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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 32a(1) of Directive 2011/61/EU

Subject Matter

De-notification in the absence of investors in the host Member State

Question

In case there are no investors in a host Member State, do AIFMs wishing to de-notify the arrangements previously made for marketing the units or shares of the EU AIFs they manage have to comply with the obligations set out in Article 32a(1) of the AIFMD?

13-06-2023

Original language

[ESMA34-32-352, Section II, Q&A 11]

Yes. Article 32a(1), point (a), AIFMD lays down an explicit exemption referring to closed-ended European long-term investment funds governed by Regulation (EU) 2015/760. In all other cases not covered by that exemption, all the conditions laid down in Article 32a(1) AIFMD are to be complied with, making sure that there are no investors uninformed about the AIFM's market exit, that all marketing is publicly terminated and any marketing arrangements with the third parties are terminated or modified to prevent any further marketing of the de-notified AIF. Finally, Article 32a(1), second subparagraph, AIFMD remains applicable. That provision requires the AIFM to cease any new or further marketing of units or shares of the AIF it manages in the Member State in respect of which it has submitted a de-notification.

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 prejudice the position that the European Commission might take before the Union and national courts.