SIFMA AMG response to the European Commission public consultation on the review of the AIFMD

Introductory remarks
This response is made on behalf of the Asset Management Group of SIFMA ("SIFMA AMG") and the Asset Management Group of ASIFMA ("AAMG"). **SIFMA AMG brings the asset management community together to provide views on U.S. and global policy and to create industry best practices. SIFMA AMG's members represent U.S. and global asset management firms whose combined assets under management exceeds $45 trillion. The clients of SIFMA AMG member firms include, among others, tens of millions of individual investors, registered investment companies, endowments, public and private pension funds, UCITS and private funds such as hedge funds and private equity funds.** **AAMG is a separate and independent division of ASIFMA established to represent the interests and concerns of asset managers in Asia (excluding Japan and Australia). AAMG is made up of 35 of the largest global asset managers which have businesses and operations in Asia and focuses on issues that have regional and global impact or with cross-border implications.** **We welcome the opportunity to respond the European Commission's public consultation on the review of the AIFMD. As noted by the Commission in the report to the European Parliament and the Council assessing the application and scope of the AIFMD**

– the framework has been fundamental to the development and continuous growth of the AIF sector in Europe since its introduction in 2011. The EU AIF market has been growing consistently when measured by net assets of AIFs and AuM with significant cross-border activity of AIFMs. Since 2011, total net assets of AIFs increased from 2.3 trillion EUR to 5.9 trillion EUR with cross-border distribution of AIFs doubling from 3% to 5.8% in the last two years. The AIFM passport has been a key enabler of this growth and wider cross-border distribution in AIFs – as confirmed by the General Survey of AIFMs, public authorities and institutional investors.

It is apparent that the AIFMD framework has been – on the whole – a resounding success. It has enabled the steady growth of the EU AIF sector and dramatically improved access to intra-EU and global markets, talent, skills and expertise for both fund managers and investors. Accordingly – on the basis of such a positive experience – we see little cause for a dramatic reform or overhaul of the AIFMD. The fundamentals of the framework are sound with only minor changes required to better optimise the legal requirements and rectify some of the issues identified. We would advise restraint on the part of the Commission, particularly in response to ESMA's recommendations for the review of the AIFMD, as substantially altering the existing requirements may jeopardise the achievements that the current AIFMD represents.

Delegation & Substance – More specifically, the delegation and substance requirements are well calibrated and permit adequate oversight and monitoring of delegation arrangements. The delegation regime is also fundamental to the proper functioning of the AIF sector enabling AIFMs to take advantage of knowledge and expertise that enhances the value of their offering, increases geographical exposure, allows for diversification and access to non-EU markets.

It is common practice globally for asset managers to delegate portfolio management of their funds to entities – often affiliates – around the world that have intimate knowledge of particular markets. These entities offer the best expertise in relation to the markets in which the investments are being made and enable AIFMs and its clients to benefit from specialised knowledge that would otherwise be unavailable. The ability to rely on a portfolio manager based in the US or APAC also allows for greater access and exposure to international markets through a trusted counterpart. ESMA's recommendation on delegation and substance seem to be addressing a 'problem' that does not exist. First, AIFMD has very clear requirements on delegation, both procedurally and substantively – such as the requirement to maintain risk management in the EU if portfolio management is delegated. Secondly, there have been no reported problems with delegation, a practice that for UCITS, and more recently

AIFMD, has been successfully used – to the benefit of EU investors – for decades. Thus it seems to us that any new layers of requirements would amount to creating additional regulatory burdens in an area where there is no apparent problem. Certainly this would be contrary to both the goals and the spirit of CMU as well. Accordingly, we would strongly advise the Commission to carefully evaluate ESMA's recommendation on delegation and substance as introducing the requirements envisaged by ESMA would be highly detrimental to the AIF sector in Europe.

Additionally, we are alarmed by the prospect of the AIFMD being applied to non-EU AIFMs extraterritorially as suggested by Q53. We would highlight that such a move would create overlapping, conflicting and duplicative legal requirements for non-EU AIFMs rendering it virtually impossible to comply with the regulation applicable in their home jurisdiction and the AIFMD at the same time. If such a scenario were to arise – it would be legally untenable for non-EU AIFMs to remain active in the EU's AIF market and would likely lead to their withdrawal. Clearly, this would be detrimental not only to non-EU AIFMs but also EU investors – leaving them with diminished investment horizons and limited opportunity to diversify their assets and receive wider geographical exposure. Accordingly, we implore the Commission to uphold the principle of deference towards non-EU regulatory authorities and avoid restricting market access in a manner that could be emulated elsewhere.

Financial stability – With the growing significance of the asset management sector – we understand the desire on the part of regulators to introduce additional macroprudential requirements so as to improve risk monitoring. However, whilst understandable from the perspective of financial supervisors – introducing a myriad of additional supervisory reporting requirements is unwarranted at this juncture. In our view – the existing framework is proportionate while still enabling adequate macroprudential oversight on the part of supervisors. Moreover, the soundness of the AIF sector has recently been vividly demonstrated by the period of market volatility precipitated by the COVID-19 pandemic. Overwhelmingly, the AIF sector was able to weather the period of market stress without significant incident or excessive investor detriment. The AIFMD's existing macroprudential requirements and regulatory reporting proved fit for purpose from a liquidity risk management perspective and enabled adequate supervision and oversight. Accordingly, reform of the macroprudential regime applicable to the AIF sector is unwarranted. The existing requirements enable proper oversight of the AIF sector when properly and consistently enforced by NCAs. We regard any shortcomings or deficiencies in existing macroprudential requirements to stem predominantly from prevailing supervisory practices that fail to realise the utility of the data furnished by AIFMs. In such a

context, supplementing the existing requirements would do little to improve the situation while implying heavier burdens for fund managers.

Sustainability – The commitment to promoting sustainable investment is justifiable in the context of worsening climate change. However, we stress the need to avoid duplicative, conflicting or potentially misaligned requirements. The inclination towards a maximalist approach by EU policymakers risks becoming counterproductive by creating a myriad of convoluted and interdependent requirements dispersed across multiple pieces of legislation. Existing and pending legislation to promote sustainable finance – namely the EU Taxonomy and the SFDR – are already highly ambitious in scope and are currently encountering difficulties in the implementation phase. At the least – we would advise the Commission to finalise pending legislation applicable to the financial sector as a whole before introducing additional, sector specific requirements for the funds sector. Furthermore, we are highly concerned by the suggestion that sustainability related obligations would be extended beyond disclosures – particularly in instances where fiduciary duty may be in conflict with sustainability considerations. The core function of sustainability-related disclosures is to enable investors to make informed investment decisions on the basis of ESG information.

Question 1

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

(a) Very unsatisfied
(b) Unsatisfied
(c) Neutral
(d) Satisfied
(e) Very satisfied
(f) 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? (a) Fully agree (b) Somewhat agree (c) Neutral (d) Somewhat disagree (e) Fully disagree (f) Don't know / no opinion / not relevant Please explain your answer to question 2, providing concrete examples and data to substantiate it:
Our response
The efficacy of the EU AIFM passport could be improved through greater regulatory and supervisory convergence among national competent authorities (NCAs) within the limits of ESMA's existing mandate. The EU AIFM passport can be limited by divergences in national marketing rules and varying interpretations of the AIFMD by the Member States. Moreover, the AIFM passport only permits marketing to professional investors with access to retail investors varying dramatically from jurisdiction to jurisdiction. Moreover, where marketing to retail investors is permitted – the national rules are often highly restrictive in a manner that essentially limits retail investor participation. While national supervisors are understandably concerned with ensuring adequate protection for retail investors – the stringent requirements introduced at national level often effectively limit access to the retail market. **In the interest of mobilising capital and fostering broader investor participation – we would favour the softening of investor categorisation in MiFID II/MiFIR and the introduction of an enhanced product governance regime that would broaden the investor base eligible to participate in the AIF market.**

