

AIFMD- Consultation response

info@dufas.nl
www.dufas.nl

To European Commission
From DUFAS (the Dutch Fund and Asset Management Association)

Date 29 January 2021
Subject **European Commission (“Public consultation on the review of the alternative investment fund managers directive (AIFMD)”**

Contact details Randy Pattiselanno, Manager strategy & regulatory affairs, rp@dufas.nl

DUFAS (the Dutch Fund and Asset Management Association) welcomes the opportunity to respond to the opportunity to respond to the European Commission’s “Public consultation on the review of the alternative investment fund managers directive (AIFMD)”, as published by the European Commission on its website on 22 October 2020.

Executive summary:

We welcome the review of the AIFMD, although in general DUFAS is of the opinion that in most parts the AIFMD functions to the satisfaction of our members. Overall, we believe the AIFMD functions well and has significantly contributed to the creation of an EU market for the offering and managing of AIFs, whilst providing investors with a high standard of protection. From that perspective we do not anticipate that material changes of AIFMD are necessary.

No amendment Level 1 required: We believe therefore that at this stage no Level 1 amendments of AIFMD is needed, subject to the following exceptions.

- *Scope of licence:* Under the AIFMD, AIFM’s can provide limited MiFID 2 services. In our opinion the limited ancillary services that AIFMs can provide should be expanded with client order execution. Our members need to be able to execute orders as part of their services under the AIFMD licence, which is currently is missing. This is particularly important, because we understand from our Dutch regulator that if the management company of an AIF has no full discretion in managing an individual portfolio management, the execution of such orders related to such portfolio does not seem to be included in the AIFMD top-up licence.
- *Retail AIF Passport:* Furthermore, we believe there is merit in having an AIF structure in place under the AIFMD that could be marketed to retail investors with a passport. Such European passport obviously (i) will facilitate asset managers to distribute their retail AIFs on a cross-border basis, and (ii) ensure a level playing field. We anticipate that changes of Level 1 may be necessary to accomplish this.

Further to our comments above, we also have the following recommendations:

- More European convergence: To a certain extent the effectiveness of the AIFMD is indeed impaired by national legislation or existing market practices. The AIFMD intends to procure maximum harmonisation for managing and offering AIFs to professional investors. However, national legislation and/or guidelines issued by regulators on a country-by-country basis have led to significantly different regimes for AIFMs in relation to e.g. cross-border marketing, what constitutes a material change for notification purposes etc. Although more convergence could also be done on level 2 or level 3 level, we do support any initiatives for more supervisory convergence.
- Harmonization UCITS and AIFMD framework: We believe that harmonization should not be a goal in itself. Under the current reporting regime, UCITS is quite extensive and more elaborate. UCITS reporting imposes a heavier burden on fund managers than AIFMD which framework leaves more discretion. Therefore total harmonization is a challenge and especially not advisable where it concerns the UCITS and AIFMD framework, where AIFs are offered to professional investors only. However, should the European Commission nonetheless intends some sort of harmonization, this should be done for UCITS and retail AIFS only.
- No further rules on top-of, and alignment with other sectoral legislation such as SFDR and MiFID: Furthermore, we believe that any amendments of the AIFMD framework should not be on top-off or in addition what is already covered by other pieces of European legislation. More in particular, we believe that as to changes in the context of sustainability & ESG, most requirements are already included in the upcoming SFDR/RTS or anticipated ESG changes in the AIFMD or UCITS delegated acts. We strongly advise not to come up with new requirements, while SFDR and these delegated acts still have to be implemented. We furthermore, do believe that AIFMD should align as much as possible to MiFID concepts, such the type of investors, but also the delegation regime, in order to ensure consistency and efficiency.

QUESTIONS

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

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

<input type="checkbox"/>	Very satisfied
<input checked="" type="checkbox"/>	Satisfied
<input type="checkbox"/>	Neutral
<input type="checkbox"/>	Unsatisfied
<input type="checkbox"/>	Very unsatisfied
<input type="checkbox"/>	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?

<input type="checkbox"/>	Fully agree
<input checked="" type="checkbox"/>	Somewhat agree
<input type="checkbox"/>	Neutral
<input type="checkbox"/>	Somewhat disagree
<input type="checkbox"/>	Fully disagree
<input type="checkbox"/>	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:

The AIFMD intends to procure maximum harmonisation for managing and offering AIFs to professional investors. However, national legislation and/or guidelines issued by regulators on a country-by-country basis have led to significantly different regimes for AIFMs in relation to the following items.

Cross-border activities

The rules that apply to the cross-border managing and marketing of AIFs to professional investors diverge. For example, the regimes on (i) below threshold managers, (ii) cross-border marketing and (iii) where it concerns cross-border management, additional requirements in relation thereto, have led to difficulties in understanding national requirements and an increase in cost and time for managers to market their AIFs on a cross-border basis.

