

29 January 2021

European Commission
Rue de la Loi, 200
1049 Brussels
Belgium

Re: Public consultation on the review of the Alternative Investment Fund Managers Directive (“AIFMD”).

The Institutional Limited Partners Association (“ILPA”)¹ appreciates the opportunity to respond to the European Commission’s (“Commission”) “Public consultation on the review of the alternative investment fund managers directive (AIFMD)” (“Consultation”).

ILPA represents almost 100 professional investor organizations based in the European Union who are investing in the alternative investment fund (“AIF”) market as Limited Partners. These members are sophisticated, trusted fiduciaries seeking to maximize returns and to limit downside risk on behalf of their beneficiaries, including – among others – pensioners, insurance policyholders and national government entities providing public services.

ILPA’s members are generally supportive of the AIFMD legal framework as it stands today, but our members believe that targeted changes can and should be made to increase investor protections in the directive and also to ensure continued access to diversified global investment opportunities in the AIF marketplace. These targeted changes should focus on enhancing transparency and governance for AIF investors, with an emphasis on ensuring regular, robust disclosure around fees and expenses charged to the AIF by the AIFM and its affiliates.

¹ ILPA is the voice of the institutional investors invested in private equity, colloquially known as Limited Partners or LPs. Our 550+ member institutions represent over USD 2 trillion in private equity assets under management globally and include public and private pension funds, insurance companies, university endowments, charitable foundations, family offices and sovereign wealth funds, all of which invest in the U.S. alternative investment market. LPs provide the capital that fuels private equity and venture capital investment, generating economic growth and job creation, across America and around the world.

In addition to providing this critical capital for economic growth, LPs are the trusted financial stewards investing the assets of millions of Americans. Limited partner beneficiaries include teachers, first responders, students receiving university scholarships, charity recipients and insurance policyholders, among others. ILPA is headquartered in Washington, D.C. with additional offices in Toronto, Ontario. For more information on ILPA’s members, please visit: <http://www.ilpa.org/members>.

I. Key Considerations Underpinning ILPA's Positions

ILPA's responses to the Consultation focus on two primary points critical to LPs based in the EU. First, we seek targeted changes to the AIFMD to require AIFMs to regularly report the fees and expenses they charge to their investors. Second, we want to ensure that EU based LPs continue to have access to the widest array of potential investment opportunities around the globe, thereby seeking multiple avenues in which AIFMs can market their fund in the bloc, as well as maintaining the ability for LPs to approach global AIFMs on their own accord for investment purposes. In addition to these two primary points, we also provided our views on other areas in which LPs think the regulatory framework for AIFs in the EU could be adjusted either to reduce investment costs in EU structures, or to ensure uniformity in sanction application across the EU.

With more specificity, ILPA's responses sought to advance the following priorities:

1. Ensuring EU Investor Access to Global AIFMs
 - a. Seeking to maintain the ability to utilize National Private Placement Regimes ("NPPRs") and allow EU based LPs to reach out to global managers to source investment opportunities.
 - b. Expressing support for a Third Country Passport framework in the future.
 - c. Seeking to maintain the current system of delegation, to permit AIFMs to delegate investment management functions outside the EU (including to the UK or elsewhere).
2. Investor Protection Changes in the AIFMD
 - a. Seeking a new requirement for AIFMs accessing the EU market to, on a quarterly basis, report all direct and indirect fees and expenses to the investors in their funds.
3. Limiting Cost of Investing in EU Investment Structures
 - a. Seeking the incorporation of a depositary passport to increase competition in the depositary market, and ultimately lower costs to invest through AIFMD compliance AIFs, as opposed to those domiciled offshore.
4. Support Changes to ESMA's Responsibilities
 - a. Seeking to enhance the power of ESMA to allow it to act as a central repository for the AIFMD reporting of non-EU domiciled AIFMs marketing their funds in the EU.

II. ILPA's Written Responses to Specific Questions in the Consultation:

In its response to the Consultation issued by the Commission, ILPA responded to many of the questions posed in the online form, in line with the priorities set forth above. For several key questions, we are providing below the written responses we submitted to the Commission. For ease of understanding, we have included the exact text of these questions for context and in the same order in which the questions appeared in the consultation.