Furthermore, the ability of each Member State to introduce additional, more stringent requirements – such as in the case of Article 36 funds (non-EU AIFs marketed and distributed by EU AIFMs) limits the potential of the AIFMD. We would therefore support the broadening of the AIFM passport so as to allow the marketing and distribution of Article 36 funds.
Question 3
Please specify to what extent you agree with the statements below: The AIFMD has been successful in achieving its objectives as follows:
Our response

	Disagree	**Rather not agree**	**Neutral**	**Rather agree**	**Fully agree**	**N.A.**
Creating internal market for AIFs					**Fully agree**	
Enabling monitoring risks to financial stability.					**Fully agree**	
Providing high level investor protection.					**Fully agree**	

The scope of the AIFM license is clear and appropriate.				**Rather agree**		
The AIFMD costs and benefits are balanced (in particular regarding the regulatory and administrative burden).			**Neutral**			
The different components of the AIFMD legal framework operate well together to achieve the AIFMD objectives.			**Neutral**			
The AIFMD objectives correspond to the needs and problems in EU asset management and financial markets.			**Neutral**			
The AIFMD has provided EU AIFs and AIFMs added value.					**Fully agree**	
Question 3.1						
Please explain your answer to question 3, providing quantitative and qualitative reasons to substantiate it:						
Our response						
We believe that the AIFMD framework has been a resounding success in fostering an EU market for AIFs, facilitating international market access, diversifying exposures and monitoring macroprudential risks. The framework in its present form functions well and requires only slight adjustments in order to be further optimised.						

The existing delegation requirements have been fundamental to the success of the AIFMD. Accordingly, it is essential that they be preserved in their current form. The delegation of portfolio management and other core functions by EU AIFMs to delegates, both within and outside the EU, is instrumental to the functioning of the AIF sector. The delegation regime enables EU AIFMs to access expert knowledge of local intra-EU and non-EU markets to deliver portfolio diversification and wider geographical exposure for EU investors. Accordingly, it is among the principal factors that explains the vibrancy of the EU AIF market.

In terms of risk monitoring – the AIFMD framework already enables macroprudential oversight to a great extent. The supervisory reporting and data collection requirements allow for comprehensive risk monitoring – as evidenced by ESMA's periodic, detailed statistical reports on the AIF sector – including data on leverage and liquidity profiles of funds. While we understand concerns over the systemic significance of the funds sector – recent experience has demonstrated that the AIF sector is on the whole – with very few and specific exceptions – adequately regulated from a macroprudential perspective.

From an investor protection standpoint – access to retail investors is effectively restricted by Member States, either by preventing the marketing and distribution of AIFs to retail investors entirely or through the application of overly restrictive investor protection requirements. To rectify this situation, we would favour the softening of investor categorisation in MiFID II/MiFIR and the introduction of an enhanced product governance regime that would broaden the of investor base eligible to participate in the AIF market.

Question 4
Is the coverage of the AIFM licence appropriate? (a) Yes (b) No (c) Don't know / no opinion / not relevant What other functions would you suggest adding to the AIFM licence?
Our response
We believe that the AIFM passport has contributed fundamentally to the creation of the AIF market in the EU. However, the utility of the AIFM passport could be improved through a number of adjustments. **Firstly, within the limits of its current scope, the functioning of the AIFM passport could be improved through greater supervisory convergence between the Member States. The ability of NCAs to introduce additional requirements at national level limits the potential of the AIFM passport and results in a degree of market fragmentation that needlessly complicates marketing and distribution across the EU.** **Secondly, in the interest of mobilising capital and fostering greater investor participation – we would favour the softening of investor categorisation in MiFID II/MiFIR and an enhanced product governance regime that would broaden the investor base eligible to participate in the AIF market.** **Finally, the ability of each Member State to introduce additional, more stringent requirements – such as in the case of Article 36 funds (non-EU AIFs marketed and distributed by EU AIFMs) limits the potential of the AIFMD. We would therefore support the broadening of the AIFM passport so as to allow the cross-border marketing and distribution of Article 36 funds.**

Question 8
Should the AIFM capital requirements be made more risk-sensitive and proportionate to the risk profile of the managed AIFs? (a) Yes (b) No (c) Don't know / no opinion / not relevant Please explain your answer to question 8, presenting benefits and disadvantages of your approach as well as potential costs:
Our response
We would caution against the introduction of AIFM capital requirements that would impair fund managers capacity to efficiently allocate capital on behalf of investors. This is all the more important since the asset management sector has been identified as crucial to the post-pandemic economic recovery. **It is essential that the character and structure of fund managers be preserved in order to deepen Europe's capital markets and provide alternative financial intermediaries to banks.** **We are concerned by the prospect of the asset management sector being regulated similarly to credit institutions in the traditionally bank dominated European financial system. We stress that the fund management sector fulfils a separate role and functions very differently to banks.** **Moreover, the asset management sector has demonstrated extraordinary resilience during recent episodes of market volatility and stress. This would strongly suggest that existing capital requirements are adequate and already minimise systemic risk stemming from the asset management sector.**

Question 14
Would you see value in introducing in the AIFMD a Supervisory Review and Evaluation Process (SREP) similar to that applicable to credit institutions? (a) Yes (b) No (c) Don't know / no opinion / not relevant Please explain your answer to question 12, presenting benefits and disadvantages of your suggested approach as well as potential costs of the change, where possible:
Our response
We would caution EU policymakers against replicating the supervisory and regulatory regime conceived for credit institutions to the asset management sector. **We reiterate that the asset management industry functions very differently to the banking sector and is structured accordingly.**

Question 20
Can the AIFM passport be improved to enhance cross-border marketing and investor access? (a) Yes (b) No (c) Don't know / no opinion / not relevant If so, what specific measures would you suggest? Please explain your suggestions, presenting benefits and disadvantages as well as potential costs thereof, where possible:
Our response
Consistent with our earlier comments – we believe that cross-border marketing and investor access could be enhanced by limiting the possibility for Member States to introduce additional requirements at national level that needlessly complicate the marketing and distribution of AIFs and result in avoidable market fragmentation. Achieving a greater degree of regulatory convergence would significantly improve the functioning of the EU AIF market and enhance cross-border marketing and investor access. **In addition, the extent of investor access could be expanded by lessening the rigidity of the binary client categorisation contained in MiFID II/MiFIR and improving the product governance requirements. Firstly, the binary categorisation of investors into either professional or retail investors is overly simplistic and excludes investors that belong to the retail category – despite cases where they possess sufficient experience and sophistication – from participating with a wider range of markets.** **Similarly, the product governance requirements that are currently applied effectively preclude the participation of the retail investor segment in dynamic and vibrant markets and reflect an overly restrictive approach to investor protection. This ultimately limits the potential of European capital markets and dampens retail investor involvement. To ameliorate this situation, we believe that the suitability assessment could be enhanced so as to allow a more comprehensive view of a client's financial and investment profile that would then allow a more flexible interpretation of client categories in MiFID II/MiFIR.**

Moreover, where appropriate, we believe that certain types of AIF could qualify as non-complex investment products and thus be made available to retail investors. This could significantly broaden the investor base and market to which certain AIFs are accessible with the benefits that would entail for EU investors and the market at large. Understandably, the AIFs that could qualify as non-complex investment products would have to be carefully defined according to a broad set of criteria that appreciates the variability in terms of experience, knowledge and sophistication among retail investors.

The broad approach outlined above may negate the need for a semi-professional client category and address the regulatory divergence in the treatment of retail investors between Member States under the AIFMD. There is currently a myriad of national rules that govern whether and - if so - how AIFMs can market to retail investors with national requirements often being excessive and overly restrictive such that retail investor participation is effectively curtailed.

Lastly, the AIFM passport should be extended to encompass Article 36 funds and so as to allow for their cross-border marketing and distribution.

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?

(a) Yes
(b) No
(c) Don't know / no opinion / not relevant

If no, how could the investor classification under the AIFMD be improved?

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

Our response

In the interest of consistency – the AIFMD should cross-reference the client categories as defined in MiFID II/MiFIR. We would advise the Commission against introducing specific client categories unique to the AIFMD that would create confusion around client definition by introducing competing client categories dispersed across different pieces of legislation.

