

To: s 22 and s 22, Strategic Policy
Re: Allianz Global Investors GmbH (Allianz GI) – application for individual relief under RG 176
From: s 22 and s 22 IMS
Date: 1 August 2017

Issue

1. We would like Strategic Policy to be aware of our proposed decision to grant relief operationally to AllianzGI given the role of Strategic Policy in relation to the wider FFSP review. We have considered the application to ensure our decision would not pose any risks to ASIC's Strategic Priorities in light of the review. Our decision is consistent with the underlying policy to grant individual relief in RG 176 and in line with precedent relief. :

Relief sought

2. On 23 June 2017, AllianzGI applied for individual relief on similar terms to ASIC Class Order [CO 04/1313] *German BaFin regulated financial service providers ([CO 04/1313])*, in view of having merged with another FFSP, Rogge Global Partners Ltd, who ceased reliance on [CO 03/1099] as a result of the merger between AllianzGI and Rogge on or around 30 June 2017, as a result of which AllianzGI inherited Rogge's clients (Macquarie), and requires the relief.
3. AllianzGI submitted that in 2008 German law was amended so that German asset managers are no longer regulated by the German Banking Act ("*Kreditwesengesetz*" - **KWG**). They are instead regulated by the German Investment Act (*Investmentgesetz*), and more recently, the German Capital Investment Code ("*Kapitalanlagegesetzbuch*" - **KAGB**). German asset managers are no longer required to hold a BaFin licence under section 32 of the KWG to provide collective and individual portfolio management services, and are instead required to hold a BaFin licence under the relevant provisions of the *Investmentgesetz* as, replaced by the KAGB in 2013, when it implemented AIFMD.
4. In June and July 2017, ASIC sought confirmation from BaFin of the licence(s) that German asset managers are required to hold in order to provide collective and individual portfolio management services under the KWG, the German Investment Act and the KAGB.

Confirmations from BaFIN

5. BaFin confirmed that:
 - (a) In 2008/2009, the German Investment Act was introduced in order to implement the EU's UCITS Directive IV in Germany. As a result of the change, German asset managers (which provide collective portfolio management) and German investment firms (which provide individual portfolio management) were no longer regulated under the KWG, and were instead regulated under the *Investmentgesetz*. The KWG now applies separately to German banks as well as German investment firms providing individual portfolio management services.
 - (b) In 2013, the KAGB was introduced in order to implement the EU's AIFMD Directive in Germany. As a result of this change, German asset managers were required to apply for a new BaFin authorisation under the KAGB regime in order to continue to provide collective portfolio management, whereas German investment firms were permitted to carry over the BaFin authorisation to provide individual portfolio management from the previous regime.
 - (c) Accordingly, while it is correct to say that the KAGB regime has replaced the KWG as far as the regulation of German asset managers and German investment firms, the BaFin authorisation to conduct individual portfolio management still references the relevant provisions of the KWG.
 - (d) Broadly speaking, these legislative changes mean that under the current German regime:

- (i) it is not possible for a German asset manager to hold a BaFin authorisation under section 32 of the KWG; but
 - (ii) it is possible for a German investment firm to hold a BaFin authorisation that references the KWG (i.e. as is the case with Deutsche Asset Management International GmbH).
 - (iii) It is also possible under the current German regime for BaFin to authorise a German entity to provide both collective and individual portfolio management (to act as both a German asset manager and a German investment firm). In this case, the entity would hold both BaFin authorisations, being:
 - a BaFin authorisation to provide collective portfolio management (allowing it to be German asset manager for UCITS and/or AIF as these permissions are issued as separate authorisations); and
 - a BaFin authorisation to provide individual portfolio management (allowing it to be a German investment firm), as an ancillary service provided to being a German UCITS Fund Manager or German AIFM.
- (e) BaFin has confirmed in an e-mail to ASIC dated 25 July 2017 that AllianzGI is authorised to carry out:
- (i) collective portfolio management for funds meeting the requirements of UCITS under para 21 KAGB (as a German UCITS Fund Manager);
 - (ii) collective portfolio management for funds meeting the requirements of AIFMD under para 22 KAGB (as a German AIFM); and
 - (iii) individual portfolio management under KAGB within the meaning of section 1 para 11 of the KWG, ancillary to AllianzGI's permissions as a German UCITS Manager and a German AIFM, covering the operation of a segregated managed account (Permission 2 - Individual Portfolio Management).

