- Don't know / no opinion / not relevant

Question 21.1 Please explain your answer to question 21:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 22. How AIFM access to retail investors can be improved?

Please give examples where possible and present benefits and disadvantages of your suggested approach as well as potential costs of the change:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No response / no opinion.

Question 23. Is there a need to structure an AIF under the EU law that could be marketed to retail investors with a passport?

- Yes
- No
- Don't know / no opinion / not relevant

Question 23.1 Please explain your answer to question 23:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We believe that any reforms to the AIFMD framework to permit retail participation should be limited so as not to require an increase in the regulatory obligations on AIFMs managing AIFs that target professional, institutional investors. Existing structures such as the ELTIF might be capable of being improved so as to encourage retail investor participation in alternative assets. However, we would not want to see an overhaul of the AIFMD framework in pursuit of an objective (retail investor participation) that is quite different from its fundamental purpose (as a regime to provide protection that is proportionate to the needs of institutional investors).

b) depositary regime

Question 24. What difficulties, if any, the depositaries face in exercising their functions in accordance with the AIFMD?

Please provide your answer by giving concrete examples identifying any barriers and associated costs.

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No response / no opinion

Question 25. Is it necessary and appropriate to explicitly define in the AIFMD tri-party collateral management services?

- Yes
- No
- Don't know / no opinion / not relevant

Question 25.1 Please explain your answer to question 25:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 26. Should there be more specific rules for the delegation process, where the assets are in the custody of tri-party collateral managers?

- Yes
- No
- Don't know / no opinion / not relevant

Question 26.1 Please explain your answer to question 26, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 27. Where AIFMs use tri-party collateral managers' services, which of the aspects should be explicitly regulated by the AIFMD?

Please select as many answers as you like

- the obligation for the asset manager to provide the depositary with the contract it has concluded with the tri-party collateral manager
- the flow of information between the tri-party collateral manager and the depositary
- the frequency at which the tri-party collateral manager should transmit the positions on a fund-by-fund basis to the depositary in order to enable it to record the movements in the financial instruments accounts opened in its books
- no additional rules are necessary, the current regulation is appropriate
- other

Question 28. Are the AIFMD rules on the prime brokers clear?

- Yes
- No
- Don't know / no opinion / not relevant

Question 29. Where applicable, are there any difficulties faced by depositaries in obtaining the required reporting from prime brokers?

- Yes
- No

- Don't know / no opinion / not relevant

Question 30. What additional measures are necessary at EU level to address the difficulties identified in the response to the preceding question?

Please explain your answer providing concrete examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 31. Does the lack of the depositary passport inhibit efficient functioning of the EU AIF market?

- Yes
- No
- Don't know / no opinion / not relevant

Question 31.1 Please explain your answer to question 31:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 32. What would be the potential benefits and risks associated with the introduction of the depositary passport?

Please explain your position, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 33. What barriers are precluding introducing the depositary passport?

Please explain your position providing concrete examples and evidence, where available, of the existing impediments:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 34. Are there other options that could address the lack of supply of depositary services in smaller markets?

Please explain your position presenting benefits and disadvantages of your suggested approach as well as potential costs of the change:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 35. Should the investor CSDs be treated as delegates of the depositary?

- Yes
- No
- Don't know / no opinion / not relevant

Question 35.1 Please explain your answer to question 35, providing concrete examples and suggesting improvements to the current rules and presenting benefits and disadvantages as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

c) transparency and conflicts of interest

Question 36. Are the mandatory disclosures under the AIFMD sufficient for investors to make informed investment decisions?

- Yes
- No
- Don't know / no opinion / not relevant

Question 37. What elements of mandatory disclosure requirements, if any, should differ depending on the type of investor?

Please explain your position, presenting benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 38. Are there any additional disclosures that AIFMs could be obliged to make on an interim basis to the investors other than those required in the annual report?

- Yes
- No
- Don't know / no opinion / not relevant

Question 39. Are the AIFMD rules on conflicts of interest appropriate and proportionate?

- Yes
-

No

- Don't know / no opinion / not relevant

d) valuation rules

Question 40. Are the AIFMD rules on valuation appropriate?

