

# ESMA\_QA\_2310

Status: Question Rejected

## **Additional Information**

---

### **Level 1 Regulation**

Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

### **Topic**

Digital operational resilience testing

## **Subject Matter**

Application of DORA to non-EU AIFMs of AIFs with EU investors

### **Question**

The scope of DORA includes (Article 2(1)(k) “managers of alternative investment funds”. Such an entity is defined in Article 3(44) as “... a manager of alternative investment funds as defined in Article 4(1), point (b), of Directive 2011/61/EU”. It is noted that the definition does not extend to the need to be authorised or registered under Directive 2011/61/EU. As such this can be read as meaning that all managers (regardless of their jurisdiction) of alternative investment funds could potentially fall within scope of DORA.

ESMA\_QA\_2107 clarifies that a financial entity in the EU is subject DORA and that DORA does not directly apply to a non-EU entity providing services to an EU financial entity – although DORA may apply indirectly to the non-EU entity given that the “EU financial entity is

expected to validate that the non-EU third-party provider does not prevent it to be compliant with DORA”.

Does the same principle apply to non-EU AIFMs that manage AIFs (regardless of where those AIFs are established) which have investors based in the EU i.e. DORA will not directly apply to such non-EU AIFMs, but may apply indirectly if such investors are financial entities in the EU who are directly subject to DORA?