More broadly, we note that approaches to investor categories vary in the EuVECA, EuSEF and ELTIF regulations and there would be significant benefits to the client categories contained in different pieces of legislation being aligned with MiFID II/MiFIR. We note that ESMA has already recommended greater convergence in the definition of professional investor and raised the possibility of introducing a semi-professional category of investors.

As highlighted above, the need to introduce a semi-professional category of investor could be negated by allowing a more sophisticated approach to profiling a client and determining the appropriate investment products according to a wider set of criteria, permitting greater flexibility in the suitability assessment and classifying certain AIFs as non-complex products and thus appropriate for retail investors.

Question 22

How can AIFM access to retail investors be improved?

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

Our response

As we suggested in our answer to Question 20, we would favour – as part of the forthcoming work being initiated under the renewed CMU action plan – for the current classification of clients in MiFID II/MiFIR to be of a less rigid and binary nature. As outlined above – AIFM access to retail investors could be expanded by softening the rigidity of MiFID II/MiFIR's binary client categorisation and improving the product governance regime.

Firstly, the binary categorisation of investors into either professional or retail investors is overly simplistic and excludes investors that belong to the retail category – despite them possessing sufficient experience and sophistication – from interacting with a wider range of products and markets.

Similarly, the product governance requirements that are currently applied pursuant to MiFID II/MiFIR prevent the participation of the retail investor segment in dynamic and vibrant markets and reflect an overly restrictive approach to investor protection. This ultimately limits the potential of European capital markets and dampens retail investor involvement. To ameliorate this situation, we believe that the suitability assessment could be enhanced so as to allow a more comprehensive view of a client's financial and investment profile that would then allow a more flexible interpretation of client categories in MiFID II/MiFIR.

Moreover, where appropriate, we believe that certain types of AIF could qualify as non-complex investment products and thus be made available to retail investors. This could significantly broaden the investor base and market to which certain AIFs are accessible with the benefits that would entail for EU investors and the market at large. Understandably, the AIFs that could qualify as non-complex investment products would have to be carefully defined according to a broad set of criteria that appreciates the variability in terms of experience, knowledge and sophistication among retail investors.

Question 23

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

(a) Yes
(b) No
(c) Don't know / no opinion / not relevant

If yes, what are the requirements that should be imposed on such AIFs?

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

Our response
By amending the client categorisation and enhancing the product governance regime in MiFID II/MiFIR – the marketing of AIFs to retail investors could be dramatically improved. This would negate the need to dramatically alter the AIFMD passport provided sophisticated retail investors were eligible to engage with the AIF market.

Question 31
Does the lack of the depositary passport inhibit efficient functioning of the EU AIF market? (a) Yes (b) No (c) Don't know / no opinion / not relevant Please explain your answer to question 31:
Our response
We believe that the lack of a depositary passport hampers the efficient functioning of the EU AIF market. The rules prescribed for the depositary regime in the current AIFMD limit freedom to provide services and prevent the completion of an internal market for the asset management industry. **This has been recognised by the Commission in the report on the application and scope of the AIFMD published in June 2020. The report notes that the lack of a depositary passport is not consistent with the principles of the single market. In addition, the limited**

choice of service providers in smaller markets leads to concerns over concentration risk where a single depositary could hold the assets of all AIFs established in a Member State. **Moreover, paradoxically the same credit institutions and investment firms that act as depositaries enjoy the benefits of passporting in relation to a wide variety of services except for depositary functions. This is at variance with the general commitment to enhance the freedom to provide services throughout the internal market in the EU.**

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:
Our response
In terms of financial stability, the establishment of a depositary passport could mitigate the concentration and systemic risks that the current regime creates at national level. In particular - concentration risk is a significant issue in smaller jurisdictions where domestic depositaries become dominant in the local market. **From the perspective of investment funds, a depositary passport would enhance competition and choice of service providers resulting in a more efficient market.**

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:
Our response
The principal barriers to the depositary passport is a myriad of divergent national laws on securities and fund accounting rules that severely hamper the introduction of a depository passport at EU level. Moreover, there are legislative obstacles in existing EU legislation – such as the current AIFMD framework – which explicitly restricts access to depositaries located in jurisdictions other than that in which an AIF is domiciled.

Question 40
Are the AIFMD rules on valuation appropriate? (a) Yes (b) No (c) Don't know / no opinion / not relevant Please explain your answer to question 40, presenting benefits and disadvantages of the potential changes as well as costs;
Our response

We regard the rules on valuation contained in the AIFMD to be appropriate, clear and sufficient in their current form.

Article 19 of the AIFMD, supplemented by Commission Delegated Regulation (EU) No 231/2013, sets out clear and unambiguous requirements for the proper valuation of assets belonging to an AIF, including the calculation of the net asset value per unit or per share of the AIF which must be disclosed to the investor as per Article 19(3).

The requirements also differentiate between open-ended and closed-ended AIF structures so as to ensure that rules on valuation are calibrated appropriately for different fund types.

Accordingly, overall, we believe that the rules on valuation are appropriate, clear and sufficient with one notable exception. Article 19(4) stipulates that AIFMs ensure that the valuation function is either performed by; (a) an external valuer, being a legal or natural person independent from the AIF, the AIFM and any other persons with close links to the AIF or the AIFM, or (b) the AIFM itself, provided that the valuation task is functionally independent from the portfolio management and other functions.

Our members would support replacing this binary choice between an external or internal valuer and the introduction of greater flexibility that would allow delegation to a valuer belonging to the same group as the AIFM. The status of such intragroup delegation is ambiguous in the existing framework and we would advocate for clear provisions that enable intragroup delegation of valuation functions.

Question 41

Should the AIFMD legal framework be improved further given the experience with asset valuation during the recent pandemic

(a) Yes
(b) No
(c) Don’t know / no opinion / not relevant

Please explain your answer to question 41, presenting benefits and disadvantages of the potential changes as well as costs;

Our response
We do not believe that the experience with asset valuation during the recent pandemic reveals the need for any radical changes to the rules on valuation. Overall, we consider the valuation rules in place to have facilitated a better understanding of the period of market volatility experienced in March on asset valuations.

Question 42
Are the AIFMD rules on valuation clear? (a) Yes (b) No (c) Don't know / no opinion / not relevant Please explain your answer to question 42:
Our response
Consistent with our response to Q40, we regard the rules on valuation contained in the AIFMD to be appropriate, clear and sufficient in their current form. **Article 19 of the AIFMD, supplemented by Commission Delegated Regulation (EU) No 231/2013, sets out clear and unambiguous requirements for the proper valuation of assets belonging to an AIF, including the calculation of the net asset value per unit or per share of the AIF which must be disclosed to the investor as per Article 19(3).**

The requirements also differentiate between open-ended and closed-ended AIF structures so as to ensure that rules on valuation are calibrated appropriately for different fund types.

Accordingly, overall, we believe that the rules on valuation are appropriate, clear and sufficient with one notable exception. Article 19(4) stipulates that AIFMs ensure that the valuation function is either performed by; (a) an external valuer, being a legal or natural person independent from the AIF, the AIFM and any other persons with close links to the AIF or the AIFM, or (b) the AIFM itself, provided that the valuation task is functionally independent from the portfolio management and other functions.

Our members would support replacing this binary choice between an external or internal valuer and the introduction of greater flexibility that would allow delegation to a valuer belonging to the same group as the AIFM. The status of such intragroup delegation is ambiguous in the existing framework and we would advocate for clear provisions that enable intragroup delegation of valuation functions.

Question 43

Are the AIFMD rules on valuation sufficient?

(a) Yes
(b) No
(c) Don't know / no opinion / not relevant

Please explain your answer to question 43, explain what rules on valuation are desirable to be included in the AIFMD legal framework:

Our response

Consistent with our response to Q40 & Q42, we regard the rules on valuation contained in the AIFMD to be appropriate, clear and sufficient in their current form.

Article 19 of the AIFMD, supplemented by Commission Delegated Regulation (EU) No 231/2013, sets out clear and unambiguous requirements for the proper valuation of assets belonging to an AIF, including the calculation of the net asset value per unit or per share of the AIF which must be disclosed to the investor as per Article 19(3).

