ESMA_QA_2310

Submission Date
22/10/2024

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?