- Yes
- No
- Don't know / no opinion / not relevant

Question 41. Should the AIFMD legal framework be improved further given the experience with asset valuation during the recent pandemic?

- Yes
- No
- Don't know / no opinion / not relevant

Question 42. Are the AIFMD rules on valuation clear?

- Yes
- No
- Don't know / no opinion / not relevant

Question 43. Are the AIFMD rules on valuation sufficient?

- Yes
- No
- Don't know / no opinion / not relevant

Question 44. Do you consider that it should be possible in the asset valuation process to combine input from internal and external valuers?

- Yes
- No

- Don't know / no opinion / not relevant

Question 44.1 Please substantiate your answer to question 44, also in terms of benefits, disadvantages and costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 45. In your experience, which specific aspect(s) trigger liability of a v a l u e r ?

Please provide concrete examples, presenting costs linked to the described occurrence:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 46. In your experience, what measures are taken to mitigate/offset the liability of valuers in the jurisdiction of your choice?

Please provide concrete examples, presenting benefits and disadvantages as well as costs of the described approach:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

III. International relations

Considering the global nature of financial services, the AIFMD interacts with the third country regulatory regimes. By adopting the AIFMD the EU co-legislators sought to put in place a legal framework for tackling risks emanating from AIF activities that may impact the EU financial stability, market integrity and investor protection. The questions below are seeking views on where to strike the balance of having a functioning, efficient AIF market and ensuring that it operates under the conditions of a fair competition without undermining financial stability. Besides posing general questions on the competitiveness of the EU AIF market, this section seeks views on how the EU market could interact with international partners in the area governed by the AIFMD. The focus is on the appropriateness of the AIFMD third country passport regime and delegation rules.

Question 47. Which elements of the AIFMD regulatory framework support the competitiveness of the EU AIF industry?

Please explain providing concrete examples and referring to data where available:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No response / no opinion.

Question 48. Which elements of the AIFMD regulatory framework could be altered to enhance competitiveness of the EU AIF industry?

Please explain providing concrete examples and referring to data where available:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No response / no opinion.

Question 49. Do you believe that national private placement regimes create an uneven playing field between EU and non-EU AIFMs?

- Yes
- No
- Don't know / no opinion / not relevant

Question 50. Are the delegation rules sufficiently clear to prevent creation of letter-box entities in the EU?

- Yes
- No
- Don't know / no opinion / not relevant

Question 51. Are the delegation rules under the AIFMD/AIFMR appropriate to ensure effective risk management?

- Yes

- No
- Don't know / no opinion / not relevant

Question 52. Should the AIFMD/AIFMR delegation rules, and in particular Article 82 of the Commission Delegated Regulation (EU) No 231/2013, be complemented?

- Yes
- No
- Don't know / no opinion / not relevant

Question 53. Should the AIFMD standards apply regardless of the location of a third party, to which AIFM has delegated the collective portfolio management functions, in order to ensure investor protection and to prevent regulatory arbitrage?

- Yes
- No
- Don't know / no opinion / not relevant

Question 53.1 Please explain your answer to question 53:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

We believe this would be an error for the reasons detailed below and would also represent an unjustified extraterritorial extension of EU law to third countries. We note that the AIFMD already sets out prescriptive requirements for delegation and third country portfolio managers must be authorised to carry out these activities by their home regulator.

Whilst requiring compliance with the AIFMD requirements for UK portfolio managers may not present too much of an issue at present as UK AIFMs conducting such activities will still be subject to the AIFMD (albeit as applied in UK law), extending the AIFMD requirements to third country portfolio management delegates in the United States and Asia would present substantial issues given that their regulatory regimes, whilst robust in terms of investor protection, differ greatly to the AIFMD framework. Requiring compliance with the AIFMD might not bolster EU oversight of such delegation models, but rather encourage the market to evolve such that the third party entities become advisers, and thus completely outside the framework of the AIFMD where not even the contractual undertaking requirements contained in the AIFMD would apply. We would note that the regulation applying to United States and Singaporean managers, for instance, provides for robust investor protection and stringent conduct regulation already. Not only would such advisory models remove

the jurisdiction of the NCAs completely, it could also lead to a situation where investment decisions are taken by AIFMs in the EU that are not as close to the underlying assets as the third country AIFM, to the detriment of the AIF and its investors.

