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THE FINNISH VENTURE CAPITAL ASSOCIATION

FINNISH VC/PE INDUSTRY'S RESPONSE TO THE PUBLIC CONSULTATION RELATED TO THIRD COUNTRY CONSULTATION PAPER (ESMA/2011/270)

Finnish Venture Capital Association (FVCA) welcomes the opportunity to respond to the public consultation to the discussion paper on draft technical advice to the European Commission on possible implementing measures of the Alternative Investment Fund Managers Directive in relation to supervision and third countries.

Delegation

Q1: Do you agree with the above proposal? If not, please give reasons.

Q2: In particular, do you support the suggestion to use as a basis for the co-operation arrangements to be signed at EU level the IOSCO Multilateral Memorandum of Understanding of May 2002 and the IOSCO Technical Committee Principles for Supervisory Co-operation?

FVCA supports the idea that existing international standards are used as a basis when setting up the co-operation arrangements with third countries. ESMA refers to the 2002 IOSCO MMoU. However, it is not clear from the ESMA proposal whether a new MMoU is intended to be negotiated for AIFMD purposes. In any case, centrally negotiated MMoU sounds reasonable provided ESMA has adequate resources to conduct the negotiations in a timely manner. It would be essential for the venture capital and private equity industry participants to understand the MMoU negotiations process, e.g. what further actions are required if the IOSCO MMoU of 2002 is used as a basis, when will the negotiations be conducted, who will lead the negotiations, in what order will the various third country jurisdictions be addressed etc.

With reference to art. 20(1)(c), FVCA supports the approach, that the authorization or registration for asset management purposes follow local criteria but also believes that the equivalence criteria should not be interpreted too strictly (please see responses to Q3 and Q4).

FVCA suggests that ESMA established a public database of jurisdictions which meet the various criteria for authority cooperation purposes, of the mutual and bilateral arrangements between jurisdictions and of jurisdictions which have "equivalent" or "essentially equivalent" criteria to asset management authorization or registration and effective supervision for the purposes of 20(1)(c).

Depositories

Q3: Do you agree with the above proposal? If not, please give reasons

Q4: Do you have an alternative proposal on the equivalence criteria to be used instead of those suggested in point b above?

The proposal does not seem to take into consideration the exemption under 21(3) last paragraph. FVCA suggests that the ESMA advice includes an explicit note of depositaries referred to therein.

ESMA suggests that third country depositary should be subject to as stringent requirements laid down in the Directive for EU depositaries. FVCA believes that due to large number of third country jurisdictions and likely differences between regulatory approaches in those jurisdictions, ESMA should lighten its proposal e.g. by stating that eligibility to act as depositary should be “essentially” equivalent or that the capital requirement and operating conditions should be “essentially” equivalent etc.

FVCA supports the idea, that European Commission or ESMA issues decisions declaring a given third country as equivalent (or essentially equivalent if the lighter approach is adopted). The process for the verification of equivalence (e.g. in what order will the various third countries be addressed, will this be done upon request or ex officio) should be communicated to the industry participants in advance.

Co-operation between EU and third country competent authorities for the purposes of Article 34 (1), 36 (1) and 42 (1) of AIFMD

Q5: Do you agree with the above proposal? If not, please give reasons.

Q6: In particular, do you support the suggestion to use as a basis for the co-operation arrangement to be signed at EU level the IOSCO Multilateral Memorandum of Understanding of May 2002 and the IOSCO Technical Committee Principles for Supervisory Co-operation?

FVCA supports the idea, that IOSCO standards be used as a basis. The negotiation process should be communicated to the industry participants in advance and the process should be high in priority.

As a separate note, it would be essential to understand as soon as possible what is the process for a non-EU AIFM to commence marketing in a Member State without passport. Does it require notification to the relevant Member State authority? When can the marketing start? Who supervises that the requirements set out in art 22 to 24 and 26 to 30 are fulfilled? To whom will the non-EU AIFM report the information set out in article 24 (its own competent authority or to the competent authority of the Member State)?

FVCA supports that a central public database of details of the cooperation arrangements to be established.

Co-operation arrangements between EU and non-EU competent authorities as required by Articles 35(2), 37(7)(d) and 39(2)(a) of AIFMD

Q7: Do you agree with the above proposal? If not, please give reasons.

No further comments in addition to responses to Q5 and Q6.

Co-operation and Exchange of Information between EU competent authorities

Q8: Do you agree with the above proposal? If not, please give reasons.

No comments.

State of reference: authorization of non-EU AIFMs – Opt-in (Article 37(4))

Q9: Do you have any suggestions on possible further criteria to identify the Member State of reference?

Q10: Do you think that any implementing measures are necessary in the context of Member State of reference given the relatively comprehensive framework in the AIFMD itself?

Q11: Do you agree with the proposed time period for competent authorities identified as potential authorities of reference to contact each other and ESMA?

The determination process should be as little time-consuming as possible and no further formalities should be created in addition to what is absolutely necessary.

FVCA believes that the AIFM should be allowed to express its view on the correct Member State of reference and that due importance should be given to that assessment by the AIFM. FVCA agrees with the respondent to the call for evidence referred to in Annex IV clause 25 that due account should also be given to the pre-existing presence of non-AIFM's group in the EU and the Member State of e.g. the group parent company could be appointed as Member State of reference.

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FINNISH VENTURE CAPITAL ASSOCIATION

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