



EUROPEAN PARLIAMENT

2009 - 2014

Committee on Economic and Monetary Affairs

2009/0064(COD)

12.2.2010

AMENDMENTS

139 - 309

Draft report

Jean-Paul Gauzès

(PE430.709v01-00)

on the proposal for a directive of the European Parliament and of the Council
on Alternative Investment Fund Managers and amending Directives
2004/39/EC and 2009/.../EC

Proposal for a directive– amending act
(COM(2009)0207 – C7-0040/2009 – 2009/0064(COD))

AM_Com_LegReport

Amendment 139

Bernd Lange

Proposal for a directive

Title

Text proposed by the Commission

on Alternative Investment Fund Managers and amending Directives 2004/39/EC and 2009/.../EC

Amendment

on ***Alternative Investment Funds and*** Alternative Investment Fund Managers and amending Directives 2004/39/EC and 2009/.../EC

Or. en

Justification

The product 'alternative investment fund' itself should be regulated. Covering the funds not just the managers would encompass the 'footprint' of the fund manager in EU financial markets.

Amendment 140

Pascal Canfin

Proposal for a directive

Title

Text proposed by the Commission

on Alternative Investment Fund Managers and amending Directives 2004/39/EC and 2009/.../EC

Amendment

on ***Alternative Investment Funds and*** Alternative Investment Fund Managers and amending Directives 2004/39/EC and 2009/.../EC

Or. en

Justification

The directive needs to encompass both funds (AIF) and managers (AIFM). Systemic risk cannot be properly managed without requirements on funds.

Amendment 141
Jürgen Klute

Proposal for a directive
Title

Text proposed by the Commission

on Alternative Investment Fund Managers
and amending Directives 2004/39/EC and
2009/.../EC

Amendment

on ***Alternative Investment Funds and***
Alternative Investment Fund Managers and
amending Directives 2004/39/EC and
2009/.../EC

Or. en

Justification

The product ‘alternative investment fund’ itself should be regulated. Covering the funds not just the managers would encompass the ‘footprint’ of the fund manager in EU financial markets.

Amendment 142
Othmar Karas

Proposal for a directive
Title

Text proposed by the Commission

Proposal for a
DIRECTIVE OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
on ***Alternative Investment Fund***
Managers and amending Directives
2004/39/EC and 2009/.../EC

Amendment

Proposal for a
DIRECTIVE OF THE EUROPEAN
PARLIAMENT AND OF THE COUNCIL
on ***Alternative Investment Funds and on***
Alternative Investment Fund Managers
and amending Directives 2004/39/EC and
2009/.../EC

Or. de

Justification

It is the product ‘alternative investment’ itself which the directive should cover. This is consistent with the approach based on the identification in good time of financial transactions which may pose a systemic risk. With that aim in view, it is not enough simply to regulate

marketing methods and managers.

Amendment 143

Sharon Bowles

Proposal for a directive

Title

Text proposed by the Commission

Amendment

on Alternative Investment Fund Managers
and amending **Directives** 2004/39/EC **and**
2009/.../EC

on Alternative Investment Fund Managers
and amending **Directive** 2004/39/EC

Or. en

Justification

Due to the changes under the Lisbon Treaty, this Directive is no longer the appropriate vehicle to amend the UCITS Directive and so, this should be removed from the title of the Directive

Amendment 144

Robert Goebbels, Udo Bullmann

Proposal for a directive

Title

Text proposed by the Commission

Amendment

on Alternative Investment Fund Managers
and amending Directives 2004/39/EC **and**
2009/.../EC

on Alternative Investment Fund Managers
and amending Directives 2004/39/EC,
2009/.../EC **and 2003/6/EC**

Or. en

Justification

The title of the directive should be adapted according to the amendment introduced in the Market Abuse Directive 2003/6/EC on short selling.

Amendment 145
Pascal Canfin

Proposal for a directive
Recital 1

Text proposed by the Commission

(1) Managers of alternative investment funds (AIFM) are responsible for ***the management of*** a significant amount of invested assets in Europe, account for significant amounts of trading in markets for financial instruments, and can exercise an important influence on markets and companies in which they invest;

Amendment

(1) ***Alternative investment funds (AIF) and*** managers of alternative investment funds (AIFM) are responsible for a significant amount of invested assets in Europe, account for significant amounts of trading in markets for financial instruments, and can exercise an important influence on markets and companies in which they invest.

Or. en

Justification

The directive needs to encompass both funds (AIF) and managers (AIFM).

Amendment 146
Hans-Peter Martin

Proposal for a directive
Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) In September 2009, shortly before the G-20 Summit in Pittsburgh, leading EU policy makers emphatically called for rules to govern every product, every trading venue and every financial institution.

Or. de

Amendment 147

Udo Bullmann, Robert Goebbels

Proposal for a directive

Recital 2

Text proposed by the Commission

(2) ***The impact of AIFM on the markets in which they operate is largely beneficial, but*** recent financial difficulties have underlined how activities of AIFM may ***also*** serve to spread or amplify risks through the financial system. Uncoordinated national responses to these risks make the efficient management of these risks difficult. This Directive therefore aims at establishing common requirements governing the authorisation and supervision of AIFM in order to provide a coherent approach to the related risks and their impact on investors and markets in the *Community*.

Amendment

(2) Recent financial difficulties have underlined how activities of AIFM may serve to spread or amplify risks through the financial system ***and the economy***. Uncoordinated national responses to these risks make the efficient management of these risks difficult. This Directive therefore aims at establishing common requirements governing the authorisation and supervision of AIFM in order to provide a coherent approach to the related risks and their impact on investors and markets in the *Union*. ***As a matter of principle, there should be regulation in view of long-term sustainable growth and to promote social cohesion. Such regulation should address consumer and investor protection, market integrity and stability and it should prevent systemic risk and tackle social externalities.***

Or. en

Justification

There is no evidence that the overall impact of AIFM on the markets or on the economy at large is beneficial. The crisis has shown, on the contrary, that hedge funds can play a negative role on the market and that companies held by private equity funds are in higher risk of default, as a result of the acquisition debt they need to repay.

Amendment 148
Wolf Klinz

Proposal for a directive
Recital 2

Text proposed by the Commission

(2) The impact of AIFM on the markets in which they operate is largely beneficial, but recent financial difficulties have underlined how activities of AIFM may also serve to spread or amplify risks through the financial system. Uncoordinated national responses to these risks make the efficient management of these risks difficult. This Directive **therefore** aims at establishing common requirements governing the authorisation and supervision of AIFM in order to provide a coherent approach to the related risks and their impact on investors and markets in the Community.

Amendment

(2) The impact of AIFM on the markets in which they operate is largely beneficial, but recent financial difficulties have underlined how activities of AIFM may also serve to spread or amplify risks through the financial system **via their prime broker counterparts**. Uncoordinated national responses to these risks make the efficient management of these risks difficult. **Directives 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions¹ and 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions² thus need to take into account the potential systemic risk arising from exposure to alternative investment funds (AIF)**. This Directive aims at establishing common requirements governing the authorisation and supervision of AIFM in order to provide a coherent approach to the related risks and their impact on investors and markets in the Community.

¹ OJ L 177, 30.6.2006, p. 1.

² OJ L 177, 30.6.2006, p. 201.

Or. en

Justification

The counterparty exposure is not addressed in this Directive. The changes reflect the need of amending the CRD in order to capture potential systemic risk arising on the prime broker side.

Amendment 149
Pascal Canfin

Proposal for a directive
Recital 2

Text proposed by the Commission

(2) ***The impact of AIFM on the markets in which they operate is largely beneficial, but*** recent financial difficulties have underlined how activities of AIFM may ***also*** serve to spread or amplify risks through the financial system. Uncoordinated national responses to these risks make the efficient management of these risks difficult. This Directive therefore aims at establishing common requirements governing the authorisation and supervision of AIFM in order to provide a coherent approach to the related risks and their impact on investors and markets in the *Community*.

Amendment

(2) Recent financial difficulties have underlined how activities of ***alternative investment funds (AIF) and*** AIFM may serve to spread or amplify risks through the financial system. Uncoordinated national responses to these risks make the efficient management of these risks difficult. This Directive therefore aims at establishing common requirements governing the authorisation and supervision of ***AIF and*** AIFM in order to provide a coherent approach to the related risks and their impact on investors and markets in the *Union*.

Or. en

Justification

The first assessment is not based on any academic proof. As explained in the recital 2, crisis has proven that AIF and AIFM effects on markets are controversial.

Amendment 150
Pascal Canfin

Proposal for a directive
Recital 3

Text proposed by the Commission

(3) Recent difficulties in financial markets have underlined that many ***AIFM*** strategies are vulnerable to some or several important risks in relation to investors, other market participants and markets. In order to provide comprehensive and common arrangements for supervision, it is

Amendment

(3) Recent difficulties in financial markets have underlined that many ***AIF*** strategies are vulnerable to some or several important risks in relation to investors, other market participants and markets. In order to provide comprehensive and common arrangements for supervision, it is

necessary to establish a framework capable of addressing those risks taking into account the diverse range of investment strategies and techniques employed by **AIFM**. Consequently, this Directive should apply to AIFM **managing and marketing all types of funds** which are not covered by Directive 2009/.../EC on the coordination of laws, regulations and administrative provisions relating to the undertakings for collective investment in transferable securities (UCITS) (recast), irrespective of the legal or contractual manner in which the AIFM is entrusted with this responsibility. AIFM should not be entitled to manage UCITS within the meaning of Directive 2009/.../EC on the basis of authorisation under this Directive.

necessary to establish a framework capable of addressing those risks taking into account the diverse range of investment strategies and techniques employed by **AIF**. Consequently, this Directive should apply to **AIF and** AIFM which are not covered by Directive 2009/.../EC on the coordination of laws, regulations and administrative provisions relating to the undertakings for collective investment in transferable securities (UCITS) (recast), irrespective of the legal or contractual manner in which the AIFM is entrusted with this responsibility. AIFM should not be entitled to manage UCITS within the meaning of Directive 2009/.../EC on the basis of authorisation under this Directive.

Or. en

Justification

Strategies are followed by funds (AIF) and not by managers (AIFM).

Amendment 151

Wolf Klinz, Carl Haglund

Proposal for a directive Recital 3

Text proposed by the Commission

(3) Recent difficulties in financial markets have underlined that many AIFM strategies are vulnerable to some or several important risks in relation to investors, other market participants and markets. In order to provide comprehensive and common arrangements for supervision, it is necessary to establish a framework capable of addressing those risks taking into account the diverse range of investment strategies and techniques employed by AIFM. Consequently, this Directive should

Amendment

(3) Recent difficulties in financial markets have underlined that many AIFM strategies are vulnerable to some or several important risks in relation to investors, other market participants and markets. In order to provide comprehensive and common arrangements for supervision, it is necessary to establish a framework capable of addressing those risks taking into account the diverse range of investment strategies and techniques employed by AIFM. Consequently, this Directive should

apply to AIFM managing and marketing all types of funds which are not covered by Directive 2009/.../EC on the coordination of laws, regulations and administrative provisions relating to the undertakings for collective investment in transferable securities (UCITS) (recast), irrespective of the legal or contractual manner in which the AIFM is entrusted with this responsibility. AIFM should not be entitled to manage UCITS within the meaning of Directive 2009/.../EC on the basis of authorisation under this Directive.

apply to AIFM managing and marketing all types of funds which are not covered by Directive 2009/.../EC on the coordination of laws, regulations and administrative provisions relating to the undertakings for collective investment in transferable securities (UCITS) (recast), irrespective of the legal or contractual manner in which the AIFM is entrusted with this responsibility ***as long as they are of potential systemic relevance***. AIFM should not be entitled to manage UCITS within the meaning of Directive 2009/.../EC on the basis of authorisation under this Directive.

Or. en

Justification

The main priority of this Directive is to capture systemic risk. In order to minimise collateral damage done by the 'one-size-fits-all' approach, smaller AIFM should only have to register and comply with the transparency obligations of Art. 19-21.

Amendment 152

Carl Haglund

Proposal for a directive

Recital 3

Text proposed by the Commission

(3) Recent difficulties in financial markets have underlined that many AIFM strategies are vulnerable to some or several important risks in relation to investors, other market participants and markets. In order to provide comprehensive and common arrangements for supervision, it is necessary to establish a framework capable of addressing those risks taking into account the diverse range of investment strategies and techniques employed by AIFM. Consequently, this Directive should apply to AIFM managing and marketing all

Amendment

(3) Recent difficulties in financial markets have underlined that many AIFM strategies are vulnerable to some or several important risks in relation to investors, other market participants and markets. In order to provide comprehensive and common arrangements for supervision, it is necessary to establish a framework capable of addressing those risks taking into account the diverse range of investment strategies and techniques employed by AIFM. Consequently, this Directive should apply to AIFM managing and marketing all

types of funds which are not covered by **Directive 2009/.../EC** on the coordination of laws, regulations and administrative provisions relating to the undertakings for collective investment in transferable securities (UCITS) (recast)¹, irrespective of the legal or contractual manner in which the AIFM is entrusted with this responsibility. AIFM should not be entitled to manage UCITS within the meaning of **Directive 2009/.../EC** on the basis of authorisation under this Directive.

¹ OJ L [...], [...], p. [...].

types of funds which are not covered by **Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009** on the coordination of laws, regulations and administrative provisions relating to the undertakings for collective investment in transferable securities (UCITS) (recast)¹, irrespective of the legal or contractual manner in which the AIFM is entrusted with this responsibility. **Such funds may include, inter alia, hedge funds, private equity funds, real estate funds, commodity funds and infrastructure funds.** AIFM should not be entitled to manage UCITS within the meaning of **Directive 2009/65/EC** on the basis of authorisation under this Directive.

¹ OJ L 302, 17.11.2009, p. 32.

Or. en

Justification

A new sentence should be added, in which different types of AIFs would be listed; such as hedge funds, private equity funds, real estate funds, commodity funds and infrastructure funds. The necessity of this is supported by four reasons: (1) the need to support the regulatory flexibility and differentiation stated in recital 3; (2) all new fund structures and regimes that will be created in the future should fall within the scope of the Directive; (3) defining the scope of the Directive in a negative manner does not bring along elements, which would enhance legal certainty and predictability; and (4) in order to identify the essential scope of the Directive.

Amendment 153 **Sari Essayah**

Proposal for a directive **Recital 3**

Text proposed by the Commission

(3) Recent difficulties in financial markets have underlined that many AIFM strategies are vulnerable to some or several important risks in relation to investors, other market participants and markets. In order to

Amendment

(3) Recent difficulties in financial markets have underlined that many AIFM strategies are vulnerable to some or several important risks in relation to investors, other market participants and markets. In order to

provide comprehensive and common arrangements for supervision, it is necessary to establish a framework capable of addressing those risks taking into account the diverse range of investment strategies and techniques employed by AIFM. Consequently, this Directive should apply to AIFM managing and marketing all types of funds which are not covered by **Directive 2009/.../EC** on the coordination of laws, regulations and administrative provisions relating to the undertakings for collective investment in transferable securities (UCITS) (recast)¹, irrespective of the legal or contractual manner in which the AIFM is entrusted with this responsibility. AIFM should not be entitled to manage UCITS within the meaning of **Directive 2009/.../EC** on the basis of authorisation under this Directive.

¹ OJ L [...], [...], p. [...].

provide comprehensive and common arrangements for supervision, it is necessary to establish a framework capable of addressing those risks taking into account the diverse range of investment strategies and techniques employed by AIFM. Consequently, this Directive should apply to AIFM managing and marketing all types of funds which are not covered by **Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009** on the coordination of laws, regulations and administrative provisions relating to the undertakings for collective investment in transferable securities (UCITS) (recast)¹, irrespective of the legal or contractual manner in which the AIFM is entrusted with this responsibility. ***Such funds may include, inter alia, hedge funds, private equity funds, real estate funds, commodity funds and infrastructure funds.*** AIFM should not be entitled to manage UCITS within the meaning of **Directive 2009/65/EC** on the basis of authorisation under this Directive.

¹ OJ L 302, 17.11.2009, p. 32.

Or. en

Amendment 154

Udo Bullmann, Robert Goebbels

Proposal for a directive

Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) The purpose of this Directive should also be to create incentives towards the relocation of off-shore funds in the EU, bringing not only regulatory and investor protection advantages but also allowing for a proper taxation of revenues, at manager, fund and investor level.

Amendment 155
Wolf Klinz

Proposal for a directive
Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) This Directive follows the agreement reached at the September 2009 G-20 summit in Pittsburgh that all players, markets and products shall be appropriately regulated.

Or. en

Justification

Reiterates the strong commitment to the pledge of the G-20 to appropriately regulate all actors, products and markets.

Amendment 156
Pascal Canfin

Proposal for a directive
Recital 4

Text proposed by the Commission

Amendment

(4) The Directive lays down requirements regarding the way in which AIFM should manage alternative investment funds (AIF) under their responsibility. It would be disproportionate to regulate the structure or composition of the portfolios of the AIF managed by AIFM and it would be difficult to provide for such extensive harmonisation due to the very diverse types of AIF managed by AIFM.

(4) This Directive lays down requirements regarding the way in which AIFM should manage alternative investment funds (AIF) under their responsibility and the way in which AIF should act in financial markets and companies in which they invest.

Or. en

Justification

The directive needs to encompass both funds (AIF) and managers (AIFM).

Amendment 157

Wolf Klinz

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) *The Directive* lays down requirements regarding the way in which AIFM should manage alternative investment funds (AIF) under their responsibility. It would be disproportionate to regulate the structure or composition of the portfolios of the AIF managed by AIFM and it would be difficult to provide for such extensive harmonisation due to the very diverse types of AIF managed by AIFM.

Amendment

(4) *This Directive* lays down requirements regarding the way in which AIFM should manage alternative investment funds (AIF) under their responsibility. It would be disproportionate to regulate the structure or composition of the portfolios of the AIF managed by AIFM ***or the authorisation processes for AIF*** and it would be difficult to provide for such extensive harmonisation due to the very diverse types of AIF managed by AIFM.

Or. en

Justification

The authorisation process itself is not regulated in this Directive and remains within the realm of national competent authorities.

Amendment 158

Othmar Karas

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) The Directive lays down requirements regarding the way in which AIFM should manage alternative investment funds (AIF) under their responsibility. It would be disproportionate to regulate the structure or

Amendment

(4) The Directive lays down requirements regarding the way in which AIFM should manage alternative investment funds (AIF) under their responsibility. It would be disproportionate to regulate the structure or

composition of the portfolios of the AIF managed by AIFM and it would be difficult to provide for such extensive harmonisation due to the very diverse types of AIF managed by AIFM.

composition of the portfolios of the AIF managed by AIFM **or the authorisation processes for AIF** and it would be difficult to provide for such extensive harmonisation due to the very diverse types of AIF managed by AIFM.

Or. en

Justification

Given that the Draft Directive sticks to regulation of the AIF Manager and does not regulate the AIF itself, it should be made clear that the authorisation process for AIF is not regulated under this Directive.

Amendment 159

Udo Bullmann, Robert Goebbels

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) The Directive lays down requirements regarding the way in which AIFM should manage alternative investment funds (AIF) under their responsibility. It would be **disproportionate** to regulate the structure or composition of the portfolios of the AIF managed by AIFM and it would be difficult to provide for such extensive harmonisation due to the very diverse types of AIF managed by AIFM.

Amendment

(4) The Directive lays down requirements regarding the way in which AIFM should manage alternative investment funds (AIF) under their responsibility. It would be **difficult** to regulate the structure or composition of the portfolios of the AIF managed by AIFM and it would be difficult to provide for such extensive harmonisation due to the very diverse types of AIF managed by AIFM.

Or. en

Justification

The issue is not a matter of proportionality. Regulating funds would not be disproportionate, considering the needs for regulation revealed by the financial crisis. However, if the regulation of managers is comprehensive (including in respect of managers marketing non-EU funds or delegating functions to non-EU entities), it is sufficient to achieve the proposed objectives.

Amendment 160
Wolf Klinz

Proposal for a directive
Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) The AIFM should either be an external manager, which is a legal person appointed by the AIF, or acting on behalf of the AIF, or, if the AIF is self-managed, which means established in such a way that the management decisions are taken by the governing body of the AIF and no external entity is designated, the AIF should qualify itself as the AIFM. Only one legal entity should qualify as the AIFM for a respective AIF.

Or. en

Justification

A clear definition is needed in order to allow for differing fund structures to be able to have an AIFM with substance. This specifically addresses the case of self-managed or internally managed funds.

Amendment 161
Thomas Mann

Proposal for a directive
Recital 5

Text proposed by the Commission

Amendment

(5) The scope of this Directive should be confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy ***on the principle of risk-spreading*** for the benefit of those investors. This Directive should not apply to ***the management of pension funds or*** managers of non-pooled investments such

(5) The scope of this Directive should be confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors. This Directive should not apply to managers of non-pooled investments such as endowments, sovereign wealth funds ***to the management***

as endowments, sovereign wealth funds or assets *held* on own account by credit institutions, insurance or reinsurance undertakings. ***This Directive should neither apply to actively managed investments in the form of securities, such as certificates, managed futures, or index-linked bonds. It*** should, however, cover managers of all collective investment undertakings which are not required to be authorised as UCITS. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

of portfolios of investments in accordance with mandates given by investors on a discretionary, client-by-client basis or to any other form of individual portfolio management, or to the management of assets held on own account by credit institutions, insurance or reinsurance undertakings. The exemptions provided for in this Directive should be applicable in so far as AIFM comply with the conditions to which those exemptions are subject on a continuous basis. This Directive should, furthermore, not apply to the management of pension funds or institutions which manage funds supporting social security and public pension systems, or to securitisation vehicles. This Directive should also not apply to the management of collective investment undertakings which are authorised in accordance with national law and only marketed in their home Member State. This Directive should, however, cover managers of all collective investment undertakings which are not required to be authorised as UCITS. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

Or. en

Amendment 162
Wolf Klinz, Carl Haglund

Proposal for a directive
Recital 5

Text proposed by the Commission

(5) The scope of this Directive should be confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy on the principle of risk-spreading for the benefit of those investors. This Directive should not apply to the management of pension funds or managers of non-pooled investments such as endowments, sovereign wealth funds or assets **hold** on own account by credit institutions, insurance or reinsurance undertakings. This Directive should neither apply to actively managed investments in the form of securities, such as certificates, managed futures, or index-linked bonds. It should, however, cover managers of all collective investment undertakings which are not required to be authorised as UCITS. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

Amendment

(5) The scope of this Directive should be confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy on the principle of risk-spreading for the benefit of those investors. This Directive should not apply to the management **of AIF managed exclusively for their parent undertaking or subsidiaries**, of pension funds or managers of non-pooled investments such as endowments, sovereign wealth funds or assets **held** on own account by credit institutions, insurance or reinsurance undertakings **nor to the management of investment products authorised in accordance with national law and sold only nationally on the territory of a respective Member State nor to national, regional and local governments and government investment vehicles or bodies or institutions which manage funds supporting social security and pension systems or employee participation schemes**. This Directive should neither apply to actively managed investments in the form of securities, such as certificates, managed futures, or index-linked bonds. It should, however, cover managers of all collective investment undertakings which are not required to be authorised as UCITS **in so far as they manage or market AIF of potential systemic relevance**. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can

however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

Or. en

Justification

In order to avoid unintended and disproportionate consequences and to minimise the collateral damage, certain limited exemptions should be pursued. Most importantly national products should be outside the scope as they are regulated and sold only at national level, do not constitute potential systemic risk and have appropriate consumer protection.

Amendment 163

Sari Essayah

Proposal for a directive

Recital 5

Text proposed by the Commission

(5) The scope of this Directive should be confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy ***on the principle of risk-spreading*** for the benefit of those investors. This Directive should not apply to the ***management of pension funds or*** managers of non-pooled investments such as endowments, sovereign wealth funds or assets ***held*** on own account by credit institutions, insurance or reinsurance undertakings. This Directive should ***neither apply to actively managed investments in the form of securities, such as certificates, managed futures, or index-linked bonds.*** It should, however, cover managers of all collective investment undertakings which are not required to be authorised as UCITS. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should

Amendment

(5) The scope of this Directive should be confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors. This Directive should not apply to the managers of non-pooled investments such as endowments, sovereign wealth funds, ***central banks*** or assets ***held*** on own account by credit institutions, ***pension funds, or*** insurance or reinsurance undertakings. This Directive should ***furthermore not apply to national, regional and local governments and government investment vehicles or bodies or institutions which manage funds supporting social security and pension systems, or to employee participation schemes. In order to benefit from the exemptions provided for in this Directive, the AIFM concerned should comply with the conditions to which those exemptions***

not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

are subject on a continuous basis. This Directive should, however, cover managers of all collective investment undertakings which are not required to be authorised as UCITS. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

Or. en

Amendment 164 **Olle Schmidt**

Proposal for a directive **Recital 5**

Text proposed by the Commission

(5) The scope of this Directive should be confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy ***on the principle of risk-spreading*** for the benefit of those investors. This Directive should not apply to the management of pension funds or managers of non-pooled investments such as endowments, sovereign wealth funds or assets ***hold*** on own account by credit institutions, insurance or reinsurance undertakings. This Directive should neither apply to actively managed investments in the form of securities, such as certificates, managed futures, or index-linked bonds. It should, however, cover managers of all collective investment undertakings which are not required to be authorised as UCITS.