Also, procedures for notifications, filings and approvals should be harmonised more to avoid unnecessary delays. For example some regulators require an approved prospectus before they will start an approval procedure which could cause a delay of 2 months.

Furthermore, the costs charged by the different supervisors vary a lot. The costs should be equal for each country.

The above will (partially) be remedied by the implementation of the Cross-border distribution directive across member states, but questions on for example below threshold managers and cross-border management requirements are likely to remain.

Ongoing notification requirements

The AIFMD provides that regulators must be informed of a "material change" to the constitutive information pertaining to the AIFM itself or an AIF. It has not been specified further what constitutes a material change (this is only addressed in the Level 2 Regulation in relation to annual report disclosure requirements, article 106(1)). This has led to significant divergence in application of this requirement, hampering the intended level-playing field for AIFMs. For example, a change in shareholding of an AIFM in certain jurisdictions will trigger a full-fledged DNO-process, similar to that applying to banking institutions, whereas other jurisdictions apply a simple notification regime.

At AIF level, similar uncertainties exist in relation to timing against which changes to the constitutive documents such as the AIFs rules of incorporation may become effective. It would be helpful if regulators adopt a common approach in defining what constitutes a material change.

Furthermore, in practice it often happens that whenever a 'new' AIF fund is being launched by fund manager, but on the same or similar terms and conditions, the same timelines are being applied by the NCA. This occurs quite often in relation to private equity and real estate. It would be helpful if shorter timeliness in such case can be applied, which we feel should be feasible given the fact that the 'new' AIF does not contain many new features.

Requirements applying for providing investment services

The AIFMD includes a member-state option to allow AIFMs to provide certain MiFID investment services or ancillary services. Due to the fact that it concerns a member-state option and the relevant provisions are therefore not harmonised between member-states, the regime in relation to the provision of investment services significantly varies. This, not only in relation to the potential authorisation to perform investment services but also in relation to the ongoing requirements that must be observed in providing these type of services. It would be helpful if ESMA could provide more clarity on the interpretation of the current AIFMD wording to enhance a coherent application between member-states. DUFAS, however sees no merit in amending the Level 1 AIFMD wording or in applying the full MiFID-regime for certain services to AIFMs. The current drafting of the AIFMD already makes clear which MiFID articles must be observed by AIFMs providing investment services.

No level 1 amendments required, except for licencing scope & retail AIF passport

Notwithstanding the above, DUFAS, however sees no merit in amending the Level 1 AIFMD wording or in applying the full MiFID-regime for certain services to AIFMs; the current drafting of the AIFMD already makes clear which MiFID articles must be observed by AIFMs providing investment services.

In general, we believe that at this stage no Level 1 amendments of AIFMD are needed, subject to the following exceptions of (i) expanding ancillary services under AIFMD with client order execution (see also our answer to Q4), and (ii) inclusion of a retail AIF Passport for retail AIFs (see also our answer to Q23).

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 N/A
creating internal market for AIFs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
enabling monitoring risks to the financial stability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
providing high level investor protection	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Other statements:

	1 (fully disagree)	2 (somewhat disagree)	3 (neutral)	4 (somewhat agree)	5 (fully agree)	Don't know No opinion N/A
The scope of the AIFM license is clear and appropriate	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The AIFMD costs and benefits are balanced (in particular regarding the regulatory and administrative burden)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The different	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

	1 (fully disagree)	2 (somewhat disagree)	3 (neutral)	4 (somewhat agree)	5 (fully agree)	Don't know No opinion N/A
components of the AIFMD legal framework operate well together to achieve the AIFMD objectives						
The AIFMD objectives correspond to the needs and problems in EU asset management and financial markets	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
The AIFMD has provided EU AIFs and AIFMs added Value [sic]	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Overall, the AIFMD functions well and has significantly contributed to the creation of an EU market for the offering and managing of AIFs, whilst providing investors with a high standard of protection. The reporting framework of the AIFMD moreover allows for a close monitoring of potential financial stability risks attached to investments / investment management in an AIFMD context, but could be even further enhanced by creating a centralized and aligned reporting regime throughout member-states. Certain items that could be developed further to enhance the functioning of the AIFMD relates to *inter alia* (i) harmonization / clarification of ongoing filing obligations such as notification of a material change; and (ii) a harmonized regime for managing / marketing by below-threshold AIFMs.

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

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

Question 4.1 What other functions would you suggest adding to the AIFM licence?

Under the AIFMD, AIFM's can provide limited MiFID 2 services. In our opinion the limited ancillary services that AIFMs can provide should be expanded with client order execution. Consequently, AIFMs should apply the MiFID best execution provisions. We support amending Level 1 to extend the current investment services with execution of client orders. It is unclear why AIFMs cannot provide client orders execution services when they meet the best execution

requirements.