We note that many third country commercial real estate sponsors set up parallel structures (typically in Luxembourg) with 'host' AIFMs, and delegate portfolio management back to the third country portfolio manager. Such parallel AIFs will, in many cases, invest in assets located in third countries. Requiring compliance by the third country portfolio manager with the AIFMD may mean that portfolio management remains with the EU AIFM and therefore execution of investments is ultimately undertaken by an AIFM that is not 'on the ground' in the relevant jurisdictions where the assets are located (potentially leading to detrimental financial performance).

In addition, by making it more difficult to access European capital by requiring compliance with another framework of regulations in addition to their own, many third country sponsors may decide not to market products to European investors or act as managers to European entities. This would have a substantially negative effect on European investors, for which many third country managers (notably in the UK and the United States) provide the risk and returns they seek. Given that pension funds make up a substantial proportion of investors in loan originating AIFs, limiting access to top performing managers may have a damaging economic effect on the pensioners of member states. By making access more difficult, we risk deterring capital inflows that can be used to rebuild economies in the EU ravaged by the pandemic.

In terms of international relations, it is not outside the realm of possibility that other jurisdictions may also elect to require compliance by EU AIFMs that interact with their asset management industry with their regulatory frameworks. Such retaliation would have a substantially negative effect on the global asset management industry and thus also on investors and savers generally, forcing distribution and management networks to become inherently local and cutting off access to efficient managers and capital pools. European policymakers should avoid taking steps that might lead to such an outcome if (as here) there are not compelling reasons for doing so.

Question 54. Do you consider that a consistent enforcement of the delegation rules throughout the EU should be improved?

- Yes
- No
- Don't know / no opinion / not relevant

Question 55. Which elements of the AIFMR delegation rules could be applied to UCITS?

Please explain your position, presenting benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No response / no opinion.

IV. Financial stability

One of the main objectives of the AIFMD is to enable supervisors to appreciate and mitigate systemic risks building up in financial markets from different sources. To this end, AIFMs are subject to periodic reporting obligations and supervisors are equipped with certain market intervention powers to mitigate negative effects to the financial stability that may arise from the activities on the AIF market.

The section below invites opinions whether the intervention powers and a tool-kit available to the relevant supervisors are sufficient in times of severe market disruptions. Shared views on the adequacy of the AIFMR supervisory reporting template will be important in rethinking the AIFM supervisory reporting obligations. According to the FSB report, markets for leveraged loans and CLOs have grown significantly in recent years exceeding pre-crisis levels ([FSB, Vulnerabilities associated with leveraged loans and collateralised loan obligations \(CLOs\), PLEN/2019/91-REV, 22 November 2019](#)). While most leveraged loans are originated and held by banks, investment funds are also exposed to the leveraged loan and CLO markets. In order to assess risks to the financial stability and regulatory implications associated with leveraged loans and CLOs it would be commendable to continue collecting the relevant data and monitoring the market. The stakeholders are invited to cast their views on the matter.

With particular regard to the loan originating AIFs, suggestions on the optimal harmonisation of the rules that could apply to these collective investment vehicles are welcome. Finally, questions are raised whether leverage calculation methods could benefit from further standardisation of metrics across the AIF market and potentially also across the UCITS for the supervisors to have a complete picture of the level of leverage engaged by the collective investment funds.

a) macroprudential tools

Question 56. Should the AIFMD framework be further enhanced for more effectively addressing macroprudential concerns?

- Yes
- No
- Don't know / no opinion / not relevant

Question 56.1 Please explain your answer to question 56:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 57. Is there a need to clarify in the AIFMD that the NCAs' right to require the suspension of the issue, repurchase or redemption of units in the public interest includes financial stability reasons?

- Yes
- No
- Don't know / no opinion / not relevant

Question 57.1 Please explain your answer to question 57, presenting benefits and disadvantages of the potential changes to the existing rules and processes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 58. Which data fields should be included in a template for NCAs to report relevant and timely data to ESMA during the period of the stressed market conditions?

