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ESMA Publishes Consultation Paper on Guidelines on Article 25 of Directive 2011/61/EU

On 27 March 2020, the European Securities and Markets Authority (ESMA) issued a Consultation Paper on draft Guidelines to address leverage risks in the Alternative Investment Fund (AIF) sector (hereunder referred to as Guidelines).

The proposed Guidelines are part of the ESMA response to the recommendations of the European Systemic Risk Board (ESRB) published in April 2018 on addressing liquidity and leverage risk in investment funds. The scope of the Consultation Paper is for ESMA to obtain feedback on the proposed principles to set leverage limits under Article 25 of the AIFMD [Directive 2011/61/EU].

AIFs can employ both financial leverage, including through securities financing transactions and borrowing as well as synthetic leverage through the use of derivatives. The proposed Guidelines aim at ensuring that National Competent Authorities (NCAs) adopt a consistent approach when assessing whether the condition for imposing leverage-related measures are met. In order to ensure that a consistent approach is taken by NCAs in the assessment of leverage-related systemic risk, the proposed Guidelines include:

- (a) a common minimum set of indicators to be considered by NCAs during their assessment; and
- (b) the instructions to calculate such indicators based on the reporting data under Article 24 of the AIFMD.

ESMA has invited Alternative Investment Fund Managers and their trade associations to respond to the Consultation Paper on the draft Guidelines. The deadline for the submission of feedback is 01 September 2020.

The Consultation Paper is available through the web-link: <https://www.esma.europa.eu/press-news/consultations/consultation-guidelines-art-25-aifmd>.

We encourage licensed holders to contribute to ESMA's Consultation Paper constructively and to respond to it in a comprehensive manner.