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Additional Information

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

Topic
AIFMD scope

Subject Matter
Scope

Question
Are managers of undertakings investing in crypto-assets subject to the AIFMD?

ESMA Answer

17-12-2021

Original language

[ESMA 34-32-352 AIFMD Q&A, Section 11, 2]

It is important to assess on a case-by-case basis whether the relevant undertaking meets the definition of an ‘AIF’ as legally defined in Article 4(1)(a) of the AIFMD. In this context, market participants and NCAs should pay attention to the guidance provided in the ESMA Guidelines on key concepts of the AIFMD (ESMA/2013/611).

Collective investment undertakings raising capital from a number of investors to invest in crypto-assets in accordance with a defined investment policy for the benefit of those investors will qualify as ‘AIF’ in accordance with Article 4(1)(a) of the AIFMD. As the AIFMD does not provide for a list of eligible or non-eligible assets, AIFs may in principle invest in any traditional or alternative assets as long as the AIFM can ensure compliance with the AIFMD. However, more specific investment and risk diversification requirements for AIFs investing in crypto-assets as well as limitations regarding the target investors of such AIFs may exist at national level.

In this context, ESMA reminds market participants and investors of the high risks involved in investments in crypto-assets as previously stated in the joint ESMA, EBA and EIOPA warning from February 2018 (ESMA50-164-1284).[1] Market participants and investors should therefore be alert to the high risks of buying and/or holding these assets, including the possibility of losing all their money.

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[1] https://www.esma.europa.eu/sites/default/files/library/esma50-164-1284_joint_esas_warning_on_virtual_currenciesl.pdf