Please provide your suggestions, presenting benefits and disadvantages of the potential changes as well as costs:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No response / no opinion.

Question 59. Should AIFMs be required to report to the relevant supervisory authorities when they activate liquidity risk management tools?

- Yes
- No
- Don't know / no opinion / not relevant

Question 60. Should the AIFMD rules on remuneration be adjusted to provide for the de minimis thresholds?

- Yes
- No
- Don't know / no opinion / not relevant

b) supervisory reporting requirements

Question 61. Are the supervisory reporting requirements as provided in the AIFMD and AIFMR's Annex IV appropriate?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 61.1 Please explain your answer to question 61:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 62. Should the AIFMR supervisory reporting template provide a more comprehensive portfolio breakdown?

- Yes
- No
- Don't know / no opinion / not relevant

Question 63. Should the identification of an AIF with a LEI identifier be mandatory?

- Yes
- No
- Don't know / no opinion / not relevant

Question 63.1 Please explain your answer to question 63, presenting benefits and disadvantages as well as costs associated with introducing such a requirement:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 64. Should the identification of an AIFM with a LEI identifier be mandatory?

- Yes
- No
- Don't know / no opinion / not relevant

Question 64.1 Please explain your answer to question 64, presenting benefits and disadvantages as well as costs associated with introducing such a requirement:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 65. Should the use of an LEI identifier for the purposes of identifying the counterparties and issuers of securities in an AIF's portfolio be mandatory for the Annex IV reporting of AIFMR?

- Yes
- No
- Don't know / no opinion / not relevant

Question 65.1 Please explain your answer to question 65, presenting benefits and disadvantages as well as costs associated with introducing such a requirement:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 66. Does the reporting data adequately cover activities of loan originating AIFs?

- Yes
- No
- Don't know / no opinion / not relevant

Question 66.1 Please explain your answer to question 66:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 67. Should the supervisory reporting by AIFMs be submitted to a single central authority?

- Yes
- No
- Don't know / no opinion / not relevant

Question 67.1 Please explain your answer to question 67:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

While we do not have strong views on this question, we consider that for third country AIFMs that market into the EU, requiring submission of Annex IV reporting to each individual member state in which the AIF has been marketed may be administratively burdensome, acting as a deterrent for some of the best in class AIFMs opening their AIFs up to European investor capital. Requiring Annex IV to be filed directly with ESMA might address that issue, without eroding the substantial advantages that the passport brings to EU AIFMs.

Question 68. Should access to the AIFMD supervisory reporting data be granted to other relevant national and/or EU institutions with responsibilities in the area of financial stability?

- Yes
- No
- Don't know / no opinion / not relevant

Question 68.1 Please explain your answer to question 68:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 69. Does the AIFMR template effectively capture links between financial institutions?

- Yes
- No
- Don't know / no opinion / not relevant

Question 69.1 Please explain your answer to question 69:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 70. Should the fund classification under the AIFMR supervisory reporting template be improved to better identify the type of AIF?

- Yes
- No
- Don't know / no opinion / not relevant

Question 70.1 Please explain your answer to question 70:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 71. What additional data fields should be added to the AIFMR supervisory reporting template to improve capturing risks to financial stability:

Please select as many answers as you like

- value at Risk (VaR)
- additional details used for calculating leverage
- additional details on the liquidity profile of the fund's portfolio
- details on initial margin and variation margin
- the geographical focus expressed in monetary values
- the extent of hedging through long/short positions by an AIFM/AIF expressed as a percentage
- liquidity risk management tools that are available to AIFMs
- data on non-EU master AIFs that are not marketed into the EU, but which have an EU feeder AIF or a non-EU feeder marketed into the EU if managed by the same AIFM
- the role of external credit ratings in investment mandates
- LEIs of all counterparties to provide detail on exposures
- sustainability-related data, in particular on exposure to climate and environmental risks, including physical and transition risks (e.g. shares of assets for which sustainability risks are assessed; types and magnitudes of risks; forward-looking, scenario-based data)
- other

Question 72. What additional data fields should be added to the AIFMR supervisory reporting template to better capture AIF's exposure to leveraged loans and CLO market?

