
TO : **Alternative Investment Fund Managers – AIFMs:**
i. Authorised Alternative Investment Fund Managers¹
ii. Registered Alternative Investment Fund Managers²

FROM : **Cyprus Securities and Exchange Commission**

DATE : **15 September 2020**

CIRCULAR No : **C404**

SUBJECT : **Publication of CySEC’s Review of compliance with the reporting obligation under the Alternative Investment Fund Managers Law (the ‘AIFM Law’) as further specified with the Commission Delegated Regulation (EU) No 231/2013 with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (‘the Regulation’)**

The Cyprus Securities and Exchange Commission (‘CySEC’) recently carried out a review of the quality of information reported to CySEC by AIFMs (‘the Review’). Specifically, this looked at information provided for AIFs³ managed or AIFs marketed in the EU by AIFMs (‘the AIFs’), under Articles 4(3)(d) and 31 of the AIFM Law as further specified under Article 110 of the [Regulation](#). The purpose of the Review was to assess the quality, accuracy and timeliness⁴ of information reported by AIFMs to CySEC.

The Review identified some areas of concern, and this circular sets out CySEC’s observations and conclusions. All AIFMs should take note of the findings and ensure

¹ The term includes a) Cyprus based AIFMs and self-managed AIFs whose total assets under management (‘AuM’) exceed the thresholds of Articles 4(2)(a) or 4(2)(b) of the Alternative Investment Fund Managers Law (‘[AIFM Law](#)’) as the case may be, and b) Cyprus based AIFMs and self-managed AIFs whose Total AuM do not exceed the thresholds of Articles 4(2)(a) or 4(2)(b) of the AIFM Law, as the case may be, but have exercised the ‘opting-in’ possibility of Article 4(6) of the AIFM Law.

² Alternatively, Sub Threshold AIFMs, as it is mentioned on CySEC’s Circulars C287 and C110 – The term includes Cyprus based AIFMs and self-managed AIFs whose Total AuM do not exceed the thresholds of section 4(2)(a) or 4(2)(b) of the AIFM Law, as the case may be, and have not exercised the ‘opting-in’ possibility of section 4(6) of the AIFM Law. For the avoidance of doubt, Registered AIFMs of the Republic comprise of: a) UCITs Management Companies; b) Cyprus Investment Firms; c) any company, which has been approved by CySEC pursuant to section 116(3)(ii)(b) of the AIF Law, to manage an AIFLNP under Part VI of the AIF Law; d) Self-managed AIFs under Part II of the AIF Law; and e) Self-managed AIFLNPs under Part VI of the AIF Law.

³ Where applicable the term AIF includes AIFs, AIFLNPs and RAIFs as per Part II, Part VII and Part VIII of AIF Law 124(I)/2018 (‘[AIF Law](#)’), respectively.

⁴ Whether reporting is performed within the timeframe provided in Article 110 of the Regulation.

they comply with their reporting obligation under Articles 4(3)(d) and 31 of the AIFM Law as further specified under Article 110 of the Regulation.

Recommended immediate steps for AIFMs are in Section D of the Circular.

A. Regulatory framework

1. The applicable regulatory framework with regards to the Review is included in Annex 1.
2. ESMA Guidelines on reporting obligations under Articles 3(3)(d) and 24(1), (2) and (4) of the AIFMD (the '[ESMA Guidelines](#)') and ESMA Questions and Answers on the application of the AIFMD (the '[ESMA Q&As](#)'), are also relevant.

B. Scope of the Review

3. The Review assessed the quality of information reported to CySEC by AIFMs for the year ending 31 December 2019. The Review looked at information reported through the TRS, notably at the AIFM ('DATAMAN') Report and AIF ('DATAIF') Report; collectively 'the **AIFMD Reports**'.
4. The Review covered the following areas:
 - i. Timely submission of valid AIFMD reports;
 - ii. Accuracy of information provided;
 - iii. Consistency of information reported within the AIFMD reports and/or between the AIFMD reports submitted by an AIFM;
 - iv. Completeness of information;
 - v. Double reporting.

C. Areas of concern/Observations identified

The following areas of concern should be read in conjunction with CySEC's Circular [C287](#), published in 2018, which notes in detail the reporting obligations for AIFMs.

5. Timely submission of valid AIFMD reports
 - i. CySEC observed that in certain cases, AIFMs did not submit valid AIFMD reports in a timely manner as outlined in the timeframe set under Article 110(1) of the Regulation.
 - ii. Furthermore, CySEC noticed that some AIFMs failed to submit valid AIFMD reports for 2019 despite the AIFM and/or the AIF being granted authorisation before 1st October 2019. There may be cases in which AIFMs do not have any information to report on AIFs, such as where there is a delay between the authorisation or registration being granted to a new AIFM and the actual start of activity or between the creation of an AIF and the first investments. In such a

scenario, AIFMs should still provide a report to their NCAs by indicating that no information is available by using a specific field.