2. *“Do you believe that the effectiveness of the AIFMD is impaired by national legislation or existing market practices?”*

ILPA's members bring the perspectives of over 100 professional investor organizations based in the EU who are investing in the alternative investment fund (“AIF”) market as Limited Partners (“LPs”). These members are sophisticated, trusted fiduciaries seeking to maximize returns and to limit downside risk in the course of investing in the global AIF market. The beneficiaries of these LPs are pensioners, insurance policyholders and governmental entities providing public services.

EU LPs are supportive of the AIFMD legal framework as it stands today, but narrowly targeted changes can and should be made to increase investor protections and to ensure continued access to diversified global investment opportunities in the AIF marketplace. These narrowly targeted changes on the investor protection side should be focused on enhancing transparency and governance for the benefit of LPs, particularly around the fees and expenses they are charged by AIFs. The changes in terms of access should ensure greater competition and fundraising opportunities for global alternative investment fund managers (“AIFMs”) in the EU market, providing greater choice and diversification for EU LPs and the citizens on behalf of whom they invest. Professional investors are distinct from retail investors in that they have a greater capacity to utilize and analyze information in their investment activities and decision-making. As a result, blunt tools that limit access to fund opportunities, such as marketing restrictions, are less effective in providing investor protection to these more sophisticated investors. Required information flows and minimum standards of governance are more critical to protect these investors.

ILPA does believe that, in some cases, the effectiveness of the AIFMD is impaired by national legislation, notably “gold plating” efforts in EU Member States. However, in other cases, national legislation, particularly national private placement regimes (“NPPRs”) in individual EU Member States, has been beneficial to ensure ILPA's EU

members have greater access to global AIFMs. Finally, existing market practices result in impairment to the AIFMD’s investor protection mission, and the European Commission (“Commission”) should consider targeted changes to address these.

First, in regard to the impairment of the AIFMD by certain national level requirements, we appreciate the work the Commission has done to improve uniformity for AIFMs who intend to market their funds across the EU, notably through the recent cross-border distribution of funds legislation. However, we believe more can be done under the AIFMD to prevent additional “gold plating” requirements among EU Member States, and we would encourage the Commission and the European Securities & Markets Authority (“ESMA”) to continue to study these issues and to provide a uniform interpretation of the Directive’s components through guidance or updates to the AIFMD. We also encourage the Commission to consider, in the course of this review, making ESMA the repository for reporting requirements for non-EU domiciled AIFMs using the AIFM passport for their AIFs to ensure greater uniformity and a central reporting location for these AIFMs.

Second, regarding the positive benefits of national level requirements, the NPPR regime is a very helpful way to ensure access for LPs and their beneficiaries to global opportunities, with sufficient investor protection. While many large, global AIFMs access the EU market through the passporting regime, the NPPRs allow targeted access in particular EU Member States to a wider array of global AIFMs who may only wish to market in a particular country. This provides significant diversification benefits for ILPA’s EU members and should remain in place.

Third, existing market practices have impaired the effectiveness of the AIFMD in its investor protection mission. One area of particular concern is the lack of transparency provided by AIFMs on fees and charges applied to LPs invested in an AIF. Across the EU, AIFMs do not consistently provide LPs transparency into AIF-related fees and charges assessed to the fund or its portfolio companies. These fees are often complex, making it difficult to confirm if they are in accordance with the fund agreement. AIFMs regularly charge investors for the services of affiliates and other entities though these expenses are often not adequately disclosed to all LPs in the AIF. As a result, LPs are usually unclear about the range of charges – directly and indirectly – they pay to AIFMs and their affiliates for managing an AIF and its portfolio companies. To remedy these issues and better account for existing market practices, the AIFMD should be revised to provide investors with greater transparency into the

fees and expenses charged by AIFMs for management of an AIF and its portfolio companies.

3. Sub-question opinion statements on “*Providing high level investor protection*” and “*The AIFMD costs and benefits are balanced (in particular regarding the regulatory and administrative burden)*”

While ILPA members are generally supportive of the AIFMD framework, we believe that the AIFMD’s existing requirements are not well targeted to professional investors, who value enhanced transparency and governance. We also believe the Commission can do more to improve investor protections, such as ensuring an ongoing flow of information from the AIFM to the LPs invested in its AIFs.