Please explain your answer providing as much detail as possible and relevant examples as well as the costs, benefits and disadvantages:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No response / no opinion.

Question 73. Should any data fields be deleted from the AIFMR supervisory reporting template?

- Yes
- No
- Don't know / no opinion / not relevant

Question 74. Is the reporting frequency of the data required under Annex IV of the AIFMR appropriate?

- Yes
- No
- Don't know / no opinion / not relevant

Question 75. Which data fields should be included in a template requiring AIFMs to provide ad hoc information in accordance with Article 24(5) of the AIFMD during the period of the stressed market in a harmonised and

Please explain your answer presenting the costs, benefits and disadvantages of implementing the suggestions:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No response / no opinion.

Question 76. Should supervisory reporting for UCITS funds be introduced?

- Yes
- No
- Don't know / no opinion / not relevant

Question 76.1 Please explain your answer to question 78, also in terms of costs, benefits and disadvantages:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 77. Should the supervisory reporting requirements for UCITS and AIFs be harmonised?

- Yes

- No
- Don't know / no opinion / not relevant

Question 77.1 Please explain your answer to question 79, also in terms of costs, benefits and disadvantages:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 78. Should the formats and definitions be harmonised with other reporting regimes (e.g. for derivatives and repos, that the AIF could report using a straightforward transformation of the data that they already have to report under EMIR or SFTR)?

- Yes
- No
- Don't know / no opinion / not relevant

c) leverage

Question 79. Are the leverage calculation methods – gross and commitment – as provided in AIFMR appropriate?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 79.1 Please explain your answer to question 79 in terms of the costs, benefits and disadvantages:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 80. Should the leverage calculation methods for UCITS and AIFs be harmonised?

- Yes
- No
- Don't know / no opinion / not relevant

Question 80.1 Please explain your answer to question 80:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 81. What is your assessment of the two-step approach as suggested by International Organisation of Securities Commissions ('IOSCO') in the [Framework Assessing Leverage in Investment Funds published in December 2019](#) to collect data on the asset by asset class to assess leverage in AIFs?

Please provide it, presenting costs, benefits and disadvantages of implementing the IOSCO approach:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No response / no opinion.

Question 82. Should the leverage calculation metrics be harmonised at EU level?

- Yes
- No
- Don't know / no opinion / not relevant

Question 82.1 Please explain your answer to question 82, presenting the costs, benefits and disadvantages of your chosen approach:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 83. What additional measures may be required given the reported increase in CLO and leveraged loans in the financial system and the risks those may present to macro-prudential stability?

Please provide your suggestion(s) including information, where available, on the costs and benefits, advantages and disadvantages of the proposed measures:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No response / no opinion.

Question 84. Are the current AIFMD rules permitting NCAs to cap the use of leverage appropriate?

- Yes
- No
- Don't know / no opinion / not relevant

Question 85. Should the requirements for loan originating AIFs be harmonised at EU level?

- Yes
- No
- Don't know / no opinion / not relevant

Question 85.1 Please explain your answer to question 85:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

While cognisant of ESMA's recommendation for a specific and bespoke framework for loan originating AIFs in its 2016 opinion (the "ESMA Loan Origination Opinion"), we consider that this would be unnecessary and unjustified on the basis that (i) the AIFMD already provides a robust and operable framework for AIFs conducting loan origination; and (ii) no other AIF asset class has been made subject to specific regimes under the AIFMD framework (and it is unclear why debt funds should be so singled out).

We note that concerns seem to focus on (i) maturity mismatches between loans originated and the terms of the originating AIF; (ii) liquidity mismatches between the liquidity profile of the AIF and its underlying loan investments; and (iii) the degree to which loan originating AIFs are plugged into the global finance ecosystem and may present macroprudential risks.

