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Directorate-General for Financial Stability, Financial Services and Capital Markets Union

Director General

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European Securities and Markets Authority
Ms Verena Ross
The Executive Director
103 rue de Grenelle
F-75345 Paris Cedex 07
FRANCE

Subject: ESMA's opinion and advice to the European Parliament, the Council and the Commission on the AIFMD passport

Dear Verena,

Thank you for your letter of 30 July to Commissioner Hill. He has asked me to reply. We are grateful for the advice on the application of the AIFMD passport to non-EU AIFMs and AIFs, and for the opinion on the functioning of the passport for EU AIFMs and on the national private placement regimes¹ (NPPRs) provided by ESMA on 30 July 2015.

As regards the advice on granting the AIFMD passport to managers and funds established in third countries, we take the view that the country-by-country approach adopted by ESMA is correct. The nature of the test set out in Article 67 of AIFMD may result in different outcomes depending on the regulatory and supervisory framework of the third countries in which non-EU AIFMs and funds are established. We also understand the resource constraints, which lead ESMA to deliver the advice in waves of selected countries. We will take a decision when a sufficient number of countries have been appropriately assessed.

We therefore invite ESMA to complete by 30 June 2016:

- the assessment of the three countries – the USA, Hong Kong and Singapore – which were selected for the first wave of six but for which to date no definitive advice has been provided;
- the assessment of another six third country jurisdictions selected for the second wave: Japan, Canada, Isle of Man, Cayman Islands, Bermuda and Australia.

¹ ESMA/2015/1235 and 1236.

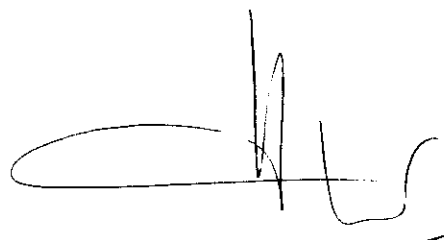
With regard to the enforcement of the AIFMD rules in third country jurisdictions, we appreciate that ESMA's advice drew from a wide range of sources of information, including reports from the EU national competent authorities, discussions with non-EU regulators and assessments by the IMF and IOSCO. Based on this input, we invite ESMA to provide a more detailed assessment of the capacity of supervisory authorities and their track record in ensuring effective enforcement, including those jurisdictions looked at in the first wave of countries. This could be based on the IOSCO principles on which IMF relies when conducting FSAPs, or an alternative framework as deemed necessary by ESMA.

To be able to better assess any potential market disruption and competition effects of granting the passport to third countries, we also invite ESMA to provide a preliminary assessment of the expected inflow of funds by type and size into the EU from relevant third countries.

Finally, we agree with ESMA's suggestion that it produces another opinion on the functioning of the EU passport and NPPRs once the AIFMD has been fully transposed in all the Member States and there is more experience on the functioning of this framework. An updated opinion will be particularly helpful for the planned review of the Directive that should start in 2017.

My staff and I remain available to provide any clarification to ensure that we receive all necessary information to prepare the Delegated Act on the extension of the AIFMD passport to entities based in qualifying third countries.

Yours sincerely,



Olivier GUERSENT

Copies: Mr Pierre GRAMEGNA, ECOFIN Chair
Mr Roberto GUALTIERI, ECON Chair