

Opinion on loan origination by funds – ESMA

As part of ESMA's ongoing work on the Capital Markets Union, it has issued a detailed opinion on the topics that should be covered by the European Commission in its Q2 consultation on establishing a common EU approach on loan origination by funds.

Interestingly, it is not clear whether that consultation will lead to a concrete legislative proposal for a European wide regime for lending by funds, or whether it will be closer to a review by the European Commission of the current market landscape, whilst continuing to monitor how member states approach lending by funds under their own national regimes.

It should also be noted that there is no mention in the opinion of non-EU fund structures, and so it is not clear how any EU legislative proposal would approach lending into the EU by such funds.

ESMA has set out that, in particular, the Commission's consultation should look at the following:

- Whether a European framework should require mandatory authorisation of managers for loan-originating funds. So, for example, should loan-originating funds be required to be managed by full-scope/authorised AIFMD managers (ruling out "small"/sub-threshold AIFMD managers unless they opt-up to full authorisation)
- Loan-originating alternative investment funds (AIFs) should be set up as closed-ended vehicles
- Loan-originating AIFs should not be allowed to have liabilities with a shorter maturity than the loans granted by the fund
- The impact on loan origination if the relevant fund carries on other activity – i.e. if the fund is not just exclusively originating loans
- Any additional systems and controls which fund managers should be subject to, such as on risk management and collateral management. The most interesting are those which might be seen as loan business specific, including assessment and scoring of borrowers, credit monitoring, management of forbearance, identification of problem debt management and the capability and experience of staff connected with loan origination
- The merits of setting a limit to the leverage of a fund. (This would be different to currently under AIFMD, where leverage is set by the manager)
- Mandatory diversification for loan-originating funds
- Loan-originating funds should not be able to originate loans to individuals, financial institutions and collective investment schemes

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