This is particularly important, because in view of the Dutch NCA, if the management company of an AIF has no full discretion in managing an individual portfolio management, the execution of such orders related to such portfolio does not seem to be included in the AIFMD top-up licence. We would therefore appreciate it if the European legislator could add the service execution of orders to the ancillary services AIFMs can provide. This would allow AIFM's to provide the same client services under its AIFM license while applying MIFID II client protection rules, without having to obtain a MiFID 2 license. We believe the restrictions on investment services should be lifted for AIFMD as long as they follow the same rules applicable to investment services.

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

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

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

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

Question 6.1. What elements would you suggest introducing into the AIFMD to exclude securitisation vehicles from the scope of the AIFMD more effectively and reducing regulatory arbitrage possibilities?

Please explain:

In our view, the Securitisation Regulation framework could benefit from including a clear cut exemption for structures that under the AIFMD already qualify as an AIF (specifically debt AIFs that are at most risk of being impacted by the Securitisation Regulation provisions). There is no need to impose a double regulatory framework to structures that are already regulated both from an investor perspective and macro-economic perspective.

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

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No

<input type="checkbox"/>	Don't know / no opinion / not relevant
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Question 8. Should the AIFM capital requirements be made more risk-sensitive and proportionate to the risk-profile of the managed AIFs?

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	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?

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	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?

<input type="checkbox"/>	Fully agree
<input checked="" type="checkbox"/>	Somewhat agree
<input type="checkbox"/>	Neutral
<input type="checkbox"/>	Somewhat disagree
<input type="checkbox"/>	Fully disagree
<input type="checkbox"/>	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:

Article 6 of the AIFMD includes a member-state option to allow AIFMs to provide certain MiFID investment services or ancillary services. Due to the fact that this regime is not harmonised, the regime in relation to the provision of investment and ancillary services significantly varies between member states, not only in relation to the potential authorisation to perform these services but also in relation to the ongoing requirements that must be observed in providing these type of services. It would be helpful to create one regime to further enhance the level-playing field between AIFMs and prevent regulatory arbitration between member states. An amendment of the AIFMD Level 1 however does not seem necessary to procure this, except for

the inclusion of the service of execution of orders under the AIFMD licence.

In the opinion of DUFAS it would suffice if for example ESMA would provide further clarification on the conditions that member-states should in its view impose when allowing AIFMs to provide MiFID services (with reference to the MiFID provisions that on the basis of the current AIFMD wording must be observed).

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?

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	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?

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

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:

No specific changes are required; the AIFMD already provides a detailed regime for conduct-of-business, operational and initial requirements for AIFMs that is tailored to the entities operating under the AIFMD. Where an AIFM provides investment services, article 6(6) AIFMD includes addition MiFID requirements that an AIFM has to observe. DUFAS does not deem it proportionate to apply other or all MiFID requirements to AIFMs providing investment services.

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?

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	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:

AIFMs cannot be compared to credit institutions in terms of (i) risks connected to activities for clients and the broader financial system, (ii) size and (iii) resources. Imposing a SREP on AIFMs would lead to a significant ongoing compliance burden that cannot be justified on the basis of the activities and risks attached thereto by AIFMs.

The AIFMD and supporting legislation already provide a clear and comprehensive framework for risk management in the broadest sense (including liquidity risk management / stress testing), governance set-up and business framework for AIFMs. Supervisors have sufficient tools to monitor these set-ups and the functioning thereof on an ongoing basis.

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

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	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:

The optionality for AIFMs to choose between maintaining additional own funds or holding a professional indemnity insurance to cover potential professional liability risks for an AIF as set out in article 9(7) AIFMD is considered a useful.

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

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	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?

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

In the current situation, the market access for below-threshold managers is subject to national legislation. As a consequence, certain member states allow below-threshold managers to market to investors in that member state whereas other member states do not allow this. In the latter scenario, below threshold managers can either not market in the jurisdiction involved or need to apply for a full-fledged AIFMD license, which in most scenario's is not feasible in view of the scale and resources of the below threshold manager.

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

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

Question 18.1 If yes, should the regulation of the sub-threshold AIFM differ from the regulation of the full-scope AIFMs under the AIFMD and in which way?

Please explain your proposition, including costs/benefits of the proposed approach:

Please see our input on question 17 – the introduction of a passport would enhance investor choice and further enable the functioning of an internal market for professional investor AIFs. However, this passport should in view of DUFAS not entail that below-threshold managers are made subject to a significantly stricter regime for ongoing requirements as there is a good reason for exempting these type of managers from a full-fledged license requirement in the current AIFMD drafting.

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:

No comment.

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

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input checked="" type="checkbox"/>	Don't know / no opinion / not relevant

II. Investor protection

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)?

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

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

AIFMD should not arrange for separate client categories, but should indeed cross-refer to MiFID. Whenever the MiFID regime therefore in relation to the type of investors are being amended or supplemented by for example the semi-professional investor, the AIFMD regime should reflect this accordingly. At this stage, we do however see no necessity for amend or supplement the client categories under MiFID. Where the MiFID II regime introduces a new category though, i.e. the semi-professional investor, we do not object to such inclusion, as long the existing definitions for ECPs, professional clients and retail clients remain unchanged.

