ESMA_QA_1069

Submission Date
12/06/2023

Status: Answer Published

Additional Information

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

Topic
Cross-border distribution of funds

Additional Legal Reference
Article 30a of Directive 2011/61/EU

Subject Matter
Pre-marketing by third-parties

Question
Where an investment strategy is developed by a third party (the fund initiator), are the obligations set out in Article 30a of the AIFMD applicable to this third party?

ESMA Answer

13-06-2023

Original language

[ESMA34-32-352, Section II, Q&A 9]

Yes. Pursuant to Article 30a(3) AIFMD, pre-marketing can be conducted by the EU AIFM or by a third party on behalf of an authorised EU AIFM only if that third party is authorised as an investment firm in accordance with Directive 2014/65/EU, as a credit institution in accordance with Directive 2013/36/EU, as a UCITS management company in accordance with Directive 2009/65/EC, as an AIFM in accordance with AIFMD, or acts as a tied agent in accordance with Directive 2014/65/EU. Moreover, such third party is subject to the conditions for pre-marketing set out in Article 30a AIFMD.

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.