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CALL FOR EVIDENCE

**Implementing measures on the
Alternative Investment Fund
Managers Directive**

Deadline for contributions: CESR invites responses to this call for evidence by 14 **January 2011**. All contributions should be submitted online via CESR's website under the heading 'Consultations' at www.cesr.eu. All contributions received will be published following the close of the call for evidence, unless the respondent requests their submission to be confidential.



Executive Summary

This call for evidence seeks stakeholders' input on the provisional request for assistance from the European Commission regarding CESR's technical advice on the implementing measures on the Alternative Investment Fund Managers Directive. This input will help CESR and its successor, the European Securities and Markets Authority (ESMA), in the development of its draft advice on the content of the implementing measures, which will be published for consultation in 2011.



Call for evidence on implementing measures on the Alternative Investment Fund Managers Directive

Background

At the meeting of the Committee of Permanent Representatives (COREPER) of 27 October 2010, the Council indicated its willingness to accept the text of the Alternative Investment Fund Managers Directive (AIFMD) voted by the European Parliament at its Plenary session of 11 November. The Council is expected to adopt the measure formally by January 2011. The AIFMD sets out a wide-ranging set of requirements to be applied to managers of alternative investment funds, which are broadly defined as all funds not covered by the UCITS Directive. The Directive makes provision for a very extensive set of implementing measures covering a wide range of topics. On 2 December 2010 the Commission sent a provisional request for assistance to CESR on the content of these implementing measures. The advice is to be delivered by 16 September 2011, in order to allow the Commission to deliver the full package of implementing legislation at the latest one year before the end of the transition period for the Directive.

Structure of the mandate

The AIFMD makes provision for an extensive set of implementing measures. To structure the work, the Commission has divided the provisional request for assistance (which is annexed to this call for evidence) into four sections. Numbering of articles is based on the version of the Directive agreed by COREPER on 27 October (Ref. 15053/1/10).

Part I covers **general provisions** of the AIFMD, the **authorisation** of and the **operating conditions** for AIFM. It includes the procedures for small managers to 'opt-in' under the Directive (Article 3(5)); procedures for the calculation of de minimis thresholds (Article 3(6)); and the calibration of capital requirements to cover risks related to professional liability (Article 9(9)). The third component includes level 2 measures in relation to general principles of operation (Article 12(3)); conflicts of interest and the avoidance thereof (Article 14(4)); risk management, including the adequacy of systems, frequency of review, hierarchical and functional separation of functions and the avoidance of associated conflicts of interest (Article 15(5)); liquidity management systems and procedures (Article 16(3)); investment in securitisation positions (Article 17(1) and Article 61); general principles of organisation (Article 18(2)); procedures and frequency of valuation, and the professional guarantees to be provided by external valuers (Article 19(11)); and conditions for delegation of functions (Article 20(5)).

Part II covers provisions relating to the **depository** requirements. These include level 2 measures (all in Article 21(15)) in relation to the appointment of the depository; the equivalence of prudential regulation and supervision in third countries; the conditions for the performance of depository functions; due diligence obligations in the event of delegation; the segregation of assets; the loss of financial instruments; the definition of certain 'external events'; and reasons for contractual discharge of liability.

Part III covers provisions relating to **transparency requirements and leverage**. These include level 2 measures relating to the definition of leverage (Article 4(3)); the content and format of the annual report (Article 22(4)); the content and frequency of disclosure to investors (Article 23(6)); the content of reporting obligations to competent authorities (Article 24(6)); and the circumstances under which competent authorities may take action to limit the use of leverage (Article 25(9)).

Part IV, finally, covers provisions relating to the **supervision of AIFM, including third country AIFM**. These include level 2 measures relating to the content of cooperation arrangements with third country authorities (Article 34(2)); the exchange of information between supervisors relating to the potential systemic consequences of AIFM activity (Article 51(4)); and the procedure for identifying the Member State of reference (Article 37(13)).



The mandate from the Commission describes in more detail the expected content of the advice on each area and identifies a number of specific questions.

The Commission encourages CESR to consider the appropriate prioritisation and sequencing of the development of the advice within each section of the mandate, with a particular focus on those areas of greatest technical complexity and where new sources of data and expertise will be required.

The AIFMD also makes provision for an extensive set of technical standards and guidelines. The Commission considers that these measures constitute an important part of the regulatory framework and will contribute to the clarity, effectiveness and coherence of the overall package. CESR is therefore invited to consider how to co-ordinate work on these standards and guidelines with the development of advice on implementing measures so as to ensure a maximum level of consistency. This does not mean that CESR will work to prepare the technical standards and guidelines to the same timetable as the advice on the other implementing measures; rather, CESR's work on such standards and guidelines should take due account of the advice on the implementing measures and the standards and guidelines themselves should be in place sufficiently in advance of the transposition deadline to allow proper implementation by firms.

The advice will be developed by CESR's Investment Management Standing Committee. All references to CESR should be understood as covering ESMA, which will be established on 1 January 2011.

CALL FOR EVIDENCE

CESR invites all interested parties to submit their views on what CESR should consider in its advice to the Commission, taking into account the issues identified and the specific questions raised. In addition to this general input on the mandate as a whole, CESR has identified a number of additional questions on which it would appreciate feedback from stakeholders.

Differentiation

Given the need for appropriate differentiation between the different entities covered by the Directive, it would be particularly helpful if stakeholders could provide their input on the following question.

Question 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).

Choice of legislative instrument

Once CESR/ESMA has submitted its advice on the implementing measures, the Commission will have to decide which type(s) of legislative instrument would be appropriate for the level 2 measures. The choice is likely to be between directives – which require transposition at national level – and regulations, which are directly applicable on market participants without any national transposition. Regulations can be considered as promoting harmonisation across EU Member States (MS), while directives leave a greater amount of discretion to MS in their application. CESR may express an opinion on this in its advice to the Commission.

Question for the call for evidence

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.



Impact assessment

In line with CESR's existing practices, the Commission mandate asks CESR to carry out an impact assessment (IA) as part of its advice. Ideally this IA work should quantify the compliance costs generated by CESR's proposals; input from stakeholders will be particularly important in facilitating such quantification.

Question for the call for evidence

3. Can you identify useful sources of data and statistical evidence from which CESR could benefit in the preparation of its advice?

Responses

All contributions can be submitted online via CESR's website (www.cesr.eu) under the heading 'Consultations' by **7 January 2011**.

CESR will provide further details in due course in relation to the public consultation(s) it will carry out in light of responses to the call for evidence and its own deliberations.