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:

If a general AIF- EU-retail framework would be available, which would ensure adequate (retail) investor protection for AIFs, similar to UCITS, a part of the AIF-market would become available for retail investors. However as AIFMD is a directive for professional parties, and retail-protection rules have no function in that context, we would strongly suggest to have this retail framework not in the AIFD itself, but possibly as a specific Regulation for retail-AIFs as a ‘specialism’ of AIFMD.

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

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

We believe there is merit in having an AIF structure in place under the AIFMD that could be marketed to retail investors with a passport. Such European passport obviously (i) will facilitate asset managers to distribute their retail AIFs on a cross-border basis, and (ii) ensure a level playing field. We anticipate that changes of Level 1 may be necessary to accomplish this.

a. 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.

The AIFMD requires AIFMs to appoint a depositary that is located in the same jurisdiction as the AIF it concerns. This in instances limits possibilities for AIFMs to appoint the same depositary for its AIFs across the EEA. Moreover, in certain jurisdictions, only one depositary candidate for a specific asset class is present. This creates unnecessary concentration risks and exposure to a singular party, which is contrary to the envisaged role of the depositary under the AIFMD.

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

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input checked="" type="checkbox"/>	Don't know / no opinion / not relevant

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

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input checked="" type="checkbox"/>	Don't know / no opinion / not relevant

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

<input type="checkbox"/>	the obligation for the asset manager to provide the depositary with the contract it has concluded with the tri-party collateral manager
<input type="checkbox"/>	the flow of information between the tri-party collateral manager and the depositary
<input type="checkbox"/>	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
<input checked="" type="checkbox"/>	no additional rules are necessary, the current regulation is appropriate
<input type="checkbox"/>	Other

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

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input checked="" type="checkbox"/>	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?

<input type="checkbox"/>	Yes
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<input type="checkbox"/>	No
<input checked="" type="checkbox"/>	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:

No comment.

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

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

Question 31.1 Please explain your answer to question 31:

The lack of a depositary passport does in practice not lead to such significant barriers in the functioning of the AIFMD that it in view of DUFAS should be deemed to inhibit an efficient functioning of the EU AIF market as a whole. However, it can be cumbersome for AIFMs to (i) have limited depositary selection in certain member states, importantly where it concerns specific asset classes other than financial instruments and (ii) meet the top-up requirements of their home-state regulator in respect of notification of an AIF and its depositary when the AIF is located in another member-state than the AIFM. For example, in certain member states regulatory authorities in such situation require an opinion of local counsel that the depositary agreements meets the AIFMD requirements under the laws governing it. This can be both time consuming and costly – it would be good if clarification can be provided on the additional information to be provided to regulators in these scenario's.

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:

Benefits would be (i) improving depositary choice for AIFMs, (ii) depositary contracting party being the head offices and not a branch, which in negotiations can sometimes lead to discussions on branch substance and (iii) reducing concentration risks.

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:

No comment.

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:

No comment.

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

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

We support the opinion that investor CSDs should be seen as delegate. An investor CSD should be treated by the depositary as part of the custody chain and as such as a delegate of the depositary. As a consequence the investor CSD shall be bound by certain segregation and liability requirements.

b. transparency and conflicts of interest

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

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	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:

The prospectus should contain additional information in case the AIFMD regime would also be applicable to retail investors. Benefits would be more information/investor protection. Differences in disclosure regimes would be costs. In any case, maintaining the differences of the both regimes is key. Where AIFs are offered to professional only, such disclosures should meet the needs of these type investors, not those of retail investors.

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?

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

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

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

a. valuation rules

Question 40. Are the AIFMD rules on valuation appropriate?

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	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?

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

Question 42. Are the AIFMD rules on valuation clear?

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No

<input type="checkbox"/>	Don't know / no opinion / not relevant
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Question 43. Are the AIFMD rules on valuation sufficient?

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	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?

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	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:

This is already market practice. Where local expertise is needed, external valuers are engaged.

Question 45. In your experience, which specific aspect(s) trigger liability of a valuer?

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

A valuer should apply international standards, such as RICS, IVSC, TEGoVA. The auditor should incorporate this in his audit.

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

No comment.

III. International relations

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

No comment.

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

No comment.

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

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input checked="" type="checkbox"/>	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?

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

In general they are sufficiently clear, apart from what constitutes 'other activities' as described in Annex I, Clause 2 under (c), and therefore are considered to be a delegated AIFM functions. Further guidance, would be helpful in this respect. More in particular, supervisory convergence as what 'other activities' fall within the delegation rules is highly desirable.

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

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

We believe that the application of delegation rules should vary depending on the circumstance whether or not delegation takes place within a group or not. Such application regime should be aligned with delegation provisions under MiFID. Under MiFID there is more flexibility and application of the delegation rules- controls in particular, are less stringent with a group in comparison to delegation outside the group.

