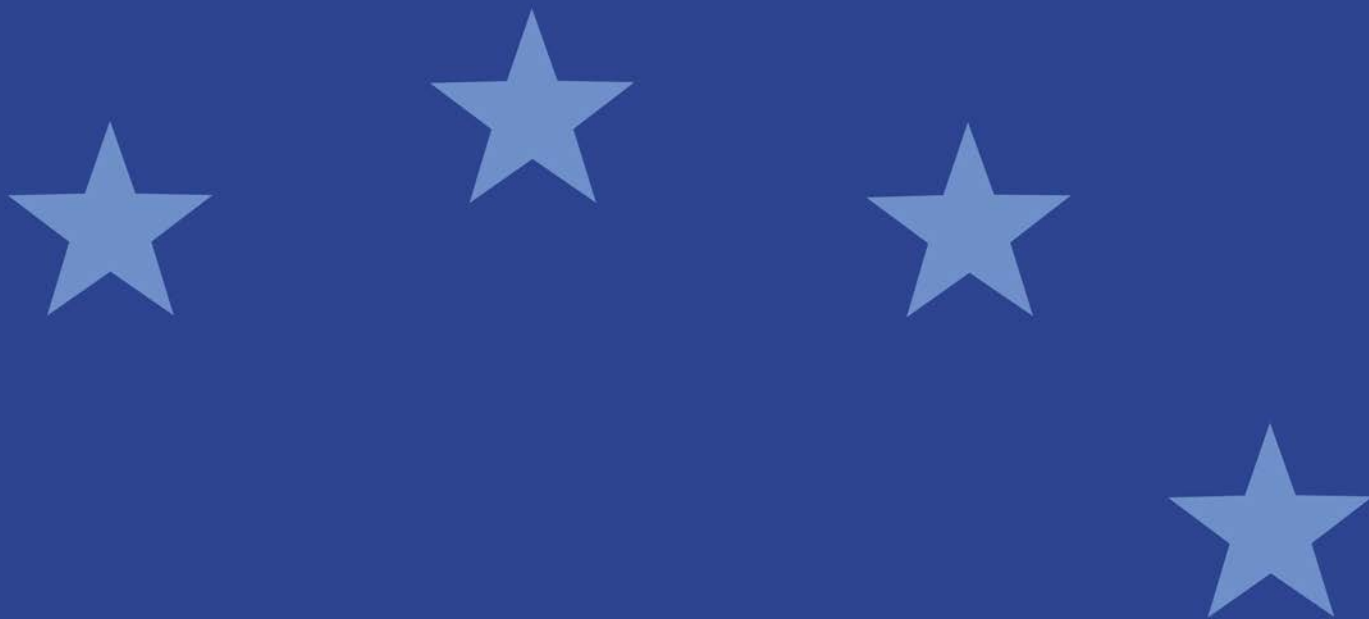




European Securities and
Markets Authority

Questions and Answers

Application of the AIFMD



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I. Background

1. The Alternative Investment Fund Managers Directive (AIFMD) puts in place a comprehensive framework for the regulation of alternative investment fund managers within Europe. The extensive requirements with which AIFMs must comply are designed to ensure that these managers can manage AIFs on a cross-border basis and the AIFs that they manage can be sold on a cross-border basis.
2. The AIFMD framework is made up of the following EU legislation:
 - a. Directive 2011/61/EU¹, which was adopted in 2011. It is a 'framework' Level 1 Directive which has been supplemented by technical delegated and implementing measures.
 - b. Commission Regulation (EU) No 231/2013², Commission Regulation (EU) No 447/2013³ and Commission Regulation (EU) No 448/2013⁴.
3. ESMA is required to play an active role in building a common supervisory culture by promoting common supervisory approaches and practices. In this regard, the Authority develops Q&As as and when appropriate to elaborate on the provisions of certain EU legislation or ESMA guidelines.
4. The European Commission has already published its own Q&A on AIFMD⁵.