Amendment

(5) The scope of this Directive should be confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy ***for the benefit of those investors***. This Directive should not apply to the management of pension funds or managers of non-pooled investments such as endowments, sovereign wealth funds, ***central banks*** or assets ***held*** on own account by credit institutions, ***pension funds, or*** insurance or reinsurance undertakings. ***This Directive should also not apply to the management of collective investment undertakings which are authorised in accordance with national law and only marketed in their home Member State.*** This Directive should neither apply to actively managed

Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

investments in the form of securities, such as certificates, managed futures, or index-linked bonds. It should, however, cover managers of all collective investment undertakings which are not required to be authorised as UCITS. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should not be required to obtain an authorisation under this Directive in order to **market units or shares of an AIF or to** provide investment services in respect of AIF. Investment firms can however only **market the units or shares of an AIF or** provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive. ***This Directive should not apply to industrial holding companies having their shares traded on an EU regulated market insofar as they hold shares in their subsidiaries or associated companies for the purpose of carrying out an industrial business strategy.***

Or. en

Justification

Managers and funds that are subject to national legislation and where the fund units/shares are exclusively distributed at national level should be exempted from the AIFM Directive, but retain the right to opt. This is in line with the principle of subsidiarity. Industrial holding companies are long term owners without a planned exit horizon and have an industrial approach to their holdings – whether as holding companies of industrial conglomerates or as industrial investment companies. Such companies pose limited systemic risk and, insofar as they are listed, are subject to existing EU Company Law, national regulation and stock exchange listing rules, which provides effective protection for investors. Industrial holding companies which are more industrial than trading oriented in their investments should therefore be exempted from the scope of the Directive.

Amendment 165
Werner Langen

Proposal for a directive
Recital 5

Text proposed by the Commission

(5) The scope of this Directive should be confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy ***on the principle of risk-spreading*** for the benefit of those investors. This Directive should not apply to the ***management of pension funds or*** managers of non-pooled investments such as endowments, sovereign wealth funds or assets ***held*** on own account by credit institutions, insurance or reinsurance undertakings. ***This Directive should neither apply to actively managed investments in the form of securities, such as certificates, managed futures, or index-linked bonds.*** It should, however, cover managers of all collective investment undertakings which are not required to be authorised as UCITS. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

Amendment

(5) The scope of this Directive should be confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors. This Directive should not apply to the managers of non-pooled investments such as endowments, sovereign wealth funds, ***central banks*** or assets ***held*** on own account by credit institutions, ***pension funds or*** insurance or reinsurance undertakings. It ***should also not apply to the management of collective investment undertakings which are authorised in accordance with national law and only marketed in their home Member State. In order to benefit from the exemptions provided for in this Directive, the AIFM concerned should comply with the conditions to which those exemptions are subject on a continuous basis.*** ***This Directive*** should, however, cover managers of all collective investment undertakings which are not required to be authorised as UCITS. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

Or. en

Justification

Funds which are regulated and only distributed on a national level should be exempted from the scope of the AIFMD. Purely national funds and their managers do not cause systemic risk as those funds are generally highly regulated funds, often also managed in accordance with rules similar to UCITS.

Amendment 166 Burkhard Balz

Proposal for a directive Recital 5

Text proposed by the Commission

(5) The scope of this Directive should be confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy ***on the principle of risk-spreading*** for the benefit of those investors. This Directive should not apply to the ***management of pension funds or*** managers of non-pooled investments such as endowments, sovereign wealth funds or assets ***held*** on own account by credit institutions, insurance or reinsurance undertakings. ***This Directive should neither apply to actively managed investments in the form of securities, such as certificates, managed futures, or index-linked bonds.*** It should, however, cover managers of all collective investment undertakings which are not required to be authorised as UCITS. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

Amendment

(5) The scope of this Directive should be confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors. This Directive should not apply to the managers of non-pooled investments such as endowments, sovereign wealth funds, ***central banks*** or assets ***held*** on own account by credit institutions, ***pension funds, or*** insurance or reinsurance undertakings. ***Nor should this Directive apply to managers insofar as they manage AIF whose only investors are their parent undertakings, their subsidiaries or other subsidiaries of their parent undertaking and where those investors are not themselves AIF. In order to benefit from the exemptions provided for in this Directive, the AIFM concerned should comply with the conditions to which those exemptions are subject on a continuous basis.*** This Directive should, however, cover managers of all collective investment undertakings which are not required to be authorised as UCITS. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should not be required to obtain an authorisation under

this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

Or. en

Justification

An exception clause for managers when they manage investments coming from the same group is justified. No additional risk for the financial markets is caused. As these funds are often used within banking or insurance groups, these financial institutions already have to duly make provision against risks in accordance with the supervisory legislation. Besides this investor protection is not needed either in such a situation of investment within the same group.

Amendment 167

Burkhard Balz

Proposal for a directive

Recital 5

Text proposed by the Commission

(5) The scope of this Directive should be confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy ***on the principle of risk-spreading*** for the benefit of those investors. This Directive should not apply to the ***management of pension funds or*** managers of non-pooled investments such as endowments, sovereign wealth funds or assets ***held*** on own account by credit institutions, insurance or reinsurance undertakings. ***This Directive should neither apply to actively managed investments in the form of securities, such as certificates, managed futures, or index-linked bonds. It should, however, cover***

Amendment

(5) The scope of this Directive should be confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors. This Directive should not apply to the managers of non-pooled investments such as endowments, sovereign wealth funds, ***central banks*** or assets ***held*** on own account by credit institutions, ***pension funds or*** insurance or reinsurance undertakings. ***It should also not apply to the management of collective investment undertakings with a maximum of five investors, if they are authorised in accordance with national law and only marketed in their home Member State. In***

managers of all collective investment undertakings which are not required to be authorised as UCITS. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

order to benefit from the exemptions provided for in this Directive, the AIFM concerned should comply with the conditions to which those exemptions are subject on a continuous basis. This Directive should, however, cover managers of all collective investment undertakings which are not required to be authorised as UCITS. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

Or. en

Justification

Funds with a limited number of investors allow for individual contractual arrangements. AIFMs who manage funds with maximum five investors and only distribute them on national level should therefore be exempted from the scope of the AIFMD, if they are subject to effective national regulation.

Amendment 168

Robert Goebbels, Udo Bullmann

Proposal for a directive

Recital 5

Text proposed by the Commission

(5) The scope of this Directive should ***be confined to*** the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy ***on the principle of risk-spreading*** for the benefit of those investors. This Directive should ***not*** apply

Amendment

(5) The scope of this Directive should ***cover*** the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined ***or discretionary*** investment policy for the benefit of those investors. This Directive should ***also*** apply to ***single***

to ***the management of pension funds or managers of non-pooled investments such as endowments, sovereign wealth funds or assets held on own account by credit institutions, insurance or reinsurance undertakings***. This Directive should neither apply to actively managed investments in the form of securities, such as certificates, managed futures, or index-linked bonds. It should, however, cover managers of all collective investment undertakings which are not required to be authorised as UCITS. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

investor funds and leveraged managed accounts, in order to preserve a level playing field between similar types of investment vehicles. It should not apply to public interest entities. This Directive should neither apply to actively managed investments in the form of securities, such as certificates, managed futures, or index-linked bonds. ***Nor should this Directive apply to holding companies insofar as they hold shares in their subsidiaries, given that such holding companies are not established for the main purpose of generating returns for their investors by means of, in particular, the divestment of their subsidiaries within a set timeframe, but which are aimed at carrying out a business strategy through their subsidiaries***. It should, however, cover managers of all collective investment undertakings which are not required to be authorised as UCITS. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

Or. en

Justification

The definition must be amended as funds may concentrate their risks. A reference to 'risk spreading' is therefore wrong. Funds operating on the basis of a discretionary investment policy must also be covered. The directive should cover all types of similar investment vehicles, including single investor funds and leveraged managed accounts (i.e. investment accounts that are managed by a third party who has the authority to do transactions without prior approval from the holder and in respect of which leverage is used in connection with such transactions). Holding companies are not meant to be covered by the directive.

Amendment 169
Sharon Bowles

Proposal for a directive
Recital 5

Text proposed by the Commission

(5) The scope of this Directive should be confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy on the principle of risk-spreading for the benefit of those investors. This Directive should not apply to the management of pension funds or managers of non-pooled investments such as endowments, sovereign wealth funds or assets held on own account by credit institutions, insurance or reinsurance undertakings. This Directive should neither apply to actively managed investments in the form of securities, such as certificates, managed futures, or index-linked bonds. ***It*** should, ***however***, cover managers of all collective investment undertakings which are not required to be authorised as UCITS. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

Amendment

(5) The scope of this Directive should be confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy on the principle of risk-spreading for the benefit of those investors. This Directive should not apply to the management of pension funds or managers of non-pooled investments such as endowments, sovereign wealth funds or assets held on own account by credit institutions, insurance or reinsurance undertakings. This Directive should neither apply to actively managed investments in the form of securities, such as certificates, managed futures, or index-linked bonds. ***In order to avoid regulatory overlap, the scope of this Directive should not apply to closed-ended collective investment undertakings listed on a regulated market which are subject to regulation under Directives 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities¹, 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market² and 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading³. To provide a harmonised approach, the Commission shall as soon as possible and***

at the very latest by the date of this Directive entering into force, review these Directives and, where appropriate, put forward legislative proposals to ensure equivalent regulation. This Directive should cover managers of all collective investment undertakings which are not required to be authorised as UCITS. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments¹⁴ should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

¹ OJ L 184, 6.7.2001, p. 1.

² OJ L 390, 31.12.2004, p. 30.

³ OJ L 345, 31.12.2003, p. 64.

Or. en

Justification

Closed-ended collective undertakings that are listed on a regulated market should not be regulated under this directive since they are already subject to requirements under CARD, the Prospectus and the Transparency directives. However, to ensure a level-playing field, the Commission should review these Directives and make appropriate changes in light of this Directive.

Amendment 170 **Corien Wortmann-Kool**

Proposal for a directive **Recital 5**

Text proposed by the Commission

(5) The scope of this Directive should be

Amendment

(5) The scope of this Directive should be

confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy on the principle of risk-spreading for the benefit of those investors. This Directive should not apply to the management of pension funds or managers of non-pooled investments such as endowments, sovereign wealth funds or assets **held** on own account by credit institutions, insurance or reinsurance undertakings. This Directive should neither apply to actively managed investments in the form of securities, such as certificates, managed futures, or index-linked bonds. ***It should, however, cover managers of all collective investment undertakings which are not required to be authorised as UCITS.*** Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments¹ should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy on the principle of risk-spreading for the benefit of those investors. ***It should cover managers of all such collective investment undertakings which are not required to be authorised as UCITS.*** This Directive should not apply to the management of pension funds or managers of non-pooled investments such as endowments, sovereign wealth funds or assets **held** on own account by credit institutions, insurance or reinsurance undertakings. This Directive should neither apply to actively managed investments in the form of securities, such as certificates, managed futures, or index-linked bonds. ***Nor, for the purposes of this Directive, is an undertaking which principally acts as a holding entity for a group of subsidiary undertakings and which owns strategic stakes in undertakings with a view to long term holding rather than for the purpose of generating returns through divestment within a defined timeframe, to be regarded as a collective investment undertaking.*** Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

Or. en

Justification

It should be clear that the reference to ‘collective investment undertakings’ in the statement

that managers of all collective investment undertakings which are not UCITS are within the scope of the Directive is a reference to collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy on the principle of risk-spreading for the benefit of those investors, rather than a broader class of collective investment undertaking.

Amendment 171

Othmar Karas

Proposal for a directive

Recital 5

Text proposed by the Commission

(5) The scope of this Directive should be confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy ***on the principle of risk-spreading*** for the benefit of those investors. This Directive should not apply to ***the management of pension funds or*** managers of non-pooled investments such as endowments, sovereign wealth funds or assets ***hold*** on own account by credit institutions, insurance or reinsurance undertakings. This Directive should ***neither*** apply to actively managed investments in the form of securities, such as certificates, managed futures, or index-linked bonds. It should, ***however***, cover managers of all collective investment undertakings which are not required to be authorised as UCITS. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

Amendment

(5) The scope of this Directive should be confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors. This Directive should not apply to managers of non-pooled investments such as endowments, sovereign wealth funds, ***central banks*** or assets ***directly or indirectly held*** on own account by credit institutions, ***institutions for retirement provision, or*** insurance or reinsurance undertakings. ***It should also not apply to the management of collective investment undertakings which are authorised in accordance with national law and only marketed in their home Member State.*** This Directive should, ***however***, apply to actively managed investments in the form of securities, such as certificates, managed futures, or index-linked bonds. It should ***also*** cover managers of all collective investment undertakings which are not required to be authorised as UCITS. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide

investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

Or. en

Justification

Managers of assets held on own account by institutions for occupational retirement provision should be treated as those of assets held on own account by insurance undertakings. Funds regulated and only distributed on a national level should be exempted from the AIFMD since purely national funds and managers do not cause systemic risks as those funds are generally highly regulated funds, often very similarly to UCITS. Exemptions for fund vehicles without the risk spreading principle are not feasible as well as for actively managed investments in the form of securities.

Amendment 172 **Gunnar Hökmark**

Proposal for a directive **Recital 5**

Text proposed by the Commission

(5) The scope of this Directive should be confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy on the principle of risk-spreading for the benefit of those investors. This Directive should not apply to the management of pension funds or managers of non-pooled investments such as endowments, sovereign wealth funds or assets **held** on own account by credit institutions, insurance or reinsurance undertakings. This Directive should neither apply to actively managed investments in the form of securities, such as certificates, managed futures, or index-linked bonds. It should, however, cover managers of all collective investment undertakings which are not required to be authorised as UCITS.

Amendment

(5) The scope of this Directive should be confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy on the principle of risk-spreading for the benefit of those investors. This Directive should not apply to the management of pension funds or managers of non-pooled investments such as endowments, sovereign wealth funds or assets **held** on own account by credit institutions, insurance or reinsurance undertakings. This Directive should neither apply to actively managed investments in the form of securities, such as certificates, managed futures, or index-linked bonds. It should, however, cover managers of all collective investment undertakings which are not required to be authorised as UCITS.

Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive. ***This Directive should not apply to industrial holding companies having their shares traded on an EU-regulated market insofar as they hold shares in their subsidiaries or associated companies over which they have a controlling influence for the purpose of carrying out an industrial business strategy.***

Or. en

Justification

The scope must be limited to AIFM that pose systematic risk, or the intended supervision will be difficult to uphold in a proper way. Industrial holding companies are long term owners without a planned exit horizon and with an industrial approach to their holdings. Such companies pose no systemic risk and, insofar as they are listed, are subject to existing EU Company Law, national regulation and stock exchange listing rules, which provide effective protection for investors. These should be exempted.

Amendment 173 **Kay Swinburne**

Proposal for a directive **Recital 5**

Text proposed by the Commission

(5) The scope of this Directive should be confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy on the principle of risk-spreading for the benefit of those

Amendment

(5) The scope of this Directive should be confined to the management of collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy on the principle of risk-spreading for the benefit of those

investors. This Directive should not apply to the management of pension funds or managers of non-pooled investments such as endowments, sovereign wealth funds or assets *hold* on own account by credit institutions, insurance or reinsurance undertakings. This Directive should neither apply to actively managed investments in the form of securities, such as certificates, managed futures, or index-linked bonds. It should, however, cover managers of all collective investment undertakings which are not required to be authorised as UCITS. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments¹ should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

investors. This Directive should not apply to the management of pension funds or managers of non-pooled investments such as endowments, sovereign wealth funds, ***national, regional or local government investment funds*** or assets *held* on own account by credit institutions, insurance or reinsurance undertakings. This Directive should neither apply to actively managed investments in the form of securities, such as certificates, managed futures, or index-linked bonds. It should, however, cover managers of all collective investment undertakings which are not required to be authorised as UCITS. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

Or. en

Justification

Investment funds managed by government bodies such as Finance Wales, which manages EU structural funds leveraged with private investments and should not be within the scope of the directive.

Amendment 174 **Pascal Canfin**

Proposal for a directive **Recital 5**

Text proposed by the Commission

(5) The scope of this Directive should be

Amendment

(5) The scope of this Directive should be

confined to ***the management of*** collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy ***on the principle of risk-spreading*** for the benefit of those investors. This Directive should not apply to ***the management of pension funds or managers of*** non-pooled investments such as endowments, sovereign wealth funds or assets ***held*** on own account by credit institutions, insurance or reinsurance undertakings. This Directive should neither apply to actively managed investments in the form of securities, such as certificates, managed futures, or index-linked bonds. It should, however, cover ***managers of*** all collective investment undertakings which are not required to be authorised as UCITS. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

confined to collective investment undertakings which raise capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors. This Directive should not apply to non-pooled investments such as endowments, sovereign wealth funds or assets ***held*** on own account by credit institutions, insurance or reinsurance undertakings, ***and pension funds***. This Directive should neither apply to actively managed investments in the form of securities, such as certificates, managed futures, or index-linked bonds. It should, however, cover all collective investment undertakings which are not required to be authorised as UCITS. Investment firms authorised under Directive 2004/39/EC on Markets in Financial Instruments¹⁰ should not be required to obtain an authorisation under this Directive in order to provide investment services in respect of AIF. Investment firms can however only provide investment services in respect of AIF, if and to the extent the units or shares thereof can be marketed in accordance with this Directive.

Or. en

Justification

The directive needs to encompass both funds (AIF) and managers (AIFM).

Amendment 175

Astrid Lulling

Proposal for a directive

Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) This Directive should not apply to managers of non-pooled investments such as endowments and sovereign wealth funds, to the management of portfolios of investments in accordance with mandates given by investors on a discretionary, client-by-client basis nor to any other form of individual portfolio management. Nor should this Directive apply to managers insofar as they manage AIF whose only investors are the managers themselves or their parent undertakings, their subsidiaries or other subsidiaries of their parent undertaking and where these investors are not themselves AIF. Nor should this Directive apply to holding companies insofar as they hold shares in their subsidiaries, given that such holding companies are not established for the main purpose of generating returns for their investors by means of, in particular, the divestment of their subsidiaries within a set timeframe, but which are aimed at carrying out a business strategy through their subsidiaries. This Directive should furthermore not apply to the management of pension funds, to supranational institutions, national central banks or national, regional and local governments and bodies or institutions which manage funds supporting social security and pension systems, nor to employee participation schemes or to securitisation vehicles.

Or. en

Justification

See Recital 5 (b) of the revised Presidency compromise proposal dated 15 December 2009

Amendment 176

Corien Wortmann-Kool

Proposal for a directive

Recital 5 a (new)

Text proposed by the Commission

Amendment

5a. This Directive should not apply to investment firms providing portfolio management services authorised under Directive 2004/39/EC, pension funds and other pension organizations governed by Directive 2004/41/EC and their dedicated asset management and/or service administration companies, or collective investment undertakings governed by Directive 2009/65/EC. In practice - for cost efficiency purposes - investment firms managing individual portfolios under Directive 2004/39/EC, pension asset management and/or service administration companies, and managers of UCITS (and, in due course, AIFM) should be able administratively or operationally to pool investments within their mandates. In light of its aims this Directive should not apply to those internal pooling structures.

Or. en

Justification

These structures described above are not commercial propositions to attract assets for collective investments ignoring the individual qualities and requirements of clients, nor are they marketed or even available for investment outside the scope of the overarching individual mandates, which are already regulated themselves under various European directives. The principal of risk-spreading as such does not apply to these structures. These structures are directly or indirectly (through one or more subsidiary companies) managed and controlled by the investment firm, the pension [asset] manager and/or service administration company, or UCITS manager and used by it in its own discretion. Therefore,

this Directive should also not apply to those structures. For the avoidance of doubt, pension [asset] management and/or service administration companies and asset pooling as described, do not fall within the definition of AIF, AIFM or depositary.

Amendment 177

Astrid Lulling

Proposal for a directive

Recital 5 b (new)

Text proposed by the Commission

Amendment

(5b) Investment firms authorised under Directive 2004/39/EC and credit institutions authorised under Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast) should not be required to obtain an authorisation under this Directive in order to provide investment services such as portfolio management in respect of AIF.

Or. en

Justification

See Recital 5 (c) of the revised Presidency compromise proposal dated 15 December 2009

Amendment 178

Wolf Klinz, Sharon Bowles, Carl Haglund

Proposal for a directive

Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) This Directive should not prevent or restrict investors from placing units or shares which they hold in AIF on the capital markets. Such investors, or their intermediaries, may offer or place such

shares or units in a Member State in accordance with the national law of that Member State. However, where such offering or placement is at the initiative of the AIFM managing such AIF, such offering or placement shall be treated as marketing.

Or. en

Justification

The trading of shares or units on a secondary market is not restricted by this Directive, as long as it is not a circumvention of the provisions of this Directive.

Amendment 179

Robert Goebbels, Udo Bullmann

Proposal for a directive

Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) Public interest entities, which solicit or hold funds received from the public, such as credit institutions, pension funds, insurance or reinsurance undertakings holding assets on their own account should be subject to their specific regime and their investment in funds be regulated in light of the specific characteristics of each category and the type of the funds. In this regard, the European Commission shall review Directive 2006/48/EC of the European Parliament and the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions (recast), Directive 2003/41/EC of the European Parliament and the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision¹, Directive 73/239/EEC of 24 July 1973 on the coordination of laws, regulations and administrative provisions relating to the

taking-up and pursuit of the business of direct insurance other than life assurance², Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 concerning life assurance³ and Directive 2005/68/EC of the European Parliament and Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC⁴ reinsurance⁴ so as to ensure that the following principles are followed: due diligence requirements similar to those applicable to AIFM are imposed to public interest entities when investing and an appropriate framework is set regarding such investments (in the form in particular of capital requirements and capital reserves).

¹ OJ L 235, 23.9.2003, p. 10.

² OJ L 228, 16.8.1973, p. 3.

³ OJ L 345, 19.12.2002, p. 1.

⁴ OJ L 323, 9.12.2005, p. 1.

Or. en

Amendment 180
Astrid Lulling

Proposal for a directive
Recital 5 ca (new)

Text proposed by the Commission

Amendment

(5a) This Directive should provide for a single AIFM for each AIF managed within the scope of the Directive, which should be responsible for the compliance with the requirements of this Directive. Depending on their legal form, AIF could be either externally or internally managed. AIF should be deemed internally managed when the

management functions are performed by the governing body or any other internal resource of the AIF. Where the legal form of the AIF permits an internal management and where the AIFs governing body chooses not to appoint an external AIFM, the AIF and the AIFM are identical. In that case, the AIF is also an AIFM and should therefore comply with all requirements for AIFM under this Directive and be authorised as such. An AIFM which is an internally managed AIF should however not be authorised as the external manager of one or more other AIF. An AIF should be deemed externally managed when an external legal person has been appointed as manager by the AIF or on account of the AIF (the appointed AIFM), which through this appointment is responsible for managing the portfolio of the AIF. In either case only an internally managed AIF or an external AIFM should be able to delegate the portfolio management or risk management functions to other entities in accordance with Article 18. Where an external AIFM has been appointed to perform management functions in relation to a particular AIF, it should not be deemed to be providing the investment service of portfolio management, as defined by Article 4(1)(9) of Directive 2004/39/EC on Markets in Financial Instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC¹⁰, but should instead be deemed to be providing the function of collective portfolio management in accordance with this Directive.

Or. en

Justification

See Recital 5 (a) of the revised Presidency compromise proposal dated 15 December 2009.

Amendment 181

Sirpa Pietikäinen

Proposal for a directive

Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) This Directive should provide for a single AIFM for each AIF managed within the scope of the Directive, which should be responsible for the compliance with the requirements of this Directive.

Or. en

Justification

Only one AIFM per AIF should be authorised under this Directive.

Amendment 182

Burkhard Balz

Proposal for a directive

Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) This Directive should provide for a single AIFM for each AIF managed within the scope of the Directive, which should be responsible for the compliance with the requirements of this Directive.

Or. en

Justification

Only one AIFM per AIF should be authorised under this Directive.

Amendment 183
Hans-Peter Martin

Proposal for a directive
Recital 6

Text proposed by the Commission

Amendment

(6) In order to avoid imposing excessive or disproportionate requirements, this Directive provides for an exemption for AIFM where the cumulative AIF under management fall below a threshold of EUR 100 million. The activities of the AIFM concerned are unlikely to have significant consequences for financial stability or market efficiency. For AIFM which only manage unleveraged AIF and do not grant investors redemption rights during a period of five years a specific threshold of EUR 500 million applies. This specific threshold is justified by the fact that managers of unleveraged funds, specialised in long term investments, are even less likely to cause systemic risks. Furthermore, the five years lock-up of investors eliminates liquidity risks. AIFM which are exempt from this Directive should continue to be subject to any relevant national legislation. They should however be allowed to be treated as AIFM subject to the opt-in procedure foreseen by this Directive.

deleted

Or. de

Amendment 184
Pascal Canfin

Proposal for a directive
Recital 6

Text proposed by the Commission

Amendment

(6) In order to avoid imposing excessive or disproportionate requirements, this Directive provides for an exemption for AIFM where the cumulative AIF under management fall below a threshold of EUR 100 million. The activities of the AIFM concerned are unlikely to have significant consequences for financial stability or market efficiency. For AIFM which only manage unleveraged AIF and do not grant investors redemption rights during a period of five years a specific threshold of EUR 500 million applies. This specific threshold is justified by the fact that managers of unleveraged funds, specialised in long term investments, are even less likely to cause systemic risks. Furthermore, the five years lock-up of investors eliminates liquidity risks. AIFM which are exempt from this Directive should continue to be subject to any relevant national legislation. They should however be allowed to be treated as AIFM subject to the opt-in procedure foreseen by this Directive.

deleted

Or. en

Justification

All AIF and AIFM should be covered in order not to create any loophole on the market.

Amendment 185
Robert Goebbels, Udo Bullmann

Proposal for a directive
Recital 6

Text proposed by the Commission

Amendment

(6) In order to avoid imposing excessive or disproportionate requirements, this Directive provides for an exemption for AIFM where the cumulative AIF under management fall below a threshold of EUR 100 million. The activities of the AIFM concerned are unlikely to have significant consequences for financial stability or market efficiency. For AIFM which only manage unleveraged AIF and do not grant investors redemption rights during a period of five years a specific threshold of EUR 500 million applies. This specific threshold is justified by the fact that managers of unleveraged funds, specialised in long term investments, are even less likely to cause systemic risks. Furthermore, the five years lock-up of investors eliminates liquidity risks. AIFM which are exempt from this Directive should continue to be subject to any relevant national legislation. They should however be allowed to be treated as AIFM subject to the opt-in procedure foreseen by this Directive.

deleted

Or. en

Justification

The directive must be applicable to all AIFM, without any exemptions based on the size of the assets under management. Otherwise, there will be a significant incentive given to managers to set up funds just below the threshold and find ways to delegate as much as possible of all of their functions to external service providers and ‘advisers’. This would defeat the purpose of the directive, which is to cover all players in the financial industry.

