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ESMA - The European Securities and Markets Authority
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7 May 2020

Invest Europe-PAE Letter to ESMA consultation on Draft technical standards on the provision of investment services and activities in the Union by third-country firms under MiFID II and MiFIR

Dear Sir or Madam,

Invest Europe would like to comment on the draft technical standards ESMA is planning to finalise on the provision of investment services and activities in the Union by third-country firms under MiFID II and MiFIR.

While the private equity fund managers we represent are typically regulated under the AIFM Directive, some private equity businesses or sub-businesses might also operate under a MiFID licence. In the vast majority of cases, these firms provide only a few limited investment services, such as the reception and transmission of orders and investment advice. They cannot hold client money or securities, they do not generally need to deal or take portfolio management decisions and their clients' investments are not likely to be affected by short term market movements.

A few of our member firms also have third country investment firms that provide services in the EU, assisting the flow of international capital into the real economies of Member States. Firms registering under the MiFID regime will already be subject to their home regulatory, reporting and supervisory frameworks, which will already have been judged equivalent to the EU rules.

We fully understand that, in order to allow ESMA to perform properly its supervisory role, a certain level of disclosure is required when a third country firm applies to provide MiFID services in the European Union. However, we are concerned that some of the information requirements are disproportionate and risk discouraging global firms from doing business in the EU.

This is especially true as the provision of services in the EU may only form one element of many firms' business activities and as the proposed annual reporting template will be deemed disproportionately onerous when viewed alongside other international equivalents (such as Form ADV in the US). Most importantly, we do not believe that the additional requirements detailed below add a significant level of security, especially as the risk to clients should already be limited where a firm's home jurisdiction has already been deemed equivalent.

More specifically, we find it would bring very little added value to require firms to provide information on outsourcing arrangements (relating to the firm's proposed EU operations), firm structure, compliance, internal audit and risk management functions (including ongoing information about regulatory changes and annual findings of those functions), and personal addresses where a business address would suffice.

Moreover, some of the required information (such as information on arrangements for algorithmic trading, high frequency trading and direct electronic access) may also not be relevant to specific



market players, such private equity and venture capital firms, that are only carrying specific MiFID activities. Some of these - such as the expected numbers of clients and counterparties or how the activities of the third-country business in the EU will contribute to the overall strategy of the firm - may also objectively be difficult to audit or to provide with precision for these firms.

Overall, we also fear that the amount of details required may sometimes go beyond the limited list of information and conditions for firms to register with ESMA set in the Level 1, and most specifically in Art 46(2) MiFIR. The requirement to provide details on the global operations of the firm is an example of this.

We hope the comments above will be of use to you in the preparation of the final technical standards and we stand at your disposal would you have any further questions.

Kind regards,

A handwritten signature in black ink, appearing to read "MB", written in a cursive style.

Martin Bresson

Invest Europe Public Affairs Director



About the PAE

The Public Affairs Executive (PAE) consists of representatives from the venture capital, mid-market and large buyout parts of the private equity industry, as well as institutional investors and representatives of national private equity associations (NVCAs). The PAE represents the views of this industry in EU-level public affairs and aims to improve the understanding of its activities and its importance for the European economy.

About Invest Europe

Invest Europe is the association representing Europe's private equity, venture capital and infrastructure sectors, as well as their investors.

Our members take a long-term approach to investing in privately held companies, from start-ups to established firms. They inject not only capital but dynamism, innovation and expertise. This commitment helps deliver strong and sustainable growth, resulting in healthy returns for Europe's leading pension funds and insurers, to the benefit of the millions of European citizens who depend on them.

Invest Europe aims to make a constructive contribution to policy affecting private capital investment in Europe. We provide information to the public on our members' role in the economy. Our research provides the most authoritative source of data on trends and developments in our industry.

Invest Europe is the guardian of the industry's professional standards, demanding accountability, good governance and transparency from our members.

Invest Europe is a non-profit organisation with 25 employees in Brussels, Belgium.

For more information please visit www.investeurope.eu.

