



Rome, January 17, 2011

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11-13 avenue de Friedland
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Prot. n. 33/11
Ref. CESR/10-1459

Call for evidence – Implementing measures on the Alternative Investment Fund Managers Directive

Assogestioni appreciates CESR's initiative to consult all relevant stakeholders on the implementing measures on the Alternative Investment Fund Managers Directive (hereinafter, "AIFMD"). In particular, we deem appropriate that all interested parties have the opportunity to express their opinion on such a significant topic, given that, with the AIFMD, for the first time at European level an harmonised discipline concerning the authorisation, ongoing operation and transparency of the managers of alternative investment funds (hereinafter, "AIFM") will be adopted.

The abovementioned discipline, together with its implementing measures, will have a strong impact on the industry's business models which will involve even subjects different from AIFM, directly linked to the latter, such as the depositary and the independent valuator. At the same time, the AIFMD will facilitate the creation of a European competitive internal market, through a scheduled timetable which provides – although in different moments – the possibility for both EU and non-EU AIFM to benefit from a European passport.

Please find below our specific comments on CESR's Call for evidence on the AIFMD level 2 measures and our general considerations on the questions included in the European Commission "Provisional request for a technical advice on the Directive for Alternative Investment Fund Managers (AIFM) level 2 measures".

QUESTIONS FOR THE CALL FOR EVIDENCE

1. Which categories of investment manager and investment fund will fall within the scope of the Alternative Investment Fund Managers in your jurisdiction? Please provide a brief description of the main characteristics of these entities (investment strategies pursued, underlying assets, use of leverage, redemption policy etc).



In the Italian jurisdiction, management companies are not differentiated in relation to the type of investment funds they manage and therefore, as regards their organisation and rules of conduct they are all subject, apart from some minor exceptions, to the same discipline. As a consequence, all Italian management companies will be potentially covered by the AIFMD scope.

Under a fund perspective, the following types of investment funds will fall within AIFMD scope.

- Non-UCITS open-ended investment funds: funds of open-ended type – which means that participants have the right to request at any time to redeem units in accordance with the procedures established by the rules of the fund – which can be invested in financial instruments listed in a regulated market, financial instruments non-listed in a regulated market and bank deposits, in accordance to the limits and criteria established by Bank of Italy. The same discipline is applicable even to non-UCITS investment companies.
- Closed-ended investment funds: funds of closed-ended type – which means that the right to redeem units may be exercised by participants only at predetermined maturities – which can be invested in real estate, rights on real estate, shares in real estate companies, Italian and foreign real estate investment funds, credits and credits certificates, other assets which have a market and which have a value that may be calculated at least every six months, and in financial instruments non-listed in a regulated market, different from units of open-ended funds, for more than 10%, in accordance to the limits and criteria established by Bank of Italy.
- Real estate investment funds: closed-ended funds which shall be invested for at the least 2/3 of their portfolio in real estate, rights on real estate, shares in real estate companies, Italian and foreign real estate investment funds, in accordance to the limits and criteria established by Bank of Italy.
- Investment funds dedicated to qualified investors: funds which can be open-ended or closed-ended, dedicated to specific categories of qualified investors, which can be invested in financial instruments listed in a regulated market, financial instruments non-listed in a regulated market, bank deposits, real estate, rights on real estate, shares in real estate companies, Italian and foreign real estate investment funds, credits and credits certificates, other assets which have a market and which have a value that may be calculated at least every six months. Furthermore, in this type of funds, the fund rules may provide investment limits different from those established by Bank of Italy.
- Hedge funds: funds which can be open-ended or closed-ended, which can be invested even in assets different from financial instruments listed in a regulated market, financial instruments non-listed in a regulated market, bank deposits, real estate, rights on real estate, shares in real estate companies, Italian and foreign real estate investment funds, credits and credits certificates, other assets which have a market and which have a value that may be calculated at least every six months, even derogating to Bank of Italy rules on investment limits. The



minimum investment amount shall not be less than € 500.000,00. Hedge fund's units shall not be object of a public offering. This category also includes funds of hedge funds.

2. Among the topics that will be covered by the implementing measures, which do you consider would be most appropriately adopted in the form of regulations or directives? Please explain your choice.

UCITS and MiFID disciplines rule organisational requirements that management companies, investment companies and investment firms, respectively, shall comply with through implementing measures adopted in the form of directives. Such approach allows Member States to take into account the peculiarities of their company law, with specific regard to the corporate governance system. In light of the above, therefore, we deem appropriate that AIFMD level 2 measures on organisational requirements for AIFM should follow the said approach and, consequently, should be adopted through a directive.

On the contrary, we deem appropriate that ESMA recommends the European Commission to adopt a regulation with reference to issues which are characterised by a major level of technicalities and with reference to which it is easier to achieve a maximum harmonisation, as in UCITS framework. In particular, we believe that a regulation should discipline: (i) the notification letter for the procedures concerning the right of EU AIFM to market and manage EU AIF in the European Union; (ii) information that should be disclosed to investors according to article 20 of the AIFMD; (iii) leverage.

