



STATE STREET

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European Securities and Markets Authority
103 Rue de Grenelle
75007 Paris
France

Call for Evidence – AIFMD passport and third country AIFMs

Dear Sir/Madam:

State Street Corporation (“State Street”)¹ appreciates the opportunity to comment on the Call for Evidence (CfE) issued by the European Securities and Markets Authority (“ESMA”) regarding the Alternative Investment Fund Managers Directive (“AIFMD”) passport and third country alternative investment fund managers (“AIFMs”).

Headquartered in Boston, Massachusetts, with branches and subsidiaries throughout the European Union (“EU”), State Street specializes in providing institutional investors with investment servicing, investment management and investment research and trading. With USD 28.47 trillion in assets under custody and administration and USD 2.42 trillion in assets under management, State Street operates in 29 countries and serves clients in more than 110 markets worldwide.² Our European workforce of 9,000 employees provides services to our clients from offices in ten EU Member States. Through our State Street Global Services business, we provide depositary services as well as related services to alternative investment funds (“AIFs”) in eight national jurisdictions, namely Austria, France, Germany, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom. Furthermore, State Street Global Advisors (“SSgA”), State Street’s investment management business, manages both EU and non-EU domiciled AIFs and has authorised AIFMs domiciled in Ireland and France.

¹ Our identification number in the European Commission’s Interest Representatives Register is 2428270908-83.

² As of September 30, 2014.

The present CfE aims at informing ESMA's opinion on the functioning of the EU passport as well as the functioning of the marketing of non-EU AIFs by non-EU AIFMs in the EU and the management and/or marketing of AIFs by non-EU AIFMs in the EU.

In keeping with our industry leading position in the funds industry and our commitment to EU financial markets, we welcome the opportunity to participate in ESMA's work on these important issues which are of high importance in ensuring the workability of the AIFM Directive for EU AIFMs and the attractiveness of the EU for non-EU AIFMs.

State Street welcomed and continues to support the concept of the EU passport as introduced by the AIFMD. However, we believe that it is still too soon to fully assess the AIFMD passport regime and how well it is functioning. While we recognise that ESMA is obliged under the AIFMD to provide its opinion on the functioning of the passport by 22 July 2015, the practical experience with the passport regime is only limited given the delay by many Member States in transposing the AIFMD into national laws, combined with the decision by many EU asset managers to avail of transitional periods and thereby delay applying for AIFM authorisation.

So far, the experience with the passport is showing problems in its day-to-day application due to a lack of harmonisation and consistency of certain requirements, such as around delegation. Furthermore, different requirements under national private placement regimes further hinder and fragment the distribution of EU AIFs within the EU. As a result, market access is unnecessarily limited and barriers to entry are created which limit investors' ability to access a wider range of fund products, and which in turn, causes investors detriment and hampers the further integration of the EU Internal Market.

With regards to the management/marketing of AIFs by non-EU AIFMs in the EU and the marketing of non-EU AIFs by EU AIFMs, State Street supports the extension of the current EU passport regime. In our view, it is important to ensure that the EU is open and accessible to non-EU AIFMs and non-EU AIFs as this allows EU investors to choose from a broader range of investment funds and investment strategies. However, a level-playing field between EU and non-EU domiciled AIFMs needs to be maintained by thoroughly assessing and ensuring that the relevant third country jurisdictions meet the requirements as set out in the AIFMD and in the relevant Level 2 measures. These assessments should be aimed at ensuring appropriate levels of investor protection and at the same time not be misused to prevent non-EU AIFMs from accessing the EU internal market and benefiting of the EU passport.

Furthermore, State Street would like to express its concern with regards to the concept of the Member State of Reference ("MSoR") in the context of the third country passport and its possible impact on the depositary market. As set out in Article 21.5 AIFMD, a non-EU AIF, upon securing a marketing passport, would be required to appoint a depositary located in its home jurisdiction, in the home Member State of the AIFM, or in the MSoR. This location requirement for the depositary, in our view, causes a number of concerns. Firstly, the MSoR is potentially subject to change and uncertainty as the process of determining the MSoR is complex, particularly where distribution is envisaged in several EU Member States. Due to the lack of a single determining factor on the MSoR, national competent authorities must come to an agreement and in the absence of such agreement, ESMA is empowered to arbitrate on the

decision. The MSoR can also change subject to distribution and management activities in the EU. Consequently, the MSoR concept does not provide a reliable basis for the selection and appointment of a depositary.

Further and most significantly, a recognised selection of depositaries might not be available in the home Member State of the AIFM as the provision of depositary services is a highly specialised activity, carrying with it significant responsibilities and liabilities. Many AIFMs will want to maintain the appointment of depositaries with whom they have existing relationships and are comfortable with from a due diligence perspective. Specialist AIF depositaries with the required capabilities are not established in all EU markets and it is entirely possible that the home Member State of the AIFM may not have access to relevant depositaries.

State Street therefore would like to suggest that sufficient flexibility in relation to the location of the depositary is needed, ultimately by changing the relevant wording of Article 21.5 AIFMD and clarifying that the depositary can also be appointed in any Member State, so long as it meets the criteria in Article 21.3 of the Directive.

Thank you once again for the opportunity to comment on the important matters raised within this CfE. Please feel free to contact me should you wish to discuss State Street's submission in greater detail.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Dr. S. Kasper', with a stylized flourish at the end.

Dr. Sven S. Kasper
Senior Vice President & Director EMEA
Regulatory, Industry and Government Affairs