Amendment 186

Wolf Klinz, Sharon Bowles, Carl Haglund

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) In order to avoid imposing excessive or disproportionate requirements, this Directive provides for ***an exemption for*** AIFM where the cumulative AIF under management fall below a threshold of EUR ***100 million***. The activities of the AIFM concerned are unlikely to have significant consequences for financial stability or market efficiency. For AIFM which only manage unleveraged AIF and do not grant investors redemption rights during a period of five years a specific threshold of EUR 500 million applies. This specific threshold is justified by the fact that managers of unleveraged funds, specialised in long term investments, are even less likely to cause systemic risks. Furthermore, the five years lock-up of investors eliminates liquidity risks. ***AIFM which are exempt from this Directive should continue to be subject to any relevant national legislation.*** They should however be allowed to be treated as AIFM subject to the opt-in procedure foreseen by this Directive.

Amendment

(6) In order to avoid imposing excessive or disproportionate requirements, this Directive provides for ***a lighter regime for non-systemically relevant*** AIFM where the cumulative AIF under management fall below a threshold of EUR ***250 million***. The activities of the AIFM concerned are unlikely to have significant consequences for financial stability or market efficiency. For AIFM which only manage unleveraged AIF and do not grant investors redemption rights during a period of five years a specific threshold of EUR 500 million applies. This specific threshold is justified by the fact that managers of unleveraged funds, specialised in long term investments, are even less likely to cause systemic risks. Furthermore, the five years lock-up of investors eliminates liquidity risks. ***AIFM that fall under the lighter regime should register with their competent authorities and comply with the transparency requirements of this Directive.*** They should however be allowed to be treated as AIFM subject to the opt-in procedure foreseen by this Directive.

Or. en

Justification

The main priority of this Directive is to capture systemic risk. In order to minimise collateral damage done by the 'one-size-fits-all' approach, smaller AIFM should only have to register and comply with the transparency obligations of Art. 19-21.

Amendment 187

Sari Essayah

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) In order to avoid imposing excessive or disproportionate requirements, this Directive provides for an exemption for AIFM where the cumulative AIF under management fall below a threshold of EUR 100 million. The activities of the AIFM concerned are unlikely to have significant consequences for financial stability or market efficiency. For AIFM which only manage unleveraged AIF and do not grant investors redemption rights during a period of five years a specific threshold of EUR 500 million applies. This specific threshold is justified by the fact that managers of unleveraged funds, specialised in long term investments, are even less likely to cause systemic risks. Furthermore, the five years lock-up of investors eliminates liquidity risks. AIFM which are exempt from this Directive should continue to be subject to any relevant national legislation. They should however be allowed to be treated as AIFM subject to the opt-in procedure foreseen by this Directive.

Amendment

(6) In order to avoid imposing excessive or disproportionate requirements, this Directive provides for an exemption for AIFM where the cumulative AIF under management fall below a threshold of EUR 100 million. The activities of the AIFM concerned are unlikely to have significant consequences for financial stability or market efficiency. For AIFM which only manage unleveraged AIF and do not grant investors redemption rights during a period of five years a specific threshold of EUR 500 million applies. This specific threshold is justified by the fact that managers of unleveraged funds, specialised in long term investments, are even less likely to cause systemic risks. Furthermore, the five years lock-up of investors eliminates liquidity risks. AIFM which are exempt from this Directive should continue to be subject to any relevant national legislation ***and should be subject at least to registration in their home Member States.*** They should however be allowed to be treated as AIFM subject to the opt-in procedure foreseen by this Directive.

Or. en

Amendment 188

Enikő Győri, Sławomir Witold Nitras

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) In order to avoid imposing excessive or

Amendment

(6) In order to avoid imposing excessive or

disproportionate requirements, this Directive provides for an exemption for AIFM where the cumulative AIF under management fall below a threshold of EUR 100 million. The activities of the AIFM concerned are unlikely to have significant consequences for financial stability or market efficiency. For AIFM which only manage unleveraged AIF and do not grant investors redemption rights during a period of five years a specific threshold of EUR 500 million applies. This specific threshold is justified by the fact that managers of unleveraged funds, specialised in long term investments, are even less likely to cause systemic risks. Furthermore, the five years lock-up of investors eliminates liquidity risks. AIFM which are exempt from this Directive should continue to be subject to any relevant national legislation. They should however be allowed to be treated as AIFM subject to the opt-in procedure foreseen by this Directive.

disproportionate requirements ***on small and medium-sized AIFs as well as to prevent AIFM from being domiciled in third countries for the purposes of regulatory arbitrage***, this Directive provides for an exemption for AIFM where the cumulative AIF under management fall below a threshold of EUR 100 million. The activities of the AIFM concerned are unlikely to have significant consequences for financial stability or market efficiency. For AIFM which only manage unleveraged AIF and do not grant investors redemption rights during a period of five years a specific threshold of EUR 500 million applies. This specific threshold is justified by the fact that managers of unleveraged funds, specialised in long term investments, are even less likely to cause systemic risks. Furthermore, the five years lock-up of investors eliminates liquidity risks. AIFM which are exempt from this Directive should continue to be subject to any relevant national legislation. They should however be allowed to be treated as AIFM subject to the opt-in procedure foreseen by this Directive.

Or. en

Justification

It is imperative to exempt the small and medium sized AIFs from unnecessary burden entailed by the generic application of the Directive, since certain AIFS (private equity funds) play crucial role in providing SMEs with finances. The Commission proposal on the set-up of the threshold should be maintained as its abolition could drive the managers of small and medium sized AIFs to massively domicile in third countries, whilst these funds could still be bought across the EU via passive marketing. The cancellation of the value limit would contradict the basic principle of the regulation, namely making the operation of the sector more transparent by means of collecting information of the transactions carried out by AIFFM.

Amendment 189
Syed Kamall

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) In order to avoid imposing excessive or disproportionate requirements, this Directive provides for an exemption for AIFM where the cumulative AIF under management fall below a threshold of EUR **100 million**. The activities of the AIFM concerned are unlikely to have significant consequences for financial stability or market efficiency. For AIFM which only manage unleveraged AIF and do not grant investors redemption rights during a period of five years a specific threshold of EUR **500 million** applies. This specific threshold is justified by the fact that managers of unleveraged funds, specialised in long term investments, are even less likely to cause systemic risks. Furthermore, the five years lock-up of investors eliminates liquidity risks. AIFM which are exempt from this Directive should continue to be subject to any relevant national legislation. They should however be allowed to be treated as AIFM subject to the opt-in procedure foreseen by this Directive.

Amendment

(6) In order to avoid imposing excessive or disproportionate requirements, this Directive provides for an exemption for AIFM where the cumulative AIF under management fall below a threshold of EUR **1 billion**. The activities of the AIFM concerned are unlikely to have significant consequences for financial stability or market efficiency. For AIFM which only manage unleveraged AIF and do not grant investors redemption rights during a period of five years a specific threshold of EUR **1,5 billion** applies. This specific threshold is justified by the fact that managers of unleveraged funds, specialised in long term investments, are even less likely to cause systemic risks. Furthermore, the five years lock-up of investors eliminates liquidity risks. AIFM which are exempt from this Directive should continue to be subject to any relevant national legislation. They should however be allowed to be treated as AIFM subject to the opt-in procedure foreseen by this Directive.

Or. en

Justification

We support raising the threshold of the Directive so as not to be overburdensome to smaller AIFM who do not pose systemic risk.

Amendment 190
Gunnar Hökmark

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) In order to avoid imposing excessive or disproportionate requirements, this Directive provides for an exemption for AIFM where the cumulative AIF under management fall below a threshold of EUR **100 million**. The activities of the AIFM concerned are unlikely to have significant consequences for financial stability or market efficiency. For AIFM which only manage unleveraged AIF and do not grant investors redemption rights during a period of five years a specific threshold of EUR **500 million** applies. This specific threshold is justified by the fact that managers of unleveraged funds, specialised in long term investments, are even less likely to cause systemic risks. Furthermore, the five years lock-up of investors eliminates liquidity risks. AIFM which are exempt from this Directive should continue to be subject to any relevant national legislation. They should however be allowed to be treated as AIFM subject to the opt-in procedure foreseen by this Directive.

Amendment

(6) In order to avoid imposing excessive or disproportionate requirements, this Directive provides for an exemption for AIFM where the cumulative AIF under management fall below a threshold of EUR **500 million**. The activities of the AIFM concerned are unlikely to have significant consequences for financial stability or market efficiency. For AIFM which only manage unleveraged AIF and do not grant investors redemption rights during a period of five years a specific threshold of EUR **1 000 million** applies. This specific threshold is justified by the fact that managers of unleveraged funds, specialised in long term investments, are even less likely to cause systemic risks. Furthermore, the five years lock-up of investors eliminates liquidity risks. AIFM which are exempt from this Directive should continue to be subject to any relevant national legislation. They should however be allowed to be treated as AIFM subject to the opt-in procedure foreseen by this Directive.

Or. en

Justification

The scope must be limited to AIFM that pose systematic risk, or the intended supervision will be difficult to uphold in a proper way. Small AIFMs do not pose systematic risk and it is disproportionate to include them. The Directive will bring compliance costs, which will be an especially heavy burden for small AIFMs and these are least likely to benefit from the introduction of passporting rights. The increased thresholds are to secure that small funds without an impact on systemic risk can be excluded from the scope.

Amendment 191
Olle Schmidt

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) In order to avoid imposing excessive or disproportionate requirements, this Directive provides for an exemption for AIFM where the cumulative AIF under management fall below a threshold of EUR **100 million**. The activities of the AIFM concerned are unlikely to have significant consequences for financial stability or market efficiency. For AIFM which only manage unleveraged AIF and do not grant investors redemption rights during a period of five years a specific threshold of EUR **500 million** applies. This specific threshold is justified by the fact that managers of unleveraged funds, specialised in long term investments, are even less likely to cause systemic risks. Furthermore, the five years lock-up of investors eliminates liquidity risks. AIFM which are exempt from this Directive should continue to be subject to any relevant national legislation. They should however be allowed to be treated as AIFM subject to the opt-in procedure foreseen by this Directive.

Amendment

(6) In order to avoid imposing excessive or disproportionate requirements, this Directive provides for an exemption for AIFM where the cumulative AIF under management fall below a threshold of EUR **500 million**. The activities of the AIFM concerned are unlikely to have significant consequences for financial stability or market efficiency. For AIFM which only manage unleveraged AIF and do not grant investors redemption rights during a period of five years a specific threshold of EUR **1 000 million** applies. This specific threshold is justified by the fact that managers of unleveraged funds, specialised in long term investments, are even less likely to cause systemic risks. Furthermore, the five years lock-up of investors eliminates liquidity risks. AIFM which are exempt from this Directive should continue to be subject to any relevant national legislation. They should however be allowed to be treated as AIFM subject to the opt-in procedure foreseen by this Directive.

Or. en

Amendment 192
Marta Andreassen

Proposal for a directive
Recital 6

Text proposed by the Commission

(6) In order to avoid imposing excessive or disproportionate requirements, this

Amendment

(6) In order to avoid imposing excessive or disproportionate requirements, this

Directive provides for an exemption for AIFM where the cumulative AIF under management fall below a threshold of EUR **100 million**. The activities of the AIFM concerned are unlikely to have significant consequences for financial stability or market efficiency. For AIFM which only manage unleveraged AIF and do not grant investors redemption rights during a period of five years a specific threshold of EUR **500 million** applies. This specific threshold is justified by the fact that managers of unleveraged funds, specialised in long term investments, are even less likely to cause systemic risks. Furthermore, the five years lock-up of investors eliminates liquidity risks. AIFM which are exempt from this Directive should continue to be subject to any relevant national legislation. They should however be allowed to be treated as AIFM subject to the opt-in procedure foreseen by this Directive.

Directive provides for an exemption for AIFM where the cumulative AIF under management fall below a threshold of EUR **200 million**. The activities of the AIFM concerned are unlikely to have significant consequences for financial stability or market efficiency. For AIFM which only manage unleveraged AIF and do not grant investors redemption rights during a period of five years a specific threshold of EUR **1 billion** applies. This specific threshold is justified by the fact that managers of unleveraged funds, specialised in long term investments, are even less likely to cause systemic risks. Furthermore, the five years lock-up of investors eliminates liquidity risks. AIFM which are exempt from this Directive should continue to be subject to any relevant national legislation. They should however be allowed to be treated as AIFM subject to the opt-in procedure foreseen by this Directive.

Or. en

Justification

The lower threshold will have negligible effect on the systemic risk the directive seeks to address, however it will create a regulatory burden on smaller funds which are least able to afford them.

Amendment 193 **Sharon Bowles**

Proposal for a directive **Recital 6 a (new)**

Text proposed by the Commission

Amendment

(6a) In order to avoid potential asset stripping, the net assets of a target company controlled by an AIF should comply with the provisions of the capital adequacy regime under the Second Company Law Directive.

Justification

The provisions in point (a) of Article 15(1) of Second Council Directive 77/91/EEC of 13 December 1976 on coordination of safeguards, and the provisions of Article 1(4)(b) and Article 1(5) of Directive 2006/68/EC of the European Parliament and of the Council of 6 September 2006 amending Council Directive 77/91/EEC as applied to Public Limited Liability Companies could help prevent asset stripping as divestment just to pay down acquisition debt while at the same time allowing sufficient leeway for legitimate strategic restructurings.

Amendment 194

Wolf Klinz

Proposal for a directive

Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) In order to avoid potential asset stripping in target companies that AIF managed by an AIFM invest in, the AIFM should ensure that a lock-in period of three years of the AIF investment in the target company is obeyed.

Justification

Close-ended funds that acquire a controlling influence in a target company have to commit their investment for a period of three years in order to avoid any asset stripping in that company.

Amendment 195
Robert Goebbels, Udo Bullmann

Proposal for a directive
Recital 7

Text proposed by the Commission

(7) This Directive aims at providing a harmonised and stringent regulatory and supervisory framework for the activities of AIFM. Authorisation in accordance with this Directive should cover the services of management and administration of AIF throughout the *Community*. ***In addition, authorised AIFM should be entitled to market AIF in the Community to professional investors, subject to a notification procedure.***

Amendment

(7) This Directive aims at providing a harmonised and stringent regulatory and supervisory framework for the activities of AIFM. Authorisation in accordance with this Directive should cover the services of management and administration of AIF throughout the *Union*.

Or. en

Justification

The issue of marketing of non-EU AIF is addressed in more details in following amendments.

Amendment 196
Sirpa Pietikäinen

Proposal for a directive
Recital 7

Text proposed by the Commission

(7) This Directive aims at providing a harmonised and stringent regulatory and supervisory framework for the activities of AIFM. Authorisation in accordance with this Directive should cover the ***services of management and administration*** of AIF throughout the *Community*. In addition, authorised AIFM should be entitled to market AIF in the *Community* to professional investors, subject to a notification procedure.

Amendment

(7) This Directive aims at providing a harmonised and stringent regulatory and supervisory framework for the activities of AIFM. Authorisation in accordance with this Directive should cover the ***cross-border*** management of AIF throughout the *Union*. In addition, authorised AIFM should be entitled to market AIF ***domiciled in the Union throughout the Union*** to professional investors, subject to a notification procedure. ***Subject to the provisions of this Directive, Member***

States should be able to allow or continue to allow AIFM to market alternative investment funds other than those covered by this Directive to professional investors on their territory, subject to national law. Member States should also be able to allow or continue to allow professional investors on their territory to look for and invest under their own responsibility in AIF domiciled in another Member State or in third countries.

Or. en

Justification

Alignment of the terminology regarding the term 'Management' with the UCITS Directive. European passport only to AIFM domiciled in the Community while granting Member States the right to allow private placement and marketing to professional investors on their territory, as well as the right to purchase AIF without passport at the initiative of professional investors.

Amendment 197

Wolf Klinz, Carl Haglund

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) This Directive aims at providing a harmonised and stringent regulatory and supervisory framework for the activities of AIFM. Authorisation in accordance with this Directive should cover the services of management **and administration** of AIF throughout the Community. In addition, authorised AIFM should be entitled to market AIF in the Community to professional investors, subject to a notification procedure.

Amendment

(7) This Directive aims at providing a harmonised and stringent regulatory and supervisory framework for the activities of AIFM. Authorisation in accordance with this Directive should cover the services of management of AIF throughout the Community. In addition, authorised AIFM **established in the Union** should be entitled to market AIF **established** in the Community **across the Union** to professional investors, subject to a notification procedure. **Member States should be able to allow AIFM to market AIF established in third countries or not covered by this Directive to professional**

investors on their territory subject to national law. Member States may furthermore allow professional investors on their territory to invest under their own responsibility in AIF established in third countries.

Or. en

Justification

National private placement regimes should co-exist alongside the passport, allowing the marketing of third country funds in a Member State according to the applicable national law.

Amendment 198
Pascal Canfin

Proposal for a directive
Recital 7

Text proposed by the Commission

(7) This Directive aims at providing a harmonised and stringent regulatory and supervisory framework for the activities of AIFM. Authorisation in accordance with this Directive should cover ***the services of management and administration of*** AIF throughout the ***Community***. In addition, authorised ***AIFM*** should be entitled to ***market AIF*** in the *Community* to professional investors, subject to a notification procedure.

Amendment

(7) This Directive aims at providing a harmonised and stringent regulatory and supervisory framework for the activities of ***AIF and*** AIFM. Authorisation in accordance with this Directive should cover ***all AIF available to the investors of the European Union or operating on financial markets*** throughout the ***Union***. In addition, authorised ***AIF*** should be entitled to ***be marketed*** in the *Union* to professional investors, subject to a notification procedure.

Or. en

Justification

Protection of investors requires an extension of the Directive requirements to all AIF receiving funds from European investors. Protection of European markets stability requires a monitoring of AIF investing in European financial markets

Amendment 199
Syed Kamall

Proposal for a directive
Recital 7

Text proposed by the Commission

(7) This Directive aims at providing a harmonised and stringent regulatory and supervisory framework for the activities of AIFM. Authorisation in accordance with this Directive should cover the **services of management and administration** of AIF throughout the *Community*. In addition, authorised AIFM should be entitled to market AIF in the *Community* to **professional** investors, subject to a notification procedure.

Amendment

(7) This Directive aims at providing a harmonised and stringent regulatory and supervisory framework for the activities of AIFM. Authorisation in accordance with this Directive should cover the management of AIF throughout the *Union*. In addition, authorised AIFM should be entitled to market AIF in the *Union* to investors, subject to a notification procedure.

Or. en

Justification

It is important to acknowledge that in certain circumstances, particularly in respect of third country domiciled AIF, the AIFM may only perform those activities in connection with the management of AIF. Activities performed in connection with the administration of the AIF may be carried out by third parties appointed by the AIF or the AIFM. It is also important to permit the marketing of certain AIF to retail investors in the Community, subject to any additional requirements imposed by national supervisors.

Amendment 200
Pascal Canfin

Proposal for a directive
Recital 8

Text proposed by the Commission

(8) This Directive does not regulate AIF and therefore does not prevent Member States from adopting or from continuing to apply additional requirements in respect of AIF established on their territory. The fact that a Member State may impose additional requirements on

Amendment

deleted

AIF domiciled on its territory should not prevent the exercise of rights of AIFM authorised in other Member States in accordance with this Directive to market to professional investors AIF domiciled outside the Member State imposing additional requirements and which are therefore not subject to and do not need to comply with those additional requirements.

Or. en

Justification

The directive needs to regulate products (AIF) and not managers (AIFM)

Amendment 201
Catherine Stihler

Proposal for a directive
Recital 8

Text proposed by the Commission

(8) This Directive does not regulate AIF **and** therefore does not prevent Member States from adopting or **from** continuing to apply **additional** requirements in respect of AIF established on their territory. The fact that a Member State may impose additional requirements on AIF **domiciled** on its territory should not prevent the exercise of rights of AIFM authorised in other Member States in accordance with this Directive to market to professional investors AIF **domiciled outside** the Member State imposing additional requirements and which are therefore not subject to and do not need to comply with those additional requirements.

Amendment

(8) This Directive does not regulate AIF. **AIF may therefore *continue to be regulated and supervised at the national level and this Directive*** does not prevent Member States from adopting or continuing to apply **national** requirements in respect of AIF established on their territory. The fact that a Member State may impose additional requirements on AIF **established** on its territory **compared to requirements applicable in other Member States** should not prevent the exercise of rights of AIFM authorised in other Member States in accordance with this Directive to market to professional investors AIF **established in a Member State other than** the Member State imposing additional requirements and which are therefore not subject to and do not need to comply with those additional

requirements.

Or. en

Justification

Member States should still be permitted to authorise and supervise AIF domiciled in their jurisdiction and to, impose additional requirements on AIF, particularly where they are marketed to retail investors. Marketing of domestically domiciled AIF to retail investors should however not be subject to stricter requirements to those on AIF established in other Member States and marketed on a cross border basis.

Amendment 202

Peter Skinner

Proposal for a directive

Recital 8

Text proposed by the Commission

(8) This Directive does not regulate AIF and therefore does not prevent Member States from adopting or from continuing to apply additional requirements in respect of AIF established on their territory. The fact that a Member State may impose additional requirements on AIF domiciled on its territory should not prevent the exercise of rights of AIFM authorised in other Member States in accordance with this Directive to market to professional investors AIF domiciled outside the Member State imposing additional requirements and which are therefore not subject to and do not need to comply with those additional requirements.

Amendment

(8) This Directive does not regulate AIF and therefore does not prevent Member States from adopting or from continuing to apply additional requirements in respect of AIF established on their territory.
However, recognising the variety of legal and governance arrangements applicable to AIFs, the AIF may be the AIFM where the AIF is responsible for its own management. The fact that a Member State may impose additional requirements on AIF domiciled on its territory should not prevent the exercise of rights of AIFM authorised in other Member States in accordance with this Directive to market to professional investors AIF domiciled outside the Member State imposing additional requirements and which are therefore not subject to and do not need to comply with those additional requirements.

Or. en

Justification

This establishes the principle that AIFs can, where appropriate, be authorised as the AIFM.

Amendment 203

Catherine Stihler

Proposal for a directive

Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) This Directive should also establish high requirements for AIFM, but should not prevent Member States from adopting additional requirements in respect of AIFM established on their territory, for example, in order to ensure investor protection. Any additional requirements on locally domiciled AIFM should not be invoked to prevent the exercise of rights conferred by this Directive on AIFM authorised in another Member State in accordance with this Directive.

Or. en

Justification

It is appropriate that the Directive is minimum harmonising to permit Member States to adopt additional requirements for AIFM established on their territory including to deal with emerging issues in a timely manner which otherwise may threaten investor protection or financial stability.

Amendment 204

Astrid Lulling

Proposal for a directive

Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) AIF domiciled in the Union managed by an AIFM established in a third country

which comply with the equivalent requirements of Article 39, do not have to comply with the requirements of this Directive and are not considered as self-managed AIF. Such AIF do not benefit from the passport created by the Directive but Member States may permit professional investors domiciled on their territory to invest at their own initiative in such AIF.

Or. en

Justification

The setting out of equivalence criteria between AIFM established inside the Community and those outside the Community shall be sufficient to create a level playing field. It does not appear necessary to impose additional criteria on an AIF established inside the Community and which is managed by an AIFM established in a third country complying with the equivalency requirements of the Directive

Amendment 205 **Jean-Pierre Audy**

Proposal for a directive **Recital 9**

Text proposed by the Commission

(9) Without prejudice to the application of other instruments of *Community* law, Member States may impose stricter requirements on AIFM whenever AIFM market an AIF solely to retail investors or whenever AIFM market the same AIF both to professional and retail investors, irrespective of whether units or shares of this AIF are marketed on a domestic or cross-border basis. These two exceptions enable Member States to impose additional safeguards which they deem necessary for the protection of retail investors. This takes account of the fact that AIF are often illiquid and subject to high risk of substantial capital loss. Investment

Amendment

(9) Without prejudice to the application of other instruments of *EU* law, Member States may impose stricter requirements on AIFM whenever AIFM market an AIF solely to retail investors or whenever AIFM market the same AIF both to professional and retail investors, irrespective of whether units or shares of this AIF are marketed on a domestic or cross-border basis. These two exceptions enable Member States to impose additional safeguards which they deem necessary for the protection of retail investors. This takes account of the fact that AIF are often illiquid and subject to high risk of substantial capital loss. Investment

strategies in relation to AIF are generally not adapted to the investment profile or needs of retail investors. They are more suitable for professional investors and investors having a sufficiently large investment portfolio so as to be able to absorb the higher risks of loss associated with these investments. Nevertheless, Member States may allow the marketing of all or certain types of AIF managed by AIFM to retail investors on their territory. Against the background of paragraphs 4 and 5 of Article 19 of Directive 2004/39/EC, Member States should continue to ensure that appropriate provision is made whenever they permit the marketing of AIF to retail investors. Investment firms authorised in accordance with Directive 2004/39/EC which provide investment services to retail clients have to take into account these additional safeguards when assessing whether a certain AIF is suitable or appropriate for an individual retail client. Where a Member State allows the marketing of AIF to retail investors on its territory, this possibility should be available regardless of the Member State where the AIFM is established, and any additional provisions should apply on a non-discriminatory basis.

strategies in relation to AIF are generally not adapted to the investment profile or needs of retail investors. They are more suitable for professional investors and investors having a sufficiently large investment portfolio so as to be able to absorb the higher risks of loss associated with these investments. Nevertheless, Member States may allow the marketing of all or certain types of AIF managed by AIFM to retail investors on their territory. ***Consideration should, however, be given by the EU institutions and, in particular, by the Commission to whether a specific EU framework should be proposed to define common rules for the distribution of AIFs to retail investors in the EU.*** Against the background of paragraphs 4 and 5 of Article 19 of Directive 2004/39/EC, Member States should continue to ensure that appropriate provision is made whenever they permit the marketing of AIF to retail investors. Investment firms authorised in accordance with Directive 2004/39/EC which provide investment services to retail clients have to take into account these additional safeguards when assessing whether a certain AIF is suitable or appropriate for an individual retail client. Where a Member State allows the marketing of AIF to retail investors on its territory, this possibility should be available regardless of the Member State where the AIFM is established, and any additional provisions should apply on a non-discriminatory basis.

