MANAGED FUNDS ASSOCIATION
The Voice of the Global Alternative Investment Industry
WASHINGTON, DC | NEW YORK

July 1, 2013

Via *ESMA Website*

European Securities and Markets Authority
103 Rue de Grenelle
75007 Paris
France

Re: GUIDELINES ON REPORTING OBLIGATIONS UNDER THE AIFMD – RESPONSE TO PUBLIC CONSULTATION

Dear Sir or Madam:

Managed Funds Association ("**MFA**")[1] welcomes the opportunity to provide comments to the European Securities and Markets Authority ("**ESMA**") in response to its public consultation (the "**Consultation Paper**") on guidelines on reporting obligations under Article 3 and Article 24 of the Directive on Alternative Investment Fund Managers (the "**AIFMD**").

Throughout the drafting process on the AIFMD, MFA engaged with EU policy makers on a number of important issues, including the reporting obligations under the AIFMD. We welcome the opportunity to work with ESMA further in this regard and set out our responses herein to some of the questions raised in the Consultation Paper in the Annex. Please note that we have not responded to all the questions in the Consultation Paper.

* * * * *

[1] The Managed Funds Association (MFA) represents the global alternative investment industry and its investors by advocating for sound industry practices and public policies that foster efficient, transparent, and fair capital markets. MFA, based in Washington, DC, is an advocacy, education, and communications organization established to enable hedge fund and managed futures firms in the alternative investment industry to participate in public policy discourse, share best practices and learn from peers, and communicate the industry's contributions to the global economy. MFA members help pension plans, university endowments, charitable organizations, qualified individuals and other institutional investors to diversify their investments, manage risk, and generate attractive returns. MFA has cultivated a global membership and actively engages with regulators and policy makers in Asia, Europe, North and South America, and all other regions where MFA members are market participants.

We would be very happy to discuss our comments or any of the issues raised in the Consultation Paper with ESMA. If ESMA has any comments or questions, please do not hesitate to contact Stuart J. Kaswell (SKaswell@managedfunds.org) or the undersigned at +1 (202) 730-2600.

Respectfully submitted,

/s/ Richard H. Baker

Richard H. Baker

President and CEO

ANNEX

MANAGED FUNDS ASSOCIATION

RESPONSES TO THE ESMA CONSULTATION ON REPORTING OBLIGATIONS UNDER ARTICLE 3 AND ARTICLE 24 OF THE AIFMD

GENERAL

Issues relating to specific line items in the Annex IV templates

Our members have raised a number of issues relating to specific line items in the reporting template "*AIF-specific information to be provided –Article 3(3)(d) and Article 24(1) of Directive 2011/61/EU*" (the "**Article 24(1) Reporting Template**") and the reporting template "*AIF-specific information to be provided to competent authorities –Article 24(2) of Directive 2011/61/EU*" (the "**Article 24(2) Reporting Template**"), in Annex IV templates in the Commission Delegated Regulation (EU) No 231/2013 (the "**Level 2 Regulation**"). It would be helpful if ESMA could clarify these issues as listed below.

With respect to the Article 24(1) Reporting Template:

- Item 8 (jurisdictions of funding sources) – It is not clear what "funding sources" means for this purpose (e.g., whether it covers leverage for investment purposes only or anything further).

- Item 11 (5 most important instruments) – It is not clear what "important" means for this purpose. This gives rise to questions such as whether "importance" is determined by reference to region/sector/product-based strategies (e.g., US semiconductor stocks) or, more broadly, equities/derivatives, etc; whether "importance" should be graded on the basis of actual profit and loss to date, market value as of the reporting date, or some other criteria; and whether only instruments traded during a reporting period or only instruments held at the end of a reporting period should be included.

  It also is unclear whether the definition of position or instrument should be an individual security or whether it should refer to a group of securities that have the same risk profile. For example, if an AIF owns 5 separate U.S. Treasury bills with similar maturity dates should those 5 positions be aggregated as one instrument or should they each be treated as a separate instrument?

  In this regard, we also note that the Annex IV templates appear to use certain terms interchangeably such as "principal instruments", "important instruments", "principal exposures", "main instruments", "important markets" and "most important concentrations".

- Items 13 (10 principal exposures) and 14 (5 most important concentrations) – It seems duplicative to require information on both principal exposures and most important portfolio concentrations as the two concepts may overlap significantly (also see Item 11 above as regards questions on the meaning of "important"). To the extent that ESMA does not see significant differences between them, we suggest that these two questions should be combined into one.

- Item 17 (investor concentration) – The draft guidelines in the Consultation Paper (see paragraph 86) state that investors that are part of the same group should be considered as a single investor. However, it is not clear what "group" means for this purpose.

