

ESMA
103 Rue de Grenelle
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Paris, 22 September 2011

**NATIXIS ASSET MANAGEMENT response to ESMA consultation
on possible implementing measures of the Alternative Investment Fund Managers Directive
in relation to supervision and third countries**

Natixis Asset Management is grateful for the opportunity to respond to ESMA's consultation on possible implementing measures of the Alternative Investment Fund Managers Directive (the AIFMD or the Directive) in relation to supervision and third countries.

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NAM supports AFG and EFAMA response to ESMA consultation on possible implementing measures of the Alternative Investment Fund Managers Directive in relation to supervision and third countries.

NAM wishes to express itself on the following points:

We believe that in some parts of ESMA proposals the respective roles of the AIFMs and of the competent authorities should be clarified in order to avoid any blurred responsibilities.

Box 1 – Delegation

ESMA proposes to assess whether a third country undertaking satisfies the requirements of the Directive based on the concept of "equivalence" of the third country rules with EU legislation. ". If the notion of "equivalent" is preserved, it seems essential to define criterias with the greatest possible objectivity: an identical reading in the EU is imperative.

We find that the notion of 'asset management' is too wide: it should be restricted to the notion of 'collective portfolio management', in order to avoid any circumvention of AIFMD through a delegation to an entity which does not provide collective portfolio management.

Para 9 page 9: the explanatory text defining the notion of independence of a third country authority (para.9 p.9) should be included in the box in order to make it binding.

In order to avoid any misinterpretation, we believe that *all the relevant undertakings should be authorised and not merely registered*. A mere registration is not enough: non-authorised entities can be simply registered without being regulated and therefore do not provide enough guarantees.

We believe that any sub-delegation should only be allowed provided the initial AIFM approves it

In our opinion, the IOSCO multilateral memorandum of understanding of May 2002 is a good basis for the cooperation arrangements to be signed at EU level. However, it is not sufficient and would need to be complemented in order to suit better the specificities of these arrangements: in other words, *an ESMA template to be used at pan-European level is necessary*.

Box 2 - Depositary

Point 1.a *“The entity should be subject to authorisation and on-going supervision by an independent competent authority with adequate resources to fulfil its tasks”*: we believe that it would be difficult, if not impossible for an AIFM to assess whether an entity fulfils the criteria described by ESMA: it could be risky for the liability of the AIFM.

Point 1.b: *The local regulatory framework should set out criteria for the eligibility to act as depositary that are equivalent to those set out for the access to the business of credit institution or investment firm*: In our view, it is not the AIFM's responsibility to assess whether the local regulatory framework of a third country sets out criteria that are equivalent to those used in the EU. It is the role of the European competent authorities. The level 1 directive states that the Commission should positively define which third countries meet the set criteria.

We suggest ESMA to include the paragraph 6 of the explanatory text p.11 in the box, in order to clarify the definition of “equivalent”. If the notion of “equivalent” is preserved, it seems essential to define criterias with the greatest possible objectivity: an identical reading in the EU is imperative.

The articulation of the role of the European competent authorities with that of the national competent authorities should be clarified.

Point 7 page 12: *“The European Commission, having verified that the above-mentioned criteria are met, may issue decisions declaring a given third country jurisdiction as equivalent.”* we urge ESMA to include paragraph 7 of the explanatory text p.12 in the box, as this would enhance investor protection and allow a better harmonisation of the implementation of the rules throughout the EU.

We suggest that the European Commission shall (and not “may”) verify the ‘same effects’ and publish a list of third countries complying with this criterion. It would be in the common interest of investors, as well as a good way to reinforce harmonisation at EU level.

Box 3 - Supervision

It would be beneficial if ESMA established the detailed content of the cooperation arrangements: we therefore urge ESMA to include paragraph 5 of the explanatory text p.14 in the box in order to make it binding.

We also support the development of a template agreement by ESMA in order to set minimum requirements; we therefore urge ESMA to include paragraph 12 of the explanatory text p.15 in the box in order to make it binding.

In our view, ESMA should set templates based on the IOSCO multilateral memorandum of understanding of May 2002 for both the arrangements relating to delegations to entities in third countries and to cooperation between EU and third country competent authorities, so that consistency is ensured and the burden of the authorities reduced. However, the IOSCO MMoU should be considered as a minimum.

We believe that it would be useful to publish such arrangements on the website of ESMA and of the relevant national competent authorities.

Point 11: “where marketing of the units is envisaged in a country other than that of the EU competent authority which is the reference authority, the agreement could be signed as a joint agreement between all the authorities involved”. : We believe that the word “could” is not adapted: we prefer “ should” .

However, we believe that ESMA should specify that such requirement applies when marketing of the units is envisaged in “a Member State other than the Member State of Reference” (rather than in “a country other than the Member State of Reference” as proposed by ESMA, which is less clear).

Box 4 – Cooperation arrangements between EU and non EU competent authorities

We generally support ESMA proposals.

However, we would like to raise ESMA’s attention on the fact that this should be complemented by arrangements on the reciprocity of marketing.

Box 5 – Member State of Reference – authorisation of non EU AIFMs – Opt-in (article 37 (4))

The determination of the Member State of Reference is an important point .In our view, there should be ex post checks by ESMA that the Member State of Reference actually meets the criteria set by the level 1 Directive and has been properly determined.

Point 5: we believe that the proposed one week deadline is too short. One month would be better, in order to let a reasonable time to all relevant competent authorities to assess the relevant case.