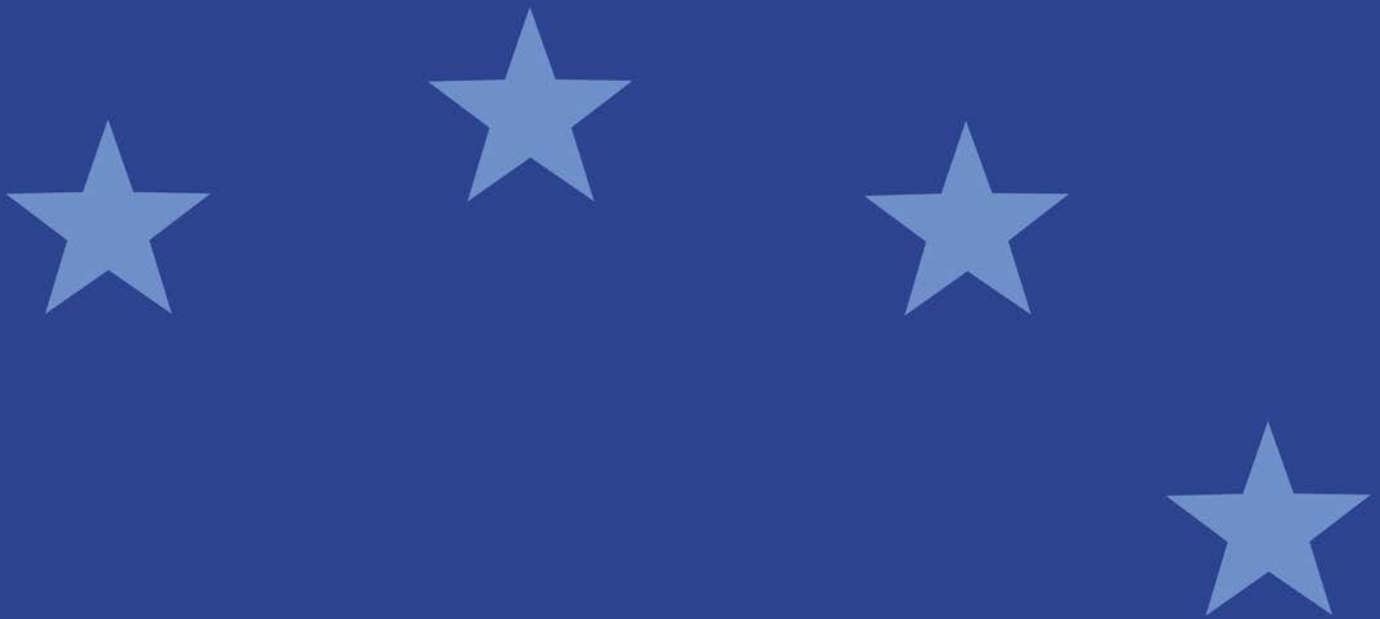


Response Form to the Consultation Paper

Guidelines on Article 25 of Directive 2011/61/EU





Responding to this paper

ESMA invites comments on all matters in this consultation paper and in particular on the specific questions summarised in Annex I. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **01/09/2020**.

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Instructions

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA_QUESTION_PFG_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text "TYPE YOUR TEXT HERE" between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA_PFG_nameofrespondent_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA_PFG_ABCD_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA's website (www.esma.europa.eu under the heading "Your input – Open consultations" → "Consultation on Position limits and position management in commodities derivatives").



Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading [Legal Notice](#).

Who should read this paper

This document will be of interest to asset managers managing alternative investment funds and their trade associations.