Most importantly, the AIFMD has failed to provide basic investor protection to LPs by not requiring regular, quarterly reporting of all fees and expenses charged by an AIFM to LPs. There is broad agreement amongst policymakers globally that fee and expense opacity in private equity is common and a risk factor for LPs. The absence of required reporting can and does result in fees and charges being assessed to LPs that are not aligned with the fund agreement between AIFMs and LPs. The EU can be a global leader on these issues if it acts through the AIFMD to enhance transparency and alignment by providing a quarterly fee and expense reporting requirement of all direct and indirect fees and costs charged to LPs for all AIFMs marketing funds in the EU.

There are useful examples highlighting the need for this reporting, which are presented in the [2019 KPMG report](#) on the AIFMD and in a [June 2020 letter from ESMA](#) on undue costs from AIFMs to LPs. Furthermore, the U.K. has taken action on this issue in its [Cost Transparency Initiative](#), and in the U.S., the Securities & Exchange Commission has issued numerous risk alerts and public comments since 2014 on the prevalence of private funds charging fees and expenses not in the fund agreements. Please review the attached supplement for additional data regarding adding this essential reporting requirement to enhance investor protection.

17. “*Does the lack of an EU passport for the sub-threshold AIFMs impede capital raising in other Member States?*”

Based on our members’ experiences in the marketplace, the AIFMD’s capital requirements for AIFMs do appear to impede fundraising in certain EU Member

States by preventing sub-threshold AIFMs from marketing their AIFs under the AIFM passport. Marketing a fund to professional investors via the AIFM passport confers legitimacy among LPs and lowers the cost to access them. Today, the AIFMD deprives a significant amount of sub-threshold AIFMs – less experienced AIFMs or AIFMs seeking to raise smaller AIFs – of the benefits of the AIFM passport. These growing AIFMs early in their lifecycle at times struggle to raise capital from LPs, while facing competition from larger AIFMs marketing funds through the AIFM passport. Over time, this leads to fewer emerging AIFMs active in the market and ultimately a limited selection of AIFMs for LPs. LPs support more robust competition in the marketplace, to both lower investment costs and achieve greater portfolio diversification for beneficiaries. We would therefore support lowering the barriers to sub-threshold AIFMs to take advantage of the AIFM passport across the EU, while still seeking to maintain many of the investor protections in the AIFMD.

18. *“Is it necessary to provide an EU level passport for sub-threshold AIFMs?”*

The Commission should offer an EU-wide AIFM passport for sub-threshold AIFMs to facilitate capital raising among emerging AIFMs and ensure LPs can consistently access a diverse selection of AIFMs. An EU-level passport for sub-threshold AIFMs would create a common process for smaller AIFMs seeking to raise AIFs, given that some EU Member States today maintain a notification process for foreign sub-threshold AIFMs, whereas others do not. One potential solution would be to require ESMA to create and maintain a website for sub-threshold AIFMs that would provide a central location to facilitate submission of a standard notification form to each NCA in the EU Member States in which they would like to market their AIFs. The EU-wide passport should seek to increase the number of sub-threshold AIFMs present in the market, while also accounting for the unique characteristics of this AIF segment. Most sub-threshold AIFMs choose to not opt-in as fully compliant to access the AIFM passport due to its corresponding financial burden. In a December 2020 survey of ILPA’s EU membership, out of 23 respondents, 61% of LP organizations indicated they do not invest with EU-based sub-threshold AIFMs. There are a few reasons why. First, many larger LPs have a minimum investment size in each AIF investment they make, which may be too large for smaller, sub-threshold AIFs. This is due to the need to deploy larger amounts of capital to achieve sufficient returns, as well as the efficiencies of investing in larger amounts as the due diligence costs and time are similar irrespective of AIF size. Second, the current lack of a AIFM passport for sub-threshold AIFMs results in many LPs targeting this market by investing through third party AIFMs (fund of funds), driving up investment costs by as much as 2.5%.