With respect to maturity mismatches, we note that loans originated by AIFs tend to have maturities that are shorter than the term of the AIF itself, thus mitigating any mismatch between term lengths. Moreover, whilst private CRE debt is clearly less liquid than quoted securities, the liquidity and transferability of such loans

has increased in recent years to the point that such debt is not materially less liquid than unquoted securities (invested in by private equity AIFs) or real estate directly held by real estate AIFs (indeed, it is sometimes more liquid). As such, concerns over maturity mismatches (although typically academic given the nature of term lengths of these AIFs) can be managed in a way that neither prejudices borrower entities nor leads to market instability.

With respect to liquidity concerns, the majority of loan originating AIFs are structured as closed-ended vehicles (typically Luxembourg limited partnerships) which provide that investors may not redeem their interests in the AIF until its termination (except with respect to secondary trades, as to which see below). This provides a consistent and long-term pool of capital for underlying investors without the risk of redemption shocks. The typical investor for a CRE loan originating AIF is an institutional investor accustomed to investing in such closed-ended structures, with long-term investment horizons and no need for immediate or short-term liquidity.

In the less common scenario where loan originating AIFs are structured as open-ended AIFs permitting periodic redemptions and subscriptions during the term of the AIF, redemptions are typically subject to market standard restrictions in order to avoid large scale redemptions during times of market stress or where large scale redemptions would have an impact on the remaining investors in the AIF or the underlying borrowers of the debt originated by such AIFs. We note the work and concern of many regulators, particularly the United Kingdom's Financial Conduct Authority, with respect to liquidity mismatches in open-ended property funds, many of which have been subject to redemption gates and NAV-related suspensions in recent years as a result of market turmoil. However, the concerns raised by such products are generally in the context of large scale retail investor exposure.

As noted, the investor base for CRE loan originating AIFs comprises sophisticated, institutional investors that understand the illiquid nature of the underlying loans and who invest with a full understanding of this – often, indeed, because they specifically want the yield premium associated with that illiquidity. We would also note that there is a growing secondary market for participations in loan originating AIFs. That should further assuage any concerns that loan originating AIFs might suffer from greater investor liquidity risks than other AIFs investing in illiquid assets, such as private equity, venture capital and real estate AIFs.

Reference is made to recital 10 of the AIFMD which expressly states that it would be “disproportionate to regulate the structure or composition of the portfolios of AIFs managed by AIFMs at Union level and it would be difficult to provide for such extensive harmonisation due to the very diverse types of AIFs managed by AIFMs.” From the outset, the AIFMD never intended to be a product-level regime. In our view, the imposition of a bespoke framework for loan originating AIFs within the AIFMD framework would be tantamount to creating a separate regime in addition to AIFMD compliance, thus leading to additional regulatory obligations and costs. One consequence may be reduced capital available to refurbish, repurpose and retrofit commercial buildings; another may be the increased use of offshore AIF vehicles for loan originating AIFs. Such a move (alongside an EU securitisation framework that is very challenging for securitised CRE debt) would also increase even further the concentration of CRE exposure within the already dominant European banking system.

V. Investing in private companies

The AIFMD rules regulating investing in private companies aim to increase transparency and accountability of collective investment funds holding controlling stakes in non-listed companies. This section seeks insights whether these provisions are delivering on the stated objectives and whether there are other ways to achieve those objectives more

efficiently and effectively. Private equity industry has been growing for years from a few boutique firms to € 3,7 T global industry. The questions are raised therefore whether the AIFMD contains all the relevant regulatory elements that are fit for purpose.

Question 86. Are the rules provided in Section 2 of Chapter 5 of the AIFMD laying down the obligations for AIFMs managing AIFs, which acquire control of non-listed companies and issuers, adequate, proportionate and effective in enhancing transparency regarding the employees of the portfolio company and the AIF investors?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 86.1 Please explain your answer to question 86, providing concrete examples and data, where available:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 87. Are the AIFMD rules provided in Section 2 of Chapter 5 of the AIFMD whereby the AIFM of an AIF, which acquires control over a non-listed company, is required to provide the NCA of its home Member State with information on the financing of the acquisition necessary, adequate and proportionate?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
-

Fully disagree

- Don't know / no opinion / not relevant

Question 87.1 Please explain your answer to question 87, providing concrete examples and data, where available:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 88. Are the AIFMD provisions against asset stripping in the case of an acquired control over a non-listed company or an issuer necessary, effective and proportionate?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 88.1 Please explain your answer to question 88, providing concrete examples and data, where available:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 89. How can the AIFMD provisions against asset stripping in the case of an acquired control over a non-listed company or an issuer be improved?