With respect to the Article 24(2) Reporting Template:

- Item 8 (individual exposures) – Foreign currency forwards entered into for currency hedging purposes are explicitly excluded in the category of "foreign exchange" (see paragraph 89 of the draft guidelines in the Consultation Paper). We therefore suggest that foreign currency forwards entered into for currency hedging purposes should be included in the category of "other derivatives".

- Item 10 (total value of exposures) – This section states explicitly that the value should be calculated "before currency hedging". Does this exclusion apply to this specific section only or should currency hedging also be excluded for the calculation of the value of assets under management for the purposes of Article 2 of the Level 2 Regulation?

- Item 15 (value of collateral) – AIFMs may post collateral in various situations, e.g., collateral on short term borrowing facilities, or collateral on facilities for the purposes of leveraged exposure. We assume, and suggest, that this item only covers collateral posted on facilities utilized to gain exposure. Further, an AIF's entire prime brokerage account may be subject to a lien in the event of a default by the AIF and the value of such prime brokerage account may significantly exceed the value of borrowings. It would be helpful if ESMA could clarify whether there are any assets potentially subject to a lien that should not be considered collateral for the purpose of this section.

- Item 17 (top five counterparties) – It is not clear what "counterparties" should be included, as it is not defined either in the AIFM or in the Level 2 Regulation (e.g., whether this captures prime brokers).

- Item 19 (investor liquidity) – Should the title for this section be "Portfolio Liquidity Profile" (Item 21 is on Investor Liquidity Profile)?

- Item 20 (unencumbered cash) – It is not clear what "unencumbered cash" means for this purpose.

In addition, as regards converting foreign exchange to euro, it would be helpful if ESMA could clarify whether official conversion rates to be used for reporting purposes would be published by ESMA or Member State regulators.

Stress test

The Annex IV templates contain a separate form for reporting stress tests. The Consultation Paper does not discuss the applicability of stress tests to non-EU AIFMs. The requirements to carry out stress tests are contained in Article 15(3)(b) and Article 16(1) of the AIFMD. However, non-EU AIFMs marketing in the EU under Article 42 of the AIFMD are only required to comply with Articles 22 – 24 (and Articles 26 – 30, if applicable) of the AIFMD. On that basis, we believe that non-EU AIFMs marketing in the EU under Article 42 of the AIFMD should not be subject to the stress test requirements and thus should not be required to report the results of stress tests.

However, if ESMA disagrees with the view above, it would be helpful if ESMA could clarify whether AIFMs should perform both stress tests in accordance with Article 15(3)(b) and Article 16(1) of the AIFMD or whether AIFMs can choose one of them. It would also be helpful if ESMA could clarify how "the results of stress tests" should be reported: is it that only numerical figures are required or that details of how the stress tests are performed are required as well?

VaR reporting

The draft guidelines in the Consultation Paper propose that AIFMs should report the VaR of the relevant AIF (see paragraph 101). Due to some of the inherent weaknesses of VaR as a risk metric for strategies transacting in less liquid asset classes, many managers do not calculate VaR as part of their risk management processes. As such, we believe that the reporting of VaR should not be a mandatory requirement. Rather it should be an option for AIFMs to decide. In this regard, we also note that the types of VaR indicated in the XSD schema are different from and more extensive than those referenced in the draft guidelines in the Consultation Paper.

Definition of CDS

Under Annex I and Annex II of the Level 2 Regulation, a CDS exposure is, for the protection seller, the higher of the market value of the underlying reference assets or the notional value of the CDS; whereas the exposure is, for the protection buyer, the market value of the underlying reference assets.

Paragraph 89 of the draft guidelines in the Consultation Paper defines "credit default derivatives" to include all single name, index and/or tranche, exotic CDS and LCDS. It further provides that the long value should be the notional value of protection written or sold and the short value should be the notional value of protection bought.

These two concepts of CDS appear to be inconsistent with each other. MFA suggests that for both the protection buyer and the protection seller the notional value of the CDS should be used for reporting purposes. This would also make the EU requirement consistent with the similar requirement under Form PF in the US.

IT issues

The Consultation Paper is accompanied by a complex XSD schema which provides detailed IT guidelines for XML filing. AIFMs will have to use this to make the relevant reporting required under the AIFMD. In this regard, we note that each Member State regulator may vary in their implementation of the XML filing requirements contained in the schema. For example, Member State regulators may make changes to the filing format in order to integrate the format into their own IT systems; Member state regulators may also be different as regards the timing when their IT systems can be made ready to receive XML filing.

Non-EU AIFMs subject to the reporting requirements under the AIFMD would need to report to the regulator of each Member State where the relevant AIF is marketed. In the case of XML filing, such filing submitted to each Member State regulator will need to go through detailed technical verification and validation processes which may differ significantly between Member States. This will inevitably gives rise to cost and timing issues.