Increased competition among AIFMs can reduce costs and improve diversification across the EU market by giving investors access to a greater selection of top-performing AIFMs. We encourage the Commission to make this change.

20. *“Can the AIFM passport be improved to enhance cross-border marketing and investor access?”*

The AIFM passport can be improved to increase LP access to AIFMs by introducing a reciprocal third country passport regime and clarifying that certain sophisticated investors may conduct their own outreach to qualified global AIFMs without those AIFMs being subject to the AIFMD’s marketing requirements. As the AIF market continues to expand globally, a third country passport would increase the availability of investment opportunities to EU LPs by recognizing other countries’ regulatory regimes as providing the same high standards of regulation and protection as that of the AIFMD. In particular, the third country passport would promote better access for LPs to the established AIF markets in the U.K. and the U.S. and growing opportunities across Asia.

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)?”*

ILPA believes that the AIFMD should cross-refer to the MiFID II client categories since MiFID II client categories effectively differentiate between the types of investors active in the market today, and the use of MiFID II client categories in the AIFMD promotes standardization of client definitions across global securities markets. MiFID II delineates three client categories that adequately reflect the investor universe today by appropriately distinguishing between professional clients – and a subset of eligible counterparties – and retail clients. MiFID II’s client categories correctly account for the fact that professional investors require different investor protections than retail investors do. In addition to the fact that MiFID II’s client categories are fitting portrayals of the different types of investors that exist, referencing MiFID II client categories in the AIFMD helps encourage standardization across securities markets in the EU and the rest of the world, and increased standardization will allow investors, AIFMs and regulators to have a shared understanding of the different kinds of investors.

31. *“Does the lack of the depositary passport inhibit efficient functioning of the EU AIF market?”*

ILPA members support the implementation of a depositary passport, as this will increase competition and thus lower the cost to those investing through AIFs domiciled in the EU. While the AIFMD includes a requirement that AIFMs use an AIFMD compliant depositary, it does not provide for a corresponding depositary passport for depositary firms to increase competition in that market. In a survey of ILPA members in the EU, we found that a majority of our members invest through EU-based AIFs rather than those based in other jurisdictions – such as the Cayman Islands – for reputational reasons. However, this comes with the additional cost of maintaining an AIFMD compliant depositary, which can often increase the cost of investment relative to that of a Cayman-domiciled AIF. These costs are generally passed on to the LPs in the AIF. While ILPA believes that the depositary requirements in the AIFMD add value and protection for LPs, we believe a depositary passport may result in lower costs to invest through EU-domiciled AIFs, thereby encouraging our members to increasingly consider those fund structures as opposed to those domiciled elsewhere. Enhanced competition in the EU depositary marketplace would be welcome, as it is currently dominated by a small number of firms in a few EU Member States and promoting competition across the EU could be helpful in reducing costs to invest through EU-domiciled funds for the benefit of all AIF market participants. We encourage the Commission to strongly consider implementation of a depositary passport to lower costs through greater competition, and we also encourage the Commission to examine other areas in which the rule could be adjusted to reduce depositary costs for LPs.

32. *“What would be the potential benefits and risks associated with the introduction of the depositary passport?”*

ILPA believes that introducing a depositary passport would benefit AIFMs – and ultimately their LPs who often pay the depositary costs – by increasing the number of eligible depositaries in the EU and promoting competition among depositaries. A depositary passport would likely promote greater competition across the EU, particularly in smaller EU Member States, in support of the goals of the CMU which typically have more concentrated depositary markets dominated by a handful of financial institutions or even a single financial institution. Increased competition among depositaries would ensure that the depositary market functions efficiently, thus lowering costs and counterparty risk. We encourage the Commission to consider including a depositary passport as part of the AIFMD review. We do not expect any significant increase in risks by permitting the use of such a passport.

33. *“What barriers are precluding introducing the depositary passport?”*

The most significant barrier to the depositary passport appears to be a lack of trust among the NCAs in different EU Member States, as well as the centralization of the depositary industry in a few select EU Member States. While many financial institutions in the EU are already providing custody and depositary services across the EU through a passporting regime, they are not currently permitted to do so for AIFs. We believe this would be a positive change and therefore encourage the Commission to consider its implementation.