Please provide your suggestion(s) including information, where available, on the costs and benefits, advantages and disadvantages of the proposed measures:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No response / no opinion.

VI. Sustainability/ESG

Integrating sustainability factors in the portfolio selection and management has a double materiality perspective, in line with the [non-financial reporting directive \(2014/95\)](#) and the [European Commission's 2017 non-binding guidelines on non-financial](#). Financial materiality refers in a broad sense to the financial value and performance of an investment. In this context, sustainability risks refer to potential environmental, social or governance events or conditions that if occurring could cause a negative material impact on the value of the investment. For example, physical risks from the consequences of climate change may concern a single investment/company, e.g. due to potential supply chain disruptions or scarcity of raw materials, and may concern welfare losses for the economy as a whole. Non-financial materiality, also known as environmental and social materiality, refers to the impacts of an investment/corporate activity on the environment and society (i.e. negative externalities). Still, there is also a financial dimension to non-financial materiality. Notably, so-called transition risks arise from an insufficient consideration for environmental materiality, for instance due to potential policy changes for mitigating climate change (e.g. to regulatory frameworks, incentive structures, carbon pricing), shifts of supply chains and end-demand, as well as stakeholder actions for mitigating climate change.

The [disclosure regulation 2019/2088](#) requires a significant part of the financial services market, including AIFMs, to integrate in their processes, including in their due diligence processes, assessment of all relevant sustainability risks that might have a material negative impact on the financial return of an investment or advice. However, at the moment AIFMs are not required to integrate the quantification of sustainability risks. Regulatory technical standards under the disclosure regulation 2019/2088 will specify principal adverse impacts to be quantified or described. This section seeks to gather input permitting better understand and assess the appropriateness of the AIFMD rules in assessing the sustainability risks.

Question 90. The [disclosure regulation 2019/2088](#) defines sustainability risks, and allows their disclosures either in quantitative or qualitative terms.

Should AIFMs only quantify such risks?

- Yes
- No
- Don't know / no opinion / not relevant

Question 90.1 Please substantiate your answer to question 90, also in terms of benefits, disadvantages and costs as well as in terms of available data:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 91. Should investment decision processes of any AIFM integrate the assessment of non-financial materiality, i.e. potential principal adverse sustainability impacts?

- Yes
- No
- Don't know / no opinion / not relevant

Question 91.1 Please substantiate your answer to question 91, also in terms of benefits, disadvantages and costs. Please make a distinction between adverse impacts and principal adverse impacts and consider those types of adverse impacts for which data and methodologies are available as well as those where the competence is nascent or evolving:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 92. Should the adverse impacts on sustainability factors be integrated in the quantification of sustainability risks (see the example in the introduction)?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 92.1 Please explain your answer to question 92:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 93. Should AIFMs, when considering investment decisions, be required to take account of sustainability-related impacts beyond what is currently required by the EU law (such as environmental pollution and degradation, climate change, social impacts, human rights violations) alongside the interests and preferences of investors?

- Yes
- No
- No, ESMA's current competences and powers are sufficient
- Don't know / no opinion / not relevant

Question 93.1 Please explain your answer to question 93:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 94. The [EU Taxonomy Regulation 2020/852](#) provides a framework for identifying economic activities that are in fact sustainable in order to establish a common understanding for market participants and prevent green-washing. To qualify as sustainable, an activity needs to make a substantial contribution to one of six environmental objectives, do no significant harm to any of the other five, and meet certain social minimum standards. In your view, should the EU Taxonomy play a role when AIFMs are making investment decisions, in particular regarding sustainability factors?

- Yes
- No
- Don't know / no opinion / not relevant

Question 94.1 Please explain your answer to question 94:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 95. Should other sustainability-related requirements or international principles beyond those laid down in Regulation (EU) 2020/852 be considered by AIFMs when making investment decisions?

