KBC
Asset Management

AIFMD

Consultation on Guidelines on key concepts of the AIFMD
ref.2012/845
Consultation on Draft regulatory technical standards on types of AIFMs
ref.2012/844

KBC Asset Management (KBC AM) welcomes the possibility to reply to ESMA's Consultation Papers mentioned in reference.

KBC Asset Management is the asset management company of KBC Group, being the largest asset manager in Belgium and mid-sized player in Europe. Since its launch as a separate legal entity within the KBC Group, it has been constantly expanding its activities and its assets.

KBC Asset Management NV is recognized by the Belgian Banking and Finance Commission and is accordingly authorized to offer asset management and related services to the investment public.

KBC AM has its registered head office in Brussels but also owns managing entities (100%-owned) in Luxembourg (KBC Asset Management SA) , Ireland (KBC Fund Management Ltd Dublin) and Poland (KBC Towarzystwo Funduszy Inwestycyjnych S.A.)

KBC AM has affiliates in its second "home market": CSOB Asset Management (Czech Republic, Slovakian Republic), K&H Asset Management (Hungary).These entities are active in the local markets in brokerage, research and fund management of local funds/mandates.

In the Asian Pacific region, KBC AM is involved in a joint venture with Union Bank of India: Union - KBC AM in Mumbai (India).

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ref.2012/845
Consultation on Guidelines on key concepts of the AIFMD

Q1. Do you agree with the approach suggested above on the topics which should be included in the guidelines on key concepts of the AIFMD? If not, please state the reasons for your answer and also specify which topics should be re-moved/included from the content of the guidelines.

YES

Q2: What are your views on/readings of the concepts used in the definition of AIF in the AIFMD? Do you agree with the orientations set out above on these concepts? Do you have any alternative/additional suggestions on the clarifications to be provided for these concepts?

Agreed

Q3: What are your views on the notion of 'raising capital'? Do you agree with the proposal set out above? If not, please provide explanations and possibly an alter-native solution.

in bullet 18 ESMA states that any capital raising should involve some kind of commercial communication between AIF and the prospective investor. We would like to have more clarity on this statement : does this imply that without commercial communication this product would not qualify as an AIF ? So vehicles used for international portfolio management optimization (eg; SPVs, strategy vehicles ...) would not fall under AIFMD ? Can ESMA provide an exhaustive definition of commercial communication.

Q5: Do you agree with the proposed guidance for identifying a 'collective investment ndertaking' for the purposes of the definition of AIF? If not, please explain why.

YES

Q7: Do you agree with the analysis on the absence of any day-to-day investor discretion or control of the underlying assets in an AIF? If not, please explain why.

YES

Q8: Do you agree that an ordinary company with general commercial purpose should not be considered a collective investment undertaking? If not, please ex-plain why.

YES

Q9: Which are in your view the key characteristics defining an ordinary company with general commercial purpose?

Individual real persons and/or other companies providing some form of capital with the aim of generating a profit through the production and/or trade of non-financial assets.

Q10: Do you agree with the proposed guidance for determining whether a 'number of investors' exists for the purposes of the definition of AIF? If not, please explain why.

NO

the factual situation should prevail. If an undertaking is in fact limited to a sole investor, although it is not required to via any binding legal effect, then ESMA should allow this undertaking to only report via Annex IV the number of investors (which equals one) for as long as this is the case.
The proposed guidance introduces the possibility that funds that have been established with the aim of raising capital from a single investor, and have through their lifetime in fact only raised capital from a single investor, fall within the definition of AIF. It is our view that it would be better to apply the proposed guidance to funds established after the implementation of the AIFMD. Where existing arrangements are already in place, we believe it is sufficient to show that the fund has never had more than one investor, and so that it is not involved in collective investment and should remain out of scope in definition of AIF. In our opinion, it should be sufficient to state that where such a fund gains a second or subsequent investor, it then comes in scope of the definition of AIF. This would equitably deal with existing funds whilst achieving the aims of the proposed guidance for new funds.

We agree with the proposed guidance regarding nominee arrangements, feeder structures and fund of fund structures.

Q12: Do you agree with the proposed indicative criteria for determining whether a 'defined investment policy' exists for the purposes of the definition of AIF? If not, please explain why.

YES

Q14: Do you consider appropriate to add in Section IX, paragraph 16(b) of the draft guidelines (see Annex V) a reference to the national legislation among the places where (in addition to the rules or instruments of incorporation of the undertak-ing) the investment policy of an undertaking is referenced to?

YES

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ref. 2012/844
Consultation on Draft regulatory technical standards on types of AIFMs

Q1: Do you agree with the approach suggested above on the topics which should be included in the draft regulatory technical standards? If not, please state the reasons for your answer and also suggest an alternative approach.

YES

Q2: Do you agree with the proposed definition of AIFMs managing AIFs of the open-ended/closed-ended type? If not, do you have any alternative proposal, in particular as regards the relevant frequency of redemptions for the open-ended funds?

YES

Q4: Do you consider that any possibility to redeem the AIF's units/shares on the secondary market and not directly from the AIF should be taken into consideration when assessing whether an AIF is open-ended or closed-ended? Or do you con-sider that, as within the UCITS framework, only any action taken by an AIFM to ensure that the stock exchange value of the units of the AIF it manages does not significantly vary from their net asset value should be regarded as equivalent to granting to unitholders/shareholders the right to redeem their units or shares out of the assets of this AIF?

Preference to have alignment with UCITS framework

Q5: Do you agree with the proposed approach as regards the treatment of hybrid structures? If not, please explain why and, if possible, provide alternative pro-*posals.*

YES

Q6: Do you see merit in clarifying further the notion of contracts with prime brokers and/or the notion of internally or externally managed? If so, please provide sug-gestions. In **particular, if your answer is yes for the notion of internally or exter-nally managed, please indicate which of the criteria already in recital (20) of the AIFMD need additional clarifications.**

We do not see added value in clarifying the notion of 'contracts with prime brokers'. Rather we see an ESMA clarification on the actual definition of a 'prime broker', as in the Level 1 Directive this definition is conceived so broadly as to suggest that any broker / counterparty with whom transactions are concluded is a prime broker. We fear that when the interpretation is being left to local regulators, possibly an unlevel playing field is created and therefore it could be useful to have a European approach on this.

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Q7: Do you consider that there is a need to develop further typologies of AIFMs where relevant in the application of the AIFMD? If yes, please provide details on the additional typologies sought.

YES

We see a need in differentiating capital protected structured AIFs versus non-capital protected structured AIFs and non-structured. A lot of the rules related to global exposure and leverage give false signals when applied to capital protected AIFs, given their asymmetric pay-off profile. Depending on the pay-off formula that determines the upside pay-off (in favourable market conditions), the global exposure and leverage calculation could give a high number (e.g. pay-off formula with discrete jump) although the investor always benefits from the capital protection built in the product. Next to that, mark-to-market evolutions of the capital protection during the lifetime of the product could also lead to - although limited - increases of the global exposure.

We believe it would be justified to set capital protected products with asymmetric pay-off profiles apart.

For KBC Asset Management
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