II. Purpose

5. The purpose of this document is to promote common supervisory approaches and practices in the application of the AIFMD and its implementing measures. It does this by providing responses to questions posed by the general public and competent authorities in relation to the practical application of the AIFMD.
6. The content of this document is aimed at competent authorities under AIFMD to ensure that in their supervisory activities their actions are converging along the lines of the responses adopted by ESMA. However, the answers are also intended to help AIFMs by providing clarity as to the content of the AIFMD rules, rather than creating an extra layer of requirements.

III. Status

7. The Q&A mechanism is a practical convergence tool used to promote common supervisory approaches and practices under Article 29(2) of the ESMA Regulation.⁶

¹ DIRECTIVE 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010

² COMMISSION DELEGATED REGULATION (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

³ COMMISSION DELEGATED REGULATION (EU) No 447/2013 of 15 May 2013 establishing the procedure for AIFMs which choose to opt in under Directive 2011/61/EU of the European Parliament and of the Council

⁴ COMMISSION DELEGATED REGULATION (EU) No 448/2013 of 15 May 2013 establishing a procedure for determining the Member State of reference of a non-EU AIFM pursuant to Directive 2011/61/EU of the European Parliament and of the Council

⁵ <http://ec.europa.eu/yqol/index.cfm?fuseaction=legislation.show&lid=9>

8. Therefore, due to the nature of Q&As, formal consultation on the draft answers is considered unnecessary. However, even if they are not formally consulted on, ESMA may check them with representatives of ESMA's Securities and Markets Stakeholder Group, the relevant Standing Committees' Consultative Working Group or, where specific expertise is needed, with other external parties.
9. ESMA will review these questions and answers on a regular basis to identify if, in a certain area, there is a need to convert some of the material into ESMA guidelines. In such cases, the procedures foreseen under Article 16 of the ESMA Regulation will be followed.

IV. Questions and answers

10. This document is intended to be continually edited and updated as and when new questions are received. The date each question was last amended is included after each question for ease of reference.
11. General questions on the practical application of the AIFMD may be sent to the following email address: AIFMD-questions@esma.europa.eu. However, questions that relate specifically to technical IT issues regarding the AIFMD reporting requirements (such as on the XSD documents or the IT technical guidance) should be sent to: info.it.aifmd@esma.europa.eu.

⁶ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC Regulation, 15.12.2010, L331/84.

Section I: Remuneration

Question 1 [last update 17 February 2014]: To which accounting period should AIFMs performing activities under the AIFMD before 22 July 2013 and submitting an application for authorisation under the AIFMD between 22 July 2013 and 22 July 2014 apply the AIFMD remuneration rules for the first time?

Answer 1: Paragraph 4 of the Guidelines on sound remuneration policies under the AIFMD (ES-MA/2013/232) (the Remuneration Guidelines) states that “*These Guidelines apply from 22 July 2013, subject to the transitional provisions of the AIFMD*”. The Commission Q&A on the AIFMD provided specific guidance on the interpretation of the transitional provisions under Article 61(1) of the AIFMD.⁷

According to Article 61(1) of the AIFMD, AIFMs performing activities under the AIFMD before 22 July 2013 have one year from that date to submit an application for authorisation. Once a firm becomes authorised under the AIFMD, it becomes subject to the AIFMD remuneration rules and the Remuneration Guidelines. Therefore, the relevant rules should start applying as of the date of authorisation.

However, as for the rules on variable remuneration (i.e. the ones for which guidance is provided under Sections XI. (Guidelines on the general requirements on risk alignment) and XII. (Guidelines on the specific requirements on risk alignment) of the Remuneration Guidelines), AIFMs should apply them for the calculation of payments relating to new awards of variable remuneration to their *identified staff* (as defined in the Remuneration Guidelines) for performance periods following that in which they become authorised. So the AIFMD regime on variable remuneration should apply only to full performance periods and should first apply to the first full performance period after the AIFM becomes authorised. For example:

- An existing AIFM whose accounting period ends on 31 December and which obtained an authorisation between 22 July 2013 and 31 December 2013: the AIFMD rules on variable remuneration should apply to the calculation of payments relating to the 2014 accounting period.
- An existing AIFM whose accounting period ends on 31 December obtains an authorisation between 1 January 2014 and 22 July 2014: the AIFMD rules on variable remuneration should apply to the calculation of payments relating to the 2015 accounting period.

