Questions and Answers

Application of the AIFMD

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Contents

I. Background

1. The Alternative Investment Fund Managers Directive (AIFMD) puts in place a comprehensive framework for the regulation of alternative investment fund managers within Europe. The extensive requirements with which AIFMs must comply are designed to ensure that these managers can manage AIFs on a cross-border basis and the AIFs that they manage can be sold on a cross-border basis.

2. The AIFMD framework is made up of the following EU legislation:

3. Directive 2011/61/EU[1], which was adopted in 2011. It is a 'framework' Level 1 Directive which has been supplemented by technical delegated and implementing measures.

4. Commission Regulation (EU) No 231/2013[2], Commission Regulation (EU) No 447/2013[3] and Commission Regulation (EU) No 448/2013[4].

5. ESMA is required to play an active role in building a common supervisory culture by promoting common supervisory approaches and practices. In this regard, the Authority develops Q&As as and when appropriate to elaborate on the provisions of certain EU legislation or ESMA guidelines.

6. The European Commission has already published its own Q&A on AIFMD5.

II. Purpose

7. The purpose of this document is to promote common supervisory approaches and practices in the application of the AIFMD and its implementing measures. It does this by providing responses to questions posed by the general public and competent authorities in relation to the practical application of the AIFMD.

8. The content of this document is aimed at competent authorities under AIFMD to ensure that in their supervisory activities their actions are converging along the lines of the responses adopted by ESMA. However, the answers are also intended to help AIFMs by providing clarity as to the content of the AIFMD rules, rather than creating an extra layer of requirements.

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[1] DIRECTIVE 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010

[2] COMMISSION DELEGATED REGULATION (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

[3] COMMISSION DELEGATED REGULATION (EU) No 447/2013 of 15 May 2013 establishing the procedure for AIFMs which choose to opt in under Directive 2011/61/EU of the European Parliament and of the Council

[4] COMMISSION DELEGATED REGULATION (EU) No 448/2013 of 15 May 2013 establishing a procedure for determining the Member State of reference of a non-EU AIFM pursuant to Directive 2011/61/EU of the European Parliament and of the Council

[5] http://ec.europa.eu/yqol/index.cfm?fuseaction=legislation.show&lid=9

III. Status

9. The Q&A mechanism is a practical convergence tool used to promote common supervisory approaches and practices under Article 29(2) of the ESMA Regulation.[6]

10. Therefore, due to the nature of Q&As, formal consultation on the draft answers is considered unnecessary. However, even if they are not formally consulted on, ESMA may check them with representatives of ESMA's Securities and Markets Stakeholder Group, the relevant Standing Committees' Consultative Working Group or, where specific expertise is needed, with other external parties.

11. ESMA will review these questions and answers on a regular basis to identify if, in a certain area, there is a need to convert some of the material into ESMA guidelines. In such cases, the procedures foreseen under Article 16 of the ESMA Regulation will be followed.

IV. Questions and answers

12. This document is intended to be continually edited and updated as and when new questions are received. The date each question was last amended is included after each question for ease of reference.

13. General questions on the practical application of the AIFMD may be sent to the following email address: investment.reporting@esma.europa.eu. However, questions that relate specifically to technical IT issues regarding the AIFMD reporting requirements (such as on the XSD documents or the IT technical guidance) should be sent to: info.it.aifmd@esma.europa.eu.

[6] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC Regulation, 15.12.2010, L331/84.

Section I: Remuneration

Date last updated: 27 June 2014

Question 1 [last update 17 February 2014]: To which accounting period should AIFMs performing activities under the AIFMD before 22 July 2013 and submitting an application for authorisation under the AIFMD between 22 July 2013 and 22 July 2014 apply the AIFMD remuneration rules for the first time?

Answer 1: Paragraph 4 of the Guidelines on sound remuneration policies under the AIFMD (ESMA/2013/232) (the Remuneration Guidelines) states that *"These Guidelines apply from 22 July 2013, subject to the transitional provisions of the AIFMD"*. The Commission Q&A on the AIFMD provided specific guidance on the interpretation of the transitional provisions under Article 61(1) of the AIFMD.[7]

According to Article 61(1) of the AIFMD, AIFMs performing activities under the AIFMD before 22 July 2013 have one year from that date to submit an application for authorisation. Once a firm becomes authorised under the AIFMD, it becomes subject to the AIFMD remuneration rules and the Remuneration Guidelines. Therefore, the relevant rules should start applying as of the date of authorisation.

However, as for the rules on variable remuneration (i.e. the ones for which guidance is provided under Sections XI. (Guidelines on the general requirements on risk alignment) and XII. (Guidelines on the specific requirements on risk alignment) of the Remuneration Guidelines), AIFMs should apply them for the calculation of payments relating to new awards of variable remuneration to their *identified staff* (as defined in the Remuneration Guidelines) for performance periods following that in which they become authorised. So the AIFMD regime on variable remuneration should apply only to full performance periods and should first apply to the first full performance period after the AIFM becomes authorised. For example:

14. An existing AIFM whose accounting period ends on 31 December and which obtained an authorisation between 22 July 2013 and 31 December 2013: the AIFMD rules on variable remuneration should apply to the calculation of payments relating to the 2014 accounting period.

15. <u>An existing AIFM whose accounting period ends on 31 December obtains an authorisation between 1 January 2014 and 22 July 2014:</u> the AIFMD rules on variable remuneration should apply to the calculation of payments relating to the 2015 accounting period.

<u>However, for an existing AIFM whose accounting period ends on 31 December which submits an application for authorisation by 22 July 2014 and obtains an authorisation after</u>

[7] ID 1180. Transitional provisions, available at: http://ec.europa.eu/yqol/index.cfm?fuseaction=question.show&questionId=1180.

that date (including when the authorisation is obtained after 31 December 2014), the AIFMD rules on variable remuneration should apply to the calculation of payments relating to the 2015 accounting period.

Question 2 [last update 17 February 2014]: To which accounting period should AIFMs not performing activities under the AIFMD before 22 July 2013 and obtaining an authorisation under the AIFMD after 22 July 2013 apply the remuneration rules for the first time?

Answer 2: Once a firm becomes authorised under the AIFMD, it becomes subject to the AIFMD remuneration rules and the Remuneration Guidelines and the relevant rules should start to apply as of the date of authorisation.

However, as for the rules on variable remuneration (i.e. the ones for which guidance is provided under Sections XI. (Guidelines on the general requirements on risk alignment) and XII. (Guidelines on the specific requirements on risk alignment) of the Remuneration Guidelines), AIFMs should apply them for the calculation of payments relating to new awards of variable remuneration to their *identified staff* (as defined in the Remuneration Guidelines) for performance periods following that in which they submit an application for authorisation. An AIFM submitting an application for authorisation in the year N (after 22 July 2013), should apply the AIFMD remuneration regime on variable remuneration only to the calculation of payments relating to the accounting period for year N+1.

Question 3 [last update 17 February 2014]: Which staff of the delegate should be covered by the “appropriate contractual arrangements” that ensure there is no circumvention of the remuneration rules as set out in paragraph 18(b) of the Remuneration Guidelines?

Answer 3: Such contractual arrangements must only be in place in respect of the delegate’s *identified staff* who have a material impact on the risk profiles of the AIFs it manages as a result of the delegation, and only in respect of the remuneration for such delegated activities.

Question 4 [last update 17 February 2014]: In a delegation arrangement where the delegate is subject to the CRD rules, can the delegate be considered to be subject to regulatory requirements on remuneration that are equally as effective as those applicable under the Remuneration Guidelines?

Answer 4: Provided that the staff of these entities who are *identified staff* for the purpose of the Remuneration Guidelines are subject to the CRD rules, these entities are subject to regulatory requirements on remuneration that are equally as effective as those applicable under the Guidelines.

Question 5 [last update 27 June 2014]: Can AIFMs choose to exclude portfolio managers from the scope of *identified staff* for the purpose of the Remuneration Guidelines purely because they are bound by investment limits set out by law and/or internal risk limits set out in the investment restrictions of the AIF?

Answer 5: No.

