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Additional Information

Level 1 Regulation
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

Topic
Other DORA topics

Additional Legal Reference
Articles 2(1)(k) and 2(3)(a), Regulation (EU) 2022/2554 (“DORA”)

Subject Matter
Application of DORA to AIFMs which have chosen to opt-in to the application of the AIFMD but whose asset under managment is below the thresholds as provided for by Article 3(2) of AIFMD

Question

Are sub-threshold alternative investment fund managers (AIFMs) as referred to in Article 3(2) of Directive 2011/61/EU (“AIFMD”), which have chosen to opt-in to the application of the AIFMD according to Article 3(4) of that Directive, captured within the scope of application of Regulation (EU) 2022/2554 (“DORA”) under Articles 2(1)(k) and 2(3)(a) of DORA, if the thresholds regarding assets under management (“AuM”) referred to under Article 3(2) of AIFMD are not exceeded by such AIFM?

ESMA Answer

03-12-2024

Original language

According to the European Commission Q&A DORA003, DORA applies to AIFMs as defined in Article 3(44) of Directive 2011/61/EU (AIFMD), with the exemption of sub-threshold AIFMs referred to in Article 3(2) of AIFMD, which are excluded from the scope of application of DORA.

However, in case such a sub-threshold AIFM decides to opt-in to the application of the entirety of AIFMD (Article 3(4) of Directive 2011/61/EU), all requirements that are applicable to managers of alternative investment funds defined in Article 4(1), point (b), of AIFMD will become applicable to the entity that opted in. As Article 18 of AIFMD applies (amended by Directive (EU) 2022/2556 it includes a reference to Regulation (EU) 2022/2554 (DORA)), DORA applies as well to these entities.

Consequently, DORA also applies to sub-threshold AIFM which have decided to opt in to Directive 2011/61/EU despite not exceeding the thresholds under Article 3(2) of Directive 2011/61/EU.