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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 special purpose acquisition companies (“SPACs”) subject to the AIFMD?

ESMA Answer

16-12-2022

Original language

[ESMA 34-32-352 AIFMD Q&A, Section 11, 3]

SPACs are not yet legally defined in Union law.

In its Public Statement (ESMA32-384-5209)[1] ESMA has described SPACs as shell companies that are admitted to trading on a trading venue with the intention to acquire a business. ESMA has also listed the three stages of the typical life-cycle of a SPAC: (i) the Initial Public Offering ("IPO"); (ii) the SPAC searches for a target company to acquire and (iii) the business combination with the target company, typically through a merger ("business combination").

However, the structure of SPAC transactions is complex and there are significant variations between the general structuring of relevant vehicles and concrete modalities of their transactions.

In light of this, it is important to assess on a case-by-case basis:

- whether SPACs meet the definition of an "AIF" as legally defined in Article 4(1)(a) of the AIFMD, and
- whether SPACs qualify as a "holding company" in accordance with Article 4(1)(o) of the AIFMD.

This assessment should take into account the specific features and characteristics of the individual structure of the SPAC and it should be based on substance, not form, paying close attention to the guidance provided in the ESMA Guidelines on key concepts of the AIFMD (ESMA/2013/611).

ESMA also notes that during the life-cycle of a SPAC, there might be circumstances which may be relevant when assessing if a SPAC qualifies as AIF, as follows:

- a SPAC does not raise capital through the IPO with a view to investing it in accordance with a defined investment policy;
- all, or substantially all, the proceeds of the IPO are used for the business combination;
- following the business combination, the SPAC has a general commercial or industrial purpose as defined in the ESMA Guidelines on key concepts of the AIFMD.

The occurrence of some or all of these circumstances may indicate that a SPAC is not an AIF as it might not meet all the elements described in the ESMA Guidelines on key concepts of the AIFMD.

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[1] https://www.esma.europa.eu/sites/default/files/library/esma32-384-5209_esma_public_statement_spacs.pdf