34. *“Are there other options that could address the lack of supply of depositary services in smaller markets?”*

ILPA believes that the depositary passport represents the best opportunity to address the lack of supply of these services in smaller markets, as these markets are unlikely to be able to address these issues otherwise. However, we would encourage the Commission to review the depositary requirements for what is needed for investor protection purposes and consider if changes that would permit more institutions in smaller markets to engage in this business are warranted.

36. *“Are the mandatory disclosures under the AIFMD sufficient for investors to make informed investment decisions?”*

The AIFMD should be amended to include mandatory disclosures for AIFMs to report all direct and indirect fees and charges paid for by the LPs or the AIF itself. The AIFMD should go further in championing transparency and governance to investors as part of its investor protection mission.

As was set forth previously, we believe that a new mandatory disclosure requirement should be put into place under AIFMD. Since the AIFMD first came into force, there have been consistent acknowledgements in the global industry that the fees and charges are opaque in the private equity marketplace. The EU could be a global leader on these issues if the Commission takes action to amend the AIFMD to enhance transparency and alignment by providing a quarterly fee and expense reporting requirement for all AIFMs marketing funds in the EU. The methodology and approach of this requirement in the Directive is critical to ensure that all fees and charges are covered, particularly given changes in market practices over time.

This requirement should include quarterly disclosure and reporting of all direct and indirect fees and expenses charged to LPs or the AIF so that LPs are able to ensure the fees and expenses they are being charged are those that have been agreed upon in the fund agreement between the AIFM and the LPs. While ILPA has developed our own [fee reporting template](#) – which we are attaching as a supplement to this response – we do not believe this should be legislated, as the AIFMD should be flexible to adjust based on the various fees and expenses that are charged and may be charged in the future in the market. AIFMs, having this requirement, will then use the best private sector solution – including potentially the ILPA template – to ensure that LPs are aware of all the fees and expenses they may be charged, directly or indirectly. This needed disclosure is currently subject to negotiation in the AIF market, and many LPs, particularly smaller LPs, are unable to access this information currently. The Commission and the EU should take a strong stance in favor of fee and expense transparency as they consider updated mandatory disclosures and reporting requirements that would add significant value to investors in the EU.

37. *“What elements of mandatory disclosure requirements, if any, should differ depending on the type of investor?”*

ILPA supports the mandatory disclosure requirements that are in place now, as well as the addition of the fee and expense reporting requirement for AIFs – as previously discussed – and related requirements to improve transparency across the AIF industry. Along with the fee and expense disclosure obligation, ILPA believes the AIFMD should mandate increased transparency on the part of AIFMs regarding conflicts of interest, ongoing or past regulatory investigations by NCAs, and the use of fund-level leverage with respect to an AIF. The AIFMD could add a requirement for AIFMs to disclose to investors any and all pertinent conflicts of interest during the due diligence process and at the time of investment to ensure that any LPs are not inadvertently entangled in conflict scenarios which the AIFM did not properly disclose and resolve. Similarly, the AIFMD should obligate AIFMs to report quarterly to LPs whether they have been – or remain – the subject of any ongoing regulatory investigations in any EU Member State, as well as whether they are presently using leverage at the fund level and in what amount, any guarantees associated with such debt and the terms of that fund-level leverage. We would encourage the Commission to review ILPA’s [2017](#) and [2020 guidance](#) on the use of subscription lines of credit and alignment of interest in crafting policy solutions, both of which are attached as supplements to this response. Given that LP capital is at higher risk through the use

of debt financing, AIFMs should communicate clearly regarding the use of any credit facilities at the fund level, which are becoming increasingly common in the marketplace, and be required to clean them down on an annual basis. Beyond implementing those disclosure requirements, we believe the Commission should consider potential changes to the marketing requirements, which we believe should be more flexible for professional investors given their sophistication in considering marketing overtures from AIFMs.

38. *“Are there any additional disclosures that AIFMs could be obliged to make on an interim basis to the investors other than those required in the annual report?”*

As previously indicated, ILPA believes that AIFMs should be required to provide fee and expense reporting on a quarterly basis, which would be additional disclosure to that which exists in the current requirements.