MFA suggests that an EEA-wide harmonised system based on the XSD schema should be set up to receive XML filings. This can be achieved by establishing a central repository at the EEA level (e.g., within ESMA) and AIFMs would only need to report to this central repository rather than to each Member State regulator).

Alternatively, there should be a specific cooperation arrangement for the purposes of XML filing, as coordinated by ESMA, between Member State regulators whereby AIFMs would only need to file with one Member State regulator and the filing would be shared by all relevant Member State regulators. This can be achieved by requiring AIFMs to notify, after having made the single filing with one regulator, each of the other relevant Member State regulators that reporting has been filed with and can be requested from that regulator.

Either of the above suggestions would ensure consistency and would be more cost effective for both regulators and managers.

In addition, we note that there appear to be inconsistencies between information required in the XSD schema and the information required in the Annex IV templates. For example, the reporting format contained in the schema appears to be different from the format of the Annex IV templates; and additional information appears to be included in the schema which is not in the Annex IV templates.

The XSD schema is prepared in computer programming language and, as such, is not easily accessible and can be understood mostly by IT staff. If these differences and new elements as shown in the schema were intended to amend the Annex IV reporting templates, we would suggest that new Annex IV reporting templates as so amended should be published so that a wider group of stakeholders are able to understand and comment on them.

Further, as regard IT and other technical issues, we believe it would be beneficial for ESMA to set up an AIFMD expert group with members from the industry and Member State regulators (similar to those set up in the process of implementing the MiFID level 3 requirements). MFA would be happy to participate in that process.

III. REPORTING FREQUENCY AND TIMINGS

Q1: Do you agree with the proposed approach for the reporting periods? If not, please state the reasons for your answer.

We support ESMA's proposal to align the reporting periods with the calendar year, i.e., the reporting periods end on the last business day of March, June, September and December of each year. We also support ESMA's proposal that all AIFMs subject to the reporting requirement should report for the first time by 31 January 2014 (15 February 2014 for funds of funds), instead of October 2013.

The Consultation Paper proposes that the first report should cover the period from 23 July 2013 to 31 December 2013. However, from a reporting perspective, the partial quarter (i.e., 23 July to 30 September) gives rise to unnecessary complexity. We therefore suggest that the first report should cover the period from 1 July to 31 December 2013.

Under Article 110(1) of the Level 2 Regulation, the reporting shall be made no later than one month after the end of the relevant reporting period. This is a very demanding timeline, particularly so in relation to funds of funds (even with the additional 15 days provided for under Article 110(1) of the Level 2 Regulation) which would need more time to provide accurate information.

Given the one month deadline, some of the information required to be reported likely will not have been signed off for purposes of the official books and records, which means that such information may need to be revised or adjusted (e.g., following an audit) subsequently when it is included in the final books/records. Some of our members managing funds of funds have noted that they can either close their books early using incomplete information or keep a separate set of books for the reporting under the AIFMD (which will contain information different from the official books and will be difficult to implement operationally).

For these reasons, MFA suggests that AIFMs should be allowed to use best available data when completing the relevant reports and that AIFMs should not have to amend their reports following subsequent adjustments.

In connection with the reporting periods, Article 110(3) of the Level 2 Regulation provides that the reporting period is determined by reference to an AIFM's assets under management "calculated in accordance with Article 2"; Article 2(1) of the Level 2 Regulation provides that, when an AIFM calculates its assets under management, it shall identify "all AIFs" for which it is the AIFM and then aggregate the value of assets for each such AIF. As regards non-EU AIFMs, the question arises as to, for the purposes of determining the relevant reporting period, whether a non-EU AIFM calculates its assets under management for only those AIFs that have been marketed into the EU or whether it needs to take into account "all AIFs" managed by it (i.e., including those that are not marketed into the EU). It would be helpful if ESMA could clarify this point.

V. REPORTING OF SPECIFIC TYPES OF AIF

Q4: Do you agree with the proposed approach for the reporting obligations for feeder AIFs and umbrella AIFs? If not, please state the reasons for your answer.

Master/feeder

The Consultation Paper proposes that AIFMs managing non-EU master AIFs that are not marketed in the EU should report for such master AIFs the information requested by Article 24(2) of the AIFMD if one of the master AIF's feeder AIFs is marketed in the EU. In this regard, the Article 24(2) Reporting Template contains various line items requiring investor-related information (see Items 22 (investor redemptions), 23 (special arrangements and preferential treatment), 24 (breakdown of ownership of units by investor groups), 32(d) (subscription information) and 32(e) (redemption information)). This gives rise to a number of issues as to how such investor-related information should be reported.

For example, when reporting for such master AIF, presumably the AIFM would need to look-through to the feeder AIF that is marketed in the EU. If so, are these investor-related questions to be answered only with respect to those class(es) of the units/shares of the feeder AIF that are marketed in the EU or would they need to be answered in relation to the entire feeder AIF (see further discussion below)?