Or. en

Amendment 206
Syed Kamall

Proposal for a directive
Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) This Directive shall not prevent or restrict investors from disposing of units or shares which they hold in AIF on the capital market. Such investors, or their intermediaries, may offer or place such shares or units to or with investors in a Member State in accordance with the national law of that Member State. , Where such offer or placement is at the initiative of the AIFM managing such AIF, however, the offer or placement shall be treated as marketing by such AIFM for the purposes of this Directive.

Or. en

Justification

In the secondary market, it is the investor; not the AIFM, who is the seller and markets the interest to be sold to potential buyers. However, the proposed Directive appears to permit only the AIFM of a fund to undertake the marketing of interests in a fund. The effect of the proposed Directive would be that, in a secondary transaction, the seller would be prevented from marketing to EU investors the fund interests it wishes to sell. Consequently, investment returns and liquidities will be driven down for European private equity investors like pension funds. Therefore, investors must remain free to dispose of existing investments to other European investors in the secondary market. It is also crucial that this Directive is proportionate and not overburdensome to small European funds. Keeping in mind the investment choices of institutional investors who represent European citizens through their pensions, we should narrow the scope of the Directive.

Amendment 207
Olle Schmidt

Proposal for a directive
Recital 10

Text proposed by the Commission

Amendment

(10) In order to ensure a high level of protection of clients of investment firms within the meaning of Directive 2004/39/EC, AIF should not be considered as non-complex financial instruments for the purposes of that Directive. That Directive should therefore be amended accordingly. ***deleted***

Or. en

Justification

The categorisation of an investment in AIF as a non-complex or a complex instrument should continue to depend on the fulfilment of the criteria in Article 38 of the MiFID Implementing Directive.

Amendment 208
Syed Kamall

Proposal for a directive
Recital 10

Text proposed by the Commission

Amendment

(10) In order to ensure a high level of protection of clients of investment firms within the meaning of Directive 2004/39/EC, AIF should not be considered as non-complex financial instruments for the purposes of that Directive. That Directive should therefore be amended accordingly. ***deleted***

Or. en

Justification

As is recognised by the Swedish Presidency Compromise Proposal, we do not consider it appropriate for this Directive to mandate that an AIF should automatically be deemed to be a complex financial instrument.

Amendment 209

Werner Langen

Proposal for a directive

Recital 10

Text proposed by the Commission

Amendment

(10) In order to ensure a high level of protection of clients of investment firms within the meaning of Directive 2004/39/EC, AIF should not be considered as non-complex financial instruments for the purposes of that Directive. That Directive should therefore be amended accordingly. ***deleted***

Or. en

Justification

Considering all AIF covered by the Directive as complex financial instruments disregards the fact that the Directive encompasses most diverse funds in structure, risk and strategy, including highly standardised funds whose regulation is based on rules similar to UCITs. It would therefore be inappropriate to apply a one size fits all approach in this respect.

Amendment 210

Sirpa Pietikäinen

Proposal for a directive

Recital 10

Text proposed by the Commission

Amendment

(10) In order to ensure a high level of protection of clients of investment firms within the meaning of Directive 2004/39/EC, AIF should not be ***deleted***

considered as non-complex financial instruments for the purposes of that Directive. That Directive should therefore be amended accordingly.

Or. en

Justification

The categorisation of an investment in AIF as a non-complex or complex instrument should continue to depend on the fulfilment of the criteria in Article 38 of the MiFID Implementing Directive.

Amendment 211

Burkhard Balz

Proposal for a directive

Recital 10

Text proposed by the Commission

Amendment

(10) In order to ensure a high level of protection of clients of investment firms within the meaning of Directive 2004/39/EC, AIF should not be considered as non-complex financial instruments for the purposes of that Directive. That Directive should therefore be amended accordingly.

deleted

Or. en

Justification

Considering all AIF covered by the Directive as complex financial instruments disregards the fact that the Directive encompasses most diverse funds in structure, risk and strategy, including highly standardised funds whose regulation is based on rules similar to UCITs. It would therefore be inappropriate to apply a one size fits all approach in this respect.

Amendment 212
Othmar Karas

Proposal for a directive
Recital 10

Text proposed by the Commission

Amendment

(10) In order to ensure a high level of protection of clients of investment firms within the meaning of Directive 2004/39/EC, AIF should not be considered as non-complex financial instruments for the purposes of that Directive. That Directive should therefore be amended accordingly.

deleted

Or. en

Justification

According to recital 10, AIF are generally to be classified as complex financial instruments. This contradicts Article 38 of the MiFID Implementing Directive, according to which shares in open-ended regulated funds are basically not considered complex. The provisions of said Directive provide reliable criteria for classifying financial instruments as complex or non complex.

Amendment 213
Peter Skinner

Proposal for a directive
Recital 10 a (new)

Text proposed by the Commission

Amendment

(10a) In accordance with the principle of proportionality and recognising the substantial overlap between the authorisation requirements laid down in Directive 2009/65/EC and those laid down in this Directive, managers authorised under either directive should be entitled to be authorised under the other directive, subject only to complying with any relevant additional requirements for the new authorisation. In that respect, cross-

references concerning documents should be possible, provided that information contained in those documents have remained unchanged. Directive 2009/65/EC should be amended to achieve the same result.

Or. en

Justification

It is appropriate to acknowledge the similarities between certain of the regulatory requirements applying to the managers of UCITS and those envisaged by this Directive. The UCITS Directive already allows UCITS managers to manage 'AIF' under their UCITS Directive authorisation. To avoid imposing disproportionate costs on AIFM and supervisors it is therefore appropriate to enable those firms which are either already managing UCITS or AIF to apply for authorisation to manage both types of funds through by just demonstrating that they meet any additional requirements conferred by the Directives governing this additional activity rather than requiring them to seek complete new authorisation.

Amendment 214

Robert Goebbels, Udo Bullmann

Proposal for a directive

Recital 11

Text proposed by the Commission

(11) It is necessary to provide for the application of minimum capital requirements to ensure the continuity and the regularity of the management services provided by the AIFM. The ongoing capital requirements should cover the potential exposure of AIFM to professional liability in respect of all their activities, including management services provided under delegation or on the basis of a mandate.

Amendment

(11) It is necessary to provide for the application of minimum capital requirements to ensure the continuity and the regularity of the management services provided by the AIFM. The ongoing capital requirements should cover the potential exposure of AIFM to professional liability in respect of all their activities, including management services provided under delegation or on the basis of a mandate. ***Own funds should be invested in liquid assets or assets readily convertible to cash in the short-term and should not include speculative positions.***

Or. en

Justification

This is necessary to give its full effect to the capital requirement

Amendment 215

Wolf Klinz

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) It is necessary to ensure that AIFM operate subject to robust governance controls. AIFM should be managed and organised so as to minimise conflicts of interest. Recent developments underline the crucial need to separate asset safe-keeping and management functions, and segregate investor assets from those of the manager. To this end, the AIFM has to ***appoint a*** depositary ***and entrust it with the*** booking of the investor money on a segregated account, ***the*** safe-keeping of financial instruments and ***the*** verification of whether the AIF or the AIFM on behalf of the AIF has obtained ownership of all other assets.

Amendment

(12) It is necessary to ensure that AIFM operate subject to robust governance controls. AIFM should be managed and organised so as to minimise conflicts of interest. Recent developments underline the crucial need to separate asset safe-keeping and management functions, and segregate investor assets from those of the manager. To this end, the AIFM has to ***ensure that the*** depositary ***tasks of*** booking of the investor money on a segregated account, safe-keeping of financial instruments and verification of whether the AIF or the AIFM on behalf of the AIF has obtained ownership of all other assets ***are fulfilled independently and in the sole interest of the AIF investors. Those tasks may be performed by a*** depositary.

Or. en

Justification

Instead of forcing the concept of a depositary on different existing fund structures, the functions/tasks of a depositary should be clearly defined and may be assigned to a depositary or another institution that ensures the independent execution in the best interest of the investors.

Amendment 216
Sirpa Pietikäinen

Proposal for a directive
Recital 12

Text proposed by the Commission

(12) It is necessary to ensure that AIFM operate subject to robust governance controls. AIFM should be managed and organised so as to minimise conflicts of interest. Recent developments underline the crucial need to separate asset safe-keeping and management functions, and segregate investor assets from those of the manager. To this end, the AIFM has to **appoint** a depositary and entrust it with the booking of investor money on a segregated account, the safe-keeping of financial instruments and the verification of whether the AIF or the AIFM on behalf of the AIF has obtained ownership of all other assets.

Amendment

(12) It is necessary to ensure that AIFM operate subject to robust governance controls. AIFM should be managed and organised so as to minimise conflicts of interest. Recent developments underline the crucial need to separate asset safe-keeping and management functions, and segregate investor assets from those of the manager. To this end, the AIFM has to **ensure the appointment of** a depositary and entrust it with the booking of investor money on a segregated account, the safe-keeping of financial instruments and the verification of whether the AIF or the AIFM on behalf of the AIF has obtained ownership of all other assets.

Or. en

Justification

The AIFM is required to ensure that a depositary is appointed by an AIF, not to appoint the depositary itself.

Amendment 217
Sari Essayah

Proposal for a directive
Recital 12

Text proposed by the Commission

(12) It is necessary to ensure that AIFM operate subject to robust governance controls. AIFM should be managed and organised so as to minimise conflicts of interest. Recent developments underline the crucial need to separate asset safe-keeping and management functions, and

Amendment

(12) It is necessary to ensure that AIFM operate subject to robust governance controls. AIFM should be managed and organised so as to minimise conflicts of interest. Recent developments underline the crucial need to separate asset safe-keeping and management functions, and

segregate investor assets from those of the manager. To this end, the AIFM has to **appoint** a depositary and entrust it with the booking of investor money on a segregated account, the safe-keeping of financial instruments and the verification of whether the AIF or the AIFM on behalf of the AIF has obtained ownership of all other assets.

segregate investor assets from those of the manager. To this end, the AIFM has to **ensure the appointment of** a depositary and entrust it with the booking of investor money on a segregated account, the safe-keeping of financial instruments and the verification of whether the AIF or the AIFM on behalf of the AIF has obtained ownership of all other assets.

Or. en

Amendment 218

Syed Kamall

Proposal for a directive

Recital 12

Text proposed by the Commission

(12) It is necessary to ensure that AIFM operate subject to robust governance controls. AIFM should be managed and organised so as to minimise conflicts of interest. Recent developments underline the crucial need to separate asset safe-keeping and management functions, and segregate investor assets from those of the manager. **To this end, the AIFM has to appoint a depositary and entrust it with the booking of investor money on a segregated account**, the safe-keeping of financial instruments and the verification of whether the AIF or the AIFM on behalf of the AIF has obtained ownership of all other assets.

Amendment

(12) It is necessary to ensure that AIFM operate subject to robust governance controls. AIFM should be managed and organised so as to minimise conflicts of interest. Recent developments underline the crucial need to separate asset safe-keeping and management functions, and segregate investor assets from those of the manager. **Although AIFM manage AIF with different business models and arrangements for, inter alia, asset safe-keeping, it is essential that a depositary separate from the AIFM is appointed to provide depositary functions with respect to AIF. The depositary will be responsible for the booking of investor money on segregated accounts**, the safe-keeping of financial instruments, **including the holding in custody of financial instruments that can be kept**, and the verification of whether the AIF or the AIFM on behalf of the AIF has obtained ownership of all other assets. **A depositary may maintain a common segregated account for several AIF.**

*Justification**Consequential changes to be made when Article 17 is finalised***Amendment 219****Astrid Lulling****Proposal for a directive****Recital 12***Text proposed by the Commission*

(12) It is necessary to ensure that AIFM operate subject to robust governance controls. AIFM should be managed and organised so as to minimise conflicts of interest. Recent developments underline the crucial need to separate asset safe-keeping and management functions, and segregate investor assets from those of the manager. To this end, the AIFM has to appoint a depositary and entrust it with ***the booking of investor money on a segregated account***, the safe-keeping of financial instruments and ***the verification of whether the AIF or the AIFM on behalf of the AIF has obtained*** ownership of ***all other*** assets.

Amendment

(12) It is necessary to ensure that AIFM operate subject to robust governance controls. AIFM should be managed and organised so as to minimise conflicts of interest. Recent developments underline the crucial need to separate asset safe-keeping and management functions, and segregate investor assets from those of the manager. To this end, the AIFM has to appoint a depositary and entrust it with ***verifying that AIF cash is placed on deposit appropriately with one or more approved credit institutions***, the safe-keeping of financial instruments and ***entitlements in them and verifying the maintenance of records demonstrating the nature and means of ownership and location*** of assets ***of the AIF***.

*Justification**Changes necessary to match drafting proposals for Article 17 below*

Amendment 220
Jean-Pierre Audy

Proposal for a directive
Recital 12

Text proposed by the Commission

(12) It is necessary to ensure that AIFM operate subject to robust governance controls. AIFM should be managed and organised so as to minimise conflicts of interest. Recent developments underline the crucial need to separate asset safe-keeping and management functions, and segregate investor assets from those of the manager. To this end, the AIFM has to appoint a depositary and entrust it with the booking of investor money on a segregated account, the safe-keeping of financial instruments and the verification of whether the AIF or the AIFM on behalf of the AIF has obtained ownership of all other assets.

Amendment

(12) It is necessary to ensure that AIFM operate subject to robust governance controls. AIFM should be managed and organised so as to minimise conflicts of interest. Recent developments underline the crucial need to separate asset safe-keeping and management functions, and segregate investor assets from those of the manager. To this end, the AIFM has to appoint a depositary and entrust it with the booking of investor money on a segregated account, the safe-keeping of financial instruments and the verification of whether the AIF or the AIFM on behalf of the AIF has obtained ownership of all other assets, ***and the oversight of the AIF in the interests of its investors.***

Or. en

Amendment 221
Arlene McCarthy

Proposal for a directive
Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) The Commission should be empowered to adopt delegated acts, in accordance with Article 290 of the Treaty on the Functioning of the European Union, to establish and maintain binding guidance on sound remuneration policies for AIFM. It is important to ensure appropriate coherence between provisions on sound remuneration for AIFM and those for credit institutions and

investment firms. Such binding guidance should therefore ensure compliance with the applicable elements of provisions on remuneration set out in Annex V of Directive 2006/48/EC. In drawing up such delegated acts, the Commission should have reference to the advice of the European Securities and Markets Authority.

Or. en

Justification

The G 20 endorsed the FSB principles on sound remuneration. The EU's rules reflecting this will be implemented through an amendment to Directive 2006/48/EC, part of the capital requirements directive. To ensure consistency in EU financial sector policy on remuneration, the binding guidance for AIFM remuneration policies should be based directly on all applicable elements set out in Directive 2006/48/EC. To ensure proper oversight by Parliament and Council such guidance should be established by means of a delegated act.

Amendment 222

Diogo Feio

Proposal for a directive

Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) The Leaders' statement following the G-20 Summit in Pittsburgh on 24 and 25 September 2009 set out the international consensus concerning remuneration of staff in banks and other systemically important financial services firms. Those principles should apply to appropriate staff at systemically important AIFM which fall within the scope of this Directive. The Commission should adopt implementing measures to that end, ensuring that any such measures are proportionate and even-handedly implemented with regard to the competitiveness of AIFM established in the EU.

Justification

Although the opportunity to address remuneration can be contested, if some disclosure on remuneration is to be envisaged, competent authorities should only be concerned with information about compensation from appropriate staff at systemically important AIFM to oversee the implementation of the FSBs and Commission principles. Comparable remuneration policies would not benefit investors in the AIF in the event that it has no right of repayment of any amounts clawed back.

Amendment 223
Syed Kamall

Proposal for a directive
Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) The Leaders' statement following the G-20 Summit in Pittsburgh on 24 and 25 September 2009 set out the international consensus concerning remuneration of staff in banks and other systemically important financial services firms. Those principles should apply to AIFM which fall within the scope of this Directive in a proportionate manner. The principles governing remuneration policies should recognise that AIFM may apply the provisions in different ways according to their size and the size of the AIF they manage, their internal organisation and the nature, the scope and the complexity of their activities. It is acknowledged that principles governing remuneration policies for AIFM may be implemented in a different form from those adopted by credit institutions, due to their differing business models.

Justification

Provisions on AIFM remuneration should be consistent with the G-20 principles and agree with the approach taken in Amendment 7 of the Gauze's report to include new recitals language at Recital 12a. Qualification that this should be in a proportionate manner. It is very important that any principles or implementing measures should recognise that AIFM, and asset managers in general, have very different and varied business and remuneration models from banks and credit institutions.

Amendment 224

Pascal Canfin

Proposal for a directive

Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) In order to address the potentially detrimental effect of poorly designed remuneration structures on the sound management of risk and control of risk-taking behaviour by individuals, there should be an express obligation for AIFM to establish and maintain, for those categories of staff whose professional activities have a material impact on the risk profiles of AIF they manage, remuneration policies and practices that are consistent with sound and effective risk management. Those categories of staff should at least include senior management, risk takers and control functions. In order to promote supervisory convergences in the assessment of remuneration policies and practices, the European Securities and Market Authority (ESMA) should ensure the existence of guidelines on sound remuneration policies in the AIFM sector.

Or. en

Justification

Remuneration structures need to be regulated as they are part of a sound management of risks.

Amendment 225
Robert Goebbels, Udo Bullmann

Proposal for a directive
Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) In order to address the potentially detrimental effect of poorly designed remuneration structures on the sound management of risk and control of risk-taking behaviour by individuals, there should be an express obligation for AIFM to establish and maintain, for those categories of staff whose professional activities have a material impact on their risk profile or the risk profiles of AIF they manage, remuneration policies and practices that are consistent with effective risk management. Those categories of staff should at least include senior management, risk takers and control functions.

Or. en

Amendment 226
Robert Goebbels, Udo Bullmann

Proposal for a directive
Recital 12 b (new)

Text proposed by the Commission

Amendment

(12b) In order to avoid excessive risk taking and provide for a better alignment of interest, fund managers should commit some of their own money in the funds they manage.

Or. en

Amendment 227
Wolf Klinz

Proposal for a directive
Recital 12 a (new)

Text proposed by the Commission

Amendment

(12a) The Commission should put forward an appropriate horizontal legislative proposal that clarifies the responsibilities and liabilities of a depositary. This Directive should, where appropriate, be amended in due course.

Or. en

Justification

To establish a true level-playing field the Commission should propose a horizontal measure to define the responsibilities and liabilities of a depositary. The same requirements should apply to all EU-depositaries.

Amendment 228
Thomas Mann

Proposal for a directive
Recital 13

Text proposed by the Commission

Amendment

(13) Reliable and objective asset valuation is crucial for the protection of investor interests. Different AIFM employ different methodologies and systems for valuing assets, depending on the assets and markets in which they predominantly invest. It is appropriate to recognise these differences ***but to, nevertheless, require the valuation of assets to be undertaken by an entity which is independent of the AIFM.***

(13) Reliable and objective asset valuation is crucial for the protection of investor interests. Different AIFM employ different methodologies and systems for valuing assets, depending on the assets and markets in which they predominantly invest. It is appropriate to recognise these differences. ***The process for valuation of assets and calculation of the net asset value (NAV) should be functionally independent from the management functions of the AIFM. Where appropriate, the AIFM should be able to delegate or assign the valuation of assets and calculation of the NAV to a***

third party.

Or. en

Amendment 229

Syed Kamall

Proposal for a directive

Recital 13

Text proposed by the Commission

(13) Reliable and objective asset valuation is crucial for the protection of investor interests. Different AIFM employ different methodologies and systems for valuing assets, depending on the assets and markets in which they predominantly invest. It is appropriate to recognise these differences ***but to, nevertheless, require the valuation of assets to be undertaken by an entity which is independent of the AIFM.***

Amendment

(13) Reliable and objective asset valuation is crucial for the protection of investor interests. Different AIFM employ different methodologies and systems for valuing assets, depending on the assets and markets in which they predominantly invest. It is appropriate to recognise these differences. ***The process for valuation of assets and calculation of the net asset value (NAV) should be functionally independent from the investment management functions of the AIFM. Where appropriate, it should be possible to delegate or assign the valuation of assets and the calculation of the NAV to a third party, in accordance with national law.***

Or. en

Justification

Alignment with UCITS Directive and national law. The valuation function should be independent of the investment management functions of the AIFM. Valuation may be delegated by the AIFM or assigned to a specialised third party, according to national law.

Amendment 230
Othmar Karas

Proposal for a directive
Recital 13

Text proposed by the Commission

(13) Reliable and objective asset valuation is crucial for the protection of investor interests. Different AIFM employ different methodologies and systems for valuing assets, depending on the assets and markets in which they predominantly invest. It is appropriate to recognise these differences ***but to, nevertheless, require the valuation of assets to be undertaken by an entity which is independent of the AIFM.***

Amendment

(13) Reliable and objective asset valuation is crucial for the protection of investor interests. Different AIFM employ different methodologies and systems for valuing assets, depending on the assets and markets in which they predominantly invest. It is appropriate to recognise these differences. ***The valuation of assets and calculation of the net asset value (NAV) should be functionally independent from the management functions of the AIFM. Where appropriate, the AIFM should be able to delegate or assign the valuation of assets and calculation of the NAV to a third party.***

Or. en

Justification

See justification to proposed amendments to Article 16.

Amendment 231
Wolf Klinz

Proposal for a directive
Recital 13

Text proposed by the Commission

(13) Reliable and objective asset valuation is crucial for the protection of investor interests. Different AIFM employ different methodologies and systems for valuing assets, depending on the assets and markets in which they predominantly invest. It is appropriate to recognise these differences ***but to, nevertheless, require the valuation***

Amendment

(13) Reliable and objective asset valuation is crucial for the protection of investor interests. Different AIFM employ different methodologies and systems for valuing assets, depending on the assets and markets in which they predominantly invest. It is appropriate to recognise these differences ***and to require the valuation of assets to be***

of assets to be *undertaken by an entity which is independent of the AIFM.*

functionally independent. Valuation of assets and calculation of the net asset value (NAV) should be able to be delegated to a third party. It is important that the underlying methodologies are sound and comprehensible. To that end, they should be published.

Or. en

Justification

As long as the valuation process is functionally independent from the portfolio management, there should be no requirement for assigning an external valuator. More important than the role of the valuator is the soundness of underlying methodologies, these should hence be published in particular in case of hard-to-value assets.

Amendment 232 **Marta Andreassen**

Proposal for a directive **Recital 13**

Text proposed by the Commission

(13) Reliable and objective asset valuation is crucial for the protection of investor interests. Different AIFM employ different methodologies and systems for valuing assets, depending on the assets and markets in which they predominantly invest. It is appropriate to recognise these differences *but to, nevertheless, require the valuation of assets to be undertaken by an entity which is independent of the AIFM.*

Amendment

(13) Reliable and objective asset valuation is crucial for the protection of investor interests. Different AIFM employ different methodologies and systems for valuing assets, depending on the assets and markets in which they predominantly invest. It is appropriate to recognise these differences. *The AIFM should be able to delegate the process for valuation of assets and the calculation of the net asset value (NAV) to a third party.*

Or. en

Justification

Valuations are already carried out by independent experts where necessary when circumstances dictate. Not all assets require independent valuation, but requiring one hundred percent independent valuation will increase costs to funds and reduce returns for investors.

Amendment 233
Catherine Stihler

Proposal for a directive
Recital 13

Text proposed by the Commission

(13) Reliable and objective asset valuation is crucial for the protection of investor interests. Different AIFM employ different methodologies and systems for valuing assets, depending on the assets and markets in which they predominantly invest. It is appropriate to recognise these differences but to, nevertheless, require the **valuation of assets to be undertaken by an entity which is independent of the AIFM.**

Amendment

(13) Reliable and objective asset valuation is crucial for the protection of investor interests. Different AIFM employ different methodologies and systems for valuing assets, depending on the assets and markets in which they predominantly invest. It is appropriate to recognise these differences but to, nevertheless, require the **AIFM to implement valuation procedures to ensure the proper valuation of assets of the AIF to derive a fair net asset value of the shares or units of the AIF.**

Or. en

Justification

The obligation to appoint an external valuator for an AIFs units or shares, or for assets held by an AIF, is unnecessary where the AIFs shares or units, or its assets, are publicly traded, and therefore their value is set by the market.

Amendment 234
Pascal Canfin

Proposal for a directive
Recital 15

Text proposed by the Commission

(15) Given that **AIFM** employing **high levels of leverage in their investment strategies** may, under certain conditions, contribute to the build up of systemic risk or disorderly markets, special requirements should be imposed on **AIFM** using certain techniques giving rise to particular risks.

Amendment

(15) Given that **AIF** employing leverage may, under certain conditions, contribute to the build up of systemic risk or disorderly markets, special requirements should be imposed on **AIF** using certain techniques giving rise to particular risks. The information needed to detect, monitor and

The information needed to detect, monitor and respond to those risks has not been collected in a consistent way throughout the *Community*, and shared across Member States so as to identify potential sources of risk to the stability of financial markets in the *Community*. To remedy this situation, special requirements should apply to **AIFM**, which consistently use high levels of leverage in their investment strategies. Those **AIFM** should be obliged to disclose information regarding their use and sources of leverage. That information should be aggregated and shared with other authorities in the *Community*, so as to facilitate a collective analysis of the impact of the leverage of those **AIFM** on the financial system in the *Community*, as well as a common response.

respond to those risks has not been collected in a consistent way throughout the *Union*, and shared across Member States so as to identify potential sources of risk to the stability of financial markets in the *Union*. To remedy this situation, special requirements should apply to **AIF**, which consistently use high levels of leverage in their investment strategies. Those **AIF** should be obliged to disclose information regarding their use and sources of leverage. That information should be aggregated and shared with other authorities in the *Union*, so as to facilitate a collective analysis of the impact of the leverage of those **AIF** on the financial system in the *Union*, as well as a common response. ***The European Systemic Risk Board (ESRB) and the European Securities and Market Authority (ESMA) will be responsible for monitoring the systemic risks created by AIF.***

Or. en

Justification

As excessive leverage increases systemic risk, new European supervision authority should be empowered to limit leverage used by AIF in order to insure financial stability.

