

By mail

ESMA

Online submitted at www.esma.europe.eu

Claude Debussylaan 80
P.O. Box 75084
1070 AB Amsterdam
The Netherlands

T +31 20 577 1771
F +31 20 577 1775

Date 22 March 2012

Our ref. M12968292/1/20538286/

Kees Groffen
E kees.groffen@debrauw.com
T +31 20 577 1025 (direct)
T +31 20 577 1639 (secretary)
F +31 20 577 1775

Re: ESMA's discussion paper on key concepts of the Alternative Investment Fund Managers Directive and types of AIFM dated 23 February 2012

Dear Madam, Dear Sir,

We act as legal adviser to a number of family offices. On behalf of our clients we hereby submit a contribution in respect of ESMA's discussion paper on key concepts of the Alternative Investment Fund Managers Directive and types of AIFM dated 23 February 2012.

1 Question 1

1.1 This contribution focusses on question 1 of the discussion paper:

Do you see merit in clarifying further the notion of family office vehicles? If yes, please clarify what you believe the notion of 'investing the private wealth of investors without raising external capital' should cover.

1.2 We believe that the notion of family office vehicles requires further clarification. Family members who invest in family office vehicles often reside in a number of EU member states. In addition, the vehicles and their managers sometimes are established in or operate from multiple EU member states. Therefore a consistent approach across the EU is desired. This requires a clear and detailed definition of the notion of family office vehicles to avoid a different interpretation when offering or operating in multiple EU member states.

2 Family relationship

2.1 Crucial for the notion of family office vehicles is what might be considered a family relationship. In our view this should cover any family relationship

recognised by national law.

- 2.2** While recognising the need to require a relationship with one or more shared ancestors and/or between the participating family investors, we would not recommend defining a minimum required degree of relationship. The primary condition should be sufficiently restrictive in practice.
- 2.3** In addition, we would consider it advisable for a family relationship by marriage or by an equivalent form of union to survive any divorce or separation. It should be possible to allow a divorced spouse or partner to continue his or her participation in the family investment vehicle, in particular if children (or further family-related descendants) are involved. Furthermore, we would recommend allowing family-related entities which have only family members as their beneficiaries (e.g. personal holding companies, trusts, pension trusts,) and family-funded charitable institutions to be treated as if these were family members.

3 Family related source of wealth?

- 3.1** Although the private wealth of a family might have a shared family-related source, either in the past or the present, we would not restrict contributions to a family investment vehicle to money or assets from such a source. In addition, we recommend not requiring assets or money to pre-date the relationship between the investors and the AIF or AIFM.
- 3.2** It would be artificial in practice to exclude monies or assets obtained by family members from other sources or acquired at a later date, such as personal and independent professional and business activities. Upon marriage “new” family members might also wish to invest their wealth equally. We would consider monitoring the original family/non-family source of money and assets over time to be burdensome and potentially complicated (e.g. in the case of co-mingling).

4 UCITS Directive

- 4.1** Given the fact that quite often family members will not qualify as professional investors the notion of family office vehicles should be extended to the UCITS Directive¹ as well.

¹ Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

- 4.2** As family office vehicles do not promote the sale of their units to the public, such vehicles in accordance with article 3 sub (b) of the UCITS Directive should not be subject to the UCITS Directive.

Yours sincerely,
De Brauw Blackstone Westbroek N.V.

Kees Groffen