

14 January 2011

European Securities and Markets Authority
11-13 Avenue de Friedland
75008 Paris
France

Dear Sir or Madam

Implementing Measures on the Alternative Investment Fund Managers Directive: Response to the Call for Evidence

Scottish Financial Enterprise represents Scotland's financial services industry. It is funded by its members, which are drawn from all sectors of the industry as well as from professional bodies, educational institutions and public sector interests. Common to all members is an interest in promoting and supporting the continued success of our industry in Scotland.

Investment management is a central element of Scotland's financial services industry. We estimate that some €720 billion of assets are managed in Scotland, principally in Edinburgh and Glasgow; and that Scotland is the 4 largest manager of funds in the EU, after the UK, France and Germany.

We have briefed officials and legislators at the EU institutions during the passage of the AIFM Directive and were pleased that it was heavily modified. In response to this call for evidence, we offer the following comments:

- The AIFMD is already very detailed at level 1. It covers a wide range of vehicles, each with its own regulatory framework (eg prospectus directive, or partnership law). It is very important that the level 2 measures do not focus on open ended funds and the AIFMs who serve them, inadvertently making it impossible for other structures to comply. **We believe the best way to eliminate this risk is to leave matters of detail, on matters such as organisation and risk management, to local regulators.**
- A proportionate approach should be taken to the level of detail required in level 2 and 3 implementation. It should be at a high level and based on principles rather than detailed prescription, to accommodate the wide range of topics, vehicles and asset types covered.
- Some advice has been requested in relation to frameworks which are not to be in place for some years, e.g. 3rd country funds. **ESMA should pursue the more immediate tasks first.**
- Many of the issues cover ground already covered in MiFID and UCITS directives, and possibly also the Prospectus and Transparency directives. **Wherever possible, these directives should be amended rather than parallel provisions be created, to avoid confusion and conflict.** In any case, it is important that all new requirements imposed are consistent with existing rules.

- UCITS directives are already tried and tested in the context of the open ended structures they deal with, and are at a very detailed level. This is possible because they only deal with one particular structure. **Such detail will not be possible given the diversity of structures which AIFMD seeks to cover.** Nor would it be appropriate to draft directives at a similar level of detail for other structures which are, say, already covered by company law, prospectus and/or other directives. Once again, it may be appropriate for this level of detail to be dealt with by local regulators, given the nature of the investor base, the materiality in the context of systemic risk, and the existing regulatory framework, which may be very specific to particular jurisdictions.
- Finally, the nature of the advice sought from ESMA covers some difficult and technical areas, such as gearing, where different asset classes and structures use different ways of describing leverage. Given the complexities involved, the process of getting to the right answer will involve more of a discussion and conversation with ESMA than merely setting out 'evidence' within a very short timescale.

We look forward to taking part in that dialogue and to contributing further to the implementation of this Directive.

Yours faithfully



OWEN KELLY
 Chief Executive