

ESMA_QA_2636

Status: Forwarded to EC/Public Consultation/Other

Additional Information

Level 1 Regulation

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

Topic

AIFMD scope

Additional Legal Reference

New exemption foreseen for distributors under Article 20(6a) AIFMD and Article 13(3) UCITS Directive

Subject Matter

Questions on the new exemption foreseen for distributors under Article 20(6a) AIFMD and Article 13(3) UCITS Directive

Question

It follows from Article 1(9)(d) and Article 2(4)(b) AIFMD II that where the marketing function of an AIFM or UCITS management company is performed by one or several distributors, which are acting on their own behalf, such function shall not be considered to be a delegation subject to the requirements set out in those Articles. In which cases is a distributor considered to be acting on its own behalf?

In cases where a distributor of an investment fund manager is acting on its own behalf, as referred to under Article 1(9)(d) and Article 2(4)(b) AIFMD II, the AIFM or UCITS management company is exempted from applying the provisions set out in Article 20 AIFMD and Article 13 UCITS Directive. In such cases, is the AIFM or UCITS management company required to monitor the distributor? What is the approach for insurance-based investment products marketed in accordance with Directive (EU) 2016/97? What is the approach for distributors located in a third country marketing UCITS or AIFs in the EU?