- Yes
- No

- Don't know / no opinion / not relevant

Question 95.1 Please explain your answer to question 95, describing sustainability-related requirements or international principles that you would propose to consider.

Please indicate, where possible, costs, advantages and disadvantages associated therewith:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

VII. Miscellaneous

This section contains a few questions on the competences and powers of supervisory authorities. It also opens up the floor for any other comments of the stakeholders on the AIFMD related regulatory issues that are raised in the preceding sections. Respondents are invited to provide relevant data to support their remarks/proposals.

Question 96. Should ESMA be granted additional competences and powers beyond those already granted to them under the AIFMD?

Please select as many answers as you like

- entrusting ESMA with authorisation and supervision of all AIFMs
- entrusting ESMA with authorisation and supervision of non-EU AIFMs and AIFs
- enhancing ESMA's powers in taking action against individual AIFMs and AIFs where their activities threaten integrity of the EU financial market or stability the financial system
- enhance ESMA's powers in getting information about national supervisory practices, including in relation to individual AIFM and AIFs
- no, there is no need to change competences and powers of ESMA
- other

Question 97. Should NCAs be granted additional powers and competences beyond those already granted to them under the AIFMD?

- Yes
- No
- Don't know / no opinion / not relevant

Question 98. Are the AIFMD provisions for the supervision of intra-EU cross-border entities effective?

- Fully agree
- Somewhat agree
- Neutral
- Somewhat disagree
- Fully disagree
- Don't know / no opinion / not relevant

Question 98.1 Please explain your answer to question 98, providing concrete examples:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

Question 99. What improvements to intra-EU cross-border supervisory cooperation would you suggest?

Please provide your answer presenting costs, advantages and disadvantages associated with the suggestions:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No response / no opinion.

Question 100. Should the sanctioning regime under the AIFMD be changed?

- Yes
- No
- Don't know / no opinion / not relevant

Question 101. Should the UCITS and AIFM regulatory frameworks be merged into a single EU rulebook?

- Yes
- No
- Don't know / no opinion / not relevant

Question 102. Are there other regulatory issues related to the proportionality, efficiency and effectiveness of the AIFMD legal framework?

Please detail your answer, substantiating your answer in terms of costs /benefits/advantages, where possible:

5000 character(s) maximum

including spaces and line breaks, i.e. stricter than the MS Word characters counting method.

No response / no opinion.

Additional information

Should you wish to provide additional information (e.g. a position paper, report) or raise specific points not covered by the questionnaire, you can upload your additional document(s) here:

The maximum file size is 1 MB.

You can upload several files.

Only files of the type pdf,txt,doc,docx,odt,rtf are allowed

3fb030f5-5155-4b27-b72e-154721c867f6/CREFC_AIFMD_Consultation_Response_Letter.pdf

Useful links

[More on this consultation \(https://ec.europa.eu/info/publications/finance-consultations-2020-aifmd-review_en\)](https://ec.europa.eu/info/publications/finance-consultations-2020-aifmd-review_en)

[Consultation document \(https://ec.europa.eu/info/files/2020-aifmd-review-consultation-document_en\)](https://ec.europa.eu/info/files/2020-aifmd-review-consultation-document_en)

[Consultation strategy \(https://ec.europa.eu/info/files/2020-aifmd-review-consultation-strategy_en\)](https://ec.europa.eu/info/files/2020-aifmd-review-consultation-strategy_en)

[List of acronyms used in this consultation \(https://ec.europa.eu/info/files/2020-aifmd-review-acronyms_en\)](https://ec.europa.eu/info/files/2020-aifmd-review-acronyms_en)

[More on investment funds \(https://ec.europa.eu/info/business-economy-euro/growth-and-investment/investment-funds_en\)](https://ec.europa.eu/info/business-economy-euro/growth-and-investment/investment-funds_en)

[Specific privacy statement \(https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement_en\)](https://ec.europa.eu/info/law/better-regulation/specific-privacy-statement_en)

[More on the Transparency register \(http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en\)](http://ec.europa.eu/transparencyregister/public/homePage.do?locale=en)

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