



VERENA ROSS

Executive Director,
European Securities and Markets
Authority (ESMA)

Enhancing the AIFMD framework in the forthcoming review

The AIFMD has provided a solid framework for alternative investment funds in Europe. It gave a basis for consistent supervision of alternative managers in the EU, thus reassuring investors in Europe and the world that alternative investment funds are grounded in a credible regulatory framework.

Since its creation in 2011, ESMA and the national competent authorities have exchanged practical experiences in supervising firms in accordance with the AIFMD rules. We have noticed many areas of the framework that should evolve in the current review. In addition, the recent COVID-19 related stresses highlighted some areas that could be further improved.

The current AIFMD framework requires changes covering areas such as reporting, availability of liquidity management tools and leverage. There is also merit in greater harmonisation of the UCITS and AIFMD frameworks in many areas.

More broadly, it is time to create a true Single Rulebook for investment management by making greater use of directly applicable regulations rather than directives which need to be individually transposed by the different Member States. Many key regulatory matters covered by the AIFM and UCITS Directives are left to national discretion which adds to regulatory complexity and risk of regulatory arbitrage for investors, market participants and authorities.

One area that we believe deserves specific attention is that of delegation and substance. These rules deserve to be updated, both in the area of the AIFMD and UCITS.

In many cases, AIFMs and UCITS management companies delegate to a large extent the collective portfolio management functions to third parties and only perform some control functions internally (notably risk management functions). In particular, portfolio management functions are often largely, or even entirely, delegated to third parties within or outside of the group of the AIFM or UCITS management company. We recognise that such extensive use of delegation arrangements can increase efficiencies and ensure access to external expertise, taking into account the global nature of financial markets. However, we also see that they may increase operational and supervisory risks.

Therefore, ESMA believes the extent

of delegation should be clarified to avoid the risk of letterbox entities. Consideration should be given to specifying and complementing the existing broad qualitative criteria to clarify which core functions should always be retained by the licensed entity.