



AMIC response to the ESMA consultation paper
Guidelines on Article 25 of Directive 2011/61/EU
1 September 2020

Q1. What are your views on the frequency at which the risk assessments should be performed by NCAs?

We agree with ESMA that NCAs should perform the risk assessment on a quarterly basis, to ensure consistency with Article 110(3) b-c of Commission Regulation 231/2013, through which AIFMs shall provide NCAs with the AIFMD data reporting on a quarterly basis for the leveraged AIFs they manage.

Q2. What are your views on the sample of funds to be included under Step 1? Do you agree in including in the risk assessment not only substantially leveraged funds but also funds not employing leverage on a substantial basis which may pose financial stability risks?

It must be noted, considering all AIFs, that the average leverage observed by ESMA ([EU Alternative Investment Funds - 2019 statistical report](#)) was 1.63 times the NAV, which is well below the maximum amount of leverage authorised under UCITS (2.1 times the NAV) **and that leverage used by AIFs has not posed a threat to financial stability.** Most types of AIFs (funds of funds (1.14x), real estate (1.31x), private equity (1.12x), others (1.37x) have leverage well below this average level; this is to the exception of hedge funds (7.81x).

Therefore, for step 1, we would suggest for NCAs to only focus on funds using leverage on a substantial basis (3 times the NAV) as defined by AIFMD. This would allow capturing for most categories of AIFs funds with “unusually high use of leverage” comparing to their peers as proposed (§13.c) while providing legal certainty to AIFMs regarding their reporting obligations. Including AIFs employing leverage, but not on a substantial basis and whose regulatory assets under management are greater than EUR 500mn, seems disproportionate as this will capture a vast majority of funds which are nationally-regulated UCITS-like funds with a low leverage (if any). Moreover we think there is a clear confusion here between Leverage and Size. Art. 25, as well as IOSCO’s Recommendations, do not provide for mixing the two. More specifically, as already mentioned above, AIFMD Level 1 is very clear in setting the distinction between “substantially leveraged” funds and the other AIFs, and it is only on that higher Leverage criterion that the Level 1 imposes further reporting requirements. To stay in line with the upper legal Level 1 approach and provisions, ESMA should not extend the scope to large funds - which are not referred to at Level 1.

Q3. Do you agree with the proposed leverage and size threshold identified under Step 1? Would you set the same threshold for all AIFs, or would you be in favour of setting different thresholds for different types of AIFs (e.g.: real estate, hedge funds, private equity, etc.) or sub-types of AIFs (please specify) based on a statistical analysis (e.g. percentile)? Should you prefer the latter option, please provide proposals and detailed arguments and justification supporting them

We recommend strictly focusing on AIFs with substantial leverage.

We do not consider it meaningful or achievable to set leverage thresholds by “types” of funds. It is not easy to define clearly homogenous categories. Even within a given category, the actual activity may widely differ from one fund to another. E.g. for real asset funds, there are some important differences between funds investing in infrastructures, in commercial real assets, etc.; e.g. impossible definition of hedge fund. Even funds in the same category and with the same strategy may have different clients or dealing cycle so it is very difficult to assume that they have the same risk profile and same tolerance for leverage.

Q4. Would you identify other relevant transmission channels?

No, we do not identify other relevant transmission channels

Q5. What are your views on using not only leverage indicators, but also other types of indicator such as those indicated under Table 2 of the draft Guidelines? Do you agree with the list of indicators provided?

General comment:

If leverage is not enough to assess the riskiness of a fund from a financial stability perspective and other data such as the fund liquidity profile (liquidity of underlying assets, redemption policy) and the market environment outlook (e.g. liquidity, volatility, performance of relevant asset classes) may be considered, **we believe that the NCAs can already achieve this by using data already being reported in the context of AIFMD (leverage/liquidity), Liquidity Stress Tests guidelines, EMIR and SFTR and that these guidelines should not lead to any further reporting obligation from asset managers.**

Specific comments on indicators:

- **Market footprint on the underlying market:** We believe this indicator based on a “group approach” is misleading and should be removed. Indeed funds may have invested in similar assets but at different times and because they have different unrealized losses or gains, they may sell assets at different times (little implications on prices when selling assets at single fund level, notably given best execution obligations). Also if the weight of their respective position might be important relative to the underlying market, they might vary in relation to their overall portfolio (different behaviours between funds with similar exposures in a fire sale episode).