Paragraph 20 of the Remuneration Guidelines provides for a presumption that certain categories of staff should be included as the *identified staff*. 'Other risk takers' are mentioned among these categories of staff. This category includes '*staff members, whose professional activities – either individually or collectively, as members of a group (e.g. a unit or part of a department) – can exert material influence on the AIFM's risk profile or on an AIF it manages*'. When assessing whether a portfolio manager can exert material influence, a number of questions are relevant:

1) is the percentage size of the AIF portfolio being managed small?

2) is the portfolio manager required to meet (and outperform) a performance benchmark?

3) is the percentage deviation from that benchmark which is tolerated by the AIFM small?

4) does the AIFM monitor the performance of the portfolio manager daily?

Where the answer to any of the above questions is 'no', a portfolio manager is likely to fall within the scope of *identified staff*. Where the answer to all of the questions above it 'yes', a portfolio manager is more likely to fall outside the scope of *identified staff*. Given that the criteria are qualitative, it may still be the case that for some combinations of 1) and 3) above, a portfolio manager may still exert material influence on an AIFM's risk profile or on an AIF it manages, in which case the Remuneration Guidelines should apply.

Section II: Notifications of AIFs

Date last updated: 3 June 2016

Question 1 [last update 17 February 2014]: What additional information should be provided under letter (f) of Annex IV of the AIFMD?

Answer 1: Letter (f) of Annex IV of the AIFMD should be understood as requesting all information set out in Article 23(1) of the AIFMD that is not already contained in Annex IV of the AIFMD.

Question 2 [last update 17 February 2014]: Should AIFMs that wish to market new investment compartments of AIFs in a Member State where these AIFs have been already notified undertake a new notification procedure via their competent authority?

Answer 2: Yes.

Question 3 [last update 1 April 2016]: If an EU AIF decides to offer additional fund units to investors, and the offer is limited to the investors already invested in the AIF, does the AIFM have to submit a new notification to the national competent authority in accordance with Article 31(2) of AIFMD?

Answer 3: No.

Question 4 [last update 3 June 2016]: For the purposes of Article 31 of AIFMD (marketing of units or shares of EU AIFs in the home Member State of the AIFM), does it make a difference whether the EU AIF to be marketed is domiciled in the home Member State of the EU AIFM or in another Member State?

Answer 4: No. Article 31 does not differentiate between the marketing of EU AIFs domiciled in the home Member State of the AIFM and EU AIFs domiciled in another Member State.

Question 5 [last update 3 June 2016]: Can an authorised EU AIFM, in its home Member State, market an EU feeder AIF with a non-EU master AIF pursuant to Article 31 of AIFMD?

Answer 5: No. Article 31(1), second subparagraph, allows an EU AIFM to market an EU feeder AIF in the home Member State of the AIFM as long as it has an EU master AIF which is managed by an authorised EU AIFM. Marketing of an EU feeder AIF with a non-EU master AIF is subject to Article 36(1) of AIFMD.

Section III: Reporting to national competent authorities under Articles 3, 24 and 42

Date last updated: 2 December 2015

Question 1 [last update 21 July 2015]: When a non-EU AIFM reports information to the national competent authorities of a Member State under Article 42 of the AIFMD, which AIFs have to be included in the reports?

Answer 1: When a non-EU AIFM reports information to the national competent authorities of a Member State under Article 42, only the AIFs marketed in that Member State have to be taken into account for the purpose of the reporting. When Member States apply ESMA's opinion on collection of additional information under Article 24(5) of the AIFMD, AIFMs should also report information on non-EU master AIFs not marketed in the EU that have either EU feeder AIFs or non-EU feeder AIFs marketed in the Union under Article 42.

Question 2 [last update 25 March 2014]: Should repurchase transactions (at the level of the portfolio of the AIF) by or on behalf of a reporting AIF be considered as financing operations for the purpose of the AIFMD reporting obligations (questions 54 – 56 and 210-217 of the consolidated reporting template)?

Answer 2: Yes. Therefore, AIFMs should take into account the counterparties of those transactions when reporting the information related to funding sources in questions 54 – 56 and take into account the aggregate amount of these transactions in questions 210-217.

Question 3 [last update 25 March 2014]: Which period should AIFMs use when reporting information on 'Instruments traded and individual exposures' (questions 121 to 124 of the consolidated reporting template): the residual maturity of the instrument or the maturity at issuance?

Answer 3: AIFMs should use the residual maturity as of the reporting date.

Question 4 [last update 25 March 2014]: What should be the basis of the numerator for calculating the geographical exposure as a percentage of the NAV of the AIF (question 78 to 85 of the consolidated reporting template)?

Answer 4: The numerator used for calculating the geographical exposure as a percentage of the net asset value of the AIF should be the NAV of the AIF for each geographical area. Therefore, this may result in negative values for certain regions but the total should equal 100%.

Question 5 [last update 25 March 2014]: What should be the basis of the numerator and the denominator for calculating the geographical exposure as a percentage of the aggregated value of the AIF (questions 86 to 93 of the consolidated reporting template)?

Answer 5: The numerator used for calculating the geographical exposure as a percentage of the aggregated value of the AIF should be the total value of assets under management of the

AIF for each geographical area. The basis for the denominator should the total value of assets under management of the AIF. The total should equal 100%.

Question 6 [last update 25 March 2014]: What should be the basis of the numerator for calculating the breakdown of investment strategies as a percentage of the NAV of the AIF (question 60 of the consolidated reporting template)?

Answer 6: The numerator used for calculating the breakdown of investment strategies as a percentage of the NAV of the AIF should be the net asset value of the AIF for each investment strategy. Therefore, this may result in negative values for certain investment strategies but the total should equal 100%.

Question 7 [last update 25 March 2014]: ESMA's guidelines recommend that AIFMs submit the last report of the AIF immediately after it has been liquidated or put into liquidation. When should AIFMs submit this last report?

Answer 7: AIFMs should submit the last AIF report not later than one month after the end of the quarter in which the AIF has been liquidated or put into liquidation.

Question 8 [last update 25 March 2014]: How should AIFMs calculate the percentage of market value for securities traded on regulated markets and OTC markets (questions 148 and 149 of the consolidated reporting template)?

Answer 8: AIFMs should aggregate the market value of all securities traded and report the percentage of the market value of securities traded on a regulated exchange and OTC. Regulated exchanges include regulated markets, multilateral trading facilities and organised trading facilities. For the European Union, regulated markets[8] and multilateral trading facilities[9] are published on ESMA's website. Securities that are not traded on regulated exchanges should be considered as traded OTC. This means that the total should equal 100%.

Question 9 [last update 25 March 2014]: How should AIFMs calculate the percentage of trade volumes for derivatives traded on regulated markets and OTC markets (questions 150 and 151 of the consolidated reporting template)?

Answer 9: AIFMs should take into account the total number of trades and report the percentage of number of trades on a regulated exchange and OTC. Regulated exchanges include regulated markets, multilateral trading facilities and organised trading facilities. For the European Union, regulated markets[10] and multilateral trading facilities[11] are published on

[8] http://mifiddatabase.esma.europa.eu/Index.aspx?sectionlinks_id=23&language=0&pageName=REGULATED_MARKETS_Display

[9] http://mifiddatabase.esma.europa.eu/Index.aspx?sectionlinks_id=22&language=0&pageName=MTF_Display

[10] http://mifiddatabase.esma.europa.eu/Index.aspx?sectionlinks_id=23&language=0&pageName=REGULATED_MARKETS_Display

[11] http://mifiddatabase.esma.europa.eu/Index.aspx?sectionlinks_id=22&language=0&pageName=MTF_Display

ESMA's website. Securities that are not traded on regulated exchanges should be considered as traded OTC. This means that the total should equal 100%.

Question 10 [last update 25 March 2014]: How should AIFMs report the information on the liquidity portfolio when the AIF is invested in assets with no current liquidity for which it is not possible to determine the future liquidity (questions 178 -184 of the consolidated reporting template)?

Answer 10: In that case, AIFMs should adopt a conservative approach and assign the instrument to the longest period bucket.

Question 11 [last update 25 March 2014]: How should AIFMs report the information on investor liquidity?

Answer 11: AIFMs should divide the AIF's NAV among the period buckets depending on the shortest period within which investors are entitled, under the fund documents, to withdraw invested funds or receive redemption payments, as applicable.

