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Additional Information

Level 1 Regulation

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

Topic

ELTIF

Subject Matter

ESMA's guidelines on performance fees in UCITS and certain types of AIFs

Question

Are ELTIFs in scope of the Guidelines on performance fees?

ESMA Answer

30-03-2021

Original language

[ESMA 34-32-352 AIFMD Q&A, Section 15, 3]

The Guidelines on performance fees apply to managers of UCITS and, in case Member States allow AIFMs to market to retail investors in their territory units or shares of AIFs they manage in accordance with Article 43 of the AIFMD, they also apply to AIFMs of those AIFs, except for:

- a) closed-ended AIFs; and
- b) open-ended AIFs that are EuVECAs (or other types of venture capital AIFs), EuSEFs, private equity AIFs or real estate AIFs.

Therefore, ELTIFs marketed to retail investors that do not have a closed-ended structure, within the meaning of Article 1(2) of the Delegated Regulation 694/2014^[1], and are not venture capital/private equity or real estate AIFs are in scope of the guidelines.

^[1] Article 1(2) of the Delegated Regulation 694/2014 states that “An AIFM of an open-ended AIF shall be considered to be an AIFM which manages an AIF the shares or units of which are, at the request of any of its shareholders or unitholders, repurchased or redeemed prior to the commencement of its liquidation phase or wind-down, directly or indirectly, out of the assets of the AIF and in accordance with the procedures and frequency set out in its rules or instruments of incorporation, prospectus or offering documents.

A decrease in the capital of the AIF in connection with distributions according to the rules or instruments of incorporation of the AIF, its prospectus or offering documents, including one that has been authorised by a resolution of the shareholders or unitholders passed in accordance with those rules or instruments of incorporation, prospectus or offering

documents, shall not be taken into account for the purpose of determining whether or not the AIF is of the open-ended type.

Whether an AIF's shares or units can be negotiated on the secondary market and are not repurchased or redeemed by the AIF shall not be taken into account for the purpose of determining whether or not the AIF is of the open-ended type”.