Previous relevant equivalence assessments undertaken by ASIC

6. ASIC has assessed the following regulatory regimes that are relevant to this application:
- (a) ASIC has made an assessment when granting relief under [CO 03/1099] *UK regulated financial service providers* [CO 03/1099] to entities regulated by the FCA that the UK regulatory regime is sufficiently equivalent to regulation by ASIC – relevantly, it is noted that this regime has incorporated MIFID and AIFMD;
 - (b) RPG decided in September 2004 that in relation to Banque AIG, the French and German regulatory regimes were from the same source - Directive 2004/39/EC (MIFID) – which harmonised regulation for investment services around the 31 member states of the EEC (the 28 Member States plus Iceland, Norway and Liechtenstein). The 31 regulatory regimes, including the French and German regulatory regimes, having transported the same EU Directive in their national legislation, the French regulatory regime was considered equivalent to the German regulatory regime, which we had already assessed as equivalent when issuing [CO 04/1313],
 - (c) In the LFM relief application, RPG approved relief which involved an assessment that the Luxembourg UCITS Fund Managers regime was sufficiently equivalent to regulation by ASIC under RG 176;
 - (d) In the IPM relief application, full equivalence assessment of the AIFMD regime, as implemented by Sweden, was undertaken by IS and determined to be sufficiently equivalent. Commissioner Price approved that individual relief be granted to IPM.

Assessment and terms of relief

7. We consider there would be no risks to ASIC's Priorities if we grant individual relief to AllianzGI as a German UCITS Fund Manager **and** German AIFM as:
- (a) ASIC has undertaken an equivalence assessment of Luxembourg UCITS Fund Managers when granting relief under the LFM relief, which applies to German UCITS Fund Managers who provide financial services in Luxembourg;
 - (b) IS recently undertook an equivalence assessment of (Swedish) AIFMD in the IPM relief, which also applies to German AIFM as a result of both Sweden and Germany having transported the same AIFMD into their respective regulatory regimes;

- (c) The UK regulatory regime, which we assessed as equivalent in [CO 03/1099] has incorporated MIFID, the original UCITS Directive, UCITS IV, UCITS V and AIFMD amongst others. UK Fund Managers notify us regularly of their additional AIFM authorisations ;
 - (d) AllianzGI is a UCITS Fund Manager **and** AIFM as opposed to only an AIFM (which was the case for IPM);
 - (e) We have also noted that in 2013 ASIC and BaFin signed a MoU (**MOU**) targetting supervision of AIFMD entities: <http://download.asic.gov.au/media/1338134/Germany-MOU-published-July-2013.pdf>
 - (f) There is limited likelihood of the Luxembourg Regulator (CSSF) re-doubling its efforts for ASIC to extend the LFM relief to AIFM as a result of the relief to Allianz if it includes AIFM authorisations given that Allianz is a UCITS Fund Manager **as well as** AIFM.
8. While there may be no impact to our policy in RG 176, there may be some impact on resourcing if German UCITS and AIFM apply for individual relief, including EU AIFM operating in Germany. That is, they may potentially invoke EU Passporting of Fund Managers as covered in the MOU to exempt their incorporation in Germany and supervision by BaFin as a potential expansion of the terms of relief). This means that a French AIFM may apply for relief on similar terms to the relief granted to AllianzGI in the event it notified BaFin of its intention to operate UCITS and or AIF in Germany, in the absence of being incorporated in Germany or supervised by BaFin, neither of which is required under the EU Passporting rules under AIFMD nor UCITS IV.

Conclusion

9. We propose that the individual relief be granted on the following terms:

- (a) Conditional upon AllianzGI's authorisations and permissions under the KAGB, issued by BaFin;
- (b) The instrument expiring at the same time as the new transitional FFSP class order relief of which the applicant will be advised.

Definitions and relevant legislation referred to above:

- (1) UCITS are undertakings of collective investment in transferable securities authorised in accordance with Article 5 of the Directive 2009/65/EC (UCITS IV), amending Council Directive 85/611/EEC of 20 December 1985 (the original UCITS Directive), as amended by Directive 2014/91 EU (UCITS V);
- (2) AIF are all Investment Funds which are not UCITS; and
- (3) EU Directive on AIFM (2011/61/EU)(**AIFMD**) relates to the supervision of Managers of AIFs not covered by UCITS IV.
- (4) IPM Portfolio Management AB (Sweden): refer [20170428 - IS Sufficient Equivalence Determination - IPM Application.docx](#)