For example, an AIF has a NAV of € 1,000,000 with two investors. According to the fund documents, investor A whose share of the NAV is €600,000 is entitled to withdraw 50% of its investment on a daily basis and 50% of its investments between 2 and 7 days. Investor B, whose share of the NAV is €400,000, is entitled to withdraw 60% of its investments between 31 and 90 days and 40% of its investment within 91 and 180 days. The investor profile of the AIF will be the following:

1 day or less	2-7 days	8-30 days	31-90 days	91-180 days	181-365 days	More than 365 days
30%	30%	0	24%	16%	0	0

Question 12 [last update 25 March 2014]: According to question 22 of the consolidated reporting template, AIFMs must indicate the inception date of the AIF. What does inception date mean?

Answer 12: If an AIF is subject to pre-authorisation, the inception date should be the date of authorisation. If an AIF is established without pre-authorisation by the competent authority, the inception date should be the date when the AIF was established. Finally, if the AIF is subject to registration obligation at national level with its competent authority after the date of establishment, the inception date should be the date when the AIF was constituted.

Question 13 [last update 25 March 2014]: Should AIFMs report the information in English or in the language of the jurisdiction to which they report?

Answer 13: Apart from the sections on assumptions and stress tests, where text is allowed, the rest of the information to be reported will consist of figures, predetermined values or names of counterparties. For assumptions and stress tests, ESMA recommends that the national competent authority allow AIFMs to report the information in English, which would allow multinational groups to centralise and harmonise their AIFMD reporting. However, this will depend on the national legislation transposing the AIFMD.

Question 14 [last update 25 March 2014]: There are predetermined codes for the XML filing. Should these codes be translated into national languages?

Answer 14: No. These codes are predetermined values that cannot be changed for the XML filing.

Question 15 [last update 25 March 2014]: Is cash resulting from repurchase agreements included in the amount of cash and cash equivalents to be reported by AIFMs under questions 121 -124?

Answer 15: Yes. When reporting information on cash and cash equivalents, AIFMs should include all amounts of cash held, including as a result of repurchase arrangements.

Question 16 [last update 25 March 2014]: According to questions 163 and 164 of the consolidated reporting template, AIFMs should report the BIC and LEI of the five biggest counterparties to which an AIF has exposure. How should AIFMs identify those counterparties if they do not have such codes?

Answer 16: In that case, AIFMs should only report the full name of the counterparty.

Question 17 [last update 25 March 2014]: What information should AIFMs report for question 137 of the consolidated reporting template when they do not have an expected annual return/IRR in normal market conditions?

Answer 17: In that case, AIFMs should report the value 'N/A' for non-applicable.

Question 18 [last update 25 March 2014]: Must all AIFMs answer questions 296 to 301 of the consolidated reporting template?

Answer 18: No. Only AIFMs managing AIFs employing leverage on a substantive basis must answer questions 296 to 301 of the consolidated reporting template.

Question 19 [last update 27 June 2014]: Pursuant to questions 19 of the consolidated reporting template for AIF-specific information and 20 of the consolidated reporting template for AIFM-specific information, AIFMs must specify whether the AIFs and the AIFMs are EEA AIFs and EEA AIFMs. Which countries are covered by the reference to "EEA"?

Answer 19: EEA AIFs and EEA AIFMs should be understood as AIFs and AIFMs established in one of the 28 EU Member States or Iceland, Norway and Liechtenstein.

Question 20 [last update 27 June 2014]: According to Article 24(2) of the AIFMD, AIFMs must report specific information for all EU AIFs they manage or AIFs they market in the Union. Which countries are covered by the reference to "the Union"?

Answer 20: The reference to the Union should be understood as including the 28 EU Member States and, once the AIFMD has been incorporated into the EEA agreement, Norway, Iceland and Liechtenstein.

Question 21 [last update 27 June 2014]: The technical guidance indicates for each information item whether the information is mandatory (M), optional (O) or conditional (C). What do these categories mean?

Answer 21: Information marked as mandatory should be reported by all AIFMs. Information marked as optional has to be reported if the AIFM has information to report. For example, question 10 of the reporting template (change in AIF reporting obligation frequency code) is marked as optional. This means that AIFMs should report this information if the reporting code has changed compared to the previous reporting. Information marked as conditional is linked to other information (flags) in the reporting template. If those flags are answered with "Yes", the corresponding conditional information has to be reported. However, if those flags are answered with "No", the corresponding conditional information should not be reported. For example, if the question 41 (master feeder flag) is answered with "Yes", AIFMs should indicate in field 42 the name of the master AIFs.

Question 22 [last update 21 July 2014]: How should AIFMs calculate the percentage of trade volumes for derivatives cleared by a CCP and bilaterally (questions 152 and 153 of the consolidated reporting template)?

Answer 22: AIFMs should take into account the total number of trades and report the percentage of number of trades cleared by a CCP and bilaterally. The total should equal 100%.

Question 23 [last update 21 July 2014]: How should AIFMs calculate the percentage of market value for repo trades cleared by a CCP, bilaterally or on a tri-party basis (questions 154 and 156 of the consolidated reporting template)?

Answer 23: AIFMs should aggregate the market value of all repo trades and report the percentage of the market value of repo trades cleared by a CCP, bilaterally or on a tri-party basis. The total should equal 100%.

Question 24 [last update 21 July 2014]: How should AIFMs classify FX spot trades when answering questions such as on individual exposures (questions 121 to 124 of the consolidated reporting template for AIF-specific information) or value of turnover in each asset class over the reporting period (questions 125 to 127 of the consolidated reporting template for AIF-specific information)?

Answer 24: When reporting information other than value of turnover, AIFMs should classify FX spot trades as '*other cash equivalent (excluding government securities)*' with the sub-asset type code ‘SEC_CSH_OTHC’. When reporting information on value of turnover, AIFMs should classify FX spot trades as ‘*other cash equivalent*’ with the sub-asset type code ‘SEC_CSH_CSH’.

Question 25 [last update 21 July 2014]: AIFMs have to report value of turnover in each asset class over the reporting period (questions 125 to 127 of the consolidated reporting template for AIF-specific information). What information should AIFMs report for these questions when no trades took place during the reporting period?

Answer 25: AIFMs should use the field ‘*total other*’ with the sub-asset type code ‘OTH_OTH_OTH’ and report ‘0’.

Question 26 [last update 21 July 2014]: How should AIFMs classify cross-currency interest swaps when answering questions such as those on individual exposures (questions 121 to 124 of the consolidated reporting template for AIF-specific information) or value of turnover in each asset class over the reporting period (questions 125 to 127 of the consolidated reporting template for AIF-specific information)?

Answer 26: When reporting information other than value of turnover, AIFMs should classify cross-currency interest swaps as ‘*interest rate derivatives*’ with the sub-asset type code ‘DER_IRD_INTR’. When reporting information on value of turnover, AIFMs should classify cross-currency interest swaps as ‘*interest rate derivatives*’ with the sub-asset type code ‘DER_IRD_IRD’.

Question 27 [last update 11 November 2014]: When answering questions 148 and 149 of the consolidated reporting template, should AIFMs include repo and reverse repurchase agreements?

Answer 27: Yes, but AIFMs should only include securities received by the AIFs.

Question 28 [last update 21 July 2014]: How should AIFMs managing AIFs holding cash report the breakdown of investment strategies?

Answer 28: When the holding of cash is part of a strategy such as a CTA[12] strategy, AIFMs should not report cash separately. For example, an AIF with a CTA strategy representing 70% of its NAV, out of which 30% of the NAV is made up of cash at the time of the reporting date, should allocate 70% of its NAV to the CTA strategy.

If the holding of cash is not part of an investment strategy, AIFMs should use the strategy ‘other’ of the predominant AIF type selected and report the corresponding percentage of the NAV held in cash. AIFMs should also use the field ‘description’ to make it clear that the field ‘other’ is made up of cash.

[12] A commodity trading advisor (CTA) generally acts as an asset manager, following a set of investment strategies utilizing futures contracts and options on futures contracts on a wide variety of underlying instruments.

Question 29 [last update 21 July 2014]: Question 6 above clarifies that negative values can be reported for investment strategies. How should AIFMs report information on investment strategies with negative values?