If the relevant information on the master AIF needs to be reported on a look-through basis, it would seem duplicative to require that AIF-specific information under Article 24(2) of the AIFMD must also be reported individually for each feeder AIF (see paragraph 22 of the draft guidelines in the Consultation Paper).

To avoid duplicative reporting in the case of master-feeder structures, MFA suggests that AIFMs should be allowed to report, at their option, either at the individual feeder AIF level or at the aggregate master AIF level. This would also harmonize the reporting requirements between the EU and the US as the Form PF reporting requirements in the US allow this option.

Class of units/shares

The Consultation Paper does not appear to address issues that may arise when an AIF offers units/shares in multiple classes or series and only certain classes or series are marketed/offered in the EU. In such circumstances, the question arises as to whether reporting should be made at the entire AIF level (i.e., covering all classes, whether or not marketed in the EU), or whether reporting should be on a class-by-class basis (i.e., only in respect of the classes marketed in the EU).

In this regard, we note that there may be a situation where the classes not marketed in the EU relate to portfolios different from the portfolios that underline the classes marketed in the EU. We also note that, if reporting were to be required on a class-by-class basis, some of the line items in the Annex IV templates would need to be clarified as they require aggregation, e.g., Item 17 (investor concentration) in the Article 24(1) Reporting Template, Item 32(a) (gross investment returns) in the Article 24(2) Reporting Template.

In addition, another issue is whether it is appropriate to aggregate different classes referencing the same portfolio. In this regard, we note that the US reporting requirements (Form PF and ADV) permit the aggregation of multiple classes referencing identical portfolios for reporting purposes.

It would be helpful if ESMA could clarify these issues.

Funds of funds

AIFs that are funds of funds typically have only three types of assets: cash, derivatives (for currency hedging), and investments in underlying hedge funds. As a result, for such AIFs, a significant amount of information as required under Articles 24(1) and 24(2) of the AIFMD is either duplicative or inapplicable.

For example, Item 13 (annual investment return) in the Article 24(2) Reporting Template appears to be inapplicable since a fund of funds does not have information on the portfolios of the underlying hedge funds in which it invests. Item 14 (trading and clearing mechanisms) in the Article 24(2) Reporting Template requires clarification regarding whether investments in underlying hedge funds should be considered "securities" for the purposes of this section – and if so, since such investments are not traded on a regulated exchange, confirmation that OTC should be selected. In addition, information on such AIF's exposures, positions and main instruments will largely be the same since it typically has a concentrated portfolio.

In any event, the underlying AIFM would already be obliged to provide information to the relevant regulators for those underlying hedge funds that are marketed in the EU, so having the AIFM report information again on the fund-of-funds AIF would appear to be duplicative.

To avoid duplication, MFA suggests that AIFMs managing funds of funds should be permitted to disregard any investments made by such AIFs in underlying hedge funds. In this regard, we note that, by allowing AIFMs managing fund-of-funds AIFs to disregard investments in underlying hedge funds, this would make the EU reporting requirements consistent with the requirements under Forms PF and CPO-PQR in the US.

VI. IDENTIFICATION OF THE AIFM AND THE AIF

Q5. Do you agree with the approach proposed by ESMA? If not, please state the reasons for your answer. Do you think ESMA should provide further clarification? If yes, please give examples.

The Consultation Paper proposes that AIFMs should report their legal entity identifier (LEI) or interim entity identifier (IEI) and that the LEI/IEI of counterparties/prime brokers should also be reported. We note that the differences between each jurisdiction in formulating LEI/IEI may give rise to potential conflicts, e.g., the US regulators and EU Member State regulators may have different IEIs or there may be a change in an entity's LEI/IEI during the relevant reporting period.

VIII. BREAKDOWN OF INVESTMENT STRATEGIES

Q7. Do you agree that AIFMs should report information on high frequency trading? If not, please state the reasons for your answer. If yes, do you agree that this information should be expressed as a percentage of the NAV of the AIF? If not, please state the reasons for your answer and identify more meaningful information that could be reported.

MFA does not support the proposal that AIFMs should report information on high frequency trading ("**HFT**") as this goes beyond the requirements under the Level 2 Regulation.

Paragraph 16 of the Consultation Paper refers to HFT as strategies which use computer programs, namely algorithms, to identify and execute trades, typically in very high volumes. This concept of HFT seems much wider than the one currently under discussion in the context of MiFID II. Our members have raised serious concerns with ad hoc algorithmic execution being considered HFT. If ESMA nonetheless were of the view that HFT should be reported, we would suggest that the definition of HFT for purposes of the AIFMD reporting requirements should track the definition as and when MiFID II is agreed.