



ESMA

103, rue de Grenelle

75007 Paris

France

Vienna, 1st of March 2012

Re: Discussion Paper dated as of 23 February 2012 – Key concepts of the Alternative Investment Fund Managers Directive and types of AIFM

Dear Ladies and Gentlemen,

We appreciate the opportunity to provide comments to the referenced Discussion Paper. We hope that our views and statements are helpful to ESMA.

We want to comment to question 14 – *“Treatment of MiFID firms and Credit Institutions – 14. Do you agree with the above analysis? If not, please provide explanations.”*

We do not completely agree with your statement that MiFID-firms „cannot be the appointed AIFM for an AIF nor obtain authorization under the AIFMD”.

Art 6 (8) AIFMD states that Investment firms authorized under Directive 2004/39/EC [MiFID-firm] **shall not be required** to obtain an authorization under this Directive in order to provide investment services such as individual portfolio management in respect of AIFs. Thus to submit an application for authorization should be possible on a voluntary basis. However in many cases such voluntary submission under the regime of the AIFMD for becoming an AIFM will only make sense for the MiFID-firm if its relevant national jurisdiction does also authorize external AIFMs to provide the services according to Art 6 (4) AIFMD.

Example: A Luxemburg domiciled AIF is managed by an Austrian based MiFID-firm. The Austrian MiFID-firm also wants to manage portfolios of investments (Art 6 (4) lit a) AIFMD, offer investment advice (Art 6 (4) lit b (i) AIFMD) and offer reception and transmission of orders in relation to financial instruments (Art 6 (4) lit b (ii)) and complies with Art 6 (5) AIFMD.



Such MiFID-firm that will submit under the AIFMD and which shall be responsible for ensuring compliance with the AIFMD shall not be forced to provide portfolio management to AIFs only under delegation arrangements subject to the rules set out under Art 20 of the AIFMD! That would require an intermediated AIFM and the Luxembourg domiciled AIF has to arrange for a "new AIFM" that, subsequently, would delegate to the Austrian MiFID-firm the task of carrying out functions on its behalf. This would not only result in higher operational costs for managing the AIF but it is also not reasonable.

Moreover a MiFID-firm as outlined above wants to exercise the rights of Chapter VI and Chapter VIII, in particular the right to market EU AIFs (that it manages) in the Union. According to the AIFMD such right is reserved to AIFM. Also from this point of view it is essential to enable MiFID-firms - that manage AIFs - in specific circumstances to be authorized as AIFM in accordance with the AIFMD (the last sentence of Art 6 AIFMD requires an "intermediated" AIFM as the provision rules: "However, investment firms shall, directly or indirectly, offer units or shares of AIFs to, or place such units or shares with, investors in the Union, only to the extent the units or shares can be marketed in accordance with this Directive.")

The same issues apply to the contents of Art. 43 AIFMD.

A MiFID-firm shall therefore be entitled to submit an application for authorization as AIFM according to Art 61. However even then, a problem still remains for a MiFID-firm that would like to be authorized as AIFM, if its national jurisdiction does not allow AIFM to provide services according to Art 6 (4) AIFMD.

Kind regards

Association of Foreign Investment Companies in Austria (VAIÖ)

Dr. Rolf Majcen

Member of the Board