General information about respondent

Name of the company / organisation	Association of the Luxembourg Fund Industry
Activity	
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Luxembourg

Introduction

Please make your introductory comments below, if any

<ESMA_COMMENT_PFG_1>

The Association of the Luxembourg Fund Industry (ALFI) represents the face and voice of the Luxembourg asset management and investment fund community. The Association is committed to the development of the Luxembourg fund industry by striving to create new business opportunities, and through the exchange of information and knowledge. Created in 1988, the Association today represents over 1,500 Luxembourg domiciled investment funds, asset management companies and a wide range of business that serve the sector. These include depositary banks, fund administrators, transfer agents, distributors, legal firms, consultants, tax advisory firms, auditors and accountants, specialised IT and communication companies. Luxembourg is the largest fund domicile in Europe and a worldwide leader in cross-border distribution of funds. Luxembourg domiciled investment funds are distributed in more than 70 countries around the world.

We would like to thank the European Securities and Markets Authority for the opportunity to comment on the draft guidelines.<ESMA_COMMENT_PFG_1>

Questions

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

<ESMA_QUESTION_PFG_1>

We believe that a quarterly frequency of the risk assessment by the NCAs is appropriate.

<ESMA_QUESTION_PFG_1>

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?

<ESMA_QUESTION_PFG_2>

Regarding the requirement to include in the risk assessment under step 1 also funds that are not employing leverage on a substantial basis which may pose financial stability risks, we would like to refer to the final IOSCO report on “Recommendations for a Framework Assessing Leverage in Investment Funds” which provides as follows:

“The goal of Step 1 is to provide regulators with a means of efficiently identifying those funds that are more likely to pose risks to the financial system [...]”.

In this sense, ESMA’s wording and related proposal are different from IOSCOs wording as it reads on page 8, point 18 of the consultation paper:

“Under Step 1 (Level, source and different usages of leverage), NCAs should identify not only AIFs employing leverage on a substantial basis but also non-substantially leveraged AIFs which may cause risks to financial stability and thus need to be assessed under Step 2.”

As in our view, the wording “more likely” and “may” is not synonymous, ALFI believes that is a good objective to include funds which may pose financial stability risks, whether they are employing leverage on a substantial basis or not.

<ESMA_QUESTION_PFG_2>

Q3 : Do you agree with the proposed threshold identified under Step 1? Would you set the same threshold for all AIFs, or would you be in favour of setting different thresholds based 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.

<ESMA_QUESTION_PFG_3>

Under Step 1, we are in favor of setting the same threshold for all AIFs similar to the definition of substantial leverage.

<ESMA_QUESTION_PFG_3>

Q4 : Would you identify other relevant transmission channels?

<ESMA_QUESTION_PFG_4>

We suggest ESMA to consider in their forward looking strategy regarding the reception and transmission of data to enable the regulator to ensure the use of efficient technology.

<ESMA_QUESTION_PFG_4>

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?

<ESMA_QUESTION_PFG_5>

Regarding other types of indicators at that stage we don't see how we could provide a measure that would be applicable to the entire fund industry.

<ESMA_QUESTION_PFG_5>

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?

<ESMA_QUESTION_PFG_6>

We are in favour of onboarding external data. This could create a network which enables interaction with participants of the wider financial sector (banking, insurance,...) in order to establish a consistent approach and to receive a better view on systemic risk. However, it should be ensured that non-comparables are not being compared which could lead to wrong conclusions. In addition, we would be in favour of NCAs collecting the specific data they deem appropriate and necessary rather than requesting it additionally from the AIF manager.

<ESMA_QUESTION_PFG_6>

Q7 : Which other restrictions would you consider as appropriate?

<ESMA_QUESTION_PFG_7>

The existing restrictions are deemed to be sufficient in our view.

<ESMA_QUESTION_PFG_7>

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?

<ESMA_QUESTION_PFG_8>

In our view, leverage limits should be applied on the level of the single fund or where indicated sub-fund.

<ESMA_QUESTION_PFG_8>

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

<ESMA_QUESTION_PFG_9>



A clarification of the term “excessive leverage” would be needed first.

Any assessment of the efficiency should be performed on a case-by-case basis and the amount of data required by the fund should be proportionate. One way to ease the assessment could be to anonymously publish relevant data of the funds which are under more scrutiny. This would provide for an easier reference and more transparency.

<ESMA_QUESTION_PFG_9>