However, for an existing AIFM whose accounting period ends on 31 December which submits an application for authorisation by 22 July 2014 and obtains an authorisation after that date (including when the authorisation is obtained after 31 December 2014), the AIFMD rules on variable remuneration should apply to the calculation of payments relating to the 2015 accounting period.

Question 2 [last update 17 February 2014]: To which accounting period should AIFMs not performing activities under the AIFMD before 22 July 2013 and obtaining an authorisation under the AIFMD after 22 July 2013 apply the remuneration rules for the first time?

Answer 2: Once a firm becomes authorised under the AIFMD, it becomes subject to the AIFMD remuneration rules and the Remuneration Guidelines and the relevant rules should start to apply as of the date of authorisation.

⁷ ID 1180. Transitional provisions, available at: <http://ec.europa.eu/yqol/index.cfm?fuseaction=question.show&questionId=1180>.

However, as for the rules on variable remuneration (i.e. the ones for which guidance is provided under Sections XI. (Guidelines on the general requirements on risk alignment) and XII. (Guidelines on the specific requirements on risk alignment) of the Remuneration Guidelines), AIFMs should apply them for the calculation of payments relating to new awards of variable remuneration to their *identified staff* (as defined in the Remuneration Guidelines) for performance periods following that in which they submit an application for authorisation. An AIFM submitting an application for authorisation in the year N (after 22 July 2013), should apply the AIFMD remuneration regime on variable remuneration only to the calculation of payments relating to the accounting period for year N+1.

Question 3 [last update 17 February 2014]: Which staff of the delegate should be covered by the “appropriate contractual arrangements” that ensure there is no circumvention of the remuneration rules as set out in paragraph 18(b) of the Remuneration Guidelines?

Answer 3: Such contractual arrangements must only be in place in respect of the delegate’s *identified staff* who have a material impact on the risk profiles of the AIFs it manages as a result of the delegation, and only in respect of the remuneration for such delegated activities.

Question 4 [last update 17 February 2014]: In a delegation arrangement where the delegate is subject to the CRD rules, can the delegate be considered to be subject to regulatory requirements on remuneration that are equally as effective as those applicable under the Remuneration Guidelines?

Answer 4 : Provided that the staff of these entities who are *identified staff* for the purpose of the Remuneration Guidelines are subject to the CRD rules, these entities are subject to regulatory requirements on remuneration that are equally as effective as those applicable under the Guidelines.

Section II: Notifications of AIFs

Question 1 [last update 17 February 2014]: What additional information should be provided under letter (f) of Annex IV of the AIFMD?

Answer 1: Letter (f) of Annex IV of the AIFMD should be understood as requesting all information set out in Article 23(1) of the AIFMD that is not already contained in Annex IV of the AIFMD.

Question 2 [last update 17 February 2014]: Should AIFMs that wish to market new investment compartments of AIFs in a Member State where these AIFs have been already notified undertake a new notification procedure via their competent authority?

Answer 2: Yes.

Section III: Reporting to national competent authorities under Articles 3, 24 and 42

Question 1 [last update 17 February 2014]: When a non-EU AIFM reports information to the national competent authorities of a Member State under Article 42 of the AIFMD, which AIFs have to be included in the reports?

Answer 1: When a non-EU AIFM reports information to the national competent authorities of a Member State under Article 42, only the AIFs marketed in that Member State have to be taken into account for the purpose of the reporting.

*****New*** Question 2 [last update 25 March 2014]:** Should repurchase transactions (at the level of the portfolio of the AIF) by or on behalf of a reporting AIF be considered as financing operations for the purpose of the AIFMD reporting obligations (questions 54 – 56 and 210- 217 of the consolidated reporting template)?