GENERAL CONSIDERATIONS ON THE QUESTIONS INCLUDED IN THE EUROPEAN COMMISSION REQUEST FOR ADVICE

As a general consideration we wish to underline that we agree with the European Commission approach according to which ESMA should focus its technical advice on the need to assure the maximum possible level of consistency between AIFMD level 2 measures and the relevant dispositions of MiFID and UCITS directive, especially with reference to general principles on organisational requirements, conflicts of interest, risk management, leverage and delegation. In this perspective, it should be also assured consistency with the Prospectus Directive, given that the latter already applies to closed-ended funds.

Where an effective consistency is not possible, ESMA should find solutions which guarantee an adequate coherence between the implementing measures of the mentioned directives, in order to avoid that management companies managing both UCITS and non-UCITS funds and also providing investment services (*i.e.* investment advice and/or portfolio management) will be obliged to comply with different, and potentially conflicting, dispositions. Such approach will represent for management companies an opportunity to benefit from a significant reduction of compliance costs which, in turn, will bring to a decrease of costs burdened by investors; furthermore, management companies will take advantage from a single set of rules.



In this respect, with specific reference to the Italian jurisdiction, the AIFMD will involve all Italian management companies, due to the fact that, according to national discipline, management companies are not distinguished depending on the type of investment funds they manage. Therefore, at the moment, even management companies which manage types of funds falling under the AIFMD scope are subject to the same regulation provided for management companies which manage UCITS funds.

With specific reference to some of the main issues covered by the European Commission request for advice, please find below our comments on conflicts of interest, risk management, depositary agreement, leverage, valuation and delegation discipline.

As regards the conflicts of interest discipline, we believe that, coherently with the MIFID and UCITS directive implementing measures approach, AIFMD level 2 measures should define only the main types of such conflicts, while a specific identification of the concrete cases that may be referred to the said types of conflicts could be considered in level 3 measures adopted by ESMA, with a higher level of detail. In this perspective, IOSCO "Private Equity Conflicts of Interest Final Report" of November 2010 could also be taken into account.

With reference to risk management, we believe that UCITS discipline could be considered a benchmark for the management of risks that characterize AIF, although with the necessary amendments due to the specific AIF peculiarities; therefore, CESR's work on UCITS risk management should be taken into account, as regards especially CESR's Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (Ref.: CESR/10-788) and CESR's Risk Management Principles for UCITS (Ref: CESR/09-178).

As regards the standard agreement with the depositary, a maximum level of coherence with UCITS discipline should be assured; therefore, we deem appropriate that the AIFMD implementing measures on this issue should take into account, with the necessary amendments, article 30 of the Directive 2010/43/EU.

In relation to transparency requirements and leverage, we believe that, coherently with the UCITS directive, there should be a distinction between the methodology of calculation of the leverage to monitor the leverage limits set by the AIF and the disclosure of such information. In the first case, the AIFM should determine for itself the method by which it will control the level of leverage, in the second case we deem important to propose a unique methodology for all investment strategies that could be set up for the various types of AIFM with the adoption of a European regulation. Furthermore, regarding the limits to leverage that could be imposed from the competent authority to an AIFM on the management of the AIF, we underline that the intervention powers pursuant to Article 25(3) should be deemed contingency measures and, thus, should be permitted only in very limited circumstances.

As regards the valuation discipline provided by article 16 of AIFMD, we agree with the approach suggested by the European Commission, according to which the procedures for the proper valuation of the assets and the calculation of the net asset



value per share or unit of AIF should take into account the different kind of assets that different types of AIF can invest in. Therefore, AIFMD level 2 measures should establish such procedures *per* macro-categories of assets (for example, listed financial instrument; non-listed financial instrument; units of UCITS and of non-UCITS investment funds; real estate), stating which is the reference value for each of such categories; furthermore, as a remaining criteria for the assets in relation to which it is not possible to define a general criteria for the identification of their value, it should be provided that the AIFM shall use independent experts, which have appropriate skills and knowledge in relation to the specific kind of assets taken into account, in charge of determining the value of the said assets. Moreover, it is important to establish that the investment fund's assets should be valued at least when the valuation of the AIF shares or units must take place. In the said perspective, it could be taken into account IOSCO "Principles for the Valuation of Hedge Fund Portfolios Final Report" of November 2007.

Furthermore, we deem important that level 2 measures clarify that the appointment of the valuation function to an external valuer represents a different case from the delegation of functions regulated by article 20 of AIFMD. The said clarification is important because it implies, on the one hand, that requirements under the abovementioned article 18 should not be fulfilled with reference to the appointment of the external valuer and, on the other hand, that the non-fulfilment of the relevant duties by the valuer should determine an autonomous liability of the latter towards fund participants. As a consequence, even though AIFM is obliged to repay the participants, the AIFM should be indemnified by the valuer as regards the specific amounts refunded.

Concerning AIFMD delegation discipline, we underline that, even if it is provided that the possibility for AIFM to delegate their functions to third parties should be justified by objective reasons, such a principle should not limit the autonomy of AIFM in deciding how to organise their structure and their business. Therefore, level 2 measures should have a principle based approach, which provides AIFM with an adequate flexibility, functional to achieve a high level of efficiency and assuring, at the same time, the aim of AIFMD on this topic.

Finally, with reference to the type of financial instruments that shall be included in the scope of the depositary's custody duties, we deem important that the list of financial instruments that can be held in custody includes also transferable securities, money markets instruments and units in collective investment undertakings.

We remain at your disposal for any request of clarification or further comments on the content of our reply.

The Director General