
ANSWER TO ESMA's CONSULTATION ON GUIDELINES ON KEY CONCEPTS OF THE AIFMD

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Amundi is a leading asset manager, ranking second in Europe and among the top ten in the world with assets under management above 710 billion euros at the end of September 2012. It is active in many different countries and serves a diversified clientele of retail, corporate and institutional investors through a large range of products and investment solutions.

If Amundi manages several hundreds UCITS based in different places in Europe, it also manages many non-UCITS European funds.

Thus, Amundi thanks ESMA for the opportunity it offers through the present consultation to express views on the definition of AIF under AIFM Directive.

Amundi totally supports the response prepared by AFG, Association Française de Gestion, which mentions the key considerations Amundi wants to underline as of prime importance. It refers to the following 3 remarks:

- The need for a standard definition of AIF throughout Europe is properly addressed by the proposed *Guidelines* but the target may just be missed by the lack of legal security resulting from provisions such as §10,14 and 18. They typically contradict the position expressed in the preceding paragraphs as they state that mentioned criteria shall not be conclusive. It is very disturbing for professionals that ESMA issue *Guidelines* that do not provide any real guidance : business needs rules and does not develop in a context of uncertainty; in that respect at least "safe harbour rules" should be published;
- The proposed *Guidelines* are primarily directed to local authorities as it is their role to implement a common definition of AIF and establish a consistent application of AIFMD in every and all European countries as sought by ESMA. Amundi does not see how a market participant could be directly affected by the *Guidelines* independently from the decision of its national Authority to comply and amend its national regulation as needed;
- As mentioned by AFG in its answer to question 1, Amundi agrees that asset management of collective investment schemes should exclusively be conducted by licensed professional asset managers fully dedicated to this activity; no delegation should be allowed to any other profession.

When turning to the 4 definitions examined in the *Guidelines*, Amundi agrees that definitions and comments provided in the *Guidelines* are and should be for the purpose of this specific AIFM regulation and should not be extended to other fields. It further agrees with the fact that criteria are cumulative to assess what is an AIF and it suggests that the possibility to opt in be mentioned in the *Guidelines*, as it may be helpful in order to reduce legal uncertainty or deal with local inconsistencies in some circumstances.

Amundi also presents the following comments (with indication of the relevant question when possible):

- *Collective investment undertaking (CIU)*: at first sight it seems puzzling not to have a definition of “ordinary company” (Q8 and 9) to help understand what a AIF might be; but it is probably one of the most difficult challenges to try and define an ordinary commercial company and it would eventually not help much. Amundi shares the view that day to day discretion and control belongs to the manager of the CIU and not to the end investor (Q7);
- *Raising capital*: Amundi is not in a position to provide a cost /benefits analysis of the proposed guidance, as it considers that it will not be impacted in its usual ways of raising capital (Q4);
- *Number of investors*: Amundi shares the view that co-investors and “ancillary” investors required to set up the structure are not taken into account when determining the number of investors (see AFG’s response to questions 10/11);
- *Defined investment policy*: (Q12/13) the difference between investment policy and investment guidance is quite relevant. In §16 (d) (v), the most important fact is that the end investor conform to minimum holding periods; on the contrary it is not sensible to suggest that a fund manager should conform to minimum holding periods as his talent is to buy and sell when appropriate to the best interests of the holders of shares or units of the CIU it manages.

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