The requirements also differentiate between open-ended and closed-ended AIF structures so as to ensure that rules on valuation are calibrated appropriately for different fund types.

Accordingly, overall, we believe that the rules on valuation are appropriate, clear and sufficient with one notable exception. Article 19(4) stipulates that AIFMs ensure that the valuation function is either performed by; (a) an external valuer, being a legal or natural person independent from the AIF, the AIFM and any other persons with close links to the AIF or the AIFM, or (b) the AIFM itself, provided that the valuation task is functionally independent from the portfolio management and other functions.

Our members would support replacing this binary choice between an external or internal valuer and the introduction of greater flexibility that would allow delegation to a valuer belonging to the same group as the AIFM. The status of such intragroup delegation is ambiguous in the existing framework and we would advocate for clear provisions that enable intragroup delegation of valuation functions.

Question 44

Do you consider that it should be possible in the asset valuation process to combine input from internal and external valuers?

(a) Yes
(b) No
(c) Don't know / no opinion / not relevant

Please substantiate your answer to question 44, also in terms of benefits, disadvantages and costs:

Our response
We are in favour of enabling the asset valuation process to combine input from internal and external valuers in a manner that enhances the robustness and reliability of valuations. **Article 19(4) stipulates that AIFMs ensure that the valuation function is either performed by; (a) an external valuer, being a legal or natural person independent from the AIF, the AIFM and any other persons with close links to the AIF or the AIFM, or (b) the AIFM itself, provided that the valuation task is functionally independent from the portfolio management and other functions.** **We would support the introduction of greater flexibility into the existing requirements whereby input from both internal and external valuers could be combined. This would allow input from more than one source to be compared and reconciled in a manner that improves the reliability of the asset valuation process.**

Question 47
Which elements of the AIFMD regulatory framework support the competitiveness of the EU AIF industry? Please explain providing concrete examples and referring to data where available:
Our response
The AIFMD has enabled the cross-border marketing and distribution of AIFs across the EU. This has allowed investors to diversify their investments, spread risk and receive wider geographical exposure. The AIFM passport has been fundamental to creating a single market for AIFs in the EU and a unified EU AIF industry.

However, access by retail investors to AIF has remained limited. This is partially due to goldplating on the part of Member States and the introduction of prohibitively stringent investor protection requirements in relation to retail investors.

This diminishes the potential of the EU market substantially by precluding a large segment of potential investors thereby limiting the scale that the EU AIF sector can achieve. As outlined in our response to Q20 - the extent of investor access could be expanded by adopting a more flexible approach to the binary client categorisation contained in MiFID II/MiFIR and refining the product governance requirements so as to allow for a more sophisticated treatment of highly variable retail investor profiles. Firstly, the binary categorisation of investors into either professional or retail investors is overly simplistic and excludes investors that belong to the retail category - while possessing sufficient experience and sophistication – from participating with a wider range of products and markets.

Furthermore, the product governance requirements that are currently applied effectively preclude the participation of the retail investor segment in dynamic and vibrant markets and reflect an overly restrictive approach to investor protection. This ultimately limits the potential of European capital markets and dampens retail investor involvement. To ameliorate this situation, we believe that the suitability assessment could be enhanced so as to allow a more comprehensive view of a client's appropriate financial and investment profile that would then allow a more flexible interpretation of client categories in MiFID II/MiFIR.

Moreover, where appropriate, we believe that certain types of AIF could qualify as non-complex investment products and thus be made available to retail investors. This could significantly broaden the investor base and market to which certain AIFs are accessible with the benefits that would entail for EU investors and the market at large. Understandably, the AIFs that could qualify as non-complex investment products would have to be carefully defined according to a broad set of criteria that appreciates the variability in terms of experience, knowledge and sophistication among retail investors.

The broad approach outlined above may negate the need for a semi-professional client category and address the regulatory divergence in the treatment of retail investors between Member States under the AIFMD. There is currently a myriad of national rules that govern whether and - if so - how AIFMs can market to retail investors with national requirements often being excessive and overly restrictive such that retail investor participation is effectively curtailed.

Question 49
Do you believe that national private placement regimes create an uneven playing field between EU and non-EU AIFMs? (a) Yes (b) No (c) Don’t know / no opinion / not relevant If you believe there is an uneven playing field between EU and non-EU AIFMs, which action would you suggest to address the issue? Please explain your choice, presenting benefits and disadvantages of the potential changes to the AIFMD as well as potential costs associated with your preferred option:
Our response
We do not believe that national private placement regimes (NPPRs) create an uneven playing field between EU and non-EU AIFMs. The experience of our members clearly illustrates that a combination of domestic regulation applicable directly to the non-EU AIFM in their home jurisdiction and the requirements imposed by EU competent authorities presiding over NPPRs ensure that non-EU AIFMs do not derive an unfair competitive advantage vis-a-vis their EU counterparts. **Moreover, we would highlight that NPPRs dramatically broaden the investment horizons of EU investors and constitute one of the primary means by which EU investors engage with global investment managers and non-EU AIFs. The NPPR regime is fundamental to enabling market access for non-EU AIFs in the EU and offer EU investors considerable benefits - adding to the vibrancy of the EU’s AIF market.** **Accordingly - even with the activation of the third-country passport – we favour the preservation of NPPRs which can be tailored at the discretion of the presiding NCA so as to reflect the nature of their investor base and financial market. We also note that NPPRs are used almost exclusively by professional EU investors. According to data from ESMA released in 2020, 98% of AIFs marketed in the EU under NPPRs are distributed to professional investors. We believe that the removal or phase-out of NPPRs**

would result in substantial market disruption and restrict the choices available to EU investors by effectively excluding non-EU AIFMs from accessing the EU market. This would limit competition in a manner that may ultimately undermine the appeal of the EU AIF market as well as limit investor choice.

Question 50

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

(a) Yes
(b) No
(c) Don't know / no opinion / not relevant

Please explain your answer to question 50:

Our response

We believe that existing delegation rules are sufficiently clear to prevent the creation of letter-box entities in the EU. Article 20 of the AIFMD is explicit that AIFMs are not permitted to delegate functions to the extent that the AIFM may no longer be regarded as the manager of the AIF – becoming in effect a letter-box entity.

In addition, Articles 75 to 82 of the AIFMR elaborate how the rules applicable to delegation and substance function. Article 82 provides a clear definition of letter-box entity and the conditions under which an AIFM is no longer considered to be managing an AIF. ESMA has further supplemented these unambiguous Level 1 requirements with Q&As clarifying the requirements of the AIFMD that provide additional guidance on the proper application of delegation rules and provisions relating to letter-box entities.

These EU requirements are also supplemented at national level with further instructions from NCAs on the application of delegation and substance requirements relating directly to concern over letter-box entities. For instance, Chapter 6 of the CSSF

Circular 18/698 provides detailed instructions on the operation of the delegation framework pursuant to AIFMD as well as specifying minimum substance requirements.

Existing requirements on delegation clearly stipulate that AIFMs must notify the relevant NCA of their intention to delegate certain functions, including portfolio management, risk management, fund administration and/or valuation activities. In Luxembourg the CSSF requires that the delegating AIFM provide a list of delegates used for the purposes of collective portfolio management on an annual basis. The CSSF also demands that the AIFM provide information on the procedures for monitoring the activities of delegates. The CSSF is empowered to request an AIFM's documentation regarding the due diligence conducted in relation to delegation at any time and AIFMs must notify the supervisor in the event there is a change of delegate.

Accordingly, we believe that existing requirements are sufficiently clear to prevent the creation of letter-box entities. They also clearly enable NCAs to exercise proper oversight of an AIFM's delegation arrangements as well as the ability to monitor compliance and enforce the rules effectively.

More generally, we highlight that the delegation regime has played a key role in the success of the AIFMD and has fundamentally influenced how the AIF sector is structured and how AIFMs conduct their business. Recently, we were alarmed to see the radical changes envisaged to the AIFMD on the part of ESMA – outlined in the form of recommendations to the Commission in a letter dated 18 August 2020.

