

**The Chairman**

Date: 15 November 2011  
ESMA/2011/382

**Michel Barnier**  
**European Commission**  
**BERL 10/034, B – 1049**  
**Brussels**  
**Belgium**

**Ref: ESMA's response to the European Commission's provisional request to CESR/ESMA for technical advice on possible Level 2 measures concerning the Directive for Alternative Investment Fund Managers (AIFM)**

Dear Mr Barnier,

On 2 December 2010 CESR received the European Commission's provisional request for technical advice on possible Level 2 measures concerning the Directive for Alternative Investment Fund Managers (AIFM) ('the request'). The request was split into four parts:

- Part I – General provisions, authorisation and operating conditions
- Part II – Depositary
- Part III – Transparency Requirements and Leverage
- Part IV – Supervision

I am pleased to submit to you ESMA's final technical advice on Parts I to IV of the request (Ref. ES-MA/2011/379).

You will find an overview of the advice in the Introduction and background section (pages 7-15). I would also like to draw your attention to the following points concerning some additional AIFMD-related work on which ESMA is currently working/will start working shortly:

- i) Under section IV (General operating conditions) relating to Part I of the request, the advice sets out a methodology for the calculation of additional own funds based on the variable assets under management. The advice also includes the possibility for AIFMs to combine additional own funds and professional indemnity insurance (PII) subject to certain conditions.

ESMA intends to complement the rules on the combination of additional own funds and PII in the advice via the development of detailed guidelines under Article 16 of the ESMA Regulation, in parallel with the timetable for the adoption of implementing measures by the European Commission.

- ii) The advice under Part III of the request covers, inter alia, the methodologies to be adopted for calculation of leverage under Article 4 of the AIFMD. The policy approach was developed so as to permit more than one methodology for the calculation of leverage, taking into account the broad range of entities covered by the AIFMD.

The following approach is set out in the advice (pages 188-211):

- the 'exposure of an AIF' is to be calculated by an AIFM in accordance with two mandatory methods, referred to as 'gross' and 'commitment' methods;
- a third method for calculating the exposure of an AIF (which would in all cases be in addition to the two mandatory methods mentioned above) can be adopted by an AIFM at its request and after notification to its competent authority;
- the overall leverage of an AIF can be expressed as a ratio between the exposure of an AIF and its net asset value.

ESMA intends to complement the advice on the advanced method for the calculation of leverage via the development of detailed guidelines, in parallel with the timetable for the adoption of implementing measures by the European Commission.

- iii) ESMA's advice under Part IV of the request, which was published for consultation in August 2011 (ESMA/2011/270), covers the implementing measures on co-operation arrangements with third country authorities and the determination of the Member State of reference for non-EU AIFMs.

Article 53 of the AIFMD concerns the co-operation and exchange of information between EU competent authorities. It places a general obligation on competent authorities of Member States responsible for the authorisation and/or supervision of AIFMs to communicate information to competent authorities of other Member States where relevant for monitoring and responding to the potential implications of the activities of individual AIFMs or AIFMs collectively for the stability of systemically relevant financial institutions and the orderly functioning of markets in which AIFMs are active. ESMA and ESRB are also to be informed. ESMA's advice was requested on the content, modalities and frequency of the information to be provided.



The approach set out in section IX.III of the advice is to require that, as a minimum, the information set out in Box 110 and the pro-forma reporting template (see Annex V of the advice) be exchanged.

The advice also clarifies (page 244) that the more detailed provisions on the exchange of information (such as the data format and conditions of secured data transmission) will be developed as part of the work on the IT system that is included in ESMA's work programme for 2012 and, where relevant, via the adoption of ESMA guidelines.

- iv) ESMA is progressing with its work on the regulatory technical standards on the types of AIFM required under Article 4(4) of the AIFMD and will publish a proposal for consultation in time to allow for their adoption in parallel with the package of implementing measures.
- v) ESMA will also start working shortly in close co-operation with the European Banking Authority on the guidelines on sound remuneration policies required under Article 13(2) of the AIFMD.
- vi) As for the co-operation agreements between EU and non-EU competent authorities which are required in different situations under the AIFMD, ESMA is ready to lead the work on negotiating such agreements in order to allow for the adoption of an MoU covering all EU competent authorities in good time ahead of the deadline of July 2013.
- vii) Finally, as for the set of other guidelines and technical standards which ESMA either 'shall' or 'may' adopt under the AIFMD, ESMA will start prioritising its work very soon, bearing in mind that all the mandatory guidelines and technical standards related to the third-country provisions of the AIFMD are not expected to enter into force before July 2015 at the earliest.

Should you have any questions on this letter, please do not hesitate to contact either myself or Verena Ross, Executive Director of ESMA.

I am copying this letter to Mr Jonathan Faull, Chair of the European Securities Committee, and Ms Sharon Bowles, Chair of the Economic and Monetary Affairs Committee.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'S. Maijoor', written in a cursive style.

Steven Maijoor  
Chair ESMA