*****New*** Answer 2:** Yes. Therefore, AIFMs should take into account the counterparties of those transactions when reporting the information related to funding sources in questions 54 – 56 and take into account the aggregate amount of these transactions in questions 210-217.

*****New*** Question 3 [last update 25 March 2014]:** Which period should AIFMs use when reporting information on 'Instruments traded and individual exposures' (questions 121 to 124 of the consolidated reporting template): the residual maturity of the instrument or the maturity at issuance?

*****New*** Answer 3:** AIFMs should use the residual maturity as of the reporting date.

*****New*** Question 4 [last update 25 March 2014]:** What should be the basis of the numerator for calculating the geographical exposure as a percentage of the NAV of the AIF (question 78 to 85 of the consolidated reporting template)?

*****New*** Answer 4:** The numerator used for calculating the geographical exposure as a percentage of the net asset value of the AIF should be the NAV of the AIF for each geographical area. Therefore, this may result in negative values for certain regions but the total should equal 100%.

*****New*** Question 5 [last update 25 March 2014]:** What should be the basis of the numerator and the denominator for calculating the geographical exposure as a percentage of the aggregated value of the AIF (questions 86 to 93 of the consolidated reporting template)?

*****New*** Answer 5:** The numerator used for calculating the geographical exposure as a percentage of the aggregated value of the AIF should be the total value of assets under management of the AIF for each geographical area. The basis for the denominator should be the total value of assets under management of the AIF. The total should equal 100%.

*****New*** Question 6 [last update 25 March 2014]:** What should be the basis of the numerator for calculating the breakdown of investment strategies as a percentage of the NAV of the AIF (question 60 of the consolidated reporting template)?

*****New*** Answer 6 :** The numerator used for calculating the breakdown of investment strategies as a percentage of the NAV of the AIF should be the net asset value of the AIF for each investment strategy. Therefore, this may result in negative values for certain investment strategies but the total should equal 100%.

*****New*** Question 7 [last update 25 March 2014]:** ESMA's guidelines recommend that AIFMs submit the last report of the AIF immediately after it has been liquidated or put into liquidation. When should AIFMs submit this last report?

*****New*** Answer 7:** AIFMs should submit the last AIF report not later than one month after the end of the quarter in which the AIF has been liquidated or put into liquidation.

*****New*** Question 8 [last update 25 March 2014]:** How should AIFMs calculate the percentage of market value for securities traded on regulated markets and OTC markets (questions 148 and 149 of the consolidated reporting template)?

*****New*** Answer 8:** AIFMs should aggregate the market value of all securities traded and report the percentage of the market value of securities traded on a regulated exchange and OTC. Regulated exchanges include regulated markets, multilateral trading facilities and organised trading facilities. For the European Union, regulated markets⁸ and multilateral trading facilities⁹ are published on ESMA's website. Securities that are not traded on regulated exchanges should be considered as traded OTC. This means that the total should equal 100%.

*****New*** Question 9 [last update 25 March 2014]:** How should AIFMs calculate the percentage of trade volumes for derivatives traded on regulated markets and OTC markets (questions 150 and 151 of the consolidated reporting template)?

*****New*** Answer 9:** AIFMs should take into account the total number of trades and report the percentage of number of trades on a regulated exchange and OTC. Regulated exchanges include regulated markets, multilateral trading facilities and organised trading facilities. For the European Union, regulated markets¹⁰ and multilateral trading facilities¹¹ are published on ESMA's website. Securities that are not traded on regulated exchanges should be considered as traded OTC. This means that the total should equal 100%.

*****New*** Question 10 [last update 25 March 2014]:** How should AIFMs report the information on the liquidity portfolio when the AIF is invested in assets with no current liquidity for which it is not possible to determine the future liquidity (questions 178 -184 of the consolidated reporting template)?

*****New*** Answer 10:** In that case, AIFMs should adopt a conservative approach and assign the instrument to the longest period bucket.