We harbour significant concerns over the ESMA recommendations in relation to delegation and substance requirements. The substantial reform of the delegation regime proposed by ESMA would compromise a core element of the existing AIFMD and severely impair the functioning of the EU's asset management sector.

Moreover, there does not appear to be a justifiable basis to warrant changes to the delegation and substance requirements. As outlined above, the existing rules in relation to substance requirements are clear and unambiguous with little to suggest non-compliance on the part of AIFMs.

Question 51
Are the delegation rules under the AIFMD/AIFMR appropriate to ensure effective risk management? (a) Yes (b) No (c) Don't know / no opinion / not relevant Please explain your answer to question 51, presenting benefits and disadvantages of the current rules and where available providing concrete examples substantiating your answer:
Our response
We believe that the current AIFMD/AIFMR rules applicable to delegation (and sub-delegation) of AIFM functions ensure effective risk management. Existing requirements enable AIFMs to exercise proper oversight over delegation arrangements and carefully manage risks that may arise therefrom. **The AIFMD clearly outlines the conditions under which AIFMs may delegate functions, as well as the criteria determining the eligibility of delegates and sub-delegates to which functions may be outsourced. As stipulated by current rules, AIFM due diligence must ensure that the delegate has adequate resources, expertise and experience to conduct the functions entrusted to it and the delegate must have proper operational risk controls in place as well as sufficient financial resources and the appropriate supervisory status.** **Where delegation of any AIFM function concerns risk management – it may only be entrusted to entities which are authorised for the purpose of asset management and subject to appropriate supervision or prior approval by the NCA of the AIFM's home Member State. Moreover, where the delegation of any AIFM function concerns risk management and is conferred on a third-country undertaking, it can only occur provided there is a cooperation agreement between the NCA of the AIFM's home Member State and the third-country delegate's relevant supervisory authority.**

Furthermore, AIFMs must ensure that appropriate contractual arrangements are in place with delegates. Not only must the contract detail the tasks and activities which are delegated but the delegate must comply with all applicable EU investment management legislation. Importantly, the AIFM's liability towards the AIF and its investors is not diluted by the delegation arrangements.

Accordingly, we support the Commission's January 2019 assessment that *"the AIFMD delegation provisions have imposed effective controls on the activity of delegating AIFM functions, thereby limiting and managing key operational risks for AIFs and AIF investors, and have done so in an efficient manner."*

We would also echo the Commission's June 2020 report which stated *that "overall, it can be concluded that the AIFMD rules regarding delegation arrangements are proportionate within the imposed limitations"* and that *"the provided safeguards in place to respond to supervisory and competitive concerns are deemed to equip supervisory authorities with a relevant toolkit."*

Moreover, when considering the efficacy of the rules governing the delegation of AIFM functions for the purposes of risk management, it is essential to consider the wider range of risk management rules with which AIFMs must comply, both in respect of the AIFM itself and AIFs under management. The AIFMD elaborate these rules in granular detail as follows:

- **As regards risk management rules for AIFMs – Article 15 of the AIFMD (as well as other provisions relating to minimum capital, conflicts of interest, remuneration and organisational requirements) and AIFMR Articles 38-43 and 45 (as well as other provisions relating to conflicts of interest, remuneration and organisational requirements) elaborate a detailed framework within which an AIFM must operate and manage risk.**

- **As regards risk management rules for AIFs under management – Article 15 of the AIFMD (as well as other provisions relating to liquidity management, valuation, investment in securitisation positions and transparency) and AIFMR Articles 44, 46-49, 50-53 and 67-74 (as well as other provisions relating to transparency) set out in granular detail the framework within which an AIF must be managed for risk purposes.**

As such, when viewed holistically, we believe that the risk management framework contained in the AIFMD is appropriately calibrated and robust so as to ensure the effective risk management of AIFMs and AIFs under management. In addition, we would also suggest that, consistent with our response to Q50, NCAs have full visibility of an AIFM's delegated activities, as well as an

adequate supervisory toolkit to monitor compliance and enforce the rules relating to the delegation of function as intended in the AIFMD.

Accordingly, we do not believe that the introduction of additional substance requirements or reform of the delegation rules would contribute to more effective risk management. Supplementing the existing rules would also appear disproportionate to the severity of the problem that is perceived to exist.

Question 52

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

(a) Yes
(b) No
(c) Don't know / no opinion / not relevant

Should the delegation rules be complemented with;

1. Quantitative criteria
2. A list of core or critical functions that would always be performed internally and may not be delegated to third parties
3. Other requirements

Please explain why you think the AIFMD/AIFMR delegation rules should be complemented with quantitative criteria, presenting benefits and disadvantages of the potential changes as well as costs:

Our response

We believe that the rules which apply to the delegation of AIFM functions are sufficiently clear to establish the conditions under which an AIFM would no longer be considered to be managing an AIF, as well as the safeguards which have been established to prevent such a scenario from arising.

Accordingly, we do not believe that AIFMR Article 82 should be complemented by any quantitative criteria, list of core or critical functions that would always be performed internally and may not be delegated to third parties, or any other such requirements.

Moreover, it is worth reiterating that the relevant provisions of the AIFMD and AIFMR which refer to the delegation of AIFM functions are already complemented by national rules and guidance provided by NCAs in relation to substance with which AIFMs must comply.

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?

(d) Yes
(e) No
(f) Don’t know / no opinion / not relevant

Please explain your answer to question 53:

Our response

Our membership includes global asset managers that operate on a cross-border basis both within the EU and beyond. Accordingly, we are strong proponent of regulatory coherence and consistent supervision across jurisdictions. As such, we support the consistent application and enforcement of regulatory standards so as to ensure that regulatory arbitrage is avoided, and high levels of investor

protection are maintained in the provision of services on a cross-border basis. We are therefore supportive of the existing provisions within the AIFMD that require the standards of the AIFMD to apply where AIFM functions are delegated to a third-party, regardless of the location of that third-party.

As outlined in our response to Q51, the AIFMD framework establishes the criteria which must be satisfied by delegates and sub-delegates in order to be contracted for the provision of any delegated functions. These requirements are key to preventing regulatory arbitrage and ensuring adequate investor protection. We therefore support the fact that they are supplemented by requirements in both Chapter 6 of the CSSF Circular 18/698 and the Central Bank of Ireland (CBI) Fund Management Companies Guidance that contracts pertaining to the delegation of AIFM functions must include provisions to ensure that delegates, regardless of location, carry out the functions delegated to them in a manner which complies with the AIFMD framework.

Moreover, AIFMR Article 79(a) ensures that delegation arrangements must allow for access to the delegate (i.e. access to data related to the delegated function(s) and to the business premises) by the AIFM, its auditors and the relevant NCA, therefore allowing for effective ongoing monitoring and supervision of delegated functions and their compliance with the EU AIFMD framework.

That being said - we are alarmed by the prospect of the AIFMD being applied to non-EU AIFMs extraterritorially as suggested by Q53. We would highlight that such a move would create overlapping, conflicting and duplicative legal requirements for non-EU AIFMs rendering it virtually impossible to comply with the regulation applicable in their home jurisdiction and the AIFMD if directly applicable concurrently. If such a scenario were to arise – it would be legally untenable for non-EU AIFMs to remain active in the EU's AIF market and would likely lead to their withdrawal. Clearly, this would be detrimental not only to non-EU AIFMs but also EU investors – leaving them with diminished investment horizons and limited opportunity to diversify their assets and receive wider geographical exposure. Accordingly, we implore the Commission to uphold the principle of deference towards non-EU regulatory authorities and avoid restricting market access in a manner that could be emulated elsewhere.

To provide concrete examples of where this might occur - the Mutual Recognition of Funds between Mainland China and Hong Kong ("MRF") is a major access route for global fund managers to investors in Mainland China. However, under the MRF, only Hong Kong domiciled funds qualify, and the management of such funds may not be delegated to a party outside Hong Kong (although allowed under certain specific bilateral Mutual Recognition of Funds arrangements). In order to broaden the choice of Hong Kong domiciled funds available to Mainland investors, AAMG has advocated since the launch of the MRF in 2015 that delegation of investment management of such funds to fund management companies outside Hong Kong be allowed. As AAMG's proposal continues to be under consideration by Hong Kong and Mainland Chinese regulators, we are deeply concerned that any

attempt to restrict delegation by EU fund management entities to overseas entities (such as Asia-based entities) would derail these considerations which we have been working hard on for years.

