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ESMA
103, rue de Grenelle
F - 75007 Paris

22 March 2012

Re: Key concepts of the Alternative Investment Fund Managers Directive and types of AIFM

Dear Sir/Madam,

We are pleased to submit this comment letter on the European Securities and Market Authorities (ESMA) Discussion Paper; Key concepts of the Alternative Investment Fund Managers Directive and types of AIFM. We are submitting these comments on behalf of alstria office REIT-AG, which is the largest German listed commercial property company. alstria is listed at the Frankfurt stock exchange in the Prime standard (ISIN DE000A0LD2U1).

Senior management of alstria would be pleased to meet with your representatives to discuss any questions regarding our comments.

We thank ESMA for the opportunity to comment with respect to this very important project. Please contact Olivier Elamine, Chief Executive Office of alstria (oelamine@alstria.de or +49 40 226341330) if you would like to discuss our comments.

Respectfully submitted,



Olivier Elamine
Chief Executive Officer
alstria office REIT-AG

**Comment Letter submitted by the
alstria office REIT-AG**

**In response to the
Discussion Paper**

***Key concepts of the Alternative Investment Fund Managers Directive and
types of AIFM***

**Issued by the European Securities and Market Authorities (ESMA)
March 2012**

ESMA
103, rue de Grenelle
75007 Paris

**Re: Discussion Paper; Key concepts of the Alternative Investment Fund
Managers Directive and types of AIFM**

Dear Sir/Madam,

Introduction to alstria

alstria office REIT-AG (symbol: AOX, ISIN: DE000A0LD2U1), an internally managed real estate company focused solely on acquiring, owning and managing office real estate in Germany. alstria is listed on the Frankfurt stock exchange and is the largest office property company in Germany.

alstria owns a portfolio of 88 German office properties valued at more than EUR 1,6 billion. alstria office REIT-AG is a member of the European Public Real Estate Association, and fully supports the comments EPRA has made in relation to the discussion paper.

However, considering the importance of the discussion paper for our industry we have decided to further actively participate into the AIFM discussion by providing you with specific company view on some of the question you are raising in the discussion paper.

We have solely focussed our answer on the Proposed Criteria to identify an AIF, as we believe that there is still a great deal of uncertainty about what is and what is not an AIF. This lack of clarity in turn creates legal uncertainty for operating companies like ours as we would fall into the grey area of the definition.

Kind Regards

5. Do you agree with the orientations set out above on the content of the criteria extracted from the definition of AIF?

We do agree with your reading of the definition of the AIF under Article 4(1)(a) of the AIMFD however we disagree with the presentation that you seem to be given to the criteria.

5-1 Definition of Collective investment undertaking

Article 4(1)(a) reads as follow:

4-1-(a) 'AIFs' means collective investment undertakings, including investment compartments thereof, which:

- (i) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and
- (ii) do not require authorisation pursuant to Article 5 of Directive 2009/65/EC;

From our perspective the Directive provides a clear gradation of the importance of the criteria that needs to be taken into consideration in order to determine whether an entity is an AIF or not. We do not feel this is reflected in your presentation.

The first criterion that needs to be considered is whether or not the entity is a collective investment undertaking. This criterion supersedes all the other as this is clearly reflected by the wording of the Directive.

It is only if the entity is a collective investment undertaking that the remaining criteria should apply to determine whether or not an entity is an AIF.

It is therefore our opinion that a clear definition of a collective investment undertaking should be provided.

We do agree with your definition of the collective investment undertaking as an entity that main purpose is "generating a return by the sale of its investments", by opposition of an entity whose "main purpose is to manage the underlying assets with the view of generating value during the life of the undertaking".

Considering the importance of being able to qualify an entity as a collective investment undertaking or not, we believe it would be useful to further define it. A collective investment undertaking could be defined as an entity which does not actively manage its assets, i.e. the value of the assets themselves is independent of the actions of the AIF (like for instance this is the case for a manager of a fund owning securities) OR if it does actively manage the assets, it is with the systematic goal to sell the asset in order to generate return for its investors (this would for example be a private equity fund). This is by opposition to an entity that do actively manage its assets with the aim of increasing their value, AND do not have any

systematic goal to sell its assets. The latter shall not be considered as a collective investment undertaking.

We do appreciate that the definition that we are proposing is not perfect, but we feel it is of the utmost importance that entities are in a position to know whether or not they are a collective investment undertaking.

5-1 Defined investment policy

With your current definition of investment policy, any company bylaws whatsoever could be considered as an investment policy.

Your wording with respect to the Investment Policy is ambiguous in that respect. On one hand you mention that the investment policy is “likely to be set out in a document that becomes part ... of the constitutional document of the entity”, which suggests it could be the bylaw itself. On the other hand you also mention that the Investment Policy creates a “contractual relationship” between the entity and the investor which (at least in Germany) bylaws do not.

We do consider that with the current wording it might be taken the view that bylaws are considered as an “investment policy”. This will in essence render the criteria void as by definition all entities will have bylaws. So it must be that the Investment Policy needs to be: “a contractual relationship between the investors and the entity that bind the entity to follow the investment policy beyond the simple legal relationship that is created between the entity and its investors by its bylaws”.

Furthermore, we believe it is important to specify that any restriction imposed by law or specific national or local regulations that could apply in a similar fashion to all the entities of similar nature should not be considered as a hint of the existence of an investment policy (like restriction to do business in certain countries which are banned by local law for example)