47. *“Which elements of the AIFMD regulatory framework support the competitiveness of the EU AIF industry?”*

ILPA believes the AIFMD framework provides an EU complement to the SEC registration framework in the U.S. and provides similar investor protection to LPs invested in the EU market. This framework helps provide certainty for LPs and AIFMs by establishing rules of the road for investment negotiations and giving NCAs tools to ensure AIFMs are following these fund agreements. This helps attract non-EU investors considering investing with EU AIFMs given that there is an additional layer of protection beyond the interest of the AIFM in preserving their reputation and the enforceability of the fund agreement. Given the limited access to information provided contractually to LPs, having an NCA examining the AIFM on a regular basis gives additional comfort that the terms of the fund agreement are being followed. There are other elements of the AIFMD framework that are beneficial to promoting EU competitiveness in the global private capital marketplace. First, the current flexibility permitted to allow investment functions to be delegated outside the EU is helpful as it enables many AIFMs to access the EU market that may not otherwise choose to do so from outside the EU, thereby providing more investment opportunities for EU-based LPs. Furthermore, the AIFM passport’s ability to currently co-exist with NPPRs in each EU Member State offer a helpful tool for EU-based LPs to access global managers seeking to market within their specific EU Member State jurisdiction. Finally, the ability for LPs themselves to seek out diverse, global AIFMs wherever they are located, without them being required to enter the market, is also

helpful from a competition perspective since it ensures EU beneficiaries can achieve the highest possible returns and access the best opportunities, even if those AIFMs do not wish to enter the EU market to market their funds.

48. *“Which elements of the AIFMD regulatory framework could be altered to enhance competitiveness of the EU AIF industry?”*

ILPA believes that the competitiveness of the EU’s AIF industry would be enhanced by providing more access to LPs and their beneficiaries to global opportunities in the AIF market. Greater alignment and collaboration with the other primary regulatory regime in the AIF marketplace – the SEC registration requirements in the U.S. – would go further in helping improve uniformity of access across what is a global industry. Furthermore, there are several steps in the AIFMD that the EU could take to increase competitiveness.

We believe the Commission can help improve the competitiveness of the EU AIF industry while also ensuring that EU citizens – beneficiaries of the EU institutional investor community – benefit from enhanced returns and diversification globally. The way to promote competitiveness is not to build a protected group of EU-based AIFMs but rather to allow EU-based AIFMs to compete for the same investors as those that are based outside the EU. This will help the EU fund industry compete globally, as it will be strengthened through more robust competition for investors.

The Commission can support this type of competitiveness across the EU’s AIF market by implementing a third country passport that recognizes other countries’ regulatory regimes as providing the same high standards of regulation and protection as the AIFMD. The third country passport would ensure better investor access to AIF markets outside of the EU, based on the principle of reciprocity, especially in the U.K. and the U.S. AIFMs from those markets would compete more vigorously with EU-based AIFMs, which in-turn would increase the overall competitiveness of the AIFM industry throughout the EU and help build global EU champions. Moreover, to accompany the introduction of a third country passport, the EU’s AIF regime would similarly be strengthened through more certainty around the ability for LPs to seek out global AIFMs for the best, most diversified investment returns, without requiring those AIFMs to apply to market in the EU. Many EU investors are currently soliciting those opportunities that are attractive to them under the guidelines of the AIFMD, and it is critical that they be able to continue to do so.

Lastly, the Commission should consider ways in which it can attract non-EU-based LPs to invest in EU-based AIFs. The Commission should look at ways to lower the cost of investing through an AIFMD structure and focus on its strengths, particularly around its leadership on environmental, social, and governance issues and sustainability. This strength, particularly around ESG reporting, may encourage more non-EU LPs interested in investing in sustainable AIFMs to consider EU-based AIFMs which have more experience and required reporting in this area. Moreover, this is an area where the EU continues to lead the way for other jurisdictions, particularly in the AIF marketplace.

