ESMA

11/13 Avenue De Friedland  
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France

Thursday, 22 March 2012

Dear Sir

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

We are writing to you in relation to the discussion paper on ‘Key concepts of the Alternative Investment Fund Managers Directive’, and welcome the opportunity to comment.

**Jersey Finance**

Jersey Finance is the trade body that represents the finance industry in Jersey. Our key objective is to promote and develop the benefits of Jersey as an international finance centre. The funds sector, alongside banking and fiduciary services, represents one of the three key pillars which underpin Jersey’s success as an International Finance Centre. Funds under administration in Jersey are valued at £189 billion. Jersey has been a prominent player in delivering fund services since the 1960s. Jersey’s funds industry specialises in funds for institutional, specialist and expert investors. In particular, alternative investments have become increasingly important as a way of supporting inward investment and Jersey has attracted a significant number of venture capital, private equity, mezzanine, real estate and hedge funds.

Jersey is recognised by European institutional investors as having a strong and appropriate regulatory environment with significant depth and breadth of professional expertise developed over more than 30 years. A significant number of private equity managers have a physical presence in Jersey with dedicated resources to manage the activities appropriately.

**Joint ventures**

It is increasingly common to see small numbers of highly sophisticated investors (such as sovereign wealth funds), whether based in or outside the EU, negotiating joint venture structures to facilitate parallel global investment, including investment in the EU. Their desire and ability to negotiate and create these structures (outside the strictures of the prescribed terms usually offered to investors in a collective investment undertaking) underlines their level of sophistication, and the small number of participants also hints at the lack of systemic risk attached to these structures. Sometimes these structures employ an external manager, sometimes they do not, but of course the Directive applies equally to self-managed as well as externally managed AIFs. The potential application of AIFMD regulation to such narrowly held and negotiated structures (which are often likely to fall within the broad definition of an “AIF”) is unlikely to subdue levels of shared investment participation in structures with an EU nexus.

We note that Recital 8 of the Directive states that the Directive does not apply to a joint venture but does not define what a joint venture is.

In the interests of creating certainty in an important area, we believe it is essential to clarify the term joint venture and, more importantly, clarify how a joint venture will be distinguished from the definition of an AIF.

In English law, the term joint venture has no technical legal meaning. A joint venture in a business sense describes any of a great number of different structures embodying commercial arrangements between economically independent parties. It may, therefore, be difficult to come up with an appropriate legal definition for joint venture that would work on a global basis.

Instead, we believe it would be helpful to provide guidance in relation to the criteria joint ventures would need to fulfill to be excluded from the AIFMD.

We would suggest that certainly in cases where an investment vehicle is not marketed to the public (which can be defined either by reference to a numerical figure, or by reference to listing – possibly as alternatives) and is not listed, this arrangement could be considered a joint venture. The Directive does not intend to capture private arrangements and the number of investors allowed to participate may be one appropriate criterion to determine what constitutes a joint venture. Our recommendation would be to allow up to 50 investors. This is the level beyond which, for Jersey regulatory purposes, an “offer to the public” is made by a fund and yet is lower than the 100 investor test applied in defining “private placement” concepts in a number of EU Member States.

Another possible criterion should be to examine the nature of the relationship between the participants in the joint venture. Not all investors need to play a part in the running of the joint venture. Passive investors should be allowed in a joint venture – there are many joint ventures where a participator may, for example, contribute an asset (eg a brand or some intellectual property) but thereafter be entirely passive, only exercising any rights by virtue of, eg voting rights attached to shares. A presumption that a joint venture which has participants that are not involved in day to day management ought NOT to result in such a joint venture being considered an AIF, if other criteria are satisfied would seem to be a reasonable position to adopt. Certainly though, if all participants are involved in the management of the vehicle or if an investment vehicle does not raise capital from the public then it should, in our view, be considered a joint venture and not an AIF.

A joint venture will also be different from an AIF in that it facilitates parallel investment through a common platform rather than pooling. Typically, negotiations result in a quasi-contractual document between partners. Given the private nature of joint ventures there will be no traditional offer. There will be an agreement between the parties that could be considered as a hybrid between a commercial contract and an offering but the deal is only open to a restricted circle of potential parties.

We trust you will find these comments helpful and we look forward to receiving your reply.

Yours sincerely,



**Heather Bestwick**

**Technical Director**

**Jersey Finance**