6. Accuracy of information reported

- i. Sum of the value of main instruments against assets under management ('AUM')
In certain cases, it was observed that the sum of the values reported for the main instruments of certain AIFs was larger than reported AUM by a significant margin.
- ii. Consistency between the reported liquidity and type of AIF
It was observed that in certain cases, the average liquidity reported for AIFs did not match the type of AIF. More specifically, AIFs categorized as 'Real Estate' or 'Private Equity' reported portfolio liquidity for which the sum of percentages from 0 days to 90 days of financing in some cases exceeded the sum of percentages from 91 days to more than 365 days.
- iii. Reporting of inaccurate net asset value ('NAV')
It was observed that in certain cases, the NAV reported for AIFs was not accurate given its level, its evolution and/ or other information, such as the information included in [ECB-RIAD database](#).
- iv. Consistency between leverage and ratio of AUM to NAV reported figures
It was observed that in certain cases there was significant difference between reported leverage and ratio of AUM to NAV.
- v. Reporting of legal entity identifiers ('LEIs') for managers and AIFs
The Review identified that certain AIFMs provided information on their LEIs and/ or the LEIs of AIFs, which was not consistent with [GLEIF database](#).

7. Consistency of information reported within the AIFMD repots and/or between the AIFMD reports submitted by an AIFM

- i. Consistency of percentages of financing
CySEC has noticed that for some AIFs the percentage reported for days of financing did not always equal to 100%. More specifically, in some cases, the percentage reported ranged between 99%-101% whereas in other cases was far less than 99% or far more than 101%.
- ii. Investor concentration vs investor group type (i.e. retail and professional)
The Review identified that in certain cases the reported percentages of investor concentration did not match the investor group type reported. For example, investor group type set to 'Household' must equal (or be smaller than) the investor concentration percentage reported as 'Retail Clients'.

iii. Reporting code consistency

In some cases, the reporting code was not reported consistently between the DATAMAN and the DATAAIF reports. The reporting code of the AIFM was not in line with that of the AIF.

vi. No reporting flag consistency

In certain cases, AIFMs did not report the 'no reporting flag' consistently:

- a. With their status /constitution date;
- b. Between the AIFMD reports (i.e. 'no reporting flag' of the AIF against 'last reporting flag' of the AIFM).

8. Completeness of information reported

i. Reporting of legal entity identifiers ('LEIs') for AIFMs and AIFs

The Review identified that certain AIFMs did not provide information on their LEIs and/ or the LEIs of the AIFs despite the fact that they had obtained LEIs (i.e. for the purposes of Article 9 of [EMIR](#) or Article 26 of [MIFIR](#)).

9. Double reporting

i. File cancellation

In certain cases, AIFMs submitted a file using an incorrect AIF national code and later submitted a second file using the correct AIF national code without cancelling⁵ the file with the incorrect national code thus leading to double reporting.

D. Immediate next steps

In order to effectively monitor and prevent systemic risk and market disruption, CySEC must act on accurate and timely information. The quality of AIFMD data and the adequacy and sufficiency of the procedures associated with AIFMD reporting obligations are fundamental in order to achieve the above objective. Fulfilling AIFMD reporting obligations requires dedicated oversight by all AIFMs to ensure any issues and/or failures are rectified appropriately.

In order to achieve the above and ensure compliance, AIFMs are advised to nominate a person within their firm who will be responsible for the regular monitoring of AIFMD reporting requirements and dealing promptly with all issues/failures that might arise. In addition, AIFMs are requested to inform CySEC accordingly about the above nomination through the Funds Digital Record.

⁵ An AIFM or AIF file can be cancelled by select the 'Cancel File' button from the Toolbar of the AIFMD Application.

The publication of common deficiencies identified in CySEC's Review is designed to assist AIFMs in prioritising their efforts towards reviewing the procedures established, implemented and maintained in relation to AIFMD. CySEC also strongly recommends AIFMs to review the [ESMA Guidelines and ESMA Q&As](#). Ensuring that data reported to CySEC is complete, accurate, consistent, timely and not duplicated is of utmost importance in order to foster a smoother-functioning market.

AIFMs not complying with their AIFMD reporting obligation will face enforcement action.

