

**ASSET MANAGEMENT AND INVESTORS COUNCIL**

DG Internal Market and Services  
Spa II, 03/13  
B-1049, Brussels  
BELGIUM

February 5, 2009

Sent by email

Dear Sir or Madam,

**The Commission Services Consultation Paper on Hedge Funds**

The Asset Management and Investors Council was established in March 2008 to represent the buy-side members of the ICMA membership. ICMA is one of the few trade associations with a European focus having both buy-side and sell-side representation.

Taking into consideration the changes that have occurred in the industry, the AMIC composition embraces the diversification and the current dynamics of the industry – taking the asset management representation to a broader and global level.

The Asset Management and Investors Council (AMIC) welcomes the opportunity to respond to the Commission consultation paper on hedge funds. The AMIC understands the desire of the European Commission to examine the role of hedge funds in the current market turmoil and to formulate informed and appropriate responses where justified. The AMIC supports the Alternative Investment Management Association (AIMA)'s view as to a future regulatory regime and that it should include some or all aspects of the following:

- Increased disclosure to the regulator by the fund and fund manager of aggregate data of systemic importance with reference to financial stability;
- A common approach to the authorisation of hedge fund managers, including the key elements used successfully as part of the UK FSA's regime;
- A coherent, internationally agreed short-selling regime;
- An industry-developed set of best practice standards (based primarily on, and aligned with, those of the Hedge Fund Standards Board and others) with which fund managers comply.

The AMIC would also like to draw the following points to the attention of the European Commission.

### 1. Definition of hedge funds.

A survey by IOSCO in March 2006<sup>1</sup> found that no regulator had adopted a formal, legal definition of the term 'hedge fund'. The same report acknowledges that a list of characteristics may expand over time and is not set in stone.

The specialised nature of the client base (few small or retail investors) means that regulation is difficult. Most important to hedge funds are proprietary trading strategies that distinguish each fund – these strategies need to be protected to ensure the survival of the industry and financial innovation to continue.

### 2. Assessment of current regulatory requirements (direct and indirect)

The IOSCO survey of 2006 reports that three general regulatory approaches to hedge funds can be identified:

- Registered or authorised CIS engaging in hedge-fund like strategies
- Limited hedge fund oversight by regulator
- No registration of hedge fund.

However in many jurisdictions hedge funds advisers are currently subject to regulatory oversight. In addition intermediaries, most notably prime brokers, are subject to regulatory oversight – which indirectly gives competent authorities oversight over the hedge fund industry.

Hedge funds are globally mobile. Unless all countries agree to restrict their activities, they will move to the region that gives them the greatest freedom. Therefore aiming for a global approach, along general guidelines and parameters may be preferable.

We would recommend that regulators should, particularly after Madoff, focus on governance: (i) separation of trading, risk management, operations and compliance in the manager; (ii) independent oversight by independent directors who are qualified to understand and challenge the business; separate independent directors for the fund and for the investment manager; (iii) independent administrator rather than in-house administration; (iv) regular audits by qualified auditing firms; (v) regular investor information, including risk reporting; Governance could also be introduced in listing requirements as funds are frequently listed in the EU.

### 3. Crisis related questions

Hedge funds play an important role in the functioning of markets, in that they are substantial liquidity providers and contribute to the price formation process in global financial markets.

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<sup>1</sup> <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD226.pdf>

Financial markets in the past year have been subject to a series of threats; we would consequently hope that hedge funds will not be given undue heightened regulatory attention.

In addition to normal difficulties to regulate hedge funds (see section 1 & 2 of this response), current market conditions have complicated this task.

#### 4. Techniques and firms

From the European Commission consultation paper it is unclear whether the European Commission proposes to regulate techniques, such as short-selling, or a type of firm. Some techniques are not exclusively used by hedge funds – which makes it hard to regulate just one type of firm.

#### 5. Target audience of Hedge funds and regulatory implications

Hedge funds have traditionally had a sophisticated client base.

The Asset Management and Investors Council remains at your disposal to discuss any of the above points,

Yours sincerely,



Bob Parker  
Chairman  
Asset Management and Investors Council