In addition, with the announcement in June 2020 of the launch of a Wealth Management Connect in the Greater Bay Area (which comprises of nine cities in China's Guangdong Province, Hong Kong and Macau), we expect that the wealth management products allowed to be sold under this scheme will also have to be locally domiciled, at least initially. The ability for Hong Kong fund managers to delegate investment management of their products to European fund management companies, for example, would broaden the choice of products that they can offer investors across the border.

Question 54

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

(a) Yes
(b) No
(c) Don't know / no opinion / not relevant

Please explain your answer to question 54, presenting benefits and disadvantages of the current rules and where available providing concrete examples substantiating your answer:

Our response

We believe that the regulatory and supervisory framework as it pertains to the delegation of AIFM functions set out under the AIFMD is sufficiently robust, fit for purpose and central to the success of the EU's AIF industry globally.

Moreover, we acknowledge the efforts of local NCAs in delivering effective supervisory guidance to support AIFMs in ensuring compliance with the EU framework and welcome continuing efforts to improve the functioning of the overall regime such as the CBI's recent Thematic Review of Fund Management Companies Guidance. We agree with the CBI's October 2020 assessment *"that when applied correctly by firms, the rules and guidance provide a framework of robust governance and oversight arrangements."* Equally, we acknowledge the Commission's statement from June 2020 that *"the effectiveness of the rules on delegation is bound to rest entirely on their diligent enforcement by the supervisory authorities."*

In that regard, we also note that the August 2020 ESMA letter to the Commission did not highlight or provide any evidence of enforcement issues relating to firms' compliance with, or EU NCAs' supervision of, rules relating to delegation (either under the AIFMD or UCITS Directive.)

However, appreciating that best practice in the supervision and oversight of the delegation of AIFM functions continues to evolve and in order to ensure that enforcement of the delegation rules throughout the EU is consistent and continues to be robust going forward, EU authorities may wish to consider how best to share supervisory best practices among NCAs, such as through the ESMA peer review process.

Question 55
Which elements of the AIFMR delegation rules could be applied to UCITS? Please explain your position, presenting benefits and disadvantages of the potential change as well as costs:
Our response
We are deeply concerned at the prospect of a harmonisation or convergence between the delegation rules of the AIFM and UCITS frameworks – particularly in a context in which the Commission appears to be contemplating imposing limitations on the extent of delegation permissible under the AIFMD. **While we strongly advise the Commission against drastic changes to the AIFMD delegation regime in general – further prescribing the AIFMD's delegation regime while harmonising it with the UCITS framework would have considerable detrimental effects for the UCITS market.**

Question 56
Should the AIFMD framework be further enhanced for more effectively addressing macroprudential concerns? (a) Yes (b) No (c) Don't know / no opinion / not relevant If yes, which of the following amendments to the AIFMD legal framework would you suggest? 1. Improving supervisory reporting requirements **2. Harmonising the availability of liquidity risk management tools for AIFMs across the EU** 3. Further detailing cooperation of the NCAs in case of activating liquidity risk management tools, in particular in situations with cross-border implications. 4. Further clarifying the grounds for supervisory intervention when applying macroprudential tools 5. Defining an inherently liquid/illiquid asset 6. Granting ESMA strong and binding coordination powers in market stress situations 7. Other Please explain why you would suggest any of the above:
Our response
Experience during the recent period of market stress in March has demonstrated that the AIFMD's existing macroprudential framework is functioning well and – in the overwhelming majority of cases – is adequate to enable robust supervision and to allay financial stability concerns. **The existing supervisory reporting obligations already enable macroprudential oversight to a great extent with ESMA and NCAs receiving sufficient information to effectively identify and monitor risks and provide detail statistical information on the AIF sector in the EU. For instance, ESMA is already in a position to identify potential risks arising due to leverage and liquidity.**

In addition, we would be in favour of harmonising the availability of liquidity risk management tools for AIFMs across the EU. In order for the use of liquidity management tools to be viable – clear and simple requirements could be outlined that would govern the use of liquidity management tools. Equally essential to the effective use of liquidity management tools will be reliable arrangements governing cooperation between NCAs and clarifying the grounds for supervisory intervention during episodes of market volatility.

Question 59

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

Yes
No
Don't know / no opinion / not relevant

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

Our response

We believe that AIFMs should report the activation of liquidity risk management tools to the relevant supervisory authority as a means to facilitate robust supervision and market monitoring during episodes of market volatility. In addition, we would have a distinct preference for periodic reporting on the activation of liquidity management tools as opposed to an ad-hoc reporting framework so that existing internal reporting processes could be deployed.

Question 61
Are the supervisory reporting requirements as provided in the AIFMD and AIFMR's annex IV appropriate? Fully agree Somewhat agree Neutral Somewhat disagree Fully disagree Don't know / no opinion / not relevant Please explain your answer to question 61:
Our response
We believe that the supervisory reporting requirements for the marketing of AIFs in Member States other than the home Member State of the AIFM are appropriate. **Annex IV already contains sufficient documentation and information requirements to be provided to the host Member State NCA to allow marketing by an AIFM based in another EU jurisdiction.**

Question 62
Should the AIFMR supervisory reporting template provide a more comprehensive portfolio breakdown? Yes No Don't know / no opinion / not relevant If yes, the more detailed portfolio reporting should be achieved by: 1. A full portfolio reporting by relevant identifier as provided for statistical purposes 2. A more granular geographical breakdown of exposures (e.g. at country level) by asset classes, investors, counterparties, and sponsorship arrangements; 3. Requiring more details on leverage 4. Requiring more details on liquidity 5. Requiring more details on sustainability-related information, e.g. risk exposure and/or impacts 6. Other Please explain your suggestions above:
Our response
Our members understand the appeal of more detailed and granular information being available on the exact composition of AIF investment portfolios and their exposures. The AIFMR reporting template provides for a granular breakdown of AIFs and contains the information necessary to enable robust supervision, market monitoring and risk analysis.

Moreover, from a practical standpoint, the composition of portfolios can be highly dynamic with rapid turnover of assets. This would render supervisory reporting on comprehensive portfolio breakdown an onerous and labour-intensive process depending on how frequently such portfolio breakdowns would be required.

More broadly, we believe that the AIFMD's existing disclosure requirements already enable NCAs and ESMA to either request or extrapolate this information. Articles 22 & 24 of AIFMD ensure that much of the information sought by the Commission is already either publicly available in the form of annual reports published by AIFMs for each of the AIFs they market in the EU or is reported directly to NCAs pursuant to Article 24.

Article 24 requires AIFMs to provide their home Member State NCA with information on the main instruments in which they are trading, on the markets of which they are a member or where they actively trade, and on the principal exposures and most important concentrations of each of the AIFMs they manage. Additionally, as stipulated by Article 24(2), AIFMs must report the percentage of each AIF's assets which are subject to special arrangements arising due to their illiquid nature, any new arrangements for managing liquidity of the AIF, the current risk profile of the AIF and risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and operational risk, information on the main categories of assets in which the AIF is invested; and, the results of the stress tests performed in accordance with point (b) of Article 15(3) and the second subparagraph of Article 16(1).

Moreover, in cases where an AIFM manages AIFs employing leverage "on a substantial basis", the AIFM is required to report on the overall level of leverage employed by each AIF it manages to its home Member State NCA.

Article 24(5) further enables home Member State NCAs to require information in addition to that stipulated in Article 24 on a periodic and/or ad-hoc basis. Article 24(5) also empowers ESMA to introduce additional reporting requirements in exceptional circumstances.

Accordingly, we believe that current supervisory reporting requirements are sufficient as they apply to AIFMs. Any inadequacies or deficiencies related to existing supervisory reporting may stem from imperfect arrangements for information sharing among competent authorities.