- **Risk from fire sales:**
 - **Investor concentration:** High level of investor concentration could be a potential risk to assess, but is not a decisive factor from fire sales in itself. The redemption risk may vary according to the type of these five largest investors (e.g. long-term vs short-term), their strategies (e.g. volatility tolerance), and the overall performance of their investments.
 - **Liquidity profile:** We think this indicator is valid. The way fund managers manage redemptions (e.g. use of liquidity management tools such as swing pricing, anti-dilution levies) and the liquidation techniques (slicing vs waterfall) could influence significantly the potential impact on prices and **should also be considered**. Liquidity Stress Testing such as new ESMA requirements for liability testing should also be considered. Likewise the assessment of “Potential liquidity demands resulting from market shock” should take into consideration these mitigation techniques/indicators.
 - **The risks associated with the “share of less liquid assets”:** We suggest removing this indicator. This would already be assessed with the “fund profile” assessment (liquidity buckets). Furthermore we do not think this is relevant to have a separate assessment without considering the liability side and the fund structure.
 - **The “Potential liquidity demands resulting from market shock assessment”:** This indicator is relevant but should rely on data already provided via the Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD (instead of new risk measures as proposed). Under these guidelines *“AIFMs should divide the NAV of the AIF among the periods indicated depending on the shortest period within which the invested funds could be withdrawn or investors could receive redemption payments, as applicable. AIFMs should assume that they would impose gates where they have the power to do so but that they would not suspend withdrawals/redemptions and that there are no redemption fees. The total should equal 100%.”*
 - **Potential liquidity demands from collateral calls:** We believe this is an important indicator but would like to make one comment on this specific point. A number of central bank reports have called out leveraged hedge funds for having to liquidate assets to meet increased margin calls as a cause for concern. We think the cause for concern is why CCP margin levels were set so low and had to be increased so quickly and steeply in March – margin levels are after all supposed to be countercyclical so this raises issues over the CCP incentives and quality of risk committees setting margin levels.
- **Risk of direct spillovers to financial institutions:** The counterparty risk is the only relevant indicator for this category of risk. We would suggest removing all other indicators which are not relevant transmission channels: i.e Linkages to financial institutions via investments; Long value of investments in listed equities and

corporate bonds issued by financial institutions; Sum of long exposures in structured and securitised products; Financial institution exposed to a risk of loss.

- **Risk of interruption in direct credit intermediation:** None of the indicators under this category are relevant transmission channels and we recommend deleting them.

Q6. What are your views on using not only AIFMD data but also other external data sources to perform the assessment? Which types of external data sources would you consider more useful for the purpose of performing the assessment under Step 2, other than those already identified in Annex of to the draft Guidelines?

We agree on NCAs making use of external data, if appropriate and meaningful, and if they collect it themselves – without additional request to AIF managers.

In addition, we think there is no need for additional external data sources other than those already identified in the Annex.

One obvious but important point of vigilance: the use of data, in particular external data, by NCAs should not lead to wrong conclusions.

Q7. Which other restrictions would you consider as appropriate?

None.

Q8. What are your views on the application of the leverage limits? Should those be applied only on the single fund or, where appropriate, limits should also be applied on group of funds? In this case, how would you identify the group of funds?

We think it is the responsibility of each NCA to regulate its own locally domiciled range of AIFs.

As explained above, we are opposed to leverage limits for group of AIFs: it should only depend on the relevant parameters related to a given fund.

If leverage limits had to be set up it should be done **only if the three following conditions are met cumulatively:**

- it should be set up only in **exceptional situations;**
- and only if the relevant AIFs are **specifically spotted after the screening done through Steps 1 and 2;**
- only if it has **no procyclical effect.**

Q9. How would you assess the efficiency of leverage limits in mitigating excessive leverage?

This notion does not appear in AIFMD Level 1 or in 2019 IOSCO's Report. It is therefore the responsibility of national securities regulators to set locally the most appropriate leverage limits – by taking into consideration all the parameters related to the given fund.

The downside of getting this wrong is potential procyclical moves by clients if they can't effectively hedge risks. For example, the performance of pension funds in a crisis and liability shortfalls varies significantly depending on whether pension funds have an effective hedging strategy in place. So while looking at interconnectedness with other market counterparties, NCAs should also look at potential interconnectedness with clients and whether reductions in leverage will make them more rather than less likely to sell.

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