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

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input checked="" type="checkbox"/>	Don't know / no opinion / not relevant

Question 52.1 Should the delegation rules be complemented with:

Please select as many answers as you like

<input type="checkbox"/>	quantitative criteria
<input type="checkbox"/>	a list of core or critical functions that would be always performed internally and may not be delegated to third parties
<input type="checkbox"/>	other requirements.

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?

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input checked="" type="checkbox"/>	Don't know / no opinion / not relevant

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

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

We feel that there is not supervisory convergence. Hence no consistent enforcement.

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

None. This consultation concerns the AIFMD review. Whether or not the AIFMR delegation rules, and which elements, should be applied to UCITS should be discussed during the UCITS review.

IV. Financial stability
a. macroprudential tools

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

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input checked="" type="checkbox"/>	Don't know / no opinion / not relevant

Question 56.1 If yes, which of the following amendments to the AIFMD legal framework would you suggest?

Please select as many answers as you like

<input type="checkbox"/>	improving supervisory reporting requirements
<input type="checkbox"/>	harmonising availability of liquidity risk management tools for AIFMs across the EU
<input type="checkbox"/>	further detailing cooperation of the NCAs in case of activating liquidity risk management tools, in particular in situations with cross-border implications
<input type="checkbox"/>	further clarifying grounds for supervisory intervention when applying macroprudential tools
<input type="checkbox"/>	defining an inherently liquid/illiquid asset
<input type="checkbox"/>	granting ESMA strong and binding coordination powers in market stress situations
<input type="checkbox"/>	Other

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?

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input checked="" type="checkbox"/>	Don't know / no opinion / not relevant

No comment.

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?

No comment.

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

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

Yes, as this is already market practice in The Netherlands.

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

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input checked="" type="checkbox"/>	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?

<input type="checkbox"/>	Fully agree
<input type="checkbox"/>	Somewhat agree
<input checked="" type="checkbox"/>	Neutral
<input type="checkbox"/>	Somewhat disagree
<input type="checkbox"/>	Fully disagree
<input type="checkbox"/>	Don't know / no opinion / not relevant

The requirements are already quite comprehensive. We encourage supervisors to make better use of the data and to share data. Changes are in our opinion not necessary and will only increase costs. Currently the supervisory reporting consists of 300 questions that have to be completed per fund every quarter. For parties with large amounts of funds, this is a lot of work. We suggest to investigate the possibilities that allow reporting on a more aggregated level. In addition, we suggest to provide clarity on counterparty risk. Is the counterparty the party of the agreement or the parent company that acts as guarantor.

Question 61. If you disagree that the supervisory reporting requirements as provided in the AIFMD and AIFMR's Annex IV appropriate, it is because of:

Please select as many answers as you like

<input type="checkbox"/>	overlaps with other EU laws
<input type="checkbox"/>	the reporting coverage is insufficient
<input type="checkbox"/>	the reporting coverage is superfluous
<input type="checkbox"/>	Other

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

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

Question 62.1 If yes, the more detailed portfolio reporting should be achieved by:

Please select as many answers as you like

<input type="checkbox"/>	a full portfolio reporting by relevant identifier as provided for statistical purposes
<input type="checkbox"/>	a more granular geographical breakdown of exposures (e.g. at country level) by asset classes, investors, counterparties, and sponsorship arrangements
<input type="checkbox"/>	requiring more details on leverage
<input type="checkbox"/>	requiring more details on liquidity
<input type="checkbox"/>	requiring more details on sustainability-related information, e.g. risk exposure and/or impacts
<input type="checkbox"/>	other

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

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	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:

Most of the AIFs already have a LEI in place. The LEI is a good identification tool and adds to the

control of risk. In addition to this, we strongly advocate for a mandatory regularly renewal, in order to avoid pollution in the market and create uncertainty.

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

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	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:

Same reason as in 63.1 Identification, which is kept up to date, is key to risk control.

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?

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	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:

See 63.1. In a risk control framework it is necessary that the whole chain of control is and stays properly identified. We agree therefore that the LEI is a good identifier, although we face the problem (amongst others in case of other supervisory and statistical reporting) that not all counterparties have a LEI code, specially non-EU countries.

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

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input checked="" type="checkbox"/>	Don't know / no opinion / not relevant

Question 66.1 If not, what data fields should be added to the supervisory reporting template:

Please select as many answers as you like

<input type="checkbox"/>	loans originated by AIFs
<input type="checkbox"/>	leveraged loans originated by AIFs
<input type="checkbox"/>	Other

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

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

Question 67.1 Please explain your answer to question 67:

No, current reporting lines to NCAs should suffice. However, there may be merit in having to report to a single central authority, and already existing authority, such as ESMA, if the result thereof is that there is more (i) consistency, and (ii) it becomes more efficient.

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?