Amendment 235

Wolf Klinz

Proposal for a directive

Recital 15

Text proposed by the Commission

(15) Given that AIFM employing high levels of leverage in their investment strategies may, under certain conditions, contribute to the build up of systemic risk or disorderly markets, special requirements should be imposed on AIFM ***using certain techniques giving rise to particular risks.***

Amendment

(15) Given that AIFM employing high levels of leverage in their investment strategies may, under certain conditions, contribute to the build up of systemic risk or disorderly markets, special ***reporting*** requirements should be imposed on AIFM ***employing leverage.*** The information

The information needed to detect, monitor and respond to those risks has not been collected in a consistent way throughout the *Community*, and shared across Member States so as to identify potential sources of risk to the stability of financial markets in the *Community*. To remedy this situation, special requirements should apply to AIFM, which ***consistently*** use high levels of leverage in their investment strategies. Those AIFM should be obliged to disclose information regarding their use and sources of leverage. That information should be aggregated and shared with other authorities in the *Community*, so as to facilitate a collective analysis of the impact of the leverage of those AIFM on the financial system in the *Community*, as well as a common response.

needed to detect, monitor and respond to those risks has not been collected in a consistent way throughout the *Union*, and shared across Member States so as to identify potential sources of risk to the stability of financial markets in the *Union*. To remedy this situation, special ***reporting*** requirements should apply to AIFM, which use high levels of leverage in their investment strategies. Those AIFM should be obliged to disclose information regarding their use and sources of leverage. That information should be aggregated ***in a central register under the auspices of the European Systemic Risk Board (ESRB) established under Regulation 2009/.../EC*** and shared with other authorities in the *Union*, ***the European Securities and Markets Authority (ESMA) established under Regulation 2009/.../EC and competent authorities in third countries, where appropriate***, so as to facilitate a collective analysis of the impact of the leverage of those AIFM on the financial system in the *Union*, as well as a common response. ***A central register under the auspices of the ESRB for banks that provide prime broker services to AIF should also be set up in Directives 2006/48/EC and 2006/49/EC.***

Or. en

Justification

In order to be able to capture potential systemic risk, information that is collected at national level has to be aggregated within a central register under the auspices of the ESRB. This should be accompanied by a register for prime brokerage activities to be set-up in the CRD.

Amendment 236
Sirpa Pietikäinen

Proposal for a directive
Recital 15

Text proposed by the Commission

(15) Given that ***AIFM employing high levels of leverage in their investment strategies*** may, under certain conditions, contribute to the build up of systemic risk or disorderly markets, special requirements should be imposed on AIFM ***using certain techniques giving rise to particular risks***. The information needed to detect, monitor and respond to those risks has not been collected in a consistent way throughout the *Community*, and shared across Member States so as to identify potential sources of risk to the stability of financial markets in the *Community*. To remedy this situation, special requirements should apply to AIFM, which ***consistently use high levels of leverage in their investment strategies***. ***Those*** AIFM should be obliged to disclose information regarding ***their*** use and sources of leverage. That information should be aggregated and shared with other authorities in the *Community*, so as to facilitate a collective analysis of the impact of the leverage of ***those*** AIFM on the financial system in the *Community*, as well as a common response.

Amendment

(15) Given that ***an AIFM may employ leverage at the level of the AIF and*** may, under certain conditions, contribute to the build up of systemic risk or disorderly markets, special requirements should be imposed on AIFM ***employing leverage on a systemically significant basis***. The information needed to detect, monitor and respond to those risks has not been collected in a consistent way throughout the *Union*, and shared across Member States so as to identify potential sources of risk to the stability of financial markets in the *Union*. To remedy this situation, special requirements should apply to AIFM, which ***employ leverage at the level of the AIF on a systemically significant basis***. ***Such*** AIFM should be obliged to disclose information regarding ***the*** use and sources of leverage. That information should be aggregated and shared with other authorities in the *Union*, so as to facilitate a collective analysis of the impact of the leverage of ***AIF managed by*** AIFM on the financial system in the *Union*, as well as a common response. ***Competent authorities should pass such information to the European Systemic Risk Board (ESRB) established under Regulation (EC) No .../2009 (ESRB Regulation) and to the European Securities and Markets Authority established under Regulation (EC) No .../2009 (ESMA Regulation) for use by these bodies in the performance of their duties.***

Or. en

Amendment 237
Syed Kamall

Proposal for a directive
Recital 15

Text proposed by the Commission

(15) Given that AIFM **employing high levels of leverage in their investment strategies** may, under certain conditions, contribute to the build up of systemic risk or disorderly markets, special requirements should be imposed on AIFM **using certain techniques giving rise to particular risks**. The information needed to detect, monitor and respond to those risks has not been collected in a consistent way throughout the *Community*, and shared across Member States so as to identify potential sources of risk to the stability of financial markets in the *Community*. To remedy this situation, special requirements should apply to AIFM, which **consistently use high levels of leverage in their investment strategies**. **Those** AIFM should be obliged to disclose information regarding **their** use and sources of leverage. **That information** should be aggregated and shared with other authorities in the *Community*, so as to facilitate a collective analysis of the impact of the leverage of **those** AIFM on the financial system in the *Community*, as well as a common response.

Amendment

(15) Given that **an** AIFM **may employ** leverage **at the level of the AIF and** may, under certain conditions, contribute to the build up of systemic risk or disorderly markets, special requirements should be imposed on AIFM **employing leverage on a systemically significant basis**. The information needed to detect, monitor and respond to those risks has not been collected in a consistent way throughout the *Union*, and shared across Member States so as to identify potential sources of risk to the stability of financial markets in the *Union*. To remedy this situation, special requirements should apply to AIFM, which **employ leverage at the level of the AIF on a systemically significant basis**. **Such** AIFM should be obliged to disclose information regarding **the** use and sources of leverage **in their AIF**. **Information gathered by competent authorities** should be aggregated and shared with other authorities in the *Union*, so as to facilitate a collective analysis of the impact of the leverage of **AIF managed by** AIFM on the financial system in the *Union*, as well as a common response.

Or. en

Justification

Leverage limits should be set on a systemically relevant basis.

Amendment 238
Sari Essayah

Proposal for a directive
Recital 15

Text proposed by the Commission

(15) Given that AIFM ***employing high levels of leverage in their investment strategies*** may, under certain conditions, contribute to the build up of systemic risk or disorderly markets, special requirements should be imposed on AIFM ***using certain techniques giving rise to particular risks***. The information needed to detect, monitor and respond to those risks has not been collected in a consistent way throughout the *Community*, and shared across Member States so as to identify potential sources of risk to the stability of financial markets in the *Community*. To remedy this situation, special requirements should apply to AIFM, which ***consistently use high levels of leverage in their investment strategies***. ***Those*** AIFM should be obliged to disclose information regarding ***their*** use and sources of leverage. ***That information*** should be aggregated and shared with other authorities in the *Community*, so as to facilitate a collective analysis of the impact of the leverage of ***those*** AIFM on the financial system in the *Community*, as well as a common response.

Amendment

(15) Given that ***an*** AIFM ***may employ*** leverage, ***at the level of the AIF and*** may, under certain conditions, contribute to the build up of systemic risk or disorderly markets, special requirements should be imposed on AIFM ***employing leverage on a systemically significant basis***. The information needed to detect, monitor and respond to those risks has not been collected in a consistent way throughout the *Union*, and shared across Member States so as to identify potential sources of risk to the stability of financial markets in the *Union*. To remedy this situation, special requirements should apply to AIFM, which ***employ*** leverage ***at the level of the AIF on a systemically significant basis***. ***Such*** AIFM should be obliged to disclose information regarding ***the*** use and sources of leverage ***in their AIF***. ***Information gathered by competent authorities*** should be aggregated and shared with other authorities in the *Union*, so as to facilitate a collective analysis of the impact of the leverage of ***AIF managed by*** AIFM on the financial system in the *Union*, as well as a common response.

Or. en

Amendment 239
Gay Mitchell

Proposal for a directive
Recital 15

Text proposed by the Commission

(15) Given that AIFM ***employing high levels of leverage in their investment strategies*** may, under certain conditions, contribute to the build up of systemic risk or disorderly markets, special requirements should be imposed on AIFM ***using certain techniques giving rise to particular risks***. The information needed to detect, monitor and respond to those risks has not been collected in a consistent way throughout the *Community*, and shared across Member States so as to identify potential sources of risk to the stability of financial markets in the *Community*. To remedy this situation, special requirements should apply to AIFM, which ***consistently use high levels of leverage in their investment strategies***. ***Those*** AIFM should be obliged to disclose information regarding ***their*** use and sources of leverage. ***That information*** should be aggregated and shared with other authorities in the *Community*, so as to facilitate a collective analysis of the impact of the leverage of ***those*** AIFM on the financial system in the *Community*, as well as a common response.

Amendment

(15) Given that ***an*** AIFM ***may employ*** leverage ***at the level of the AIF and*** may, under certain conditions, contribute to the build up of systemic risk or disorderly markets, special requirements should be imposed on AIFM ***employing leverage on a systemically significant basis***. The information needed to detect, monitor and respond to those risks has not been collected in a consistent way throughout the *Union*, and shared across Member States so as to identify potential sources of risk to the stability of financial markets in the *Union*. To remedy this situation, special requirements should apply to AIFM, which ***employ*** leverage ***at the level of the AIF on a systemically significant basis***. ***Such*** AIFM should be obliged to disclose information regarding ***the*** use and sources of leverage ***in their AIF***. ***Information gathered by competent authorities*** should be aggregated and shared with other authorities in the *Union*, so as to facilitate a collective analysis of the impact of the leverage of ***AIF managed by*** AIFM on the financial system in the *Union*, as well as a common response.

Or. en

Justification

I do not consider that the Directive should oblige AIFM to set specific leverage limits, as proposed by the Gauzès Report (Amendment 11). Generally, this amendment follows the Swedish Presidency Compromise Proposal.

Amendment 240
Udo Bullmann, Robert Goebbels

Proposal for a directive
Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) In view of the general objective of financial stability and containment of systemic risk, particular attention should be paid to financial institutions such as lending institutions and prime brokers which are key partners to the AIF and are active in the building risk processes. Those institutions, in addition to complying with disclosure requirements towards competent authorities, should also be subject to specific capital requirements considering the risk they incur, depending on their links with AIF. Moreover, the conflict of interest arising when those institutions run AIF themselves in parallel of providing services to their customers should be addressed in the appropriate legislative texts as a matter of urgency.

Or. en

Amendment 241
Jean-Pierre Audy

Proposal for a directive
Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) The financing provided to AIFM employing high levels of leverage in their investment strategies on a systematic basis should be closely monitored. To that end specific coordination should be put in place between the ESMA and the EBA to keep track of the level of financing provided to such AIFM by financial

institutions involved in these activities.

Or. en

Amendment 242
Jean-Paul Gauzès

Proposal for a directive
Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) The financing provided to AIFM employing high levels of leverage in their investment strategies on a systematic basis should be closely monitored. To this end specific coordination should be put in place between the ESMA and the EBA to keep track of the level of financing provided to such AIFM by financial institutions involved in those activities.

Or. en

Amendment 243
Enikő Győri

Proposal for a directive
Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) Liquidity problems brought about by certain AIF employing high leverage in their investment strategies as well as its spillover effects have contributed to the build-up of the financial systemic risk. This concern is of particular relevance for open-ended investment funds where an eventual investors' run against a fund could easily contaminate the exposure of the other market participants in the particular sector.

Justification

The liquidity risk makes up a significant part of the systemic risk in case of open-ended funds because of the high likelihood of the incidence of herding-effect, resulting in the market prices developing in one direction. Therefore, the Commission is strongly urged to put forward the implementation measures which will also address the liquidity-related issues raised by the functioning of the AIFs.

Amendment 244 **Pascal Canfin**

Proposal for a directive **Recital 16**

Text proposed by the Commission

(16) Activities of **AIFM** based on the use **of high levels** of leverage could be detrimental to the stability and efficient functioning of financial markets. It is considered necessary to allow the **Commission** to impose limits on the level of leverage that **AIFM** could use, **in particular in those cases where AIFM employ high levels of leverage on a systematic basis**. The limits to the maximum amount of leverage should take into account aspects related to the source of leverage and the strategies employed by the **AIFM**. They should also take into account the essentially dynamic nature of the management of leverage by most **AIFM** using **a high level of** leverage. In this respect the limits to leverage could for example either consist in a threshold that should not be breached at any point in time or a limit on the average leverage employed during a given period (i.e. monthly or quarterly).

Amendment

(16) Activities of **AIF** based on the use of leverage could be detrimental to the stability and efficient functioning of financial markets. It is considered necessary to allow the **European Securities and Market Authority (ESMA)** to impose limits on the level of leverage that **AIF** could use. The limits to the maximum amount of leverage should take into account aspects related to the source of leverage and the strategies employed by the **AIF**. They should also take into account the essentially dynamic nature of the management of leverage by most **AIF** using leverage. In this respect the limits to leverage could for example either consist in a threshold that should not be breached at any point in time or a limit on the average leverage employed during a given period (i.e. monthly or quarterly). **The Commission should ensure that the requirements concerning AIF which use leverage set out of this Directive are applied to all funds, including UCITS funds, which use leverage for investing on the Union's financial markets.**

Justification

ESMA should have the possibility to impose limits on leverage used by AIFM.

Amendment 245

Wolf Klinz, Sharon Bowles, Carl Haglund

Proposal for a directive**Recital 16***Text proposed by the Commission*

(16) Activities of AIFM based on the use of high levels of leverage could be detrimental to the stability and efficient functioning of financial markets. ***It is considered necessary to allow the Commission to impose limits on the level of leverage that AIFM could use in particular in those cases where AIFM employ high levels of leverage on a systematic basis. The limits to the maximum amount of leverage should take into account aspects related to the source of leverage and the strategies employed by the AIFM. They should also take into account the essentially dynamic nature of the management of leverage by most AIFM using a high level of leverage. In this respect the limits to leverage could for example either consist in a threshold that should not be breached at any point in time or a limit on the average leverage employed during a given period (i.e. monthly or quarterly).***

Amendment

(16) Activities of AIFM based on the use of high levels of leverage could be detrimental to the stability and efficient functioning of financial markets. ***Leverage is a difficult concept to define. The competent authorities of the home Member States of the AIFM should however have the possibility to impose limits on the level of leverage that AIFM could use in times of extreme market stress. The Member States should inform the European Securities Markets Authority (ESMA) and the Commission of any such measure.***

Amendment 246
Syed Kamall

Proposal for a directive
Recital 16

Text proposed by the Commission

(16) ***Activities of AIFM based on the use of high levels of leverage could be detrimental to the stability and efficient functioning of financial markets.*** It is considered necessary to allow ***the Commission*** to impose limits on the level of leverage that AIFM could ***use***, in ***particular in those cases where AIFM employ high levels of leverage on a systematic basis.*** The limits to the ***maximum amount of leverage*** should take into account aspects related to the source of leverage and the strategies employed by the AIFM. They should also take into account the essentially dynamic nature of the management of leverage by most AIFM using ***a high level of leverage.*** ***In this respect the limits to leverage could for example either consist in a threshold that should not be breached at any point in time or a limit on the average leverage employed during a given period (i.e. monthly or quarterly).***

Amendment

(16) It is considered necessary to allow ***the competent authorities of the home Member State of the AIFM*** to impose limits on the level of leverage that AIFM could ***employ in AIF where the stability and integrity of the financial system may be threatened.*** Those limits should take into account aspects related to the source of leverage and the strategies employed by the AIFM, ***as well as the market conditions in which the AIF operates.*** They should also take into account the essentially dynamic nature of the management of leverage by most AIFM using leverage ***in their AIF and possible pro-cyclical effects.***

Or. en

Justification

It is appropriate to provide supervisors with the ability to use a range of regulatory tools, including limits on leverage, to deal with issues of financial stability. National supervisors should understand their local financial markets and the key players operating in them and therefore are in a better position to identify emerging issues of regulatory concerns (including through the disclosure requirements envisaged in the Directive) and to take timely action to deal with these issues. It is therefore appropriate to provide national supervisors rather than the Commission with the power to impose targeted limits of the leverage that AIFM can employ where these limits are necessary to deal with financial stability concerns. There may be circumstances however where it is appropriate for limits to be applied on a wider level and therefore to acknowledge the role envisaged for the European Systemic Risk Board (ESRB) and European Securities and Markets Authority (ESMA). It is therefore necessary to require

that national supervisors report the use of supervisory tools of this type to these institutions to enable them to perform an oversight role.

Amendment 247

Sari Essayah

Proposal for a directive

Recital 16

Text proposed by the Commission

(16) Activities of AIFM based on the use of high levels of leverage could be detrimental to the stability and efficient functioning of financial markets. It is considered necessary to allow the Commission to impose limits on the level of leverage that AIFM could use, in particular in those cases where AIFM employ high levels of leverage on a systematic basis. The limits to the maximum amount of leverage should take into account aspects related to the source of leverage and the strategies employed by the AIFM. They should also take into account the essentially dynamic nature of the management of leverage by most AIFM using a high level of leverage. In this respect the limits to leverage could for example either consist in a threshold that should not be breached at any point in time or a limit on the average leverage employed during a given period (i.e. monthly or quarterly).

Amendment

(16) It is considered necessary to allow the competent authorities of the home Member State of the AIFM to impose limits on the level of leverage that AIFM could employ in AIF where the stability and integrity of the financial system may be threatened. Those limits should take into account aspects related to the source of leverage and the strategies employed by the AIFM, as well as the market conditions in which the AIF operates. They should also take into account the essentially dynamic nature of the management of leverage by most AIFM using leverage in their AIF and possible pro-cyclical effects.

Or. en

Amendment 248
Gay Mitchell

Proposal for a directive
Recital 16

Text proposed by the Commission

(16) ***Activities of AIFM based on the use of high levels of leverage could be detrimental to the stability and efficient functioning of financial markets.*** It is considered necessary to allow ***the Commission*** to impose limits on the level of leverage that AIFM could ***use***, in ***particular in those cases where AIFM employ high levels of leverage on a systematic basis.*** The limits ***to the maximum amount of leverage*** should take into account aspects related to the source of leverage and the strategies employed by the AIFM. They should also take into account the essentially dynamic nature of the management of leverage by most AIFM using ***a high level of leverage.*** ***In this respect the limits to leverage could for example either consist in a threshold that should not be breached at any point in time or a limit on the average leverage employed during a given period (i.e. monthly or quarterly).***

Amendment

(16) It is considered necessary to allow ***the competent authorities of the home Member State of the*** AIFM to impose limits on the level of leverage that AIFM could ***employ in AIF where the stability and integrity of the financial system may be threatened.*** Those limits should take into account aspects related to the source of leverage and the strategies employed by the AIFM, ***as well as the market conditions in which the AIF operates.*** They should also take into account the essentially dynamic nature of the management of leverage by most AIFM using leverage ***in their AIF and possible pro-cyclical effects.***

Or. en

Justification

The Commission would not be expected to have the capacity to set these limitations, and any such power would adversely affect market confidence and could contribute to instability at times of turbulence. This amendment follows the Swedish Presidency Compromise Proposal.

Amendment 249
Udo Bullmann, Robert Goebbels

Proposal for a directive
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) Short selling is a widespread market practice extensively used by AIFM and other market participants. Although it may sometimes perform a useful role in keeping markets liquid, it also makes them more volatile and plays a part in destabilising them because of its procyclical effect. In particular, the part played by short selling in accelerating a market downturn has long been documented whenever a financial market crisis occurs. In addition, short selling can encourage the spread of false rumours with a view to making a profit on a falling market. As the orderly operation and integrity of markets is vital to restoring the confidence of long-term investors, who are vital to finance the economy, and as the integration of financial markets demands common practices within the European Union in order to avoid regulatory shopping, Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) should be amended to provide a regulatory framework for short selling and should prohibit naked short selling. The Commission should take into consideration, when establishing and subsequently adapting rules, the provisions in place in the United States in order to achieve a common standard on both sides of the Atlantic and thus facilitate the orderly operation of global financial markets.

Or. en

Justification

The report on short selling issued by the Committee of European Securities Regulators on 8 July 2009 confines its analysis and proposals to the issue of transparency and does not address questions of trading procedures, settlement cycles or sanctions for non-compliance with rules and regulations. As a result, the procedures and rules on short selling are inadequate or non-existent at the European Union level and the few measures that exist vary greatly between the various Member States. This contrasts sharply with the stringent regulatory measures introduced in the United States, especially on 14 and 15 October 2008, by the Securities and Exchange Commission to regulate short selling. It is therefore time to adopt an appropriate regulatory framework at the EU level.

Amendment 250

Sharon Bowles

Proposal for a directive

Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) It is necessary to ensure that all market participants engaging in short selling are subject to the same requirements. For this purpose, the Commission should propose a horizontal measure to ensure a level playing field between AIFM and other users of short selling.

Or. en

Justification

Some legitimate corporate hedging may use 'naked' short selling. Any action must be taken on a horizontal basis to ensure a level-playing field and avoid regulatory arbitrage.

Amendment 251
Wolf Klinz

Proposal for a directive
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) It is necessary to adopt a horizontal measure at Union level that bans naked short selling in the Union and addresses the general issues of short selling in the financial markets.

Or. en

Justification

Is of the opinion that naked short-selling should never be allowed and that we need to deal with the issue of short-selling in a horizontal manner in order to protect the level-playing-field within the Community.

Amendment 252
Jean-Paul Gauzès

Proposal for a directive
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) Short selling plays an important role in the functioning of the financial markets and is a legitimate investment technique. Nevertheless, there is a concern that, notably in extreme market conditions, short selling may contribute to market disorder. Therefore, short selling should operate in a harmonised regulatory framework to reduce the potential destabilising effect that it may cause. In that respect, the Commission should adopt a horizontal instrument in order to avoid inconsistency and to achieve level playing field across Union legislation.

Amendment 253
Syed Kamall

Proposal for a directive
Recital 16 a (new)

Text proposed by the Commission

Amendment

(16a) Short selling plays an important role in the functioning of the financial markets and is a legitimate investment technique. Nevertheless, there is a concern that, notably in extreme market conditions, short selling may contribute to market disorder. Therefore, short selling should operate in a harmonised regulatory framework to reduce the potential destabilising effect that it may cause.

Or. en

Justification

Consistent with the objective CESR is seeking to achieve and the work it has already undertaken, it is appropriate to put in place a comprehensive harmonised regulatory framework for short selling disclosure in separate legislation which applies to all relevant financial traders.

Amendment 254
Udo Bullmann, Robert Goebbels

Proposal for a directive
Recital 16 b (new)

Text proposed by the Commission

Amendment

(16b) The European Central Bank and the High-Level Group on Financial Supervision chaired by Jacques De Larosière have proposed the setting up of a global credit register. The creation of a

global directory of all trading positions should help identify systemic risk arising from credit and counterparty exposures and from herding and contagion in the financial markets. A register should thus be set up by CESR and all information collected on AIFM leverage should be filed there.

Or. en

Amendment 255

Udo Bullmann, Robert Goebbels

Proposal for a directive

Recital 16 c (new)

Text proposed by the Commission

Amendment

(16c) Improper conduct by AIFM, but also by other market players, through the use of certain techniques such as stealth purchases or empty voting, could have destabilising effects on Union markets. In order to curb stealth acquisitions, an appropriate disclosure regime should include both direct voting interest in terms of outright ownership shares as well as indirect interest acquired through derivatives transactions or financial instruments giving rights to newly issued shares. The practice of empty voting should be banned as it is detrimental to companies and to markets. In this context, the Commission should review Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market¹, Commission Directive 2007/14/EC of 8 March 2007 laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC on the harmonisation of

transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market² and Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies³.

¹ OJ L 390 31.12.2004, p. 38.

² OJ L 69, 9.3.2007, p. 27.

³ OJ L 184, 11.7.2007, p. 17.

Or. en

Amendment 256
Jean-Paul Gauzès

Proposal for a directive
Recital 16 b (new)

Text proposed by the Commission

Amendment

(16b) Consideration should be given by the Commission to develop a European private placement regime.

Or. en

Amendment 257
Wolf Klinz

Proposal for a directive
Recital 17

Text proposed by the Commission

Amendment

(17) It is necessary to ensure that an AIFM provides all companies over which it can exercise a controlling or dominant influence with the information necessary for the company to assess how this controlling influence in the short to medium term impacts the company's economic and social situation. To this end,

(17) It is necessary to ensure that an AIFM provides all companies over which it can exercise a controlling or dominant influence with the information necessary for the company to assess how this controlling influence in the short to medium term impacts the company's economic and social situation. To this end,

particular requirements should apply to AIFM managing AIF which are in a position to exercise controlling influence over a *listed or* non-listed company, ***in particular to notify the existence of this position and to disclose information to the company and all its other shareholders about the intentions of the AIFM with regard to the future business development and other planned changes of the controlled company.*** In order to ensure transparency regarding the controlled company, enhanced reporting requirements should apply. ***The annual reports of the relevant AIF should be supplemented with information that is specific to the type of investment and the controlled company.***

particular requirements should apply to AIFM managing AIF which are in a position to exercise controlling influence over a non-listed company. In order to ensure transparency regarding the controlled company, enhanced reporting requirements should apply.

Or. en

Justification

The proposed transparency requirements go too far and should be more sensible and balanced.