Sincerely

Demetra Kalogerou
Chairman
Cyprus Securities and Exchange Commission

Regulatory Framework

1. Article 4(3) of the AIFM Law states that: *“AIFMs referred to in paragraph (2) - (d) regularly provide the competent authorities of their home Member State with information on the main instruments in which they are trading and on the principal exposures and most important concentrations of the AIFs that they manage in order to enable the competent authorities to monitor systemic risk effectively; and*

2. Article 31 of the AIFM Law states that: *“(1) AIFMs of the Republic shall regularly report to the Commission on the principal markets and instruments in which it trades on behalf of the AIFs they manage. AIFMs of the Republic shall include in these reports information on –*
 - (a) the main instruments in which it is trading on behalf of the AIF; and*
 - (b) the markets of which it is a member or where it actively trades; and*
 - (c) on the principal exposures and most important concentrations of each of the AIFs it manages.*

(2) AIFMs of the Republic shall, for each of the EU AIFs it manages and for each of the AIFs it markets in the Union, provide the following information to the Commission:

 - (a) the percentage of the AIF’s assets which are subject to special arrangements arising from their illiquid nature;*
 - (b) any new arrangements for managing the liquidity of the AIF;*
 - (c) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;*
 - (d) information on the main categories of assets in which the AIF invested;*

(4) An AIFM of the Republic, managing AIFs employing leverage on a substantial basis, shall make available to the Commission –

 - (a) information about the overall level of leverage employed by each AIF it manages; and*
 - (b) a break-down between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives; and*
 - (c) information regarding the extent to which the AIF’s assets have been reused under leveraging arrangements; and*
 - (d) the identity of the five largest sources of borrowed cash or securities for each of the AIFs managed by the AIFM, and the amounts of leverage received from each of those sources for each of those AIFs.*

(5) Non-EU AIFM, for which the Republic is the member state of reference, shall make available to the Commission the information referred to in subsection (4), only for the EU AIFs it manages and for the non-EU AIFs it markets in the Union.

3. Article 110 of the Regulation states that: “1. In order to comply with the requirements of the second subparagraph of Article 24(1) and of point (d) of Article 3(3) of Directive 2011/61/EU, an AIFM shall provide the following information when reporting to competent authorities:

(a) the main instruments in which it is trading, including a break-down of financial instruments and other assets, including the AIF’s investment strategies and their geographical and sectoral investment focus;

(b) the markets of which it is a member or where it actively trades;

(c) the diversification of the AIF’s portfolio, including, but not limited to, its principal exposures and most important concentrations. The information shall be provided as soon as possible and not later than one month after the end of the period referred to in paragraph 3. Where the AIF is a fund of funds this period may be extended by the AIFM by 15 days.

2. For each of the EU AIFs they manage and for each of the AIFs they market in the Union, AIFMs shall provide to the competent authorities of their home Member State the following information in accordance with Article 24(2) of Directive 2011/61/EU: (a) the percentage of the AIF’s assets which are subject to special arrangements as defined in Article 1(5) of this Regulation arising from their illiquid nature as referred to in point (a) of Article 23(4) of Directive 2011/61/EU;

(b) any new arrangements for managing the liquidity of the AIF;

(c) the risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;

(d) the current risk profile of the AIF, including: (i) the market risk profile of the investments of the AIF, including the expected return and volatility of the AIF in normal market conditions; (ii) the liquidity profile of the investments of the AIF, including the liquidity profile of the AIF’s assets, the profile of redemption terms and the terms of financing provided by counterparties to the AIF;

(e) information on the main categories of assets in which the AIF invested including the corresponding short market value and long market value, the turnover and performance during the reporting period; and

(f) the results of periodic stress tests, under normal and exceptional circumstances, performed in accordance with point (b) of Article 15(3) and the second subparagraph of Article 16(1) of Directive 2011/61/EU.

3. The information referred to in paragraphs 1 and 2 shall be reported as follows: (a) on a half-yearly basis by AIFMs managing portfolios of AIFs whose assets under management calculated in accordance with Article 2 in total exceed the threshold of either EUR 100 million or EUR 500 million laid down in points (a) and (b) respectively of Article 3(2) of Directive 2011/61/EU but do not exceed EUR 1 billion, for each of the EU AIFs they manage and for each of the AIFs they market in the Union;

(b) on a quarterly basis by AIFMs managing portfolios of AIFs whose assets under management calculated in accordance with Article 2 in total exceed EUR 1 billion, for each of the EU AIFs they manage, and for each of the AIFs they market in the Union;

(c) on a quarterly basis by AIFMs which are subject to the requirements referred to in point (a) of this paragraph, for each AIF whose assets under management, including any assets acquired through use of leverage, in total exceed EUR 500 million, in respect of that AIF;

(d) on an annual basis by AIFMs in respect of each unleveraged AIF under their management which, in accordance with its core investment policy, invests in non-listed companies and issuers in order to acquire control.

5. AIFMs managing one or more AIFs which they have assessed to be employing leverage on a substantial basis in accordance with Article 111 of this Regulation shall provide the information required under Article 24(4) of Directive 2011/61/EU at the same time as that required under paragraph 2 of this Article.

6. AIFMs shall provide the information specified under paragraphs 1, 2 and 5 in accordance with the pro-forma reporting template set out in the Annex IV.

7. In accordance with point (a) of Article 42(1) of Directive 2011/61/EU, for non-EU AIFMs, any reference to the competent authorities of the home Member State shall mean the competent authority of the Member State of reference.