Answer 29: AIFMs should allocate the status of predominant AIF type to the strategy with the highest absolute percentage of the NAV. The predominant AIF type 'multi-strategy hedge fund' should be used when no strategy has an absolute value greater than 50% of the NAV.

Question 30 [last update 21 July 2014]: Should AIFMs consider bank overdrafts as funding sources?

Answer 30: Yes.

Question 31 [last update 21 July 2014]: Pursuant to Article 111 of the implementing Regulation, leverage shall be considered to be employed on a substantial basis when the exposure of an AIF, as calculated according to the commitment method, exceeds three times its NAV. How should AIFMs assess this limit?

Answer 31: AIFs should be considered as employing leverage on a substantial basis if, over the reporting period, the average daily calculation of the exposure as calculated according to the commitment method exceeds three times the average daily calculation of the NAV. If the exposure is calculated less frequently than daily, AIFs should be considered as employing leverage on a substantial basis where, at least once during the reporting period, the exposure as calculated according to the commitment method exceeds three times its NAV.

Question 32 [last update 21 July 2014]: How should AIFMs managing AIFs with multiple share classes identify the AIFs?

Answer 32: AIFMs reporting information for AIFs with multiple share classes should answer questions 24 and questions 30 to 40 of the consolidated reporting template.

For AIFs with only one share class, AIFMs should only answer questions 24 to 33 of the consolidated reporting template.

Question 33 [last update 21 July 2014]: In question 282 of the consolidated reporting template, should AIFMs report the percentage of collateral posted to all counterparties that has been re-hypothecated as of the last business day of the reporting period or during the reporting period?

Answer 33: AIFMs should report the percentage of the market value of the collateral that has been re-hypothecated during the reporting period. This percentage should be the ratio of the aggregated market value of the collateral re-hypothecated during the reporting period by all counterparties over the aggregated market value of all the collateral posted by AIFMs to all counterparties.

Question 34 [last update 21 July 2014]: What information should AIFMs report under questions 283 to 286 of the consolidated reporting template?

Answer 34: For questions 283, 284, 285 and 286, AIFMs should aggregate the market value of cash and securities borrowed.

Question 35 [last update 21 July 2014]: In which currency, should AIFMs report information on the five principal markets and five principal instruments in which they trade (questions 29 and 32 of the consolidated reporting template for AIFM-specific information)?

Answer 35: AIFMs should report this information in Euro.

Question 36 [last update 30 September 2014]: A non-EU AIFM markets its AIFs in the Union under Article 42 of the AIFMD. Should the AIFM continue to report to the national competent authorities of the Member States in which it markets its AIFs after the marketing period of the AIF has ended?

Answer 36: For non-EU AIFMs marketing their AIFs in the Union under Article 42 of the AIFMD, the reporting obligations to national competent authorities does not depend on the actual marketing period of the AIF but rather on the existence of investors in the AIF in the jurisdiction of the authority concerned.

Therefore, non-EU AIFMs should continue to report to national competent authorities after the marketing period has ended unless they confirm that no investors in the jurisdiction of the authority concerned are invested in the AIFs.

Question 37 [last update 26 March 2015]: A non-EU AIFM markets its AIFs in several Member States under Article 42 of the AIFMD. Should the AIFM calculate a reporting frequency for each Member State where it markets its AIFs or should the AIFM calculate a unique reporting frequency for all Member States in which it markets its AIFs?

Answer 37: According to Article 110 of the implementing Regulation, AIFMs shall take into account all the EU AIFs they manage and AIFs they market in the Union to calculate the reporting frequency. The AIFM should therefore calculate a unique reporting frequency taking into account all the AIFs it markets in the Union and apply the same reporting frequency to all Member States where it markets its AIFs.

Similarly, the assets under management in questions 33 and 34 of the consolidated reporting template for AIFM-specific information should be based on all the AIFs marketed in the Union by a non-EU AIFM and not on the AIFs marketed by a non-EU AIFM in a particular Member State. This means that non-EU AIFMs should report the same amount of assets under management to all NCAs to which they report under Article 42 of the AIFMD.

Question 38 [last update 30 September 2014]: Should AIFMs use the NAV when they report information under questions 48 and 86 to 93 of the consolidated reporting template for AIF-specific information?

Answer 38: No. AIFMs should use the total value of assets under management calculated in accordance with Article 2 of the implementing Regulation. In addition, if the national competent authorities to which they report have decided to apply ESMA's opinion on collection of information under Article 24(5), AIFMs should also use the total value of assets under management for questions 86 to 93 of the consolidated reporting template for AIF-specific information.

Question 39 [last update 30 September 2014]: How should AIFMs calculate the value of the five main instruments in which the AIF is trading (question 76 of the consolidated reporting template for AIF-specific information)?

Answer 39: AIFMs should calculate the values according to Article 2 of the implementing Regulation and not according to Article 3 of the AIFMD as stated in Annex IV of the implementing Regulation.

Question 40 [last update 30 September 2014]: According to Article 110 of the implementing Regulation, AIFMs shall report to national competent authorities no later than 30 days or 45 days for fund of funds after the end of the reporting period. What should AIFMs do if the final NAV of the AIFs for which they report is not available by this deadline or is no longer representative?

Answer 40: In that situation, AIFMs should use estimates of the NAV of the AIFs and send updates afterwards if there is a difference between the estimated NAV and the final NAV.

Question 41 [last update 30 September 2014]: Should the position type (Long or Short) in relation to a derivative instrument be determined by reference to the derivative contract or by reference to the exposure to the underlying of the derivative instrument (questions 75, 97, 105, 123, 124, 129 and 130 of consolidated reporting template for AIF-specific information)?

Answer 41: The position type should be determined by reference to the exposure to the underlying of the derivative instrument. As a result, a long position on a put option should be reported as 'Short' whereas a short position on a put option should be reported as 'Long'.

Question 42 [last update 30 September 2014]: Should AIFMs take into account the settlement period when they report information on portfolio liquidity (questions 178 to 184 of the consolidated reporting template for AIF-specific information)?

Answer 42: AIFMs should adopt a conservative approach when they report information on the portfolio liquidity. As a consequence, AIFMs should take into account the time delay for having the proceeds of the sale available on a cash account if it has as a non-negligible impact on the liquidity profile of the AIF.

Question 43 [last update 30 September 2014]: Should AIFMs include cash accounts when reporting information on the total number of open positions (question 218 of the consolidated reporting template for AIF specific information)?

Answer 43: Yes, AIFMs should take into account all cash accounts that exist.

Question 44 [last update 30 September 2014]: What value should AIFMs use to report information on the value of securities borrowed for short positions (question 289 of the consolidated reporting template for AIF-specific information)?

Answer 44: AIFMs should use the market value of the securities borrowed.

Question 45 [last update 30 September 2014]: Should AIFMs report information on turnover of financial derivative instruments based on both market values and notional values (questions 126 and 127 of the consolidated reporting template for AIF-specific information)?

Answer 45: Yes.

Question 46 [last update 30 September 2014]: How should AIFMs treat bank overdrafts for the purpose of information on individual exposures (questions 123 and 124 of the consolidated reporting template)?

Answer 46: AIFMs should treat bank overdrafts as short positions in ‘Cash and Cash Equivalent’.

Question 47 [last update 11 November 2014]: AIFMs shall report the value of collateral and other credit support posted to all counterparties (questions 157 to 159 of the consolidated reporting template). Should AIFMs include collateral passed to a clearing member for transmission to a CCP in these questions?

Answer 47: Yes.

Question 48 [last update 11 November 2014]: How should AIFMs calculate the turnover expressed in notional value for derivative instruments (question 127 of the consolidated reporting template)?

Answer 48: AIFMs should convert the derivative positions into an equivalent position in the underlying assets as prescribed in Article 10 and Annex II of the implementing Regulation using the value at the date of the trade and not at the reporting date.

Question 49 [last update 11 November 2014]: In which categories should AIFMs allocate sovereign bonds which fall in the categories ‘*Non-G10 with 0-1 year/1year+ term to maturity*’ and also in the categories ‘*EU bonds with 0-1 year/1 year + term to maturity*’?