Amendment 258 Pascal Canfin

Proposal for a directive Recital 17

Text proposed by the Commission

It is necessary to ensure that an AIFM provides all companies over which it can exercise a controlling or ***dominant*** influence with the information necessary for the company to assess how this controlling influence in the short to medium term impacts the company's economic and social situation. To this end, particular requirements should apply to ***AIFM managing AIF which are*** in a position to exercise controlling influence over a listed or non-listed company, in

Amendment

It is necessary to ensure that an AIFM provides all companies over which it can exercise a controlling or ***significant*** influence with the information necessary for the company to assess how this controlling influence in the short to medium term impacts the company's economic and social situation. To this end, particular requirements should apply to AIF in a position to exercise controlling influence over a listed or non-listed company, in particular to notify the

particular to notify the existence of this position and to disclose information to the company and all its other shareholders about the intentions of the *AIFM* with regard to the future business development and other planned changes of the controlled company. In order to ensure transparency regarding the controlled company, enhanced reporting requirements should apply. The annual reports of the relevant AIF should be supplemented with information that is specific to the type of investment and the controlled company.

existence of this position and to disclose information to the company and all its other shareholders about the intentions of the *AIF* with regard to the future business development and other planned changes of the controlled company. In order to ensure transparency regarding the controlled company, enhanced reporting requirements should apply. The annual reports of the relevant AIF should be supplemented with information that is specific to the type of investment and the controlled company. ***The Commission should ensure that the requirements concerning AIF which exercise a controlling or dominant influence on companies established in the Union set out in this Directive are applied to all funds, including UCITS funds, which exercise such a controlling or dominant influence on companies established in the Union.***

Or. en

Justification

Requirements should be the same for all funds (European or non-European) exercising a controlling or dominant influence on European companies.

Amendment 259 **Sharon Bowles**

Proposal for a directive **Recital 17 a (new)**

Text proposed by the Commission

Amendment

(17a) It is necessary to ensure that portfolio companies are not subject to more stringent requirements than any other non-listed company receiving private investment other than the investment provided by an AIFM. For this purpose, the Commission should conduct a review of relevant company law

legislation as well as of relevant financial sector directives as soon as possible and in any event by ... and make necessary changes in the form of legislative amendments, which should ensure such level playing field between portfolio and other companies.*

** OJ: please insert date of entry into force of this Directive.*

Or. en

Justification

There should be a level-playing field between AIFM and other investors which gain a controlling influence in non-listed companies.

Amendment 260
Sirpa Pietikäinen

Proposal for a directive
Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) It is necessary to ensure that portfolio companies are not subject to more stringent requirements than any other issuer or non-listed company receiving private investment other than the investment provided by an AIFM. For this purpose, the Commission should conduct a review of relevant company law legislation as well as of relevant financial sector directives by ... and make necessary changes in the form of legislative amendments, which should ensure such level playing field between portfolio and other companies.*

** OJ please insert date of entry into force of this Directive.*

Or. en

Amendment 261
Peter Skinner

Proposal for a directive
Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) This Directive should not impose unreasonable burdens in particular in relation to small and medium-sized AIF which do not pose systemic risk and do not endanger integrity of the markets. One of the tools by which to achieve that objective is the proper application of the principle of proportionality. That principle should apply generally to the requirements imposed on AIFM, AIF, depositories and valuers, as well as to the exercise of supervisory powers. All measures in this Directive, including delegated acts, should therefore take due account of the nature, scale and complexity of different types of AIF and AIFM. The Directive should not, however, be circumvented in cases involving, for example, the artificial splitting of funds managed by the same AIFM.

Or. en

Justification

To avoid imposing disproportionate requirements on those AIFM whose activities do not pose significant systemic risks and to reflect the differences between types of AIF and the regulatory concerns their activities give rise to, it is appropriate to apply the principle of proportionality and differentiation to provisions in the Directive.

Amendment 262
Pervenche Berès

Proposal for a directive
Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) This Directive should not be too burdensome for small AIF which do not pose systemic risk and do not endanger integrity of the markets. One of the tools by which to achieve that objective is the proper application of the proportionality principle. That principle should apply both to the requirements imposed on the AIFM, AIF, depositories and valuers, as well on the exercise of supervisory powers. All measures in this Directive, including delegated acts, should therefore incorporate the principle of proportionality to reflect the nature, scale and complexity or specificity of their business, such as the microfinance investment fund managers, for which adapted valuation and reporting requirements should prevail.

Or. en

Justification

The proportionality principle should ensure an appropriate regulation adapted to the specificities of certain types of funds such as microfinance funds, without exempting them from the scope of this directive. They should be addressed in the upcoming UCITS V Directive.

Amendment 263
Udo Bullmann, Robert Goebbels

Proposal for a directive
Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) There is no Union-wide database of standardised information on AIFM. As a result, there is an information gap that cannot be satisfactorily filled with information supplied by the industry itself. It is therefore of critical importance to create a statistical database compiling information on AIFM. That database should be set up and managed by the Commission.

Or. en

Amendment 264
Udo Bullmann, Robert Goebbels

Proposal for a directive
Recital 17 b (new)

Text proposed by the Commission

Amendment

(17b) AIFM controlling a company wishing to dispose of assets in order to repay a portion of the acquisition debt should be appropriately controlled. To that effect, in the event a company under private equity control wishes to sell company assets in any material respect, the management of both the target company and the acquisition vehicles should issue a statement as to why the sale is implemented and certifying that the proposed sale is in the best interest of the target company. In the event the proposed sale is connected to a repayment of the acquisition debt, the employees of the target company should be informed and consulted. In the event the company

becomes insolvent after the asset stripping, the private equity firm should be held liable. More generally, management of companies under leverage buy-outs should be required to issue a statement that capital outflows, including fees paid, are in the long term interest of the company, including its long term growth and research and development needs.

Or. en

Amendment 265

Pascal Canfin

Proposal for a directive

Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) AIF using excessive leverage to acquire a controlling influence on non-listed companies could be detrimental to the development and the investment of these companies in particular in the case of an economic downturn. It is considered necessary to impose limits on the level of leverage that AIF could use for buying companies.

Or. en

Justification

Leverage used by buy-out funds need to be limited as excessive indebtedness creates some risks for the companies bought by such funds.

Amendment 266
Pascal Canfin

Proposal for a directive
Recital 17 b (new)

Text proposed by the Commission

Amendment

(17b) It is necessary to ensure that AIF that attempt to influence listed companies strategies are involved on a long-term basis in the company in order to prevent any short-term based strategy.

Or. en

Justification

Long term strategy of listed companies should not be influenced by short term investors.

Amendment 267
Pascal Canfin

Proposal for a directive
Recital 18

Text proposed by the Commission

Amendment

(18) Many AIFM currently manage AIF domiciled in third countries. It is appropriate to allow authorised AIFM to manage AIF domiciled in third countries, subject to appropriate arrangements that ensure the sound administration of those AIF and the effective safe-keeping of assets invested by Community investors.

(18) Many AIF offer to European investors are currently managed and/or domiciled in third countries. It is appropriate to allow investors established in the Union to invest in AIF managed and/or domiciled in third countries, subject to appropriate arrangements that ensure that requirements of this Directive regarding the protection of investors and sound administration of those AIF are effectively implemented. Investors established in the Union should not be allowed to invest in AIF established in non-cooperative third countries as regard tax and prudential cooperation. The Commission should be responsible for evaluating the degree of cooperation of a

third country.

Or. en

Justification

All AIF offer to European investors should implement the requirement that guarantee the protection of investors, wherever they can domiciled or managed.

Amendment 268

Wolf Klinz

Proposal for a directive

Recital 18

Text proposed by the Commission

(18) Many AIFM currently manage AIF domiciled in third countries. It is appropriate to allow authorised AIFM to manage AIF domiciled in third countries, *subject to appropriate arrangements that ensure the sound administration of those AIF and the effective safe-keeping of assets invested by Community investors.*

Amendment

(18) Many AIFM currently manage AIF domiciled in third countries. It is appropriate to allow authorised AIFM to manage AIF domiciled in third countries.

Or. en

Justification

National private placement regimes should co-exist alongside the passport, allowing the managing and marketing of third country funds in a Member State according to the applicable national law.

Amendment 269

Astrid Lulling

Proposal for a directive

Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) In order to further the development

of the internal market, to improve the product range and efficiency of AIF offered to investors established in the Union and to strengthen the European Alternative Investment Fund Industry, this Directive should encourage, wherever possible, measures that promote the creation or expansion of alternative investment fund management businesses established in the Union and the creation of AIF established in Member States. The Commission, in developing the delegated acts, should ensure that a level playing field exists and that Member States do not allow AIF and AIFM established in third countries to enjoy conditions to operate and place their products with investors established in the Union, which are more favourable than those that apply to AIF and AIFM established in the Union.

Or. en

Justification

The success of the UCITS directives over the past 20 years has created a worldwide brand for the European Fund Industry, has provided enhanced investment opportunities for European Investors and has created substantial employment in the Community. As part of the objectives of the AIFMD, a similar focus on creating a level playing field for European AIFMs and European AIFs to support and enhance the alternative investment fund industry in the European Community will bring additional investment opportunities for European Investors and support employment growth in Member States.

Amendment 270

Pascal Canfin

Proposal for a directive

Recital 18 a (new)

Text proposed by the Commission

Amendment

(18a) European pension funds, credit institutions, insurance companies and UCITS funds should not be allowed to invest directly or indirectly in AIF which

do not comply with the requirements of this Directive regarding the protection of investors.

Or. en

Justification

Savings from European citizens should not be, even indirectly through professional investors, invested in AIF that do not guarantee any protections to investors.

Amendment 271

Pascal Canfin

Proposal for a directive

Recital 18 b (new)

Text proposed by the Commission

Amendment

(18b) Many AIF managed and/or established in third countries are currently invested on the European financial markets. In order to insure the financial stability of the European Union, it is appropriate to impose on those funds some of the requirements imposed to the AIF managed and/or established in the Union.

Or. en

Justification

Preserving the financial stability of European markets implied to regulate all AIF operating on these markets wherever they can be domiciled.

Amendment 272
Pascal Canfin

Proposal for a directive
Recital 19

Text proposed by the Commission

Amendment

(19) AIFM should also be able to market AIF domiciled in third countries to professional investors both in the home Member State of the AIFM and in other Member States. That right should be subject to notification procedures and the existence of a tax agreement with the third country concerned which ensures an efficient exchange of information with the tax authorities in the domicile of the Community investors. Given the fact that such AIF and the third country in which they are domiciled have to meet additional requirements, some of which first have to be laid down in implementing measures, the rights granted under the Directive to market AIF domiciled in third countries to professional investors should only become effective three years after the transposition period. In the meantime Member States may allow or continue to allow AIFM to market AIF domiciled in third countries to professional investors on their territory subject to national law. During this period of three years, AIFM can however not market such AIF to professional investors in other Member States on the basis of rights granted under this Directive.

deleted

Or. en

Justification

Recital 19 is useless in the framework defined in the amended recital 18 and the new articles 18a and 18b.

Amendment 273
Wolf Klinz, Carl Haglund

Proposal for a directive
Recital 19

Text proposed by the Commission

(19) AIFM should ***also*** be able to market AIF domiciled in ***third countries*** to professional investors both in the home Member State of the AIFM and in other Member States. That right should be subject to notification procedures ***and the existence of a tax agreement with the third country concerned which ensures an efficient exchange of information with the tax authorities in the domicile of the Community investors. Given the fact that such AIF and the third country in which they are domiciled have to meet additional requirements, some of which first have to be laid down in implementing measures, the rights granted under the Directive to market AIF domiciled in third countries to professional investors should only become effective three years after the transposition period. In the meantime Member States may allow or continue to allow AIFM to market AIF domiciled in third countries to professional investors on their territory subject to national law. During this period of three years, AIFM can however not market such AIF to professional investors in other Member States on the basis of rights granted under this Directive.***

Amendment

(19) AIFM should be able to market AIF domiciled in ***the Union*** to professional investors both in the home Member State of the AIFM and in other Member States. That right should be subject to notification procedures.

Or. en

Justification

Only AIFM established in the EU that manage AIF established in the EU should be able to profit from the passporting regime.

Proposal for a directive
Recital 19

Text proposed by the Commission

(19) AIFM should also be able to market AIF domiciled in third countries to professional investors both in the home Member State of the AIFM and in other Member States. That right should be subject to notification procedures and the existence of a tax agreement with the third country concerned which ensures an efficient exchange of information with the tax authorities in the domicile of the Community investors. Given the fact that such AIF and the third country in which they are domiciled have to meet additional requirements, some of which first have to be laid down in implementing measures, the rights granted under the Directive to market AIF domiciled in third countries to professional investors should only become effective three years after the transposition period. In the meantime Member States may allow or continue to allow AIFM to market AIF domiciled in third countries to professional investors on their territory subject to national law. During this period of three years, AIFM can however not market such AIF to professional investors in other Member States on the basis of rights granted under this Directive.

Amendment

(19) Any investor established in the Union should be free to invest, on its own initiative, in a third country fund in accordance with the existing national private placement regimes. However, in such a case, transparency of the fund and effective monitoring of potential systemic risk should be ensured. To that end, if the AIFM is established in a third country, the competent authority of the Member State in which the relevant AIF is marketed should have an agreement for cooperation and exchange of information concerning systemic risk with the competent authority in that third country. In addition, to complete the internal market, AIF established in the Union and managed by an AIFM established in the Union should benefit from a European marketing passport under this Directive. As UCITS benefit from the UCITS brand, so also should an AIF established in the Union benefit from such a European brand, offering the investors the standards as set by this Directive, reinforced by the requirement that the depository and the AIF should be established in the same Member State. Those provisions should not be circumvented through master-feeder structures. Therefore, when a feeder AIF invests in a master fund which would not benefit from the European marketing passport under this Directive, that feeder AIF should not benefit from the European passport.

Or. en

Justification

In order to benefit from the European marketing passport under this Directive, a fund of funds AIF - even if it invested more than 30% in third country AIF - would be required to be domiciled in a Member State and managed by an AIFM authorised under this Directive. In contrast to a feeder AIF which has an investment policy of only investing in the related master fund and whose manager would therefore only have a limited role, the AIFM of a fund of funds would have a full management role with discretion and responsibility for the management of the fund in accordance with its investment policy.

Amendment 275

Sari Essayah

Proposal for a directive

Recital 19

Text proposed by the Commission

(19) ***AIFM*** should ***also*** be able to market AIF domiciled in third countries to ***professional*** investors ***both*** in ***the home*** Member State of the AIFM ***and in other*** Member States. ***That right should be subject to notification procedures and the existence of a tax agreement with the third country concerned which ensures an efficient exchange of information with the tax authorities in the domicile of the Community investors. Given the fact that such AIF and the third country in which they are domiciled have to meet additional requirements, some of which first have to be laid down in implementing measures, the rights granted under the Directive to market AIF domiciled in third countries to professional investors should only become effective three years after the transposition period. In the meantime Member States may allow or continue to allow AIFM to market AIF domiciled in third countries to professional investors on their territory subject to national law. During this period of three years, AIFM can however not market such AIF to professional investors in other Member States on the basis of rights granted under***

Amendment

(19) ***A Member State*** should be able to ***allow AIFM*** to market ***in its territory*** AIF domiciled in third countries to investors in ***that*** Member State ***if appropriate cooperation arrangements are in place between the competent authorities*** of the AIFM ***home*** Member State ***and the supervisory authority of the relevant third country. Those cooperation arrangements should properly counter possible problems concerning tax evasion and money laundering.***

this Directive.

Or. en

Amendment 276

Syed Kamall

Proposal for a directive

Recital 19

Text proposed by the Commission

(19) *AIFM* should **also** be able to market AIF domiciled in third countries to **professional** investors **both in the home Member State of the AIFM and in other Member States. That right should be subject to notification procedures and the existence of a tax agreement with the third country concerned which ensures an efficient exchange of information with the tax authorities in the domicile of the Community investors. Given the fact that such AIF and the third country in which they are domiciled have to meet additional requirements, some of which first have to be laid down in implementing measures, the rights granted under the Directive to market AIF domiciled in third countries to professional investors should only become effective three years after the transposition period. In the meantime Member States may allow or continue to allow AIFM to market AIF domiciled in third countries to professional investors on their territory subject to national law. During this period of three years, AIFM can however not market such AIF to professional investors in other Member States on the basis of rights granted under this Directive.**

Amendment

(19) *A Member State* should be able **to allow AIFM** to market **in its territory** AIF domiciled in third countries to investors in **that** Member State **if appropriate cooperation arrangements are in place between the competent authorities of the AIFM home Member State and the supervisory authority of the relevant third country.**

Or. en

Justification

The exchange of tax information is not relevant to the stated objective of the Directive – the authorisation and supervision of AIFM to provide a coherent approach to the related risks and their impact on investors and markets in the Community. Further, the Directive should not supplant the private placement regimes of individual Member States, where available. It should not restrict the investors to whom Member States private placement regimes may permit marketing to ‘professional investors’ as defined in the Directive, since this reduces choice and reduces the income of workers’ pension funds.

Amendment 277

Diogo Feio

Proposal for a directive

Recital 19

Text proposed by the Commission

*(19) AIFM should **also** be able to market AIF domiciled in third countries to **professional** investors **both** in **the home Member State of the AIFM and in other Member States**. That right should be subject to notification procedures and the existence of a tax agreement with the third country concerned which ensures an efficient exchange of information with the tax authorities in the domicile of the Community investors. Given the fact that such AIF and the third country in which they are domiciled have to meet additional requirements, some of which first have to be laid down in implementing measures, the rights granted under the Directive to market AIF domiciled in third countries to professional investors should only become effective three years after the transposition period. In the meantime Member States may allow or continue to allow AIFM to market AIF domiciled in third countries to professional investors on their territory subject to national law. During this period of three years, AIFM can however not market such AIF to professional investors in other Member States on the basis of rights granted under*

Amendment

*(19) **A Member State** should be able **to allow AIFM** to market **in its territory** AIF domiciled in third countries to investors in **that** Member State, **if appropriate cooperation arrangements are in place between the competent authorities of the AIFM home Member State and the supervisory authority of the relevant third country**.*

this Directive.

Or. en

Justification

It is considered that tax information exchange is not relevant to the stated objective of this Directive. It is important to allow national private placement regimes to coexist and not restrict the investors to whom Member States private placement regimes may permit marketing to 'professional investors' as defined in the Directive, since this could require Member States to have to amend their national law.

Amendment 278 **Olle Schmidt**

Proposal for a directive **Recital 19**

Text proposed by the Commission

*(19) AIFM should **also** be able to market AIF domiciled in third countries to professional investors **both in the home Member State of the AIFM and in other Member States**. That right should be subject to notification procedures and the existence of a tax agreement with the third country concerned which ensures an efficient exchange of information with the tax authorities in the domicile of the Community investors. Given the fact that such AIF and the third country in which they are domiciled have to meet additional requirements, some of which first have to be laid down in implementing measures, the rights granted under the Directive to market AIF domiciled in third countries to professional investors should only become effective three years after the transposition period. In the meantime Member States may allow or continue to allow AIFM to market AIF domiciled in third countries to professional investors on their territory subject to national law. During this period of three years, AIFM*

Amendment

*(19) **Member States** should be able **to allow or to continue to allow AIFM** to market AIF domiciled in third countries to professional investors **on their territory subject to national law**.*

can however not market such AIF to professional investors in other Member States on the basis of rights granted under this Directive.

Or. en

Justification

To preserve investor choice, Member States should be able to allow private placement and marketing of non-EU AIF to professional investors within their jurisdiction, subject to national law.

Amendment 279

Udo Bullmann, Robert Goebbels

Proposal for a directive

Recital 19

Text proposed by the Commission

(19) AIFM should also be able to market AIF domiciled in third countries to professional investors both in the home Member State of the AIFM and in other Member States. That right should be subject to ***notification procedures and the existence of a tax agreement with the third country concerned which ensures an efficient exchange of information with the tax authorities in the domicile of the Community investors.*** Given the fact that such AIF and the third country in which they are domiciled have to meet additional requirements, some of which first have to be laid down in implementing measures, the rights granted under the Directive to market AIF domiciled in third countries to professional investors should only become effective three years after the transposition period. In the meantime Member States may allow or continue to allow AIFM to market AIF domiciled in third countries to professional investors on their territory subject to national law. During this period

Amendment

(19) AIFM should also be able to market AIF domiciled in third countries to professional investors both in the home Member State of the AIFM and in other Member States. That right should be subject to ***the signature of multilateral agreements on information exchange and tax cooperation between the third country and the Commission acting on behalf of Member States.*** Given the fact that such AIF and the third country in which they are domiciled have to meet additional requirements, some of which first have to be laid down in implementing measures, the rights granted under the Directive to market AIF domiciled in third countries to professional investors should only become effective three years after the transposition period. In the meantime Member States may allow or continue to allow AIFM to market AIF domiciled in third countries to professional investors on their territory subject to national law. During this period of three years, AIFM can however not

of three years, AIFM can however not market such AIF to professional investors in other Member States on the basis of rights granted under this Directive.

market such AIF to professional investors in other Member States on the basis of rights granted under this Directive.

Or. en

Amendment 280
Wolf Klinz, Carl Haglund

Proposal for a directive
Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) Member States should be able to allow AIFM to market AIF established in third countries or not covered by this Directive to professional investors on their territory subject to national law. Member States should also be able to allow professional investors on their territory to invest under their own responsibility in AIF established in third countries.

Or. en

Justification

National private placement regimes should co-exist alongside the passport, allowing the marketing of third country funds in a Member State according to the applicable national law.

Amendment 281
Wolf Klinz

Proposal for a directive
Recital 19 b (new)

Text proposed by the Commission

Amendment

(19b) After a review period of five years, the Commission should put forward a proposal revising this Directive. The Commission should seek to establish

equivalence with third countries that will allow an AIFM established in the Union to market units or shares of an AIF established in third countries in the whole Union, subject to notification procedures. Furthermore, it should establish the requirements for an AIFM established in a third country to market units or shares of an AIF within the Union. The requirements for equivalence should incorporate regulatory and supervisory equivalence, reciprocity of access to markets and an information sharing agreement between the competent authorities of the AIFM home Member State and the competent authority of the third country.

Or. en

Justification

Potential equivalence should be re-assessed after a five year review period. This will allow to take global developments into account and give time to assess the functioning of this Directive.

Amendment 282

Wolf Klinz

Proposal for a directive

Recital 20

Text proposed by the Commission

(20) It is appropriate to allow the AIFM to delegate administrative tasks to an entity established in a third country provided that necessary safeguards are in place.

Similarly, a depositary may delegate its depositary tasks in respect of AIF domiciled in a third country to a depositary domiciled in that third country, provided that the legislation of that third country ensures a level of protection of investor interests which is equivalent to

Amendment

(20) It is appropriate to allow the AIFM to delegate administrative tasks to an entity established in a third country provided that necessary safeguards are in place.

that in the Community. Under certain conditions, it should also be possible for the AIFM to appoint an independent valuator established in a third country.

Or. en

Amendment 283
Syed Kamall

Proposal for a directive
Recital 20

Text proposed by the Commission

(20) It is appropriate to allow the AIFM to delegate administrative tasks to an entity established in a third country provided that necessary safeguards are in place. Similarly, a depositary may delegate its depositary tasks *in respect of AIF domiciled in a third country to a depositary domiciled in that third country, provided that the legislation of that third country ensures a level of protection of investor interests which is equivalent to that in the Community. Under certain conditions, it should also be possible for the AIFM to appoint an independent valuator established in a third country.*

Amendment

(20) It is appropriate to allow the AIFM to delegate administrative tasks to an entity established in a third country provided that necessary safeguards are in place. Similarly, a depositary may delegate its depositary tasks *provided that it exercises due care, skill and diligence in the selection, appointment and periodic review of that person and of its arrangements in respect of the matters delegated to it.*

Or. en

Justification

Depositaries must be allowed to delegate functions to sub-depositaries in all relevant jurisdictions depending on the nature of the underlying investments held within the AIF. See the proposed amendment to Article 17(4) (amendment 51) for detailed justification.

Amendment 284
Sharon Bowles

Proposal for a directive
Recital 20

Text proposed by the Commission

(20) It is appropriate to allow the AIFM to delegate administrative tasks to an entity established in a third country provided that necessary safeguards are in place. Similarly, a depositary may delegate its depositary tasks in respect of AIF domiciled in a third country to a depositary domiciled in that third country, provided that the legislation of that third country ***ensures a level of protection of investor interests which is equivalent to that in the Community. Under certain conditions,*** it should also be possible for the AIFM to appoint ***an independent valuator*** established in a third country.

Amendment

(20) It is appropriate to allow the AIFM to delegate administrative tasks to an entity established in a third country provided that necessary safeguards are in place. Similarly, a depositary may delegate its depositary tasks in respect of AIF domiciled in a third country to a depositary domiciled in that third country, provided that the legislation of that third country ***complies with standards set by international organisations, inter alia the IOSCO standards on hedge funds oversight.*** It should also be possible for the AIFM to appoint ***a valuer*** established in a third country.

Or. en

Justification

If a third country complies with IOSCO standards, depositaries established in that jurisdiction should qualify as depositaries under this Directive for AIFM managing third country AIF.

Amendment 285
Olle Schmidt

Proposal for a directive
Recital 20

Text proposed by the Commission

(20) It is appropriate to allow the AIFM to delegate administrative tasks to an entity established in a third country provided that necessary safeguards are in place. Similarly, a depositary may delegate its depositary tasks in respect of AIF

Amendment

(20) It is appropriate to allow the AIFM to delegate administrative tasks to an entity established in a third country provided that necessary safeguards are in place. Similarly, a depositary may delegate ***some of*** its depositary tasks in respect of AIF

domiciled in a third country to a depositary domiciled in that third country, provided that the legislation of that third country ensures a level of protection of investor interests which is equivalent to that in the *Community*. Under certain conditions, it should also be possible for the AIFM to appoint ***an independent*** valuator established in a third country.

domiciled in a third country to a depositary domiciled in that third country, provided that the legislation of that third country ensures a level of protection of investor interests which is equivalent to that in the *Union*. Under certain conditions, it should also be possible for the AIFM to appoint ***a*** valuator established in a third country.

Or. en

Justification

Not all requirements on duties of the depositary may be delegated to a sub-custodian ('depositary') in a third country since the depositary should have to keep over-all responsibilities in relation to assets where the safe-keeping or custody have been delegated. The valuator established in a third country does not have to be independent. There should be a possibility to different legal set-ups.

Amendment 286 **Gunnar Hökmark**

Proposal for a directive **Recital 20**

Text proposed by the Commission

(20) It is appropriate to allow the AIFM to delegate administrative tasks to an entity established in a third country provided that necessary safeguards are in place. Similarly, a depositary may delegate its depositary tasks in respect of AIF domiciled in a third country to a depositary domiciled in that third country, provided that the legislation of that third country ensures a level of protection of investor interests which is equivalent to that in the *Community*. Under certain conditions, it should also be possible for the AIFM to appoint ***an independent*** valuator established in a third country.

