

July 29, 2009

Via Electronic Mail

Emil Paulis
Director, DG MARKT/G
Financial Services Policy & Financial Markets
European Commission
200 Rue de la Loi, B-1049
Brussels, Belgium

Ugo Bassi
Head of Unit, Asset Management
European Commission
Internal Market and Services DG
European Commission, Office: SPA2, B-1049
Brussels, Belgium

Re: Proposal for Alternative Investment Fund Managers Directive

Dear Mr. Paulis and Mr. Bassi:

The Investment Adviser Association is writing this letter with respect to the European Union's proposal for a directive on Alternative Investment Fund Managers (AIFM). The Investment Adviser Association (IAA) is a not-for-profit US association that represents the interests of investment adviser firms that are registered with the US Securities and Exchange Commission (SEC). IAA's membership consists of investment advisory firms that manage assets for a wide variety of institutional and individual clients, including pension plans, trusts, investment funds, endowments, foundations, and corporations, and many of our members manage assets on behalf of clients in the European Union.¹

As an initial matter, we applaud the European Commission for undertaking this important work of providing more oversight of unregulated investment managers that manage a significant amount of assets in the European Union. The IAA has long advocated in the United States that hedge fund managers be required to register with the SEC and be subject to regulation.² We are pleased that governments around the world are working to achieve the

¹ For more information, please visit our web site: www.investmentadviser.org.

² We understand that many US hedge fund advisers are already registered with the SEC.

important objectives of monitoring for potential systemic risk and obtaining sufficient information for the proper supervision of the markets.

While we fully support the laudable goals of the AIFM Directive, we want to ensure that the Directive takes into consideration the global nature of the investment management industry, which benefits EU investors by providing international diversification and expertise. To this end, we seek clarification regarding the provisions related to non-EU investment managers. Article 39 of the proposed AIFM Directive states that, under certain conditions, Member States may authorize, in accordance with the Directive, AIFMs established in a third country. The conditions would include, among other things, findings by the Commission that the laws on prudential regulation and ongoing supervision of AIFMs in a third country are equivalent to the Directive, that those laws are effectively enforced, and that the third country grants EU AIFMs market access at least comparable to that granted by the EU to AIFMs from that third country.³ We understand this article to allow non-EU managers to manage non-UCITS funds, either directly or through delegation, that are marketed in the European Union based on their supervision by their home country regulator.⁴

We encourage the EU Commission to develop criteria for recognizing supervisory equivalence and market access and urge the EU and the US to engage in discussion regarding the development of a regulatory framework for hedge fund managers.⁵ In addition, we seek to confirm that non-EU managers, such as US managers, also would be permitted to obtain authorization on the same basis as EU managers under the AIFM Directive without having a physical presence in the European Union. Given the broad scope of the proposed Directive, which currently proposes to cover not only hedge funds but all non-UCITS funds,⁶ we believe it is important for the benefit of EU investors and for the efficient functioning of the markets

³ We respectfully request that the EU Commission make these findings during the implementation period, which would allow non-EU managers to provide services during the three-year transition period.

⁴ It appears from the text of the current proposal that portfolio management may only be delegated to a third party that is also authorized as an AIFM. Because Chapter VII (Specific rules in relation to third countries) does not provide a specific provision on delegation of portfolio management to an AIFM established in a third country, we assume that Article 39 would apply to delegation of portfolio management.

⁵ As in the European Union, it is expected that the US will likely adopt legislation for the registration and regulation of unregulated fund managers. The US is considering requiring investment advisers to hedge funds and other private pools of capital managing assets above a certain threshold to be registered with the SEC and be subject to certain regulatory requirements. See <http://www.treas.gov/press/releases/tg214.htm> (Obama Administration's legislative proposal requiring registration of hedge fund managers and requiring disclosure of certain data by hedge fund managers); *Financial Regulatory Reform A New Foundation: Rebuilding Financial Supervision and Regulation* (June 17, 2009) at 37. Consistent with the G-20 commitments to require registration of hedge funds or their managers, we hope that the US and EU continue their dialogue regarding this type of regulation.

⁶ The current definition of "alternative investment fund" is broadly drafted to include any non-UCITS funds marketed in the European Union. Therefore, the Directive would not only cover what are traditionally considered "hedge funds," but any non-UCITS funds, including those that are not highly leveraged or take controlling stakes in companies.

to allow non-EU managers to be authorized under the AIFM Directive to manage non-UCITS funds on a cross-border basis.

Many global investment managers in the United States and Europe have affiliates in multiple countries to provide clients with expertise in a particular region. Moreover, it is more efficient for investment managers managing, for example, a portfolio of US equities or a portfolio of Asian securities to be located in the same time zone as the relevant market. We also do not believe physical presence in the European Union is necessary for investor protection. We believe that European investors benefit when investment managers with knowledge of a particular market can manage those assets from abroad. We are concerned that European investors would lose the benefits of international diversification if investment managers could not advise European investors unless the managers were located in the European Union. We respectfully seek clarification that the proposed Directive will permit non-EU domiciled investment managers to provide portfolio management services to EU investors.

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The IAA strongly supports the European Union's efforts to provide oversight of this important financial services sector. We request that the Directive provide appropriate oversight of AIFMs while preserving the benefits that overseas managers can provide to investors in Europe. It would be unfortunate for EU investors if the Directive unintentionally deprived EU investors of expertise that international managers could provide.

We appreciate the opportunity to provide our views on these issues and would be pleased to provide any additional information. Please contact me at (202) 293-4222 with any questions regarding these matters.

Respectfully submitted,

/s/ Jennifer S. Choi

Jennifer S. Choi
Assistant General Counsel

cc: Mr. Charlie McCreevy
European Commissioner for Internal Market and Services, European Commission

Mr. David Wright
Deputy Director General Financial Services DG MARKT, European Commission