Question 63
Should the identification of an AIF with a LEI identifier be mandatory? Yes No Don’t know / no opinion / not relevant Please explain your answer to question 63, presenting benefits and disadvantages as well as costs associated with introducing such a requirement:
Our response
We believe that supervisory reporting, market monitoring and supervision would be facilitated by each AIF being identifiable by its own dedicated LEI.

Question 67
Should the supervisory reporting by AIFMs be submitted to a single central authority? Yes No Don't know / no opinion / not relevant If yes, which one: 1. ESMA 2. Other options Please explain your choice, particularly substantiating 'other options', and provide information, where available, on the benefits, disadvantages and costs of implementing each proposition:
Our response
We believe that information sharing between relevant competent authorities should be enhanced so as to maximise the utility of the information provided by AIFMs pursuant to their supervisory reporting requirements. **As detailed in our response to Q62 – existing supervisory reporting requirements stipulate that the home Member State NCA of an AIFM should be the primary recipient of the information required.**

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? Yes No Don't know / no opinion / not relevant If yes, please specify which one: 1. ESRB 2. ECB 3. NCBs 4. National macro-prudential authorities 5. Other Please specify to which other relevant national and/or EU institutions the access to the AIFMD supervisory reporting data should be granted:
Our response
We believe that financial supervision would be enhanced if supervisory reporting data were shared between relevant national and EU authorities with responsibility for financial stability. **However, the obligation to report this data to multiple different supervisory authorities should not be imposed on AIFMs. Instead, we believe strongly that supervisory authorities at both EU and national level should enhance their information sharing capacity in order to maximise the utility of supervisory data already furnished by AIFMs pursuant to Articles 22 & 24 of AIFMD.**

Question 69
Does the AIFMR template effectively capture links between financial institutions? Yes No Don't know / no opinion / not relevant If not, what additional reporting should be required to better capture inter-linkages between AIFMs and other financial intermediaries? Please provide your suggestion(s) providing information on the costs, benefits and disadvantages of each additional reporting:
Our response
The AIFMR template provides for AIFMs to report the results of stress tests conducted in accordance with point (b) of Article 15(3) of the AIFMD. The reporting of these results in the existing AIFMR template captures the links between financial institutions through disclosure of the type and value of borrowings of cash or securities and the five largest sources of borrowed cash or securities. This enables NCAs to conduct an analysis of the interlinkages that develop between AIFMs and other financial intermediaries.

Question 70
Should the fund classification under the AIFMR supervisory reporting template be improved to better identify the type of AIF? Yes No Don't know / no opinion / not relevant If yes, the AIF classification could be improved by: 1. Permitting multiple choice of investment strategies in the AIFMR template? 2. Adding additional investment strategies? 3. Other? 4. It cannot be improved, however, if a portfolio breakdown is provided to the supervisors this can be inferred? Please explain your answer;
Our response
We note that a high proportion of AIFs are classified as 'other' account for 61% of NAV of EU AIFs. The category of 'other' could be refined so as offer more insight into the investment strategies employed by AIFs classified as such. We note that ESMA has already determined that 67% of the NAV associated with 'other' AIFs belongs to funds with fixed income and equity strategies.

Question 71

What additional data fields should be added to the AIFMR supervisory reporting template capturing risks to financial stability:

1. Value at Risk (VaR)?
2. Additional details used for calculating leverage?
3. Additional details on the liquidity profile of the fund's portfolio?
4. Details on initial margin and variation margin?
5. The geographical focus expressed in monetary values?
6. The extent of hedging through long/short positions by an AIFM/AIF expressed as a percentage?
7. Liquidity risk management tools that are available to AIFMs?
8. 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?
9. The role of external credit ratings in investment mandates?
10. LEIs of all counterparties to provide detail on exposures?
11. Sustainability-related data, in particular on exposure to climate and environmental risks, including physical and transition risks (e.g. shares of assets for sustainability risks are assessed; types and magnitudes of risks: forward-looking, scenario-based data)?
12. Other

Please explain your answer;

Our response

As outlined earlier in our response, existing supervisory reporting requirements in general, and the AIFMR template in particular, are adequate to enable NCAs to conduct robust supervision, market monitoring and risk analysis in their current iteration.

Many of the information proposed in the form of additional data fields are either already contained in the AIFMR template or could be extrapolated on the basis of the information reported by AIFMs pursuant to their supervisory reporting requirement.

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? Please explain your answer presenting the costs, benefits and disadvantages of implementing the suggestions:
Our response
We would caution the Commission against prescribing the information that AIFMs should be required to disclose during exceptional circumstances – as allowed for under Article 24(5) of the AIFMD. **NCAs and ESMA should be granted discretion to determine the most pertinent and relevant information based on the prevailing circumstances that may require additional information to be sought from AIFMs on an ad-hoc basis.**

Question 79
Are the leverage calculation methods – gross and commitment – as provided in AIFMR appropriate? Fully agree Somewhat agree Neutral Somewhat disagree Fully disagree Don't know / no opinion / not relevant Please explain your answer to question 79 in terms of the costs, benefits and disadvantages:
Our response
SIFMA AMG believes that there is no optimal or ideal single measure for calculating leverage. Accordingly, NCAs should be mindful of the limitations of various leverage calculation methods when assessing levearge. That being said, SIFMA AMG believes that the gross and commitment methods for calculating leverage are not appropriate. There are unavoidable limitations to the application of the gross and commitment calculation methods across a wide range of portfolios with different investment strategies and risk exposures associated with their underlying assets that make them inapproriate for use by regulators in understanding potential leverage-related risk. Our primary concern with these measures is that they both rely on a single aggregate number that may ultimately give a misleading picture of fund risk. Aggregating exposures in this way may both overstate and understate risk in certain funds based on its failure to account for the vastly different risks of underlying assets. We believe that a much better approach would be to align the AIFMD with the work that IOSCO has done on leverage measures, which recommends leverage assessments broken down on an asset class-by-asset class and long/short basis. This approach would allow regulators to gain a much better understanding of the use of leverage by AIFs as compared to the current gross and commitment calculation methods. **We also concur with the Commission recognition of the limitations inherent to the AIFMR commitment approach that arise due to the complexity of its netting rules which rely to some extent on subjective measurements of hedges or offsetting positions. Moreover, the prescribed calculation methodologies do not always align with industry practice in some segments – such as closed-**

ended funds and private equity funds and lack the necessary metrics to provide an accurate reflection of leverage-related risks in these areas.

Accordingly, SIFMA AMG suggests that the Commission's explicitly adopt the IOSCO two-step approach to assessing leverage in investment funds, including leverage measures broken down on an asset class-by-asset class and long/short basis.

Question 81
What is your assessment of the two-step approach as suggested by 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 and benefits and disadvantages of implementing the IOSCO approach:
Our response
SIFMA AMG is supportive of the two-step approach developed by IOSCO for assessing leverage in investment funds. The IOSCO approach would introduce a more proportionate and risk-sensitive approach to the calculation of leverage and associated risk monitoring. **Step 1 of the IOSCO approach would provide a measure of leverage broken down on an asset class-by-asset class and long/short basis, which would identify those funds that may pose risks to financial stability and may require further risk analysis. We believe that this approach – rather than utilizing a single aggregate measure of exposure – will allow regulators to appropriately analyse potential risks posed by the use of leverage and that any effort to broadly align with the IOSCO two-step approach without also utilizing IOSCO's recommended approach to leverage measures would be deficient.**

Step 2 provides a list of indicators and risk-based measures for supervisory authorities to consider during their analysis. This ensures a degree of flexibility that allows for a tailored approach to risk assessments on the part of supervisory authorities.

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?

Yes
No
Don't know / no opinion / not relevant

Please substantiate your answer to question 90, also in terms of benefits, disadvantages and costs as well as in terms of available data:

Our response

We believe that the manner in which sustainability risks are disclosed should be at the discretion of the AIFM. Quantitative and/or qualitative are both valid with the latter often being more accessible and meaningful to investors. Accordingly, we would be against prescribing a quantitative approach, especially given the fact that the SFDR allows for qualitative and quantitative disclosures of sustainability risks. Accordingly, it would be prudent to allow for financial market participants to fully implement the requirements under SFDR before amending the rules as they apply to AIFMs.