Answer 49: AIFMs should allocate those sovereign bonds to the categories ‘*EU bonds with 0-1 year/1 year + term to maturity*’.

Question 50 [last update 9 January 2015]: How should AIFMs report information on subscriptions and redemptions over the reporting period (questions 255 to 278 of the consolidated reporting template)?

Answer 50: AIFMs should report the value of subscription and redemption orders and not the number of subscription and redemption orders. Information should be reported for the month of the cash-flows and not for the month of the subscription and redemption orders unless it is the same month.

For example, an AIFM is subject to quarterly reporting obligations and investors can subscribe/redeem 4 times per year on the NAVs of 31/03, 30/06, 30/09 and 31/12 of each year. The AIFM receives for January 100 redemption orders, for February 200 redemption orders and for March 50 redemption orders (350 redemption orders in total over the reporting period Q1). Redemption orders are executed in April on the NAV calculated on 31 March. The NAV is €100 per share. Therefore, the AIFM will report redemption orders for a total value of €35,000 (350*100) in April (reporting for Q2).

Question 51 [last update 9 January 2015]: How should AIFMs report information on the change in NAV per month (questions 243 to 254 of the consolidated reporting template)?

Answer 51: The change in NAV captures both the change due to subscriptions and redemptions and the change due to investment performance. It is the net effect on the fund's NAV over the given reporting period after all inflows, outflows and performance are taken into account. AIFMs should report information on the change in NAV for each month of the reporting period. If no official NAV is available for the calculation, AIFMs should use estimates of the NAV. In some cases (e.g. for AIFs investing in illiquid assets), the best estimate may be the previous NAV.

Question 52 [last update 9 January 2015]: How should AIFMs report information on the percentage of gross and net investment returns per month (questions 219 to 242 of the consolidated reporting template)?

Answer 52: AIFMs should report the information for each month of the reporting period. If no official NAV is available for the calculation, AIFMs should use estimates of the NAV. In some cases (e.g. for AIFs investing in illiquid assets), the best estimate may be the previous NAV.

Question 53 [last update 9 January 2015]: An AIFM manages both funds and funds of funds. When should the AIFM report aggregated information at the level of the AIFM (AIFM file of the consolidated reporting template)?

Answer 53: In that case, the AIFM should report aggregated information at the level of the AIFM and on funds of funds no later than 45 days after the end of the reporting period. Information on AIFs that do not take the form of fund of funds should be reported 1 month after the end of the reporting period as required by Article 110 of the implementing Regulation.

Question 54 [last update 26 March 2015]: How should AIFMs report information on the total long and short value of exposures before currency hedging (questions 128 to 130 of the consolidated reporting template)?

Answer 54: AIFMs should report information on long and short value of exposures for all the sub-asset types of questions 122 to 124 of the consolidated reporting template. The information should be provided in the base currency of the AIF. This means that the sum of the short and long value of exposures in questions 129 and 130 should equal the sum of the questions 122 to 124.

Question 55 [last update 26 March 2015]: Should non-EU AIFMs marketing their AIFs in the Union under Article 42 of the AIFMD report the results of stress tests under Articles 15 and 16 of the AIFMD (questions 279 and 280 of the consolidated reporting template)?

Answer 55: Non-EU AIFMs marketing their AIFs in the Union under Article 42 of the AIFMD should report the results of stress tests insofar as this is required by the national private placement regime of the Member States where they market their AIFs or if the non-EU AIFMs have carried out such stress tests.

Question 56 [last update 12 May 2015]: How do the reporting obligations apply to AIFMs that are sister companies and that are owned by another AIFM?

Answer 56: The reporting obligations apply to each individual AIFM for the AIFs they manage and/or market in the Union. This means that each AIFM should report individually to the competent authorities of their home Member State according to their own reporting frequency as calculated pursuant to Article 110 of the implementing Regulation.

Question 57 [last update 12 May 2015]: Should AIFMs consider commitments or actual capital drawdowns when they report information on subscriptions over the reporting period for AIFs pursuing private equity strategies (questions 255 to 266 of the consolidated reporting template)?

Answer 57: AIFMs should consider actual capital drawdowns and not commitments when they report information on subscriptions for AIFs pursuing private equity strategies.

Question 58 [last update 12 May 2015]: What are the reporting obligations for a registered AIFM that decides to opt in under the Directive?

Answer 58: Once a registered AIFM has opted in under the Directive it has to comply with the Directive in its entirety. Therefore, an AIFM that has opted in has to report to its national competent authorities the information listed in Article 24 of the Directive. However, the fact that the AIFM has opted into the Directive does not impact the reporting frequency. Indeed, the AIFM should continue to report on an annual basis to its national competent authorities.

However, if at a later stage the total value of assets under management of the AIFM that has opted in exceeds the thresholds of Article 110 of the implementing Regulation, the AIFM will have to report on a more frequent basis to its national competent authorities.

In certain Member States, all AIFMs have to be authorised under the Directive. Therefore, in these jurisdictions, AIFMs whose total value of assets under management is under the thresholds of Article 3(2)(a) and (b) of the Directive have to report to their national competent authorities the information listed in Article 24 of the Directive.

Question 59 [last update 12 May 2015]: What information should a non-EU AIFM whose total value of assets under management does not exceed the thresholds of Article 3(2)(a) and (b) of the Directive and that markets its AIFs in the Union under a national private placement regime report to the competent authorities?

Answer 59: Article 3 of the AIFMD does not make any distinction between EU AIFMs and non-EU AIFMs. Therefore, non-EU AIFMs whose total value of assets under management does not exceed the thresholds of Article 3(2)(a) and (b) and that market their AIFs in the Union under a national private placement regime should at least report to the competent authorities where they market their AIFs the information listed in Article 3(3)(d) of the Directive. Indeed, the national private placement regimes of the Member States where the non-EU AIFM markets its AIFs may require non-EU AIFMs to report additional information.

Question 60 [last update 12 May 2015]: What information should an AIFM report for questions 128 to 130 of the consolidated reporting template when an AIF invests exclusively in assets denominated in the base currency of the AIF?

Answer 60: The AIFM should report the long and short positions in the base currency of the AIF.

Question 61 [last update 12 May 2015]: Should AIFMs consider distribution of dividends to investors as redemptions for the purpose of questions 267 to 278 of the consolidated reporting template?

Answer 61: No.

Question 62 [last update 12 May 2015]: Should AIFMs always apply the same reporting frequency to AIFs that are sub-funds of the same umbrella AIFs?

Answer 62: No. The reporting frequency of an AIF is not affected by the legal structure of the AIF. Each AIF, being sub-funds of the same umbrella AIFs or not, has to be treated separately for the purpose of the reporting obligations (including for the reporting frequency).

Question 63 [last update 12 May 2015]: Should AIFMs take into account cash and cash equivalents for the purpose of the main instruments in which the AIF is trading (questions 64 to 77 of the consolidated reporting template), the principal exposures of the AIF (questions 94 to 102 of the consolidated reporting template) and the five most important portfolio concentrations (questions 103 to 112 of the consolidated reporting template)?

Answer 63: Yes.

Question 64 [last update 12 May 2015]: What should be the procedure for the first reporting on AIFs?

Answer 64: The procedure should be the same procedure as for the first reporting on AIFMs. This procedure is detailed in paragraphs 11 to 13 of ESMA's guidelines on reporting obligations under Articles 3(3)(d) and 24 (1), (2) and (4) of the AIFMD.

Question 65 [last update 21 July 2015]: How should AIFMs convert the total value of assets under management into Euro?

Answer 65: First of all, AIFMs should use the rounded values of the AIFs in the base currency of the AIFs. Then, AIFMs should divide these rounded values by the corresponding value of one Euro into the base currency of the AIFs. For example, if the base currency of an AIF, reporting for the 31 March 2015, is the US dollar and is using the ECB rate, AIFMs should divide the rounded value in US dollar of the AIF by 1.0759 which was the spot rate on that date.

AIFMs should report the rounded values in the base currency and in Euro in questions 33 and 34 of the consolidated reporting template for AIFM-specific information and in question 48 of the consolidated reporting template for AIF-specific information. AIFMs should also report the value of the exchange rate used for the conversion in question 37 of the consolidated reporting template for AIFM-specific information and in question 50 of the consolidated reporting template for AIF-specific information.

