

PUBLIC CONSULTATION ON THE REVIEW OF THE ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE (AIFMD)

Response from Insight Investment Management (Europe) Limited

29 January 2021

We are grateful to the European Commission to provide us the ability for us to engage on this important topic. In this paper, we elaborate on some answers where we were unable to on the online form.

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

Yes

Question 50.1 Please explain your answer to question 50:

The rules prohibit the use of letter box entities. Local regulators, coordinated by ESMA have set standards and published guidance regarding substance in the jurisdiction. The rules are sufficiently clear and regulators have sufficient powers to enforce them.

We provide views on this section based on our experience of the regime in Ireland under CP86 rules. This regime provides a stringent framework to ensure that there is substance on the ground with strong supervision and governance. In particular, the following is in place:

- Designated investment management team headed by a Chief Investment Officer at Manco, responsible for oversight of portfolio management delegation.
- Designated persons across supporting functions including operations, compliance, risk and reporting at Manco who are responsible for those functions.
- Strong controls, risk function, and governance at Manco level ensures robust monitoring of delegee.
- Designated persons at Manco have expertise, seniority and authority to challenge actions of delegee.

The delegation model that results ensures that portfolio management activities can be appropriately and safely delegated to wherever the expertise for the strategy adopted is based, ensuring the best service and outcome possible for EU27 investors.

Europe is a leading international centre for funds, and the AIFMD and UCITS regulatory frameworks have been powerful instruments in helping to build this European brand.

Any changes that would render the selection of expertise difficult could threaten this status and have a negative impact on the EU's current competitiveness in this arena. Further, this could also negatively impact all other fund supporting industries (including fund administrators and custodians).

Finally, any potential concerns relating to any different interpretation of delegation rules may be more easily (and speedily) addressed via level 3 guidance from ESMA.

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

Yes.

Question 51.1 Please explain your answer to question 51, presenting benefits and disadvantages of the current rules and where available providing concrete examples substantiating your answer:

There is no evidence to suggest that risk management is not appropriate. The AIFM retains legal responsibility for risk management if a function is delegated. The framework described in response to Q50 above ensures that the AIFM has adequate expertise and resources to manage such risks.

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

No.

Please provide further information below.

We do not believe they should be complemented with any further requirements. These rules are already very comprehensive and detailed and go above and beyond international IOSCO principles on delegation.

There are many layers of protection in place to ensure that EU rules are adhered to and that EU investors are protected, regardless of where portfolio management activities are delegated to.

The portfolio management entity that the AIFM delegates to is always contractually required to manage in a manner that is consistent with EU rules and subject to the robust controls, governance and monitoring of the AIFM.

We do not believe they should be complemented with a core list of function because the Manco (based on the Ireland CP86 regime) already has designated persons across all key functions including operations, compliance, risk and reporting.

As set out in our answer to question 50, further amendments that unnecessarily restrict the ability of investors to access global investment management expertise could have a negative impact on an already successful model and hamper the EU's competitiveness in this arena.

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?

No.

Question 53.1 Please explain your answer to question 53:

There are many levels of protection built in to ensure that the EU investor is protected and there is no regulatory arbitrage:

- The Manco is subject to the EU rules and it is their legal responsibility is to ensure that the entity that it delegates portfolio management to – regardless of it being outside of the EU – contractually meets the EU rules and regulations.
- Strong controls, governance and substance requirements at the Manco (explained earlier) ensures it has the expertise, authority and relevant powers to deliver this.
- The NCA supervises the Manco to ensure that the above is being delivered as it should.

In a delegation model, the delegate's national rules do not need to be the same as the delegator's national rules, as such delegation cannot be used to ever bypass EU rules.

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

Yes.

Question 59.1 Please explain your answer to question 59, providing costs, benefits and disadvantages of the advocated approach:

We think its reasonable to report to NCA when liquidity management tools such as gates, suspension, and side pockets are utilised. Please note that we do not believe swing pricing should trigger such a reporting as this is a tool that can be used in normal market circumstances as well and therefore should not be considered a liquidity management tool.

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)?

No.

Question 78.1 If yes, please explain your response indicating the benefits and disadvantages of a harmonisation of the format and definitions with other reporting regimes:

In general, given the spend on building existing reporting regimes there is resistance from the industry to have to spend further costs for frequent updates to these regimes.

Theoretically, we can be open to some minimal harmonisation of, for example investor classifications, trade classification, and product classifications. However, we would need to make sure that any such changes to not materially impact outcome for investors and trading. Furthermore, if any further IT and other spend is needed on reporting changes then we request that no further changes are made again by policymakers for at least a further five years in order to be efficient with resources.

Also any changes need to be justifiable and needs to relevant to make it worthwhile. For example, if the same level of information as is provided for MMF reporting were implemented for Annex IV reporting, it wouldn't add much value to the reporting in its current form. Additionally, given sheer amount of data that would need to be produced, it wouldn't be very accessible for the reader. Therefore, we caution the regulatory from rushing into further reporting changes.

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

Yes

Question 84.1 Please explain your answer to question 86, in terms of the costs, benefits and disadvantages:

We would not support a universal leverage cap and support the current framework where NCAs have discretion over applying leverage caps. This is particularly important for some strategies that can optically seem to be highly leveraged but the risk may not be, for example because the funds may have access to readily available capital from outside the vehicles. It is important that NCAs have the freedom to be able to assess these situations on a case by case basis.

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