

Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (Text with EEA relevance)

CHAPTER V

AIFMs MANAGING SPECIFIC TYPES OF AIF

SECTION 1

AIFMs managing leveraged AIFs

Article 25

**Use of information by competent authorities,
supervisory cooperation and limits to leverage**

1 Member States shall ensure that the competent authorities of the home Member State of the AIFM use the information to be gathered under Article 24 for the purposes of identifying the extent to which the use of leverage contributes to the build-up of systemic risk in the financial system, risks of disorderly markets or risks to the long-term growth of the economy.

2 The competent authorities of the home Member State of the AIFM shall ensure that all information gathered under Article 24 in respect of all AIFMs that they supervise and the information gathered under Article 7 is made available to competent authorities of other relevant Member States, ESMA and the ESRB by means of the procedures set out in Article 50 on supervisory cooperation. They shall, without delay, also provide information by means of those procedures, and bilaterally to the competent authorities of other Member States directly concerned, if an AIFM under their responsibility, or AIF managed by that AIFM could potentially constitute an important source of counterparty risk to a credit institution or other systemically relevant institutions in other Member States.

3 The AIFM shall demonstrate that the leverage limits set by it for each AIF it manages are reasonable and that it complies with those limits at all times. The competent authorities shall assess the risks that the use of leverage by an AIFM with respect to the AIFs it manages could entail, and, where deemed necessary in order to ensure the stability and integrity of the financial system, the competent authorities of the home Member State of the AIFM, after having notified ESMA, the ESRB and the competent authorities of the relevant AIF, shall impose limits to the level of leverage that an AIFM are entitled to employ or other restrictions on the management of the AIF with respect to the AIFs under its management to limit the extent to which the use of leverage contributes to the build up of systemic risk in the financial system or risks of disorderly markets. The competent authorities of the home Member State of the AIFM shall duly inform ESMA, the ESRB and the competent authorities of the AIF, of actions taken in this respect, through the procedures set out in Article 50.

4 The notification referred to in paragraph 3 shall be made not less than 10 working days before the proposed measure is intended to take effect or to be renewed. The notification shall include details of the proposed measure, the reasons for the measure and when the measure

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is intended to take effect. In exceptional circumstances, the competent authorities of the home Member State of the AIFM may decide that the proposed measure takes effect within the period referred to in the first sentence.

5 ESMA shall perform a facilitation and coordination role, and, in particular, shall try to ensure that a consistent approach is taken by competent authorities, in relation to measures proposed by competent authorities under paragraph 3.

6 After receiving the notification referred to in paragraph 3, ESMA shall issue advice to the competent authorities of the home Member State of the AIFM about the measure that is proposed or taken. The advice may, in particular, address whether the conditions for taking action appear to be met, whether the measures are appropriate and the duration of the measures.

7 On the basis of the information received in accordance with paragraph 2, and after taking into account any advice of the ESRB, ESMA may determine that the leverage employed by an AIFM, or by a group of AIFMs, poses a substantial risk to the stability and integrity of the financial system and may issue advice to competent authorities specifying the remedial measures to be taken, including limits to the level of leverage, which that AIFM, or that group of AIFMs, are entitled to employ. ESMA shall immediately inform the competent authorities concerned, the ESRB and the Commission of any such determination.

8 If a competent authority proposes to take action contrary to ESMA's advice referred to in paragraph 6 or 7 it shall inform ESMA, stating its reasons. ESMA may publish the fact that a competent authority does not comply or intend to comply with its advice. ESMA may also decide, on a case-by-case basis, to publish the reasons provided by the competent authority for not complying with its advice. The competent authorities concerned shall receive advance notice about such a publication.

9 The Commission shall adopt, by means of delegated acts in accordance with Article 56 and subject to the conditions of Articles 57 and 58, measures setting out principles specifying the circumstances in which competent authorities apply the provisions set out in paragraph 3, taking into account different strategies of AIFs, different market conditions in which AIFs operate and possible pro-cyclical effects of applying those provisions.