Amendment

(20) It is appropriate to allow the AIFM to delegate administrative tasks to an entity established in a third country provided that necessary safeguards are in place. Similarly, a depositary may delegate ***some of*** its depositary tasks in respect of AIF domiciled in a third country to a depositary domiciled in that third country, provided that the legislation of that third country ensures a level of protection of investor interests which is equivalent to that in the *Union*. Under certain conditions, it should also be possible for the AIFM to appoint ***a*** valuator established in a third country.

Or. en

Justification

Because the depositary should have an over-all responsibility, not all duties are suitable for delegation to a sub-custodian in a third country.

Amendment 287

Jean-Pierre Audy

Proposal for a directive

Recital 20

Text proposed by the Commission

(20) It is appropriate to allow the AIFM to delegate administrative tasks to an entity established in a third country provided that necessary safeguards are in place. Similarly, a depositary may delegate its depositary tasks in respect of AIF domiciled in a third country to a depositary domiciled in that third country, provided that the legislation of that third country ensures a level of protection of investor interests which is equivalent to that in the *Community*. Under certain conditions, it should also be possible for the AIFM to appoint ***an independent*** valuator established in a third country.

Amendment

(20) It is appropriate to allow the AIFM to delegate administrative tasks to an entity established in a third country provided that necessary safeguards are in place. Similarly, a depositary may delegate ***some of*** its depositary tasks in respect of AIF domiciled in a third country to a depositary domiciled in that third country, provided that the legislation of that third country ensures a level of protection of investor interests which is equivalent to that in the *Union*. Under certain conditions, it should also be possible for the AIFM to appoint ***a*** valuator established in a third country.

Or. en

Amendment 288

Pascal Canfin

Proposal for a directive

Recital 20

Text proposed by the Commission

(20) It is appropriate to allow the AIFM to delegate administrative tasks to an entity established in a third country provided that necessary safeguards are in place. Similarly, a depositary may delegate its depositary tasks in respect of AIF

Amendment

(20) It is appropriate to allow the AIFM ***established in the Union*** to delegate ***some*** administrative tasks to an entity established in a third country provided that necessary safeguards are in place. Similarly, a depositary may delegate ***some of*** its

domiciled in a third country to a depositary domiciled in that third country, provided that the legislation of that third country ensures a level of protection of investor interests which is equivalent to that in the *Community*. Under certain conditions, it should also be possible for the AIFM to appoint an independent valuator established in a third country.

depositary tasks in respect of AIF domiciled in a third country to a depositary domiciled in that third country, provided that the legislation of that third country ensures a level of protection of investor interests which is equivalent to that in the *Union*. ***For assets located in a third country and*** under certain conditions, it should also be possible for the AIFM to appoint an independent valuator established in a third country.

Or. en

Justification

Delegation of key process as valuation and depositary tasks by AIFM established in the Community needs to be limited in order to ensure the protection of investors.

Amendment 289

Pascal Canfin

Proposal for a directive

Recital 21

Text proposed by the Commission

Amendment

(21) Subject to the existence of an equivalent regulatory framework in a third country, as well as of effective access for AIFM established in the Community to the market of that third country, Member States should be allowed to authorise AIFM in accordance with the provisions of this Directive, without requiring that it has a registered office in the Community, after a period of three years as from the end of the transposition period. This period takes account of the fact that such AIFM and the third country in which they are domiciled have to meet additional requirements some of which first have to be laid down by implementing measures.

deleted

Justification

Recital 21 is useless in the framework defined in the amended recital 18 and new articles 18 a and b.

Amendment 290

Wolf Klinz, Carl Haglund

Proposal for a directive

Recital 21

Text proposed by the Commission

Amendment

(21) Subject to the existence of an equivalent regulatory framework in a third country, as well as of effective access for AIFM established in the Community to the market of that third country, Member States should be allowed to authorise AIFM in accordance with the provisions of this Directive, without requiring that it has a registered office in the Community, after a period of three years as from the end of the transposition period. This period takes account of the fact that such AIFM and the third country in which they are domiciled have to meet additional requirements some of which first have to be laid down by implementing measures. **deleted**

Justification

Consistent with other changes regarding equivalence and third countries.

Amendment 291
Diogo Feio

Proposal for a directive
Recital 21

Text proposed by the Commission

Amendment

(21) Subject to the existence of an equivalent regulatory framework in a third country, as well as of effective access for AIFM established in the Community to the market of that third country, Member States should be allowed to authorise AIFM in accordance with the provisions of this Directive, without requiring that it has a registered office in the Community, after a period of three years as from the end of the transposition period. This period takes account of the fact that such AIFM and the third country in which they are domiciled have to meet additional requirements some of which first have to be laid down by implementing measures.

deleted

Or. en

Justification

Abolish the 3 year period during which third country AIFM are restricted to get authorisation to market their funds in the EU so to eliminate the protectionist hurdle raised by the original text.

Amendment 292
Pascal Canfin

Proposal for a directive
Recital 22

Text proposed by the Commission

Amendment

(22) It is necessary to clarify the powers and duties of competent authorities responsible for implementing this Directive, and to strengthen the

(22) It is necessary to clarify the powers and duties of competent authorities responsible for implementing this Directive, and to strengthen the

mechanisms needed to ensure the necessary level of cross-border supervisory cooperation.

mechanisms needed to ensure the necessary level of cross-border supervisory cooperation. ***European Systemic Risk Board and European Securities and Market Authority (ESMA) will be competent authorities for cross-border supervision.***

Or. en

Justification

AIFM directive should take into account the new European supervision framework.

Amendment 293

Pascal Canfin

Proposal for a directive

Recital 23

Text proposed by the Commission

(23) The relative importance of the activities of ***AIFM*** in some financial markets, especially in those cases where ***the AIF they manage*** do not have a material interest in the underlying products or instruments from which those markets derive, could, under some circumstances, hinder the efficient functioning of those markets. For example it could make those markets excessively volatile or affect the correct pricing of the instruments traded in them. It is therefore considered necessary to make sure the competent authorities enjoy the powers necessary to monitor the activities of AIFM in those markets and to intervene in those circumstances where it would be necessary to protect their orderly functioning.

Amendment

(23) The relative importance of the activities of ***AIF*** in some financial markets, especially in those cases where ***those*** AIF do not have a material interest in the underlying products or instruments from which those markets derive, could, under some circumstances, hinder the efficient functioning of those markets. For example it could make those markets excessively volatile or affect the correct pricing of the instruments traded in them. It is therefore considered necessary to make sure the competent authorities enjoy the powers necessary to monitor the activities of AIFM in those markets and to intervene in those circumstances where it would be necessary to protect their orderly functioning. ***AIF involvement in commodities markets needs to be limited. In particular, it is a necessity to prohibit AIF from the agricultural commodities markets of the Union. The Commission should ensure that the requirements***

concerning AIF invested in commodities markets are applied to all Union or third-country funds making such investments without a material interest in the products or instruments.

Or. en

Justification

Commodities markets should be protected from speculative funds.

Amendment 294
Pervenche Berès

Proposal for a directive
Recital 24

Text proposed by the Commission

(24) Member States should lay down rules on sanctions applicable to infringements of the provisions of this Directive and ensure that they are implemented. The sanctions should be effective, proportionate and dissuasive.

Amendment

(24) Member States should lay down rules ***following guidelines established by the ESMA*** on sanctions applicable to infringements of the provisions of this Directive and ensure that they are implemented. The sanctions should be effective, proportionate and dissuasive.

Or. en

Justification

Sanctions need to be consistent across the Community and should therefore be elaborated in conformity with guidelines to be drafted by ESMA.

Amendment 295

Slawomir Witold Nitras, Danuta Jazłowiecka, Danuta Maria Hübner

Proposal for a directive

Recital 25 a (new)

Text proposed by the Commission

Amendment

(25a) This Directive should provide for a single AIFM for each AIF managed within the scope of the Directive, which should be responsible for the compliance with the requirements of this Directive.

Or. en

Justification

It should be clear that only one AIFM per AIF should be authorised under this Directive.

Amendment 296

Sharon Bowles

Proposal for a directive

Recital 26

Text proposed by the Commission

Amendment

(26) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission.

deleted

Or. en

Justification

This is appropriate under the new 'comitology' procedures.

Amendment 297
Wolf Klinz

Proposal for a directive
Recital 27

Text proposed by the Commission

(27) In particular the Commission should be empowered to adopt *the measures* necessary for the implementation of this Directive. *In this respect, the Commission should be able to adopt measures determining the procedures under which AIFM managing portfolios of AIF whose assets under management do not exceed the threshold set out in this Directive may exercise their right to be treated as AIFM covered by this Directive. These measures are also* designed to specify the criteria to be used by competent authorities to assess whether AIFM comply with their obligations as regards their conduct of business, the type of conflicts of interests AIFM have to identify, as well as the reasonable steps AIFM are expected to take in terms of internal and *organizational* procedures in order to identify, prevent, manage and disclose conflicts of interest. *They are designed to specify the risk management requirements to be employed by AIFM as a function of the risks which the AIFM incurs on behalf of the AIF that it manages as well as any arrangements needed to enable AIFM to manage the particular risks associated with short selling transactions, including any relevant restrictions that might be needed to protect the AIF from undue risk exposures. They are designed to specify the liquidity management requirements of this Directive and in particular the minimum liquidity requirements for AIF.* They are designed to specify the requirements that originators of securitisation instruments have to meet in order for an AIFM to be allowed to invest in such instruments issued after 1 January

Amendment

(27) In particular the Commission should be empowered to adopt *delegated acts* necessary for the implementation of this Directive *in accordance with Article 290 of the Treaty* designed to specify the criteria to be used by competent authorities to assess whether AIFM comply with their obligations as regards their conduct of business, the type of conflicts of interests AIFM have to identify, as well as the reasonable steps AIFM are expected to take in terms of internal and *organisational* procedures in order to identify, prevent, manage and disclose conflicts of interest. They *should also be* designed to specify the requirements that originators of securitisation instruments have to meet in order for an AIFM to be allowed to invest in such instruments issued after 1 January 2011. They *should also be* designed to specify the requirements that AIFM have to comply with when investing in such securitisation instruments. They *should also be* designed to specify the criteria under which *the valuation process* can be considered independent in the meaning of this Directive. They *should also be* designed to specify the conditions under which the manager could no longer be considered to be the manager of the AIF in case of excessive delegation. They *should also be* designed to specify the content and format of the annual report that AIFM have to make available for each AIF they manage and to specify the disclosure obligations of AIFM to investors and reporting requirements to competent authorities as well as their frequency. They *should also be* designed to specify the modalities, content and frequency of

2011. They *are as well* designed to specify the requirements that AIFM have to comply with when investing in such securitisation instruments. They *are* designed to specify the criteria under which **a valuator** can be considered independent in the meaning of this Directive. They *are* designed to specify ***the conditions under which the delegation of AIFM functions should be approved and the conditions under which the manager could no longer be considered to be the manager of the AIF in case of excessive delegation. They are designed to specify the content and format of the annual report that AIFM have to make available for each AIF they manage and to specify the disclosure obligations of AIFM to investors and reporting requirements to competent authorities as well as their frequency. They are designed to specify the disclosure requirements imposed on AIFM as regards leverage and the frequency of reporting to competent authorities and of disclosure to investors. They are designed to setting limits to the level of leverage AIFM can employ when managing AIF They are designed to determine the detailed content and the way AIFM acquiring controlling influence in issuers and non-listed companies should fulfil their information obligation towards issuers and non-listed companies and their respective shareholders and representatives of employees, including the information to be provided in the annual reports of the AIF they manage. They are designed to specify the types of restrictions or conditions that can be imposed on the marketing of AIF to professional investor in the home Member State of the AIFM. They are designed to specify general criteria for assessing equivalence of valuation standards of third countries where the valuator is established in a third country, the equivalence of legislation of third countries regarding depositaries and, for***

exchange of information regarding AIFM between the competent authorities of the home Member State of the AIFM and other competent authorities where the AIFM individually or collectively with other AIFM may have an impact on the stability of systemically relevant financial institutions and the orderly functioning of markets. They *should also be* designed to specify the procedures for on-the-spot verifications and investigations.

the purpose of the authorisation of AIFM established in third countries, the equivalence of prudential regulation and ongoing supervision. They are designed to specify general criteria for assessing whether third countries grant Community AIFM effective market access comparable to that granted by the Community to AIFM from third countries. They are designed to specify the modalities, content and frequency of exchange of information regarding AIFM between the competent authorities of the home Member State of the AIFM and other competent authorities where the AIFM individually or collectively with other AIFM may have an impact on the stability of systemically relevant financial institutions and the orderly functioning of markets. They *are* designed to specify the procedures for on-the-spot verifications and investigations.

Or. en

Justification

Alignment with changes in the legislative text that are proposed.

Amendment 298 **Astrid Lulling**

Proposal for a directive **Recital 27**

Text proposed by the Commission

(27) In particular the Commission should be empowered to adopt *the measures* necessary for the implementation of this Directive. ***In this respect, the Commission should be able to adopt measures determining the procedures under which AIFM managing portfolios of AIF whose assets under management do not exceed the threshold set out in this Directive may***

Amendment

(27) In particular the Commission should be empowered to adopt the *delegated acts* necessary for the implementation of this Directive *in accordance with Article 290 of the Treaty* designed to specify the criteria to be used by competent authorities to assess whether AIFM comply with their obligations as regards their conduct of business, the type of conflicts of interests

exercise their right to be treated as AIFM covered by this Directive. These measures are also designed to specify the criteria to be used by competent authorities to assess whether AIFM comply with their obligations as regards their conduct of business, the type of conflicts of interests AIFM have to identify, as well as the reasonable steps AIFM are expected to take in terms of internal and organizational procedures in order to identify, prevent, manage and disclose conflicts of interest. They are designed to specify the risk management requirements to be employed by AIFM as a function of the risks which the AIFM incurs on behalf of the AIF that it manages as well as any arrangements needed to enable AIFM to manage the particular risks associated with short selling transactions, including any relevant restrictions that might be needed to protect the AIF from undue risk exposures. They are designed to specify the liquidity management requirements of this Directive and in particular the minimum liquidity requirements for AIF. They are designed to specify the requirements that originators of securitisation instruments have to meet in order for an AIFM to be allowed to invest in such instruments issued after 1 January 2011. They are as well designed to specify the requirements that AIFM have to comply with when investing in such securitisation instruments. They are designed to specify the criteria under which a valuator can be considered independent in the meaning of this Directive. They are designed to specify the conditions under which the delegation of AIFM functions should be approved and the conditions under which the manager could no longer be considered to be the manager of the AIF in case of excessive delegation. They are designed to specify the content and format of the annual report that AIFM have to make available for each AIF they manage and to specify the

AIFM have to identify, as well as the reasonable steps AIFM are expected to take in terms of internal and organisational procedures in order to identify, prevent, manage and disclose conflicts of interest. They should also be designed to specify the risk management requirements to be employed by AIFM as a function of the risks which the AIFM incurs on behalf of the AIF that it manages. They should also be designed to specify the liquidity management systems and procedures that AIFM are to employ. They should also be designed to specify the requirements that originators of securitisation instruments have to meet in order for an AIFM to be allowed to invest in such instruments issued after 1 January 2011. They should also be designed to specify the requirements that AIFM have to comply with when investing in such securitisation instruments. They should also be designed to specify the procedures for the proper valuation of the assets and shares or units of AIF. They should also be designed to specify as regards depositaries the modalities for the segregation of payments in different accounts, the notions of safe-keeping and custody, including the modalities for the segregation of financial instruments and entitlements in them in different accounts, the determination of when financial instruments or entitlements in them can be kept or maintained, are subject to regular trading and when there is a loss of financial instruments or entitlements in them, the oversight duties of depositaries, the conditions for delegation, including the due diligence duties of depositaries and the need for cooperation agreements with other jurisdictions and the conditions for approval of depositaries, including an assessment of whether the depositary can furnish sufficient financial and professional guarantees to be able effectively to perform the relevant depositary functions and meet the

disclosure obligations of AIFM to investors and reporting requirements to competent authorities as well as their frequency. They *are* designed to specify the disclosure requirements imposed on AIFM *as regards* leverage and the frequency of reporting to competent authorities and of disclosure to investors. ***They are designed to setting limits to the level of leverage AIFM can employ when managing AIF They are designed to determine the detailed content and the way AIFM acquiring controlling influence in issuers and non-listed companies should fulfil their information obligation towards issuers and non-listed companies and their respective shareholders and representatives of employees, including the information to be provided in the annual reports of the AIF they manage. They are designed to specify the types of restrictions or conditions that can be imposed on the marketing of AIF to professional investor in the home Member State of the AIFM. They are designed to specify general criteria for assessing equivalence of valuation standards of third countries where the valuator is established in a third country, the equivalence of legislation of third countries regarding depositaries and, for the purpose of the authorisation of AIFM established in third countries, the equivalence of prudential regulation and ongoing supervision. They are designed to specify general criteria for assessing whether third countries grant Community AIFM effective market access comparable to that granted by the Community to AIFM from third countries.*** They are designed to specify the modalities, content and frequency of exchange of information regarding AIFM between the competent authorities of the home Member State of the AIFM and other competent authorities where the AIFM individually or collectively with other AIFM may have an impact on the stability of systemically

commitments inherent in those functions. They *should also be* designed to specify the conditions under which the delegation of AIFM functions should be approved and the conditions under which the manager could no longer be considered to be the manager of the AIF in case of excessive delegation. They *should also be* designed to specify the content and format of the annual report that AIFM have to make available for each AIF they manage and to specify the disclosure obligations of AIFM to investors and reporting requirements to competent authorities as well as their frequency. They *should also be* designed to specify the disclosure requirements imposed on AIFM, ***particularly with*** regard ***to*** leverage and the frequency and format of reporting to competent authorities and of disclosure to investors. ***They should also be designed to specify when leverage is considered to be employed on a systematic basis. They should also be designed to specify the principles competent authorities should use when considering implementation of limits on leverage.*** They *should also be* designed to specify the modalities, content and frequency of exchange of information regarding AIFM between the competent authorities of the home Member State of the AIFM and other competent authorities where the AIFM individually or collectively with other AIFM may have an impact on the stability of systemically relevant financial institutions and the orderly functioning of markets. They *should also be* designed to specify the procedures for on-the-spot verifications and investigations.

relevant financial institutions and the orderly functioning of markets. They *are* designed to specify the procedures for on-the-spot verifications and investigations.

Or. en

Justification

Changes necessary to match drafting proposals. '[S]upervision' in Article 17 changed to 'oversight' in order to clarify distinction from UCITS 'supervision' requirements, which should not apply.

Amendment 299 **Syed Kamall**

Proposal for a directive **Recital 27**

Text proposed by the Commission

(27) In particular the Commission should be empowered to adopt *the measures* necessary for the implementation of this Directive. ***In this respect, the Commission should be able to adopt measures determining the procedures under which AIFM managing portfolios of AIF whose assets under management do not exceed the threshold set out in this Directive may exercise their right to be treated as AIFM covered by this Directive.*** These measures are also designed to specify the criteria to be used by competent authorities to assess whether AIFM comply with their obligations as regards their conduct of business, the type of conflicts of interests AIFM have to identify, as well as the reasonable steps AIFM are expected to take in terms of internal and *organizational* procedures in order to identify, prevent, manage and disclose conflicts of interest. They *are* designed to specify the risk management requirements to be employed by AIFM as a function of the risks which

Amendment

(27) In particular the Commission should be empowered to adopt necessary for the implementation of this Directive *delegated acts in accordance with Article 290 of the Treaty* designed to specify the criteria to be used by competent authorities to assess whether AIFM comply with their obligations as regards their conduct of business, the type of conflicts of interests AIFM have to identify, as well as the reasonable steps AIFM are expected to take in terms of internal and *organisational* procedures in order to identify, prevent, manage and disclose conflicts of interest. They *should also be* designed to specify ***when the risk management does not need to be separated and*** the risk management requirements to be employed by AIFM as a function of the risks which the AIFM incurs on behalf of the AIF that it manages. They *should also be* designed to specify the liquidity management requirements of this Directive and in particular the minimum liquidity requirements for AIF.

the AIFM incurs on behalf of the AIF that it manages *as well as any arrangements needed to enable AIFM to manage the particular risks associated with short selling transactions, including any relevant restrictions that might be needed to protect the AIF from undue risk exposures*. They are designed to specify the liquidity management requirements of this Directive and in particular the minimum liquidity requirements for AIF. *They are designed to specify the requirements that originators of securitisation instruments have to meet in order for an AIFM to be allowed to invest in such instruments issued after 1 January 2011. They are as well designed to specify the requirements that AIFM have to comply with when investing in such securitisation instruments*. They are designed to specify the criteria under which a valuator can be considered independent in the meaning of this Directive. They are designed to specify the conditions under which the delegation of AIFM functions should be approved and the conditions under which the manager could no longer be considered to be the manager of the AIF in case of excessive delegation. They are designed to specify the content and format of the annual report that AIFM have to make available for each AIF they manage and to specify the disclosure obligations of AIFM to investors and reporting requirements to competent authorities as well as their frequency. They are designed to specify the disclosure requirements imposed on AIFM as regards leverage and the frequency of reporting to competent authorities and of disclosure to investors. *They are designed to setting limits to the level of leverage AIFM can employ when managing AIF*. They are designed to determine the detailed content and the way AIFM acquiring controlling influence in issuers and non-listed companies should fulfil their information obligation towards issuers and non-listed

They *should also be* designed to specify the criteria under which a valuator can be considered independent in the meaning of this Directive. They *should also be* designed to specify the conditions under which the delegation of AIFM functions should be approved and the conditions under which the manager could no longer be considered to be the manager of the AIF in case of excessive delegation. They *should also be* designed to specify the content and format of the annual report that AIFM have to make available for each AIF they manage and to specify the disclosure obligations of AIFM to investors and reporting requirements to competent authorities as well as their frequency. They *should also be* designed to specify the disclosure requirements imposed on AIFM as regards leverage and the frequency of reporting to competent authorities and of disclosure to investors. They *should also be* designed to determine the detailed content and the way AIFM acquiring controlling influence in issuers and non-listed companies should fulfil their information obligation towards issuers and non-listed companies and their respective shareholders and representatives of employees, including the information to be provided in the annual reports of the AIF they manage. They *should also be* designed to specify the modalities, content and frequency of exchange of information regarding AIFM between the competent authorities of the home Member State of the AIFM and other competent authorities where the AIFM individually or collectively with other AIFM may have an impact on the stability of systemically relevant financial institutions and the orderly functioning of markets. They *should also be* designed to specify the procedures for on-the- spot verifications and investigations.

companies and their respective shareholders and representatives of employees, including the information to be provided in the annual reports of the AIF they manage. ***They are designed to specify the types of restrictions or conditions that can be imposed on the marketing of AIF to professional investors in the home Member State of the AIFM. They are designed to specify general criteria for assessing equivalence of valuation standards of third countries where the valuator is established in a third country, the equivalence of legislation of third countries regarding depositaries and, for the purpose of the authorisation of AIFM established in third countries, the equivalence of prudential regulation and ongoing supervision. They are designed to specify general criteria for assessing whether third countries grant Community AIFM effective market access comparable to that granted by the Community to AIFM from third countries.*** They are designed to specify the modalities, content and frequency of exchange of information regarding AIFM between the competent authorities of the home Member State of the AIFM and other competent authorities where the AIFM individually or collectively with other AIFM may have an impact on the stability of systemically relevant financial institutions and the orderly functioning of markets. They *are* designed to specify the procedures for on-the-spot verifications and investigations.

Or. en

Justification

These amendments are consequential upon previous amendments.

