

ASSET MANAGEMENT AND INVESTORS COUNCIL

Attention to Ms Verena Ross

European Securities and Markets Authority

103, rue de Grenelle
75007 Paris
France

September 13, 2011

Sent by email

Ms Ross,

Consultation Paper – ESMA draft’s technical advice to the European Commission on possible implementing measures of the AIFMD.

The ICMA Asset Management and Investors Council (‘AMIC’ or ‘the Council’) was established in March 2008 to represent the buy-side members of the ICMA membership. ICMA is one of the few trade associations with a European focus having both buy-side and sell-side representation.

The AMIC composition embraces the diversification and the current dynamics of the industry – representing the full array of buy side interests both by type and geography. The AMIC’s focus is on issues which are of concern to its broad membership, rather than having a specific product focus.

The AMIC welcomes the opportunity to respond to the consultation paper on ESMA’s draft technical advice to the European Commission on possible implementing measures of the AIFMD. The Council is presenting general comments on the implementing measures.

At a general level ESMA’s draft advice adds useful clarification and detail to the level 1 text. Some points made in our January submission have been taken into account. Importantly, ESMA has recognised that proportionality and flexibility are required on the basis of the diversity of entities likely to fall within the scope of the AIFMD. Moreover efforts to ensure consistency with other regulatory measures, such as UCITS and MiFID, have been made, where appropriate. Additionally, ESMA has taken account of current market practices and the costs and other impacts associated with significant changes, which are of course key for a competitive European asset management industry going forward and for the investors who rely on access to specialist investment management techniques.

The Council takes the opportunity to highlight that the AIFs are mainly designed for professional investors, and professional investors are more aware of the risks inherent

in this kind of investment. Therefore, the measures applying to AIFs should not be more restrictive than those of the UCITS Directive or the protections which are cited in the MiFID Directive.

The Council, together with other trade associations, would welcome further clarification as regards the depositaries' provisions to ensure consistency with the AIFMD level 1 – provisions that are key to the operational aspects of the asset management industry work.

Council members recall that, as mentioned in point 1 of the Council's answer to ESMA dated as of January 17, 2011, "the value of the industry rests upon its diversity of legal structures and strategies. Therefore the AMIC believes that this calls for a legislative flexibility only offered by a Directive." In addition to the extra costs arising from substantial new provisions, if a regulation is put in place, the asset management industry will incur extra costs associated with legal uncertainty. Indeed it is unclear how new regulations will interact with local property and local regulatory frameworks. The AMIC will prefer well-drafted directives to allow flexibility.

The AMIC would be happy to discuss further with you the points made in this letter. The Secretary of the AMIC, Nathalie Aubry-Stacey, can be reached at Nathalie.aubry-stacey@icmagroup.org should you need further information.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Robert Parker', with a long horizontal stroke extending from the end of the name.

Robert Parker
AMIC Chairman