Question 91
Should investment decision processes of any AIFM integrate the assessment of non-financial materiality, i.e. potential principal adverse sustainability impacts? Yes No Don’t know / no opinion / not relevant 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:
Our response
We believe that the integration of non-financial materiality into the investment decision process should be at the discretion of individual asset owners. **The SFDR requires asset managers to disclose information related to the principal adverse impacts of their investments in aggregate – or at entity level – and for each of the products they offer on the market. The reasons for the disclosure of this information is to enable end-investors to easily identify and consider the adverse impact of their investments on sustainability factors and to take such information into account when determining their choice of investment. Nowhere in the SFDR is it projected that consideration of adverse impacts both principal and/or non-principal would be embedded into the investment decision process nor predetermine its outcome.** **Accordingly, we do not believe it would be appropriate the Commission to impose requirements that predetermine the products that asset managers can offer to investors. Moreover, the SFDR is already proving to be highly challenging to implement with multiple interpretive and practical barriers that render the framework difficult to apply for entities in scope. As outlined in SIFMA AMG’s response to the Joint ESAs’ consultation on ESG disclosures, there is inadequate data provided by corporates and investee companies to render the disclosures mandated by the SFDR practicable. Further compounding the fundamental issue of inadequate**

data is its inconsistent nature due to divergent accounting standards across the EU which undermines the comparability of some of the disclosures.

Mindful of this context, we would strongly advise the Commission against introducing amendments to the SFDR in the AIFMD that will radically alter the scope and nature of its requirements as they apply to AIFMs. AIFMs should be guided by their AIF's investment mandate when making investment decision rather than on the basis of other considerations that could be at variance with the client's best interest or mandate.

Question 92

Should the adverse impacts on sustainability factors be integrated in the quantification of sustainability risks?

Fully agree
Somewhat agree
Neutral
Somewhat disagree
Fully disagree
Don't know / no opinion / not relevant

If you agree, please explain how and at which level the adverse impacts on sustainability factors should be integrated in the quantification of sustainability risks (AIFM or financial product level etc.)

Please explain your answer including concrete proposals, if any, and costs, advantages and disadvantages associated therewith. 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.

Our response

Our members note that there is a distinct risk of concepts such as 'adverse impact on sustainability factors' and 'sustainability risks' being confused with one another or inadequately delineated. Moreover, the potential relationship between sustainability factors and sustainability risks – and how the former might allow for the quantification of the latter – is not clear.

We understand that – according to the definitions contained in the SFDR – a "sustainability risk" is an environmental, social or governance event or condition that, if it were to occur, could cause an actual or a potential material negative impact on the value of an investment. We note that while the SFDR provides a definition of "sustainability factors" as "environmental, social and employee matters, respect for human rights, anti-corruption and anti-bribery matters," the term "adverse impact" is not defined under Article 2. That being the case, we understand the expression "adverse impact on sustainability factors" to refer to the detrimental effects that an investee company's activities imply for environmental, social and governance factors.

The SFDR defined "sustainability risks" as distinct from "adverse impact on sustainability factors," and applies a separate set of obligations for the treatment of each – reflecting their differing nature. In theory, adverse impacts may occasionally reach a point at which they could qualify as sustainability risks however how and when this would be the case is not elaborated by the SFDR. We are deeply concerned that introducing the requirement to integrate adverse impacts in the investment process would expand the scope of the SFDR as applicable to AIFMs through the AIFMD in a manner that would risk undermining the concepts contained in the SFDR or altering them as they apply uniquely to AIFMs. This would be highly inappropriate and would generate further confusion as AIFMs are struggling to implement the SFDR in its current form. Accordingly, the Commission should ensure that adverse impacts and sustainability risks remain clearly distinguishable so as to avoid creating confusion for investors and generating potential conflicts with the majority of client mandates – with the exception of so-called "impact" funds.

To further empahsise the point – we believe that altering the nature of AIFMs ESG-related obligations through the introduction of additional requirements in the AIFMD risks creating considerable confusion by pre-empting the implementation and application of the SFDR as it applies to AIFMs. Moreover, the SFDR has encountered a series of difficulties during implementation such that the application of Level 2 measures has had to be deferred until January 2022. In addition, the Joint ESAs have highlighted a series of interpretive issues in determining the scope of the SFDR and in relation to core concepts such as so-called Article 8 products and Article 9 products. In such a context, we would strongly advise the Commission against altering the SFDR in a manner that may create further confusion with regard to fundamental concepts such as "adverse impacts" and sustainability risks.

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? Yes No No, ESMA's current competences and powers are sufficient Don't know / no opinion / not relevant If so, how should AIFMs be required to take account of the long-term sustainability and social impacts of their investment decisions? Please explain:
Our response
We stress the need to avoid duplicative, conflicting, or potentially misaligned requirements. The inclination towards a maximalist approach by EU policymakers risks becoming counterproductive by creating a myriad of convoluted and interdependent requirements dispersed across multiple pieces of legislation. Existing and pending legislation to promote sustainable finance – namely the EU Taxonomy and the SFDR – are already highly ambitious in scope and are currently encountering difficulties in the implementation phase. At the least – we would advise the Commission to finalise pending legislation applicable to the financial sector as a whole before introducing additional, sector specific requirements for the funds sector. Furthermore, we are highly concerned by the suggestion that sustainability related obligations would be extended beyond disclosures – particularly in instances where fiduciary duty may be perceived as incompatible with sustainability factors. The core function of sustainability-related disclosures is to enable investors to make informed investment decisions on the basis of ESG information. They should not act as a basis to restrict the range of investments that are eligible for investment.

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? Yes No Don't know / no opinion / not relevant Please explain your answer to question 94:
Our response
The role of EU Taxonomy is to provide a guide to both AIFMs and investors in indicating the environmental sustainability of the economic activities with which their investments are associated. The Taxonomy is a largely voluntary tool that financial market participants should be able to apply at their own discretion or at the request of their clients. **We would add that the Taxonomy includes additional mandatory disclosures for so-called Article 8 and Article 9 products as defined by the SFDR. The obligations introduced by the Taxonomy are related to reporting after an investment has been made – the Taxonomy criteria were never envisioned to play a role in the investment process or to predetermine the outcome of that process.** **Accordingly, we believe it would be inappropriate to fundamental extend or alter the scope and nature of the Taxonomy's original purpose and/or requirements as applicable to AIFMs through the AIFMD.**

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? Yes No Don't know / no opinion / not relevant 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:
Our response
We stress the need to avoid duplicative, conflicting or potentially misaligned requirements. The inclination towards a maximalist approach by EU policymakers risks becoming counterproductive by creating a myriad of convoluted and interdependent requirements dispersed across multiple pieces of legislation. Existing and pending legislation to promote sustainable finance – namely the EU Taxonomy, the SFDR and the NFRD – are already highly ambitious in scope and are currently encountering difficulties in the implementation phase. At the least – we would advise the Commission to finalise pending legislation applicable to the financial sector as a whole before introducing additional, sector specific requirements for the funds sector. Furthermore, we are highly concerned by the suggestion that sustainability related obligations would be extended beyond disclosures – particularly in instances where fiduciary duty may be in conflict with sustainability considerations. The core function of sustainability-related disclosures is to enable investors to make informed investment decisions on the basis of ESG information.

Question 96
Should ESMA be granted additional competences and powers beyond those already granted to them under the AIFMD? 1. Entrusting ESMA with authorisation and supervision of all AIFMs? 2. Entrusting ESMA with authorisation and supervision of non-EU AIFMs and AIFs 3. Enhancing ESMA's powers in taking action against individual AIFMs and AIFs where their activities threaten the integrity of the EU financial market or stability of the financial system? 4. Enhance ESMA's powers in getting information about national supervisory practices, including in relation to individual AIFMs and AIFs? 5. No, there is no need to change competences and powers of ESMA? 6. Other? Please explain your answer:
Our response
We do not believe it would be appropriate to grant ESMA direct supervisory powers over the AIFM sector.