Question 66 [last update 21 July 2015]: Question 64 above clarifies that the procedure for first reporting of AIFs should be the same procedure as for first reporting of AIFMs as laid down in ESMA's guidelines on reporting obligations. This means that AIFMs should not report any information on AIFs for the reporting period during which the AIFs were created. However, should AIFMs include AIFs created during the reporting period in the total value of assets under management of the AIFM for that reporting period?

Answer 66: Yes. This means that the total value of assets under management at the level of the AIFM at the reporting date (question 33 of the consolidated reporting template for AIFM-specific information) will not be the sum of the values of assets under management of the AIFs reported for that reporting period.

Question 67 [last update 02 December 2015]: According to questions 54 to 56 and 210 to 217 of the consolidated reporting template, AIFMs have to report on the jurisdictions of the three main funding sources (excluding units or shares of the AIF bought by investors) as well as on the aggregate amount of borrowing and cash financing. Should AIFMs include all liquidity that is made available to the AIF (including the cash received in the context of securities lending transactions and repurchase transactions), unless it originates from the payment of subscriptions related to units or shares of the AIF bought by investors?

Answer 67: Yes.

Question 68 [last update 02 December 2015]: According to questions 121 to 124 of the reporting template for AIF-specific information, AIFMs have to categorise loans as either leveraged or other loans. ESMA guidelines provide that where a loan is syndicated the loan should be classified as 'other'. How should a leveraged syndicated loan be classified for the purpose of completion of these questions?

Answer 68: To ensure consistency of reporting all leveraged loans, whether syndicated or otherwise, should be disclosed as leveraged loans.

Question 69 [last update 02 December 2015]: According to question 285 of the reporting template for AIF-specific information, AIFMs shall report information on collateralised/secured cash borrowing – via (reverse) repo. Should AIFMs report cash from repurchase agreements as cash borrowings?

Answer 69: Yes.

Question 70 [last update 02 December 2015]: Question 66 clarifies that newly created AIFs should be included in the total AUM of the AIFM at the reporting date (question 33 of the reporting template for AIFM-specific information). Should information on newly created AIFs also be included in questions 26 to 32 of the reporting template for AIF-specific information?

Answer 70: No. Information on the newly created AIF(s) should only be included in the total AUM of the AIFM as reported at question 33 of the reporting template for AIFM-specific information.

Question 71 [last update 02 December 2015]: According to Article 2(4) of the implementing Regulation, AIFMs may exclude investments of AIFs in other AIFs they manage for the purpose of calculating the total value of assets under management. Does ESMA expect AIFMs to exclude such investments from the calculation of the total value of assets under management?

Answer 71: Yes. In order to ensure the comparability of the results at an EU level, it is important that AIFMs calculate their total value of assets under management in the same manner. In situations where feeder AIFs invest in master AIFs and where these are managed by the same AIFM, it is important to ensure that there is no duplication of assets under management.

Question 72 [last update 02 December 2015]: When reporting information on their investment strategies, should AIFMs report the investment strategy that corresponds to their portfolio of assets as at the reporting date or should they indicate the investment strategy that is disclosed to investors in the fund rules or other offering documents?

Answer 72: AIFMs should report the investment strategy that is disclosed to investors in the fund rules or other offering documents.

Question 73 [last update 02 December 2015]: How should AIFMs determine the geographical focus of assets in which they invest such as stocks, bonds or financial derivatives (questions 78 to 85 of the consolidated template for AIF-specific information)?

Answer 73: AIFMs should take into account the domicile of the company/entity to which the AIFs have an exposure. For example, if an AIF invests in a stock of a company domiciled in Europe but traded in the US, the corresponding geographical area would be Europe and not North-America. Similarly, an AIF that invest in a bond issued in the US market by a company domiciled in the Europe should select Europe. For financial derivative instruments such as options, AIFMs should look at the financial instrument underlying the financial derivative instruments and apply the same approach as for stocks and bonds.

Question 74 [last update 02 December 2015]: Is information on gross and net investment returns, change in NAV, subscriptions and redemptions mandatory or optional?

Answer 74: This information is mandatory for Article 24(2) AIF reporting contents but, to enable the necessary functional flexibility, it is classified as optional from a technical standpoint. This information is optional from a technical standpoint because AIFMs only have to report this information for the months corresponding to the reporting period for which they report. For example, an AIFM that reports on quarterly basis will report in Q2 only information for April, May and June and not for January, February and March. Information on January, February and March would have been part of the report for Q1.

Question 75 [last update 02 December 2015]: When reporting information on leverage, should AIFMs report a ratio or a percentage?

Answer 75: AIFMs should report a percentage.

Question 76 [last update 02 December 2015]: When reporting the investment strategy of a feeder AIF, should AIFMs look through the master AIF?

Answer 76: ESMA expects that in most instances, feeder AIFs will have the same investment strategy as the master AIF unless the investments made by the feeder AIF in other assets make the resulting strategy different.

Question 77 [last update 02 December 2015]: Should AIFMs include master/feeder structures when answering questions 290 to 293 of the consolidated template for AIF-specific information?

Answer 77: No.

Question 78 [last update 02 December 2015]: Is information on liquidity profile mandatory or optional (questions 178 to 192 of the reporting template for AIF-specific information)?

Answer 78: This information is mandatory.

Question 79 [last update 02 December 2015]: What information should AIFMs communicate when they report a total value of assets under management with a value of 0 at the AIFM level (question 33 of the reporting template for AIFM-specific information) or at the AIF level (question 48 of the reporting template for AIF-specific information)?

Answer 79: AIFMs should use the assumption boxes of the reporting template to explain why the total value of assets under management equals 0. For example, this may be because the assets of the AIF have been liquidated, merged with or transferred to another AIF or because the management of the AIF has been transferred to another AIFM.

Section IV: Notification of AIFMs

Date last updated: 26 March 2015

Question 1 [date of last update 27 June 2014]: May an AIFM manage an AIF in a host MS under Article 33 of the AIFMD without having identified any existing AIF in that host MS beforehand?

Answer 1 [date of last update 27 June 2014]: Yes. The fact that an AIFM cannot identify a pre-existing AIF in the host MS does not prevent an AIFM from managing an AIF in that host MS under Article 33 of the AIFMD. In practice, the creation of the first AIF in the host MS is usually conditional on the AIFM having previously notified the host MS's national competent authority under Article 33 of the AIFMD. Therefore, it may be necessary for an AIFM to first notify its wish to make use of the management passport under Article 33 in order to subsequently be in a position to create and manage AIFs in that host MS.

Question 2 [date of last update 27 June 2014]: When an AIFM wishes to manage an AIF in a host MS for the first time, but has not yet set up any AIF in that host MS, how should it comply with the requirement of Article 33(2)(b) of the AIFMD to identify the AIFs it intends to manage?

Answer 2 [date of last update 27 June 2014]: If the AIFM has no prior presence in the host MS it is sufficient for the AIFM to specify the types of strategy of the AIFs it intends to manage in the host MS. However, this is without prejudice to the obligation for the AIFM to communicate a programme of operations stating the services it intends to perform in the host MS.

Question 3 [date of last update 26 March 2015]: Should an AIFM that is already managing AIFs in a host Member State under Article 33 of the AIFMD and that wishes to manage a new AIF in that host Member State undertake a new notification under Article 33(2) of the AIFMD?

Answer 3: The AIFM should not undertake a new notification under Article 33(2) of the AIFMD every time it wishes to manage a new AIF established in a given Member State. The original Article 33(2) notification should be considered valid for all the AIFs it intends to manage in that given Member State. In such cases, an update in accordance with Article 33(6) should be sent to identify each new AIF to be managed under the original Article 33(2) notification. When the proposed new AIFs are of a different type from the ones specified in the original Article 33(2) notification, the AIFM should clarify this in the update submitted under Article 33(6).

Section V: MiFID services under Article 6(4) of the AIFMD

Date last updated: 27 June 2014

Question 1 [last update 27 June 2014]: Can competent authorities in a Member State other than the home Member State of an AIFM accept passport notifications for the activities of the AIFM authorised under Article 6(4) of the AIFMD?