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

Please explain your answer to question 68:

We agree that information should be sharable, in order to share them with other supervisors, with the understanding that sharing of such data does not unnecessarily violate banking secrecy or privacy laws. But this should be restricted to ESRB, ECB and national central banks or national macroprudential authorities. In practice, however, we experience interpretation differences when it comes to definitions. In reference to question 67, the definitions should be aligned or interpretation differences should be clarified.

Question 68.1 If yes, please specify which one:

<input checked="" type="checkbox"/>	ESRB
<input checked="" type="checkbox"/>	ECB
<input checked="" type="checkbox"/>	NCBs
<input checked="" type="checkbox"/>	National macro-prudential authorities
<input type="checkbox"/>	Other

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

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input checked="" type="checkbox"/>	Don't know / no opinion / not relevant

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

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

Although we acknowledge that some very specific AIFs may be more hard to identify, we do believe that the current reporting template is sufficient at this stage.

Question 70.1 If yes, the AIF classification could be improved by:

Please select as many answers as you like

<input type="checkbox"/>	permitting multiple choice of investment strategies in the AIFMR template
<input type="checkbox"/>	adding additional investment strategies
<input type="checkbox"/>	Other
<input type="checkbox"/>	it cannot be improved, however, if a portfolio breakdown is provided to the supervisors this can be inferred

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

<input type="checkbox"/>	value at Risk (VaR)
<input type="checkbox"/>	additional details used for calculating leverage
<input type="checkbox"/>	additional details on the liquidity profile of the fund's portfolio
<input type="checkbox"/>	details on initial margin and variation margin
<input type="checkbox"/>	the geographical focus expressed in monetary values
<input type="checkbox"/>	the extent of hedging through long/short positions by an AIFM/AIF expressed as a percentage
<input type="checkbox"/>	liquidity risk management tools that are available to AIFMs
<input type="checkbox"/>	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
<input type="checkbox"/>	the role of external credit ratings in investment mandates
<input type="checkbox"/>	LEIs of all counterparties to provide detail on exposures
<input type="checkbox"/>	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)
<input type="checkbox"/>	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:

No comment.

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

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input checked="" type="checkbox"/>	Don't know / no opinion / not relevant

Question 73.1 Please explain your answer to question 73, presenting the costs, benefits and disadvantages of each data field suggested for deletion:

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

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input checked="" type="checkbox"/>	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 proportionate way?

No comment.

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

<input type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input checked="" type="checkbox"/>	Don't know / no opinion / not relevant

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

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

No. We believe that harmonization should not be a goal in itself. Under the current reporting

regime, UCITS is quite extensive and more elaborate, although the framework uses threshold. UCITS reporting imposes a heavier burden on fund managers. Contrary to AIFMD. The AIFMD reporting framework is more structured and leaves more discretion, including retail AIFs. Therefore total harmonization is a challenge and especially not advisable where it concerns the UCITS and AIFMD framework, where AIFs are offered to professional investors only. However, should the European Commission nonetheless intends some sort of harmonization, this should be done for UCITS and retail AIFS only.

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)?

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

Not necessary. The reporting purpose may differ across various regimes. We believe that harmonization should not be a goal in itself. Having one format in place should only be considered if (i) the overall work load is less, and (ii) this does not mean that as a result of combined formats reports this has the effect that you need to report data which is not mandatory for an AIF.

c. leverage

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

<input type="checkbox"/>	Fully agree
<input checked="" type="checkbox"/>	Somewhat agree
<input type="checkbox"/>	Neutral
<input type="checkbox"/>	Somewhat disagree
<input type="checkbox"/>	Fully disagree
<input type="checkbox"/>	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:

As we have seen in the recent crisis resulting from Covid-19, the risk based approach did not lead to problems regarding leverage. However, the calculation of leverage related to cash

positions in the base /foreign currency in gross and commitment method seems bit confusing. We suggest to align this with the calculation method under the UCITS directive

The definition of leverage which “means any method by which the AIFM increases the exposure of an AIF it manages whether through borrowing of cash or securities, or leverage embedded in derivative positions or by any other means” is unclear (or by any other means) and interpretation differences exist. Some parties only use leverage to comply with the AIFMD. It’s unclear why leverage should be calculated in this manner. In terms of risk management some parties work towards exposure in view of the NAV. In addition, it is strange that in view of the definition leverage euro’s held on a bank account are not defined as leverage, but when it comes to dollars, this is different.

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

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

Question 80.1 If yes, what leverage calculation methods should be chosen to be applied for both UCITS and AIFs?

As to UCITS. The leverage calculation method under UCITS is more intuitive and straightforward. The calculation method under AIFMD with regard to cash in base/foreign currency is somewhat confusing. However, it is recognized that UCITS are under stricter restriction on the negative cash positions compared to AIFs. Nevertheless, it shall be taken into account in the harmonization of the leverage calculation method.