*****New*** Question 11 [last update 25 March 2014]:** How should AIFMs report the information on investor liquidity?

*****New*** Answer 11:** AIFMs should divide the AIF's NAV among the period buckets depending on the shortest period within which investors are entitled, under the fund documents, to withdraw invested funds or receive redemption payments, as applicable.

For example, an AIF has a NAV of € 1,000,000 with two investors. According to the fund documents, investor A whose share of the NAV is €600,000 is entitled to withdraw 50% of its investment on a daily basis and 50% of its investments between 2 and 7 days. Investor B, whose share of the NAV is €400,000, is entitled to withdraw 60% of its investments between 31 and 90 days and 40% of its investment within 91 and 180 days. The investor profile of the AIF will be the following

1 day or less	2-7 days	8-30 days	31-90 days	91-180 days	181-365 days	More than 365 days
30%	30%	0	24%	16%	0	0

*****New*** Question 12 [last update 25 March 2014]:** According to question 22 of the consolidated reporting template, AIFMs must indicate the inception date of the AIF. What does inception date mean?

*****New*** Answer 12:** If an AIF is subject to pre-authorisation, the inception date should be the date of authorisation. If an AIF is established without pre-authorisation by the competent authority, the inception date should be the date when the AIF was established. Finally, if the AIF is subject to registration obliga-

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http://mifiddatabase.esma.europa.eu/Index.aspx?sectionlinks_id=23&language=0&pageName=REGULATED_MARKETS_Display

⁹ http://mifiddatabase.esma.europa.eu/Index.aspx?sectionlinks_id=22&language=0&pageName=MTF_Display

¹⁰

http://mifiddatabase.esma.europa.eu/Index.aspx?sectionlinks_id=23&language=0&pageName=REGULATED_MARKETS_Display

¹¹ http://mifiddatabase.esma.europa.eu/Index.aspx?sectionlinks_id=22&language=0&pageName=MTF_Display

tion at national level with its competent authority after the date of establishment, the inception date should be the date when the AIF was constituted.

*****New*** Question 13 [last update 25 March 2014]:** Should AIFMs report the information in English or in the language of the jurisdiction to which they report?

*****New*** Answer 13:** Apart from the sections on assumptions and stress tests, where text is allowed, the rest of the information to be reported will consist of figures, predetermined values or names of counterparties. For assumptions and stress tests, ESMA recommends that the national competent authority allow AIFMs to report the information in English, which would allow multinational groups to centralise and harmonise their AIFMD reporting. However, this will depend on the national legislation transposing the AIFMD.

*****New*** Question 14 [last update 25 March 2014]:** There are predetermined codes for the XML filing. Should these codes be translated into national languages?

*****New*** Answer 14:** No. These codes are predetermined values that cannot be changed for the XML filing.

*****New*** Question 15 [last update 25 March 2014]:** Is cash resulting from repurchase agreements included in the amount of cash and cash equivalents to be reported by AIFMs under questions 121 -124?

*****New*** Answer 15:** Yes. When reporting information on cash and cash equivalents, AIFMs should include all amounts of cash held, including as a result of repurchase arrangements.

*****New*** Question 16 [last update 25 March 2014]:** According to questions 163 and 164 of the consolidated reporting template, AIFMs should report the BIC and LEI of the five biggest counterparties to which an AIF has exposure. How should AIFMs identify those counterparties if they do not have such codes?

*****New*** Answer 16:** In that case, AIFMs should only report the full name of the counterparty.

*****New*** Question 17 [last update 25 March 2014]:** What information should AIFMs report for question 137 of the consolidated reporting template when they do not have an expected annual return/IRR in normal market conditions?

*****New*** Answer 17:** In that case, AIFMs should report the value 'N/A' for non-applicable.

*****New*** Question 18 [last update 25 March 2014]:** Must all AIFMs answer questions 296 to 301 of the consolidated reporting template?

*****New*** Answer 18:** No. Only AIFMs managing AIFs employing leverage on a substantive basis must answer questions 296 to 301 of the consolidated reporting template.