Answer 1: Yes. Article 92 of Directive 2014/65/EU (MiFID 2) modifies the provisions of the AIFMD in order to establish that an AIFM authorised to provide the MiFID investment services mentioned under Article 6(4) of the AIFMD has the right to provide these services on a cross-border basis under the authorisation granted by the competent authorities of its home Member State.

Member States must apply the measures referred to in Article 92 of MiFID 2 from 3 July 2015. However, the principle of sincere cooperation set out in Article 4(3) TFEU requires the Member States to facilitate the achievement of the Union’s tasks and refrain from any measure which could jeopardise the attainment of the Union’s objectives. It is therefore recommended that competent authorities accept passport notifications for the activities of the AIFM authorised under Article 6(4) of the AIFMD even before 3 July 2015.

Section VI: Depositaries

Date last updated: 16 December 2015

Question 1 [last update 21 July 2014]: Do the cash monitoring duties apply on a look-through basis to cash accounts which are not opened in the name of the AIF/AIFM, but in the name of financial and/ or legal structures established by the AIF or by the AIFM acting on behalf of the AIF for the purposes of investing in the underlying assets and which are controlled directly or indirectly by the AIF or by the AIFM acting on behalf of the AIF?

Answer 1: No, the cash monitoring requirements under Articles 85 and 86 of Commission Regulation (EU) No 231/2013 (the AIFMD Level 2 Regulation) do not apply to cash accounts opened in the name of companies in which the AIF/AIFM holds investments.

Question 2 [last update 21 July 2014]: Is it possible for the depositary to delegate to a third party (e.g. an administrator which is not an affiliate of the depositary) the cash flow reconciliation duties?

Answer 2: No. According to the provisions of Article 21(11) of the AIFMD, the monitoring of the cash flow is an activity which cannot be delegated. For example, the depositary should not rely exclusively on the reconciliation processes performed by a third party, even where the depositary performs due diligence on those processes.

In line with the provisions of recital 42 of the AIFMD, the only delegation which is permitted in relation to the monitoring of the cash flow is that of the depositary's supporting tasks, such as administrative or technical functions performed by the depositary as a part of its depositary tasks.

Question 3 [last update 21 July 2014]: How far down the distribution chain is the depositary to reconcile subscription flows?

Answer 3: The cash monitoring duties relate to any of the cash accounts – including accounts used for subscriptions and redemptions – referred to in Article 21(7) of the AIFMD (as implemented by Articles 85 to 87 of the AIFMD Level 2 Regulation): accounts opened in the name of the AIF, in the name of the AIFM acting on behalf of the AIF or in the name of the depositary acting on behalf of the AIF. The rules on reconciliations linked to subscriptions are further detailed in Article 93 of the AIFMD Level 2 Regulation.

Question 4 [last update 21 July 2014]: Does the obligation to verify that the AIF and AIFM comply with applicable laws and regulations in Article 95 (a) of the AIFMD Level 2 Regulation cover anti-money laundering rules, labour law and contracts of the AIF/AIFM with third parties which do not relate to the asset or risk management activities?

Answer 4: In general, the obligation to set up and implement appropriate procedures for the verifications required under Article 95(a) of the AIFMD Level 2 Regulation should be linked to the requirement in Article 21(9) of the AIFMD for the depositary to ensure oversight of the

AIF's operations. The verifications required under Article 95(a) of the AIFMD Level 2 Regulation are meant to ensure that the AIF and/or the AIFM acting on behalf of the AIF comply with the applicable laws and regulations applying to the AIF including fund rules, instruments of incorporation (e.g. investment restrictions, leverage limits, etc.). They do not relate to the laws and regulations applying to these entities that do not have any direct relation with the instructions of the AIFM to the depositary (e.g. the application of the remuneration rules by the AIFM). This is without prejudice to the depositary voluntarily (or in agreement with the AIF/AIFM) performing more extensive verifications.

Therefore, the obligation to verify that the AIF and AIFM comply with applicable laws and regulations does not cover labour law or contracts with third parties unrelated to asset or risk management activities.

As for the compliance with the relevant anti-money laundering rules, the contract by which the depositary is appointed shall include information on the tasks and responsibilities of the parties to the contract in respect of obligations relating to the prevention of money laundering and the financing of terrorism (Article 83(1)(m)) of the AIFMD Level 2 Regulation. This is without prejudice to the relevant anti-money laundering obligations applying to the depositary, AIF and AIFM under the EU legislation on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

Question 5 [last update 21 July 2014]: Is it correct to say that where derivative contracts contain a netting clause, derivatives should fall exclusively under the cash flow monitoring obligation of the depositary and that it is only in the absence of a netting clause – where the AIF/AIFM gets an ownership claim for the underlying – that the depositary is in a position to verify whether the AIF/AIFM has acquired ownership of the underlying asset according to Article 90(2)(c) of Commission Regulation (EU) No 231/2013?

Answer 5: No. Recital 103 of the AIFMD Level 2 Regulation gives examples of assets that are not financial instruments to be held in custody and specifically includes '*financial contracts such as derivatives*' among these examples. Therefore, these assets are subject to the obligation to verify the ownership and maintain a record according to the provisions of Article 90(2)(c) of the AIFMD Level 2 Regulation. This duty involves, inter alia, looking at the contract to assess what the AIF/AIFM is entitled to.

Question 6 [last update 21 July 2014]: Are holdings in collective investment undertakings to be held in custody or subject to record keeping?

Answer 6: Unless, in accordance with applicable national law, they are only directly registered with the issuer itself or its agent, in the name of the AIF or the AIFM acting on behalf of the AIF (in which case the provisions of Article 88(2) of the AIFMD Level 2 Regulation apply), units of collective investment undertakings (CIUs) should be held in custody and subject to the relevant provisions of the AIFMD.

Question 7 [last update 21 July 2014]: Within the cash monitoring duties of a depositary, what is the meaning of “close of business day”?

Answer 7: Given that the requirements relating to the monitoring of the AIF's cash flows apply to the depositary (Article 86 of the AIFMD Level 2 Regulation), the "close of business day" should be determined in relation to the jurisdiction where the depositary is established which, for EU AIFs, is also the home Member State of the AIF. This means that the identification of significant cash flows referred to under Article 86(c) of the AIFMD Level 2 Regulation should be made with reference to the close of business day in the jurisdiction where the depositary is established, but the relevant checks may be carried out after the close of business in the depositary’s jurisdiction, typically the following business day.

Question 8 [last update 1 October 2015]: When assets of an AIF held in custody by the depositary of the AIF are provided by that depositary to a CSD or a third country CSD as defined under Regulation (EU) No 909/2014 (CSDR) in order to be held in custody in accordance with Article 21(8) of the AIFMD, does the CSD or third country CSD have to comply with the provisions on delegation set out under Article 21(11) of the AIFMD?

Answer 8: Yes.

Question 9 [last update 16 December 2015]: Does the depositary’s liability regime apply to those assets for which a depositary has safe-keeping duties on a look-through basis according to Articles 89(3), first sub-paragraph, and 90(5), first sub-paragraph of the AIFMD Level 2 Regulation?

Answer 9: Yes. The look-through requirements under Articles 89(3), first sub-paragraph, and 90(5), first sub-paragraph of the AIFMD Level 2 Regulation mean that the depositary has safe-keeping duties in relation to the relevant assets. The safe-keeping duties are described under Article 21(8) of the AIFMD and the depositary’s liability regime set out under Article 21(12) of the AIFMD (and the relevant implementing provisions under the AIFMD Level 2 Regulation) apply to safekeeping activities. This means that for financial instruments held in custody to which the look-through requirements under Article 89(3), first sub-paragraph of the AIFMD Level 2 Regulation apply, the depositary is subject to the strict liability regime under Article 21(12), second sub-paragraph of the AIFMD. For other assets to which the look-through requirements under Article 90(5), first sub-paragraph of the AIFMD Level 2 Regulation apply, the depositary is subject to the liability regime under Article 21(12), third sub-paragraph of the AIFMD.

