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Additional Information

Level 1 Regulation
Alternative Investment Fund Managers Directive (AIFMD) Directive 2011/61/EU

Topic
AIFMD scope

Subject Matter
Notion of ‘substantive direct or indirect holding’ in Article 3(2) of the AIFMD

Question
Article 3(2) AIFMD states the following: “Without prejudice to the application of Article 46, only paragraphs 3 and 4 of this Article shall apply to the following AIFMs:
(a) AIFMs which either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management, including any assets acquired through

use of leverage, in total do not exceed a threshold of EUR 100 million; or
(b) AIFMs which either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIFs whose assets under management in total do not exceed a threshold of EUR 500 million when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF".

How should the notion of 'substantive direct or indirect holding' in Article 3(2) of the AIFMD be interpreted. In particular, is there a quantitative threshold above which the criterion of substantive direct or indirect holding could be considered as met, and, if yes, what this threshold would be?"

ESMA Answer

10-03-2023

Original language

[ESMA 34-32-352 AIFMD Q&A, Section 16, 1]

Answer provided by the European Commission in accordance with Article 16b(5) of the ESMA Regulation [1]

As mentioned in Article 3(2)(a) AIFMD, the notion of "substantive direct or indirect holding" refers to situations where the AIFM manages the portfolios of AIFs through its direct or indirect holding in a company. This covers, for instance, situations whereby the AIFM de facto has the power to impose decisions on the AIF portfolio composition, its asset allocation or its risk management. Article 3(2)(a) AIFMD does not set a quantitative threshold. The notion of "substantive direct or indirect holding" shall be assessed on a case-by-case basis by AIFMs supervisors.

[1] The answers provided by the European Commission clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving

from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudge the position that the European Commission might take before the Union and national courts.