Question 81. What is your assessment of the two-step approach as suggested by International Organisation [sic] 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:

We do not see the need for a two-step approach. AIFMD does not set different leverage and size thresholds for different types of AIFs or sub-types of AIFs, therefore it does not merit from collecting data by asset class. Doing so unavoidably put additional reporting burden on AIFs.

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

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	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:

A single consistent approach to calculation metrics creates common language and better steering and oversight information

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:

No comment

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

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

Question 84.1 Please explain your answer to question 84, in terms of the costs, benefits and disadvantages:

Unlike the UCITS directive, there is no cap on the use of leverage under the current AIFMD rules. Instead only a signalling level of 300% is stated, which is adequate.

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

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No

<input type="checkbox"/>	Don't know / no opinion / not relevant
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Question 85.1 Please explain your answer to question 85:

Yes. A single consistent approach to calculation metrics creates common language and better steering and oversight information.

Question 85.1 If yes, which of the following options would support this harmonisation:

Please select as many answers as you like

<input type="checkbox"/>	limit interconnectedness with other financial intermediaries
<input type="checkbox"/>	impose leverage limits
<input type="checkbox"/>	impose additional organisational requirements for AIFMs
<input type="checkbox"/>	allow only closed-ended AIFs to originate loans
<input type="checkbox"/>	provide for certain safeguards to borrowers
<input type="checkbox"/>	permit marketing only to professional investors
<input type="checkbox"/>	impose diversification requirements
<input type="checkbox"/>	impose concentration requirements
<input type="checkbox"/>	Other

V. Investing in private companies

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?

<input type="checkbox"/>	Fully agree
<input type="checkbox"/>	Somewhat agree
<input type="checkbox"/>	Neutral
<input type="checkbox"/>	Somewhat disagree
<input type="checkbox"/>	Fully disagree
<input checked="" type="checkbox"/>	Don't know / no opinion / not relevant

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?

<input type="checkbox"/>	Fully agree
<input type="checkbox"/>	Somewhat agree
<input type="checkbox"/>	Neutral
<input type="checkbox"/>	Somewhat disagree
<input type="checkbox"/>	Fully disagree
<input checked="" type="checkbox"/>	Don't know / no opinion / not relevant

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?

<input type="checkbox"/>	Fully agree
<input type="checkbox"/>	Somewhat agree
<input type="checkbox"/>	Neutral
<input type="checkbox"/>	Somewhat disagree
<input type="checkbox"/>	Fully disagree
<input checked="" type="checkbox"/>	Don't know / no opinion / not relevant

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?

No comment.

VI. Sustainability/ESG

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?

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	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:

Ideally the AIFM disclosure and requirements should be aligned with other EU regulation such as SFDR. It is best to continue to allow both qualitative and quantitative description of the risks. Because not everything can be quantified. Also through the upcoming SFDR regulation financial participants will be asked to report on the Principle Adverse Impact indicators. Keeping the alignment here is important. Also need to keep the option of looking at both qualitative and quantitative indicators. This gives asset managers more flexibility how to treat sustainability risks.

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

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	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:

Not in the current situation. Under condition of materiality and data availability & quality. Again here it is important to align with SFDR and first focus on getting that methodology right and process as well as data right. We are not supporting new additional requirements, while data quality has to improve and data is not sufficient available.

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

<input type="checkbox"/>	Fully agree
<input type="checkbox"/>	Somewhat agree
<input type="checkbox"/>	Neutral
<input type="checkbox"/>	Somewhat disagree
<input checked="" type="checkbox"/>	Fully disagree
<input type="checkbox"/>	Don't know / no opinion / not relevant

Whether the adverse impacts on sustainability factors should be integrated in the quantification of sustainability risks should first of all be dealt with in SFDR.

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?

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	No, ESMA's current competences and powers are sufficient
<input type="checkbox"/>	Don't know / no opinion / not relevant

Question 93.1 If so, how should AIFMs be required to take account of the long-term sustainability and social impacts of their investment decisions?

This is included in the upcoming SFDR/RTS and/or upcoming changes in the AIFMD delegated act. We strongly advise not to come up with new requirements, while SFDR or the AIFMD delegated act still has to be implemented.

However, at the same time it is important that not only financial materiality is considered but also double materiality. So impact of investment on people and planet should also be considered. And if that impact is negative this should be mitigated. This may already be foreseen in the upcoming changes in the AIFMD delegated act, but if that is not the case we support this inclusion on the AIFMD review.

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?

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

Question 94.1 Please explain your answer to question 94:

In general DUFAS supports the EU Taxonomy framework, and Dutch asset managers are encouraged to use the framework. In that respect, the EU taxonomy may certainly play a role when AIFMs are making investment decisions. However, this should take place on a voluntary basis. It depends of the intention of the fund, and the specific sustainability objectives the fund

wants to achieve.

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?

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	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:

As stated before, it is better to first wait for implementation of SFDR, EU Taxonomy and upcoming changes in the AIFMD delegated Act before coming up with any new requirements.

