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AMF

Réf :
N° AMF 000515

Mary L. Schapiro
Chairman
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549
United States of America

Paris, 18 January 2011

Dear Mary,

The Securities and Exchange Commission has launched a public consultation following the adoption of the Wall Street Reform and Consumer Protection Act. Although, the AMF has not officially contributed to the consultation, I would like to share with you our concerns regarding one of the issues which potentially has a material impact on non-US actors, i.e. the specific exemption introduced by the new financial regulation with regard to Foreign Private Advisers (Title IV, section 402 *et al*), which replaces the provisions of section 203 (b) of the Investment Advisers Act of 1940.

Currently, the law defines the Foreign Private Adviser as an entity:

(i) with no place of business in the United States;

(ii) with fewer than 15 clients and/or investors in the United States in private funds;

(iii) of which the aggregate assets under management attributable to clients or investors in the United States in private funds advised by the adviser amount to less than $25,000,000 "or such higher amount as the Commission may, by rule, deem appropriate (...)" ;

(iv) which does not present itself to the general public as an investment adviser, nor advises registered investment companies or business development companies.

A certain number of difficulties could arise as a result of the $25 million threshold as defined in section 402 (a).

In practice, $25 million corresponds very often to the amount invested by a single investor, such as a pension fund or a large institutional investor. Under the newly adopted provisions, an investment adviser who has only one US client investing $25 million or whose investment has reached that value through good performance will be compelled to register with the SEC. Such a situation seems contrary to the overall principles defined in the exemption and deprives the other conditions from their effect.

In addition, with a relatively small threshold, many small to medium foreign private advisers which benefited until now from the exemption provisions of section 203 (b) will have to register despite overall limited assets under management from American clients.

Therefore the AMF welcomes the possibility offered to your Commission to increase the initial threshold defined in the legislation above the current limit of $25 million.

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From a European perspective, the amount set seems very low given that investment advisers who manage funds are regulated by the national competent authorities whatever amount of assets they manage, i.e. the AMF is competent to deliver (withdraw) authorisations and supervise the investment advisers activities. Furthermore, where the adviser's assets under management exceed €100 million, the investment adviser ("manager" in the European terminology) will be regulated under the Alternative Investment Fund Managers (AIFM) Directive which enters into force in 2013 across the 27 European Member States. The directive imposes to AIFMs, inter alia, to be registered with and regulated by their national competent authorities and to disclose information on aspects potentially systemic of their activities in a very similar way to the Dodd-Frank Act in the US. Relevant prudential information could thus be shared among regulators.

As a consequence, the AMF would like to suggest to the SEC to consider increasing the maximum amount of assets under management authorised to benefit from the Foreign Private Adviser Exemption. We would recommend aligning the amount of the threshold with the provision defined for the Private Fund Advisers exemption, $150 million which appears coherent with the framework applicable for all European Alternative Investment Adviser from early 2013 (€100 million or c.a. $130 million).

Furthermore, given the widely spread prudent-man practice by which investors do not accept to represent more than 10% of one single fund's total assets under management, an individual investment of $25 million corresponds to a fund of approximately $250 million. Therefore, a threshold of exemption at $150 million would not prevent US authorities from registering and collecting information from most funds advised/managed by non-US advisers/managers.

In addition to this specific issue, I believe it would also be of great interest to exchange views on a broader basis to see to what extent there could be a mutual recognition of the equivalence of the supervisory frameworks and practices regarding alternative investment funds and their operators, in the US and in Europe. Such a discussion seems all the more relevant in the context of the detailed measures currently being drafted by the SEC in the US and the technical standards discussed by ESMA under the Alternative Investment Funds Directive.

I would be very glad to have the opportunity to discuss this issue further with you and remain of course at your disposal to provide you further details as to the AMF's position.

I am copying this letter to Steven Maijoor and Carlos Tavares, respectively Chairman and Vice-Chairman of ESMA.

Yours sincerely,

Jean-Pierre JOUYET

CC: Steven Maijoor, Chairman of the European Securities and Markets Authority

Carlos Tavares, Vice-Chairman of the European Securities and Markets Authority