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?”*

Instances in which AIFMs delegate collective portfolio management functions to a third party, the AIFMD standards should apply regardless of the third party’s location in order to ensure investor protection and to prevent regulatory arbitrage. By ensuring that the AIFMD framework remains in place regardless of a third party’s location, it will prevent AIFMs from circumventing the AIFMD and seeking a lower regulatory standard by delegating functions to a third party. It will also encourage greater standardization across the global AIF market, as the AIFMD standards will prevail in several third-party countries to which AIFMs regularly delegate portfolio management functions.

56. *“Should the AIFMD framework be further enhanced for more effectively addressing macroprudential concerns?”*

Today, the AIFMD effectively addresses macroprudential concerns shared by market actors, and this framework does not, in our view, need to be further enhanced nor augmented.

67. *“Should the supervisory reporting by AIFMs be submitted to a single central authority?”*

ILPA does not believe that there is currently a need for a single central authority, such as ESMA, for supervisory reporting of AIFMs. The Commission should, however, consider strengthening the requirements for NCAs across the EU to ensure that the AIFMD governs all AIFs and AIFMs in a uniform manner. ILPA’s members

have expressed concern that some NCAs have applied disparate treatment in their enforcement activities against AIFMs that violate the requirements of the Directive. Moreover, ILPA's members believe that ESMA should be a central repository for reporting of non-EU-based AIFMs that are marketing funds across the EU through the AIFMD marketing passport. This will provide a central authority to collect this information where there is currently no clear jurisdiction to handle the reporting. ESMA could create a central portal with publicly available information for LPs to access, as well as release relevant information that can assist LPs in their due diligence of AIFMs accessing the EU.

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?”*

NCAs should be required to report all AIFMD supervisory reporting data to relevant national or EU regulators, and ESMA should also be permitted to request NCAs to provide this type of reporting data. The Commission should also consider requiring a biannual ESMA report to the public of the types of issues uncovered across the AIF market in the EU, highlighting areas where NCAs had found issues. EU-based investors would find this information very helpful, and there is precedent to this in the U.S. in SEC Risk Alerts – such as the SEC's [June 2020 Risk Alert](#) –that add value when investors are able to target these questions in their due diligence efforts to ensure they are able to access information about where AIFMs have had regulatory challenges prior to investing.

86. *“Are the rules provided in Section 2 of Chapter 5 of the AIFMD laying down the obligations for AIFMs managing AIFs, which require control of non-listed companies and issuers, adequate, proportionate and effective in enhancing transparency regarding the employees of the portfolio company and the AIF investors?”*

The AIFMD's rules governing the obligations for AIFMs managing AIFs are sufficient in scope. However, ILPA would request that this information regarding portfolio company issues be directly reported to LPs in the fund on a routine basis.

87. *“Are the AIFMD rules provided in Section 2 of Chapter 5 of the AIFMD whereby the AIFM of an AIF, which acquires control over a non-listed company, is required to provide the NCA of its home Member State with information on the financing of the acquisition necessary, adequate, and proportionate?”*

The AIFMD's rules mandating disclosures from AIFMs to NCAs are appropriate and do not need to be revised at this time.

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?"*

ILPA appreciates and supports the Commission's ongoing focus on sustainability in the financial markets. However, we believe that other EU workstreams are the most appropriate place to drive the Commission's sustainability agenda. We believe incorporating sustainability-related requirements into the AIFMD would be confusing and duplicative.

96. *"Should ESMA be granted additional competences and powers beyond those already granted to them under the AIFMD?"*

ILPA supports encouraging the Commission to consider, in the course of the AIFMD consultation, making ESMA the central repository for reporting requirements for non-EU domiciled AIFMs utilizing the AIFMD market passport to seek LPs in the EU.

99. *"What improvements to intra-EU cross-border supervisory cooperation would you suggest?"*

ILPA would suggest a greater role for ESMA in helping NCAs share information and learn from one another about the AIF market and operations. We would also support uniform training on supervisory examinations so that NCAs can have a similar approach to supervision under AIFMD across the EU and encourage greater uniformity in supervisory application to AIFMs. This sort of coordination and training would likely result in a more robust market and increased effectiveness of AIFMD as a deterrent to potential violators of the Directive.