

**MEMO# 33065**

January 25, 2021

# **EC AIFMD Consultation: ICI Global's Submitted Response**

[33065]

January 25, 2021 TO: ESG Task Force  
EU ESG Disclosure Regulation Working Group  
EU Sustainable Finance Strategy Working Group  
Global Advocacy Coordination Advisory Committee  
Global Operations Advisory Committee  
ICI Global EU Capital Markets Union Task Force  
ICI Global Regulated Funds Committee  
International Compliance Advisory Committee RE: EC AIFMD Consultation: ICI Global's Submitted Response

On 25 January 2020, ICI Global submitted the attached response to the European Commission's consultation ("the Consultation") on changes to the Alternative Investment Fund Managers Directive (AIFMD).[\[1\]](#) ICI Global's response takes account of member feedback on the draft response.[\[2\]](#)

## **Consultation Response**

ICI Global has responded to a limited number of topics in the consultation that have the most relevance for UCITS, as summarised below.

### ***International Relations***

- In our view, the existing rules that apply to the delegation of AIFM functions are sufficiently clear and robust to prevent the creation of letter-box entities, while providing for an appropriate level of supervisory discretion and judgement.
- Before exploring making changes to the delegation rules, it is paramount that policymakers first identify with specificity their concerns regarding the existing delegation framework, whether these concerns are related to the delegation framework, and if and how any identified problems have arisen on the basis of this framework.

### ***Macro-prudential issues***

- We support the current regulatory framework and believe any changes to reporting lines or requests for additional reporting on liquidity risk management or

macroprudential tools should be justified by data and relevant experience, including the recent real-life stress test in March 2020.

- We believe that AIFMD supervisory reporting would be improved if NCAs, with input from technical experts from industry and in coordination with ESMA, could work toward greater consistency in reporting requirements across jurisdictions and improved reporting infrastructure to facilitate timely and effective reporting from NCAs to ESMA.
- Leverage assessments should closely track the two-step framework recommended in IOSCO's Framework for Assessing Leverage in Investment Funds. In this regard, the first step should require NCAs to assess fund leverage exposures by broad asset categories and long and short positions.
- NCAs should prudently exercise their broad authority to impose leverage restrictions. In so doing, they should consult publicly on any possible leverage restrictions and consult confidentially with any funds before they become subject to such restrictions. In addition, any restrictions based solely on gross notional exposure, including any fund distribution restrictions, should be eliminated.

### ***Sustainable Finance***

- Given the many new sustainable finance requirements that will apply to asset managers, we urge the Commission to focus first on coherent implementation of existing requirements before considering additional significant changes that have the potential to impact negatively the investment process. This approach will provide the Commission with the opportunity to assess the market impact of SFDR, the Taxonomy, and other forthcoming requirements and avoid unintended consequences from additional requirements that may not interact effectively with existing obligations.
- We recognise the EC's interest in increasing fund managers' focus on sustainability impacts, but we strongly urge against requiring fund managers to take into account interests and preferences other than those expressed by investors. From an investor protection standpoint, it is essential that asset managers make investment decisions on behalf of their clients/investors only and invest in a manner that they assess will best achieve a client's mandate or a fund's stated investment objectives.

### ***Investor Protection***

- We have not identified the need for a separate AIF structure to be created under EU law for cross-border marketing to retail investors. The European Commission should pursue improvements to the cross-border marketing passport for retail funds and introduce a pan-European retail marketing regime.

### ***Miscellaneous***

- ESMA's existing competences and powers – which it could more fully utilise – enable it to address divergence in Member States' implementation of the EU's investment fund frameworks and support supervisory convergence across NCAs. We have recommended additional competencies and powers to support the development of the cross-border market for retail funds.
- The UCITS and AIFMD frameworks should not be merged into a single EU rulebook given their different purposes and the major legal and policy uncertainties that would

result – instead the European Commission should address divergence in Member States’ implementation of the UCITS and AIFMD frameworks and encourage supervisory convergence.

## **Next Steps**

The European Commission is accepting comments in response to the consultation by 29 January 2021, after which it will consider the next steps, including whether to issue legislative proposals.

Giles Swan  
Director of Global Funds Policy  
ICI Global

## [Attachment](#)

### **endnotes**

[1] See ICI Memorandum No. 32864, RE: European Commission AIFMD Consultation, dated 27 October 2020, *available from* <https://www.iciglobal.org/iciglobal/pubs/memos/memo32864>

[2] See ICI Memorandum No. 33034, RE: EC AIFMD Consultation: ICI Global Draft Response for Member Feedback by Monday 18 January 2021, dated 12 January 2021, *available from* <https://www.iciglobal.org/iciglobal/pubs/memos/memo33034>

---

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.