However, at the same time it is important that not only financial materiality is considered but double materiality as well. So impact of investment on people and planet should also be considered. And if that impact is negative this should be mitigated. This may already be foreseen in the upcoming changes in the AIFMD delegated act, but if that is not the case we support this inclusion on the AIFMD review.

VII. Miscellaneous

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

<input type="checkbox"/>	entrusting ESMA with authorisation and supervision of all AIFMs
<input type="checkbox"/>	entrusting ESMA with authorisation and supervision of non-EU AIFMs and AIFs
<input type="checkbox"/>	enhancing ESMA's powers in taking action against individual AIFMs [sic] and AIFs where their activities threaten integrity of the EU financial market or stability the financial system
<input type="checkbox"/>	enhance ESMA's powers in getting information about national supervisory practices, including in relation to individual AIFM [sic] and AIFs
<input checked="" type="checkbox"/>	no, there is no need to change competences and powers of ESMA
<input type="checkbox"/>	Other

No, there is no need to change competences and powers of ESMA. We believe that ESMA already has enough powers to fulfil its role. However, more convergence between the member states with regard to interpretation and application of EU regulations is necessary. We think that this can be achieved by the current 'level 3' instruments of ESMA (Guidelines, opinions, supervisory briefings, etc.) and the use of advisory groups. The answer would however be 'yes' where it is decided that ESMA will become the central reporting authority, as set forth in Q 67.

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

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

Question 97.1 Please explain your answer to question 97, providing information, where available, on the costs and benefits, advantages and disadvantages of implementing your suggestion:

No. We want to ensure a European Level playing field, and we do not think NCAs should have more tools in addition to what tools they have now, which may not benefit asset managers.

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

<input type="checkbox"/>	Fully agree
<input type="checkbox"/>	Somewhat agree
<input type="checkbox"/>	Neutral
<input type="checkbox"/>	Somewhat disagree
<input type="checkbox"/>	Fully disagree
<input checked="" type="checkbox"/>	Don't know / no opinion / not relevant

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

No comment.

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:

No comment.

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

<input type="checkbox"/>	Yes
<input checked="" type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

Question 100.1 Please explain your answer to question 100, substantiating your answer in terms of costs/benefits/advantages, if possible:

No. according to the recent ESMA report on sanctions a substantial part of the member states did not even issue sanctions. However, we do believe that there should be more supervisory convergence on the application of sanctions.

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

<input checked="" type="checkbox"/>	Yes
<input type="checkbox"/>	No
<input type="checkbox"/>	Don't know / no opinion / not relevant

Question 101.1 Please explain your answer to question 101, in terms of costs, benefits and disadvantages:

Yes. In general we see merit in more harmonisation of EU regulation, including reporting, definitions, etc. This not only concerns AIFMD and UCITS, but throughout all regulations, for instance MiFID, EMIR, MMF etc. One single rulebook may be beneficial, as long as it does not lead to material, expensive changes of the existing frameworks.

For the avoidance of the doubt, we do not advocate the harmonization of the AIFMD and UCITS framework, but having both frameworks, together with other relevant sectoral financial legislation, incorporated in one rulebook, such as we have in the Netherlands, the Act on the financial supervision (Wet op het financieel toezicht), would be supported. This should primarily be beneficial for retail AIFs and UCITS. In such case there is certainly merit in establishing one rulebook. For AIFs intended to be offered to professional investors a merger should not be done. One should also keep in mind that the AIFMD framework is more focused on risks and focus on the management company, whilst the UCITS framework is more a product related

framework, with focus on investor protection.

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:

In case of delegation to ““identified staff who have a material impact on the risk profiles of the AIFs it manages” and disclosure of remuneration information in the annual account of the AIFs, we suggest to amend Level 1 in order to reflect the following. For an AIFMD that has delegated portfolio management or risk management, it is a challenge to include the remuneration of persons working at the delegate in the annual accounts of the AIFs, as proposed by ESMA. When these activities have been delegated to one person, such information cannot always be disclosed in terms of privacy. In such case, AIFM’s can disclose the costs of the delegated activity, but this also includes administration costs. Therefore this is doesn’t provide an accurate reflection of the remuneration. This makes fair comparison between AIFMs difficult In other cases we would need to request the external managers to provide us the remuneration information of their staff. We believe that this information should not be requested where EU based managers are involved. In case of non-EU based managers, it is difficult to explain why such information is needed and consequently to obtain the relevant information.

DUFAS: Dutch Fund and Asset Management Association

Since 2003, DUFAS has been committed to a healthy asset management sector in the Netherlands. DUFAS has more than 50 members: from large asset managers who invest Dutch pension and insurance assets to smaller, specialist asset managers. DUFAS increases awareness of the social relevance of investing, helps to develop sector standards and represents the sector in the implementation of new laws and regulations. In addition, DUFAS is committed to a single European market with equal regulations.

More information

Would you like to respond, or should you have any questions? I would be pleased to hear from you.