According to Articles 89(3), second sub-paragraph, and 90(5), second sub-paragraph of the AIFMD Level 2 Regulation, the look-through provision does not apply to funds of funds or master-feeder structures provided they have a depositary which safe-keeps the fund’s assets appropriately. Therefore, it is only for this type of investment that the liability regime should not apply to the depositary of the AIF as a consequence of the fact that the depositary is not subject to any safe-keeping duties in relation to those investments.

Section VII: Calculation of leverage

Date last updated: 12 May 2015

Question 1 [last update 21 July 2014]: An AIF that is a private equity fund as referred to in recital 78 of the AIFMD, controls a financial structure that is used to acquire non-listed companies or issuers. The financial structure raises debt to finance the acquisition of those assets. When calculating the exposure of the AIF, shall the AIFM include the debt raised at the level of the financial structure?

Answer 1: According to Article 6(3) of Regulation 231/2013, exposure contained in any financial or legal structures controlled by an AIF shall be included in the calculation of the exposure where those structures are specifically set up to directly or indirectly increase the exposure at the level of the AIF. Therefore, debt raised by such a financial structure to finance the acquisition of assets shall be included in the calculation of the exposure where those structures are: (1) specifically set up to directly or indirectly increase the exposure at the level of the AIF and (2) the AIF controls such a structure. If these two conditions are fulfilled, the debt raised by the financial structure is to be included in the calculation of the exposure of the AIF.

Where the AIF does not have to bear losses beyond its investment in a financial structure that is used to acquire non-listed companies or issuers, the financial structure should not be considered as having been set up to directly or indirectly increase the exposure at the level of the AIF. In any case, these structures should not be used as a means to circumvent the provisions of the AIFMD on leverage.

Question 2 [last update 21 July 2014]: An AIF controls a financial structure that is used to acquire non-listed companies or issuers. When calculating the exposure of the AIF, shall the AIFM include the debt raised at the level of the non-listed companies or issuers?

Answer 2: No, provided that the AIF does not have to bear potential losses beyond its investment in the non-listed companies or issuers.

However, if the debt at the level of the non-listed companies or issuers exposes the AIF to potential losses beyond its investment in those non-listed companies or issuers, the debt shall be included in the calculation of the exposure of the AIF.

Question 3 [date of last update 21 July 2014]: An AIF controls a financial structure that acquires non-listed companies or issuers by raising debt. At the time of the acquisition, the non-listed companies or issuers were not leveraged. Subsequently, the non-listed companies or issuers raise debt to finance a dividend distribution enabling the financial structure to reimburse entirely its acquisition debt. When calculating the exposure of the AIF, shall the AIFM include the debt raised at the level of the non-listed companies or issuers?

Answer 3: No, provided that the AIF does not have to bear potential losses beyond its investment in the non-listed companies or issuers.

Question 4 [date of last update 26 March 2015]: When calculating the exposure of an AIF in accordance with the gross method under Article 7(a) of the implementing Regulation, should AIFMs exclude the value of all cash held in the base currency of the AIF?

Answer 4: Yes. The exclusion of cash held in the base currency of the AIF applies to cash and also to cash equivalents that meet the requirements of Article 7(a) of the implementing Regulation.

Question 5 [date of last update 12 May 2015]: Which positions should AIFMs take into account when calculating their exposure under the commitment approach pursuant to Article 8 of the Implementing Regulation?

Answer: AIFMs should take into account the absolutes value of all the positions of their AIFs valued in accordance with Article 19 of the AIFMD and the criteria laid down in paragraphs 2 to 9 of Article 8 of the Implementing Regulation. For derivative instruments, as required under Article 8(2)(a), AIFMs should convert each position into an equivalent position in the underlying assets using the methodologies set out in Article 10 (which refers to Annex II of the implementing Regulation) and points (4) to (9) and (14) in Annex I of the implementing Regulation.

Section VIII: Delegation

Date last updated: 30 September 2014

Question 1 [date of last update 30 September 2014]: An AIFM manages multiple AIFs. When assessing whether any delegation of portfolio management and/or risk management by the AIFM results in the AIFM becoming a letter-box entity as referred to in Article 20 of the AIFMD, should the assessment be made at the level of the AIFM or at the level of each AIF?

Answer 1: The provisions on letter-box entities in Article 82 of the implementing Regulation apply in relation to the management of a particular AIF and not in relation to a group of AIFs. The assessment should therefore be carried out at the level of each individual AIF.

Section IX: Calculation of the total value of assets under management

Date last updated: 3 June 2016

Question 1 [date of last update 11 November 2014]: Should AIFMs include short derivative positions in the calculation of the total value of assets under management?

Answer 1: Yes. According to Article 2(3) of the implementing Regulation, AIFMs should convert derivative instrument positions (both long and short) into an equivalent position in the underlying assets and the absolute value of that equivalent position should then be used for the calculation of the total value of assets under management.

Question 2 [date of last update 21 July 2015]: Should AIFMs include short non-derivative positions for the calculation of the total value of assets under management?

Answer 2: Yes. According to Article 2(1)(b) of the implementing Regulation, AIFMs should include assets acquired through leverage. Where a short sale occurs with assets being received, AIFMs should include the assets received in the calculation of the total value of assets under management.

Question 3 [date of last update 3 June 2016]: Should "committed capital" be taken into account when calculating the total value of assets under management (AuM) pursuant to Article 3(2) of AIFMD and Article 2 of Commission Regulation (EU) No 231/2013?

Answer 3: Generally no. As a general rule, committed capital does not contribute to the actual assets of the AIF for which it was pledged, as long as it has not been drawn down by the AIFM. However, Article 2 of Commission Regulation (EU) No 231/2013 makes reference to national valuation rules as well as to rules on valuation contained in the AIF rules or articles of incorporation. Committed capital should therefore be taken into account in the calculation of total AUM if national rules foresee this.

Section X: Additional own funds

Date last updated: 3 June 2016

Question 1: [date of last update 26 March 2015]: Should AIFMs exclude investments by AIFs in other AIFs they manage for the calculation of additional own funds under Article 9(3) of the AIFMD?

Answer 1: Yes.

Question 2: [date of last update 26 March 2015]: Should AIFMs exclude investments by AIFs in other AIFs they manage for the calculation of additional own funds to cover potential liability risks arising from professional negligence under Article 9(7) of the AIFMD?

Answer 2: No, because investments in other AIFs managed by the same AIFM increase the operational risk.

Question 3 [date of last update 3 June 2016]: Should "committed capital" be taken into account when calculating the additional own funds requirement pursuant to Articles 9(3) and 9(7) of AIFMD and Article 14(2) of Commission Regulation (EU) No 231/2013?

Answer 3: As a general rule, committed capital does not contribute to the actual assets of the AIF for which it was pledged, as long as it has not been drawn down by the AIFM.

Section XI: Scope

Date last updated: 26 March 2015

Question 1 [date of last update 26 March 2015]: According to Article 36(1) of the AIFMD, Member States may allow an authorised EU AIFM to market to professional investors, in their territory only, units or shares of EU feeder AIFs which have a non-EU master AIF managed by a non-EU AIFM provided that the EU AIFM managing the EU feeder AIF fulfils certain conditions as set out in Article 36(1) (a) to (c). Does the non-EU AIFM managing the non-EU master AIF also have to be authorised under the AIFMD?

Answer 1: According to Article 36(2) of the AIFMD, Member States may impose stricter rules on the AIFM in respect of the application of Article 36 of the AIFMD. Therefore, whether the non-EU AIFM managing the non-EU master AIFs has to be authorised under the AIFMD depends on the national law of the Member State transposing Article 36 of the AIFMD.

Section XII: Impact of Regulation (EU) 648/2012 (EMIR)[13] on AIFMD

Date last updated: 19 July 2016

NEW **Question 1 [last update 19 July 2016]:** For OTC financial derivative transactions that are centrally cleared and subject to the reporting obligation of EMIR, can AIFMs rely on the valuation provided by the central counterparty (CCP)?

Answer: No. The AIFMD framework requires AIFMs to have in place a process for proper and independent verification of the value of the OTC financial derivative transactions, even if they are centrally cleared. The valuation provided by the CCP can only serve as a point of reference for the verification performed by the AIFM. Nevertheless, the AIFM should be able to justify any deviation from the valuation provided by the CCP.

[13] Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ("European Markets Infrastructure Regulation")