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Status: Awaiting Answer

Additional Information

Level 1 Regulation

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

Topic

AIFMD scope

Additional Legal Reference

Article 4(1)(1)

Subject Matter

Can compartments of umbrella fund structures qualify as AIFs?

Question

Dear ESMA-Team,

I am reaching out to you with a question regarding one of your documents published online, namely the 'Final report: Guidelines on key concepts of the AIFMD', ESMA/2013/600 dated 24 May 2013. My question relates to the definition of AIFs.

In its Annex III Section V. Guidelines on the treatment of investment compartments of an undertaking, you specify that "where an investment compartment of an undertaking exhibits all the elements in the definition 'AIF' (...), this should be sufficient to determine that the undertaking as a whole is an 'AIF' (...).

While this answers the question under which circumstances an undertaking as a whole (e.g. an umbrella fund structure) qualifies as an AIF, it leaves room for interpretation if such an investment compartment in and of itself can – subject to all criteria set out in the definition in Article 4(1)(1) of the AIFMD – qualify as an AIF as well.

Therefore I would like to ask

1. if – assuming that an investment compartment exhibits all the criteria set out in the AIF's definition (i.e. collective investment undertaking, raising capital, number of investors, defined investment policy) – an investment compartment itself can also qualify as an AIF within the meaning of the AIFMD (not only the overarching undertaking),
2. if full legal capacity (i.e. the ability to have rights and obligations, being a legal entity) is required for a compartment to qualify as an AIF (presumably not as this is not included in the AIF definition) and finally
3. if all requirements included in the AIF definition in Article 4(1)(1) AIFMD have to be fulfilled in order for an undertaking to qualify as an AIF or if the fulfillment of some of the criteria is sufficient.

I am asking these questions as I (as a retail investor) am planning to invest in a closed-ended compartment of a Luxembourg based S.C.A., SICAV-RAIF, which under its umbrella structure has established multiple compartments. If those compartments would also qualify as AIFs themselves, that would of course mean that the AIFMD fully applies, the compartment was registered for marketing in Austria, the compartment itself is supervised by an AIFM etc.

I highly appreciate your efforts in answering my query and remain

with best regards