Amendment 300
Pascal Canfin

Proposal for a directive
Recital 27

Text proposed by the Commission

(27) In particular the Commission should be empowered to adopt *the measures* necessary for the implementation of this Directive. ***In this respect, the Commission should be able to adopt measures determining the procedures under which AIFM managing portfolios of AIF whose assets under management do not exceed the threshold set out in this Directive may exercise their right to be treated as AIFM covered by this Directive.*** These measures are also designed to specify the criteria to be used by competent authorities to assess whether AIFM comply with their obligations as regards their conduct of business, the type of conflicts of interests AIFM have to identify, as well as the reasonable steps AIFM are expected to take in terms of internal and *organizational* procedures in order to identify, prevent, manage and disclose conflicts of interest. They *are* designed to specify the risk management requirements to be employed by AIFM as a function of the risks which the AIFM incurs on behalf of the AIF that it manages as well as any arrangements needed to enable AIFM to manage the particular risks associated with short selling transactions, including any relevant restrictions that might be needed to protect the AIF from undue risk exposures. They *are* designed to specify the liquidity management requirements of this Directive and in particular the minimum liquidity requirements for AIF. They *are* designed to specify the requirements that originators of securitisation instruments have to meet in order for an ***AIFM*** to be allowed to invest in such instruments issued after 1 January 2011. They *are as well* designed to specify

Amendment

(27) In particular the Commission should be empowered to adopt *delegated acts* necessary for the implementation of this Directive *in accordance with Article 290 of the Treaty* designed to specify the criteria to be used by competent authorities to assess whether AIFM comply with their obligations as regards their conduct of business, the type of conflicts of interests AIFM have to identify, as well as the reasonable steps AIFM are expected to take in terms of internal and *organisational* procedures in order to identify, prevent, manage and disclose conflicts of interest. They *should also be* designed to specify the risk management requirements to be employed by AIFM as a function of the risks which the AIFM incurs on behalf of the AIF that it manages as well as any arrangements needed to enable AIFM to manage the particular risks associated with short selling transactions, including any relevant restrictions that might be needed to protect the AIF from undue risk exposures. They *should also be* designed to specify the liquidity management requirements of this Directive and in particular the minimum liquidity requirements for AIF. They *should also be* designed to specify the requirements that originators of securitisation instruments have to meet in order for an ***AIF*** to be allowed to invest in such instruments issued after 1 January 2011. They *should also be* designed to specify the requirements that ***AIF*** have to comply with when investing in such securitisation instruments. They *should also be* designed to specify the criteria under which a valuator can be considered independent in

the requirements that **AIFM** have to comply with when investing in such securitisation instruments. They *are* designed to specify the criteria under which a valuator can be considered independent in the meaning of this Directive. They *are* designed to specify the conditions under which the delegation of AIFM functions should be approved and the conditions under which the manager could no longer be considered to be the manager of the AIF in case of excessive delegation. They *are* designed to specify the content and format of the annual report that **AIFM** have to make available **for each AIF they manage** and to specify the disclosure obligations of AIFM to investors and reporting requirements to competent authorities as well as their frequency. They *are* designed to specify the disclosure requirements imposed on **AIFM** as regards leverage and the frequency of reporting to competent authorities and of disclosure to investors. They *are* designed to setting limits to the level of leverage **AIFM** can employ **when managing AIF**. They *are* designed to determine the detailed content and the way **AIFM** acquiring controlling influence in issuers and non-listed companies should fulfil their information obligation towards issuers and non-listed companies and their respective shareholders and representatives of employees, including the information to be provided in the annual reports of the AIF they manage. They *are* designed to specify the types of restrictions or conditions that can be imposed on the marketing of AIF to professional investor in the home Member State of the AIFM. They *are* designed to specify general criteria for assessing equivalence of valuation standards of third countries where the valuator is established in a third country, the equivalence of legislation of third countries regarding depositaries and, for the purpose of the authorisation of **AIFM** established in third countries, **the equivalence of** prudential

the meaning of this Directive. They *should also be* designed to specify the conditions under which the delegation of AIFM functions should be approved and the conditions under which the manager could no longer be considered to be the manager of the AIF in case of excessive delegation. They *should also be* designed to specify the content and format of the annual report that **AIF** have to make available and to specify the disclosure obligations of AIFM to investors and reporting requirements to competent authorities as well as their frequency. They *should also be* designed to specify the disclosure requirements imposed on **AIF** as regards leverage and the frequency of reporting to competent authorities and of disclosure to investors. They *should also be* designed to setting limits to the level of leverage **AIF** can employ. They *should also be* designed to determine the detailed content and the way **AIF** acquiring controlling influence in issuers and non-listed companies should fulfil their information obligation towards issuers and non-listed companies and their respective shareholders and representatives of employees, including the information to be provided in the annual reports of the AIF they manage. They *should also be* designed to specify the types of restrictions or conditions that can be imposed on the marketing of AIF to professional investor in the home Member State of the AIFM. They *should also be* designed to specify general criteria for assessing equivalence of valuation standards of third countries where the valuator is established in a third country, the equivalence of legislation of third countries regarding depositaries and, for the purpose of the authorisation of **AIF** established in third countries, **to specify general criteria for assessing an effective tax and prudential cooperation**. They *should also be* designed to specify general criteria for assessing whether third countries grant **Union AIFM** effective market access comparable to that granted

regulation and ongoing supervision. They *are* designed to specify general criteria for assessing whether third countries grant *Community* AIFM effective market access comparable to that granted by the *Community* to AIFM from third countries. They *are* designed to specify the modalities, content and frequency of exchange of information regarding AIFM between the competent authorities of the home Member State of the AIFM **and other competent authorities** where the AIFM individually or collectively with other AIFM may have an impact on the stability of systemically relevant financial institutions and the orderly functioning of markets. They *are* designed to specify the procedures for on-the-spot verifications and investigations.

by the *Union* to AIFM from third countries. They *should also be* designed to specify the modalities, content and frequency of exchange of information regarding **AIF and** AIFM between the **European Stability Risk Board (ESRB), the European Securities and Market Authority (ESMA) and the** competent authorities of the home Member State of the **AIF and** AIFM where the **AIF and** AIFM individually or collectively with other **AIF and** AIFM may have an impact on the stability of systemically relevant financial institutions and the orderly functioning of markets. They *should also be* designed to specify the procedures for on-the-spot verifications and investigations.

Or. en

Justification

Consistency with previous amendments.

Amendment 301

Robert Goebbels, Udo Bullmann

Proposal for a directive

Recital 27

Text proposed by the Commission

(27) In particular the Commission should be empowered to adopt *the measures* necessary for the implementation of this Directive. *In this respect, the Commission should be able to adopt measures determining the procedures under which AIFM managing portfolios of AIF whose assets under management do not exceed the threshold set out in this Directive may exercise their right to be treated as AIFM covered by this Directive. These measures*

Amendment

(27) In particular the Commission should be empowered to adopt *delegated acts* necessary for the implementation of this Directive *in accordance with Article 290 of the Treaty* to specify the criteria to be used by competent authorities to assess whether AIFM comply with their obligations as regards their conduct of business, the type of conflicts of interests AIFM have to identify, as well as the reasonable steps AIFM are expected to take in terms of

are also designed to specify the criteria to be used by competent authorities to assess whether AIFM comply with their obligations as regards their conduct of business, the type of conflicts of interests AIFM have to identify, as well as the reasonable steps AIFM are expected to take in terms of internal and *organizational* procedures in order to identify, prevent, manage and disclose conflicts of interest. They *are* designed to specify the risk management requirements to be employed by AIFM as a function of the risks which the AIFM incurs on behalf of the AIF that it manages as well as any arrangements needed to enable AIFM to manage the particular risks associated with short selling transactions, including any relevant restrictions that might be needed to protect the AIF from undue risk exposures. They *are* designed to specify the liquidity management requirements of this Directive and in particular the minimum liquidity requirements for AIF. They *are* designed to specify the requirements that originators of securitisation instruments have to meet in order for an AIFM to be allowed to invest in such instruments issued after 1 January 2011. They *are as well* designed to specify the requirements that AIFM have to comply with when investing in such securitisation instruments. They *are* designed to specify the criteria under which a valuator can be considered independent in the meaning of this Directive. They *are* designed to specify the conditions under which the delegation of AIFM functions should be approved and the conditions under which the manager could no longer be considered to be the manager of the AIF in case of excessive delegation. They *are* designed to specify the content and format of the annual report that AIFM have to make available for each AIF they manage and to specify the disclosure obligations of AIFM to investors and reporting requirements to competent authorities as well as their frequency. They

internal and *organisational* procedures in order to identify, prevent, manage and disclose conflicts of interest. ***They should also be designed to specify the principles to be respected by AIFM in their remuneration policies and practises.*** They *should also be* designed to specify the risk management requirements to be employed by AIFM as a function of the risks which the AIFM incurs on behalf of the AIF that it manages as well as any arrangements needed to enable AIFM to manage the particular risks associated with short selling transactions, including any relevant restrictions that might be needed to protect the AIF from undue risk exposures. They *should also be* designed to specify the liquidity management requirements of this Directive and in particular the minimum liquidity requirements for AIF. They *should also be* designed to specify the requirements that originators of securitisation instruments have to meet in order for an AIFM to be allowed to invest in such instruments issued after 1 January 2011. They *should also be* designed to specify the requirements that AIFM have to comply with when investing in such securitisation instruments. ***They should also be designed to lay down the requirements related to initial and on going capital of AIFM.*** They *should also be* designed to specify the criteria under which a valuator can be considered independent in the meaning of this Directive. They *should also be* designed to specify the conditions under which the delegation of AIFM functions should be approved and the conditions under which the manager could no longer be considered to be the manager of the AIF in case of excessive delegation. They *should also be* designed to specify the content and format of the annual report that AIFM have to make available for each AIF they manage and to specify the disclosure obligations of AIFM to investors and reporting requirements to competent authorities as

are designed to specify the disclosure requirements imposed on AIFM as regards leverage and the frequency of reporting to competent authorities and of disclosure to investors. They *are* designed to setting limits to the level of leverage AIFM can employ when managing AIF. They *are* designed to determine the detailed content and the way AIFM acquiring controlling influence in issuers and non-listed companies should fulfil their information obligation towards issuers and non-listed companies and their respective shareholders and representatives of employees, including the information to be provided in the annual reports of the AIF they manage. They *are* designed to specify the types of restrictions or conditions that can be imposed on the marketing of AIF to professional investor in the home Member State of the AIFM. They *are* designed to specify general criteria for assessing equivalence of valuation standards of third countries where the valuator is established in a third country, the equivalence of legislation of third countries regarding depositaries and, for the purpose of the authorisation of AIFM established in third countries, the equivalence of prudential regulation and ongoing supervision. They *are* designed to specify general criteria for assessing whether third countries grant *Community* AIFM effective market access comparable to that granted by the *Community* to AIFM from third countries. They *are* designed to specify the modalities, content and frequency of exchange of information regarding AIFM between the competent authorities of the home Member State of the AIFM and other competent authorities where the AIFM individually or collectively with other AIFM may have an impact on the stability of systemically relevant financial institutions and the orderly functioning of markets. They *are* designed to specify the procedures for on-the-spot verifications

well as their frequency. They *should also be* designed to specify the disclosure requirements imposed on AIFM as regards leverage and the frequency of reporting to competent authorities and of disclosure to investors. They *should also be* designed to setting limits to the level of leverage AIFM can employ when managing AIF. They *should also be* designed to determine the detailed content and the way AIFM acquiring controlling influence in issuers and non-listed companies should fulfil their information obligation towards issuers and non-listed companies and their respective shareholders and representatives of employees, including the information to be provided in the annual reports of the AIF they manage. ***They should also be designed to specify the detailed content of the statements to be provided in relation with value extraction.*** They *should also be* designed to specify the types of restrictions or conditions that can be imposed on the marketing of AIF to professional investor in the home Member State of the AIFM. They *should also be* designed to specify general criteria for assessing equivalence of valuation standards of third countries where the valuator is established in a third country, the equivalence of legislation of third countries regarding depositaries and, for the purpose of the authorisation of AIFM established in third countries, the equivalence of prudential regulation and ongoing supervision. They *should also be* designed to specify general criteria for assessing whether third countries grant *Union* AIFM effective market access comparable to that granted by the *Union* to AIFM from third countries. They *should also be* designed to specify the modalities, content and frequency of exchange of information regarding AIFM between the competent authorities of the home Member State of the AIFM and other competent authorities where the AIFM individually or collectively with other AIFM may have an impact on the stability of systemically

and investigations.

relevant financial institutions and the orderly functioning of markets. They *should also be* designed to specify the procedures for on-the-spot verifications and investigations.

Or. en

Amendment 302
Marta Andreasen

Proposal for a directive
Recital 27

Text proposed by the Commission

(27) In particular the Commission should be empowered to adopt *the measures* necessary for the implementation of this Directive. *In this respect, the Commission should be able to adopt measures* determining the procedures under which AIFM managing portfolios of AIF whose assets under management do not exceed the threshold set out in this Directive may exercise their right to be treated as AIFM covered by this Directive. *These measures are also* designed to specify the criteria to be used by competent authorities to assess whether AIFM comply with their obligations as regards their conduct of business, the type of conflicts of interests AIFM have to identify, as well as the reasonable steps AIFM are expected to take in terms of internal and *organizational* procedures in order to identify, prevent, manage and disclose conflicts of interest. They *are* designed to specify the risk management requirements to be employed by AIFM as a function of the risks which the AIFM incurs on behalf of the AIF that it manages as well as any arrangements needed to enable AIFM to manage the particular risks associated with short selling transactions, including any relevant restrictions that might be needed to protect

Amendment

(27) In particular the Commission should be empowered to adopt *delegated* necessary for the implementation of this Directive *acts in accordance with Article 290 of the Treaty* determining the procedures under which AIFM managing portfolios of AIF whose assets under management do not exceed the threshold set out in this Directive may exercise their right to be treated as AIFM covered by this Directive. *Those acts should also be* designed to specify the criteria to be used by competent authorities to assess whether AIFM comply with their obligations as regards their conduct of business, the type of conflicts of interests AIFM have to identify, as well as the reasonable steps AIFM are expected to take in terms of internal and *organisational* procedures in order to identify, prevent, manage and disclose conflicts of interest. They *should also be* designed to specify the risk management requirements to be employed by AIFM as a function of the risks which the AIFM incurs on behalf of the AIF that it manages as well as any arrangements needed to enable AIFM to manage the particular risks associated with short selling transactions, including any relevant restrictions that might be needed to protect

the AIF from undue risk exposures. They *are* designed to specify the liquidity management requirements of this Directive and in particular the minimum liquidity requirements for AIF. They *are* designed to specify the requirements that originators of securitisation instruments have to meet in order for an AIFM to be allowed to invest in such instruments issued after 1 January 2011. They *are as well* designed to specify the requirements that AIFM have to comply with when investing in such securitisation instruments. They *are* designed to specify ***the criteria under which a valuator can be considered independent in the meaning of this Directive. They are designed to specify the conditions under which the delegation of AIFM functions should be approved and*** the conditions under which the manager could no longer be considered to be the manager of the AIF in case of excessive delegation. They *are* designed to specify the content and format of the annual report that AIFM have to make available for each AIF they manage and to specify the disclosure obligations of AIFM to investors and reporting requirements to competent authorities as well as their frequency. They *are* designed to specify the disclosure requirements imposed on AIFM as regards leverage and the frequency of reporting to competent authorities and of disclosure to investors. They *are* designed to setting limits to the level of leverage AIFM can employ when managing AIF. They *are* designed to determine the detailed content and the way AIFM acquiring controlling influence in issuers and non-listed companies should fulfil their information obligation towards issuers and non-listed companies and their respective shareholders and representatives of employees, including the information to be provided in the annual reports of the AIF they manage. They *are* designed to specify the types of restrictions or conditions that can be imposed on the marketing of AIF to

the AIF from undue risk exposures. They *should also be* designed to specify the liquidity management requirements of this Directive and in particular the minimum liquidity requirements for AIF. They *should also be* designed to specify the requirements that originators of securitisation instruments have to meet in order for an AIFM to be allowed to invest in such instruments issued after 1 January 2011. They *should also be* as well designed to specify the requirements that AIFM have to comply with when investing in such securitisation instruments. They *should also be* designed to specify the conditions under which the manager could no longer be considered to be the manager of the AIF in case of excessive delegation. They *should also be* designed to specify the content and format of the annual report that AIFM have to make available for each AIF they manage and to specify the disclosure obligations of AIFM to investors and reporting requirements to competent authorities as well as their frequency. They *should also be* designed to specify the disclosure requirements imposed on AIFM as regards leverage and the frequency of reporting to competent authorities and of disclosure to investors. They *should also be* designed to setting limits to the level of leverage AIFM can employ when managing AIF. They *should also be* designed to determine the detailed content and the way AIFM acquiring controlling influence in issuers and non-listed companies should fulfil their information obligation towards issuers and non-listed companies and their respective shareholders and representatives of employees, including the information to be provided in the annual reports of the AIF they manage. They *should also be* designed to specify the types of restrictions or conditions that can be imposed on the marketing of AIF to professional investor in the home Member State of the AIFM. They *should also be* designed to specify

professional investor in the home Member State of the AIFM. They *are* designed to specify general criteria for assessing equivalence of valuation standards of third countries where the valuator is established in a third country, the equivalence of legislation of third countries regarding depositaries and, for the purpose of the authorisation of AIFM established in third countries, the equivalence of prudential regulation and ongoing supervision. They *are* designed to specify general criteria for assessing whether third countries grant *Community* AIFM effective market access comparable to that granted by the *Community* to AIFM from third countries. They *are* designed to specify the modalities, content and frequency of exchange of information regarding AIFM between the competent authorities of the home Member State of the AIFM and other competent authorities where the AIFM individually or collectively with other AIFM may have an impact on the stability of systemically relevant financial institutions and the orderly functioning of markets. They *are* designed to specify the procedures for on-the-spot verifications and investigations.

general criteria for assessing equivalence of valuation standards of third countries where the valuator is established in a third country, the equivalence of legislation of third countries regarding depositaries and, for the purpose of the authorisation of AIFM established in third countries, the equivalence of prudential regulation and ongoing supervision. They *should also be* designed to specify general criteria for assessing whether third countries grant *Union* AIFM effective market access comparable to that granted by the *Union* to AIFM from third countries. They *should also be* designed to specify the modalities, content and frequency of exchange of information regarding AIFM between the competent authorities of the home Member State of the AIFM and other competent authorities where the AIFM individually or collectively with other AIFM may have an impact on the stability of systemically relevant financial institutions and the orderly functioning of markets. They *should also be* designed to specify the procedures for on-the-spot verifications and investigations.

Or. en

Justification

Valuations are already carried out by independent experts where necessary when circumstances dictate. Requiring one hundred percent independent valuation will increase costs to funds and reduce returns for investors.

Amendment 303
Sharon Bowles

Proposal for a directive
Recital 27

Text proposed by the Commission

(27) *In particular* the Commission should be empowered to adopt ***the measures*** necessary for the implementation of this Directive. In this respect, the Commission should be able to adopt ***measures*** determining the procedures under which AIFM managing portfolios of AIF whose assets under management do not exceed the threshold set out in this Directive may exercise their right to be treated as AIFM covered by this Directive. *These measures are* also designed to specify the criteria to be used by competent authorities to assess whether AIFM comply with their obligations as regards their conduct of business, the type of conflicts of interests AIFM have to identify, as well as the reasonable steps AIFM are expected to take in terms of internal and *organizational* procedures in order to identify, prevent, manage and disclose conflicts of interest. They *are* designed to specify the risk management requirements to be employed by AIFM as a function of the risks which the AIFM incurs on behalf of the AIF that it manages as well as any arrangements needed to enable AIFM to manage the particular risks associated with short selling transactions, including any relevant restrictions that might be needed to protect the AIF from undue risk exposures. They *are* designed to specify the liquidity management requirements of this Directive and in particular the minimum liquidity requirements for AIF. They *are* designed to specify the requirements that originators of securitisation instruments have to meet in order for an AIFM to be allowed to invest in such instruments issued after 1 January 2011. They *are as well* designed to specify

Amendment

(27) The Commission should be empowered to adopt ***delegated acts in accordance with Article 290 of the Treaty, in particular those*** necessary for the implementation of this Directive. In this respect, the Commission should be able to adopt ***acts*** determining the procedures under which AIFM managing portfolios of AIF whose assets under management do not exceed the threshold set out in this Directive may exercise their right to be treated as AIFM covered by this Directive. *Those acts should also be* designed to specify the criteria to be used by competent authorities to assess whether AIFM comply with their obligations as regards their conduct of business, the type of conflicts of interests AIFM have to identify, as well as the reasonable steps AIFM are expected to take in terms of internal and *organisational* procedures in order to identify, prevent, manage and disclose conflicts of interest. They *should be* designed to specify the risk management requirements to be employed by AIFM as a function of the risks which the AIFM incurs on behalf of the AIF that it manages as well as any arrangements needed to enable AIFM to manage the particular risks associated with short selling transactions, including any relevant restrictions that might be needed to protect the AIF from undue risk exposures. They *should also be* designed to specify the liquidity management requirements of this Directive and in particular the minimum liquidity requirements for AIF. They *should also be* designed to specify the requirements that originators of securitisation instruments have to meet in order for an AIFM to be allowed to invest

the requirements that AIFM have to comply with when investing in such securitisation instruments. They *are* designed to specify the criteria under which a valuator can be considered independent in the meaning of this Directive. They *are* designed to specify the conditions under which the delegation of AIFM functions should be approved and the conditions under which the manager could no longer be considered to be the manager of the AIF in case of excessive delegation. They *are* designed to specify the content and format of the annual report that AIFM have to make available for each AIF they manage and to specify the disclosure obligations of AIFM to investors and reporting requirements to competent authorities as well as their frequency. They *are* designed to specify the disclosure requirements imposed on AIFM as regards leverage and the frequency of reporting to competent authorities and of disclosure to investors. They *are* designed to setting limits to the level of leverage AIFM can employ when managing AIF. They *are* designed to determine the detailed content and the way AIFM acquiring controlling influence in issuers and non-listed companies should fulfil their information obligation towards issuers and non-listed companies and their respective shareholders and representatives of employees, including the information to be provided in the annual reports of the AIF they manage. They *are* designed to specify the types of restrictions or conditions that can be imposed on the marketing of AIF to professional investor in the home Member State of the AIFM. They *are* designed to specify general criteria for assessing equivalence of valuation standards of third countries where the valuator is established in a third country, the equivalence of legislation of third countries regarding depositaries and, for the purpose of the authorisation of AIFM established in third countries, the equivalence of prudential

in such instruments issued after 1 January 2011. They *should also be* as well designed to specify the requirements that AIFM have to comply with when investing in such securitisation instruments. They *should also be* designed to specify the criteria under which a valuator can be considered independent in the meaning of this Directive. They *should also be* designed to specify the conditions under which the delegation of AIFM functions should be approved and the conditions under which the manager could no longer be considered to be the manager of the AIF in case of excessive delegation. They *should also be* designed to specify the content and format of the annual report that AIFM have to make available for each AIF they manage and to specify the disclosure obligations of AIFM to investors and reporting requirements to competent authorities as well as their frequency. They *should also be* designed to specify the disclosure requirements imposed on AIFM as regards leverage and the frequency of reporting to competent authorities and of disclosure to investors. They *should also be* designed to setting limits to the level of leverage AIFM can employ when managing AIF. They *should also be* designed to determine the detailed content and the way AIFM acquiring controlling influence in issuers and non-listed companies should fulfil their information obligation towards issuers and non-listed companies and their respective shareholders and representatives of employees, including the information to be provided in the annual reports of the AIF they manage. They *should also be* designed to specify the types of restrictions or conditions that can be imposed on the marketing of AIF to professional investor in the home Member State of the AIFM. They *should also be* designed to specify general criteria for assessing equivalence of valuation standards of third countries where the valuator is established in a third

regulation and ongoing supervision. They *are* designed to specify general criteria for assessing whether third countries grant *Community* AIFM effective market access comparable to that granted by the *Community* to AIFM from third countries. They *are* designed to specify the modalities, content and frequency of exchange of information regarding AIFM between the competent authorities of the home Member State of the AIFM and other competent authorities where the AIFM individually or collectively with other AIFM may have an impact on the stability of systemically relevant financial institutions and the orderly functioning of markets. They *are* designed to specify the procedures for on- the- spot verifications and investigations.

country, the equivalence of legislation of third countries regarding depositaries and, for the purpose of the authorisation of AIFM established in third countries, the equivalence of prudential regulation and ongoing supervision. They *should also be* designed to specify general criteria for assessing whether third countries grant *Union* AIFM effective market access comparable to that granted by the *Union* to AIFM from third countries. They *should also be* designed to specify the modalities, content and frequency of exchange of information regarding AIFM between the competent authorities of the home Member State of the AIFM and other competent authorities where the AIFM individually or collectively with other AIFM may have an impact on the stability of systemically relevant financial institutions and the orderly functioning of markets. They *should also be* designed to specify the procedures for on- the- spot verifications and investigations. ***They should also be designed to state that the fund valuation standards of a specific third country are equivalent to those applicable in the Union where the valuator is established in a third country. They should also be designed to state that the legislation on depositaries of a specific third country is equivalent to this Directive. They should also be designed to state that the legislation on prudential regulation and on-going supervision of AIFM in a specific third country is equivalent to this Directive. They should also be designed to state whether a specific third country grants Union AIFM effective market access comparable to that granted by the Union to AIFM from that third country. They should also be designed to specify standard models for notification and attestations and to specify the procedure for the exchange of information between competent authorities.***

Or. en

Justification

This is appropriate wording under the new ‘comitology’ procedures if this entire content of this article is retained.

Amendment 304

Sharon Bowles

Proposal for a directive

Recital 27 a (new)

Text proposed by the Commission

Amendment

(27a) In order to ensure a level playing field between AIFM, credit institutions and other market participants, the Commission should review Directive 2009/.../EC to introduce retention and qualitative requirements for UCITS when investing in securitised products.

Or. en

Justification

Retention and qualitative requirements for securitised products should also be applicable to UCITS to prevent an un-level playing field.

Amendment 305

Sharon Bowles

Proposal for a directive

Recital 28

Text proposed by the Commission

Amendment

(28) Since those measures are of general scope and are designed to amend non-essential elements of this Directive, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC. Measures not ***deleted***

falling under the above category should be subject to the regulatory procedure provided in Article 5 of that Decision. Those measures are designed to state that the fund valuation standards of a specific third country are equivalent to those applicable in the Community where the valuator is established in a third country. They are designed to state that the legislation on depositaries of a specific third country is equivalent to this Directive. They are designed to state that the legislation on prudential regulation and on-going supervision of AIFM in a specific third country is equivalent to this Directive. They are designed to state whether a specific third country grants Community AIFM effective market access comparable to that granted by the Community to AIFM from that third country. They are designed to specify standard models for notification and attestations and to specify the procedure for the exchange of information between competent authorities.

Or. en

Justification

This is appropriate under the new 'comitology' procedures.

Amendment 306 **Wolf Klinz, Carl Haglund**

Proposal for a directive **Recital 28**

Text proposed by the Commission

(28) Since those *measures* are of general scope and are designed to amend non-essential elements of this Directive, by supplementing it with new non-essential elements, they must be adopted in

Amendment

(28) Since those *acts* are of general scope and are designed to amend non-essential elements of this Directive, by supplementing it with new non-essential elements, they must be adopted in

accordance with the *regulatory* procedure with *scrutiny* provided for in *Article 5a of Decision 1999/468/EC*. Measures not falling under the above category should be subject to the regulatory procedure provided in Article 5 of *that Decision*.

Those measures are designed to state that the fund valuation standards of a specific third country are equivalent to those applicable in the Community where the valuator is established in a third country. They are designed to state that the legislation on depositaries of a specific third country is equivalent to this Directive. They are designed to state that the legislation on prudential regulation and on-going supervision of AIFM in a specific third country is equivalent to this Directive. They are designed to state whether a specific third country grants Community AIFM effective market access comparable to that granted by the Community to AIFM from that third country. They are designed to specify standard models for notification and attestations and to specify the procedure for the exchange of information between competent authorities.

accordance with the procedure provided for in *Article 290 of the Treaty*. Measures not falling under the above category should be subject to the regulatory procedure provided in Article 5 of *Decision 1999/468/EC*. *Those measures should specify standard models for notification and attestations and to specify the procedure for the exchange of information between competent authorities.*

Or. en

Justification

Alignment with changes in the legislative text that are proposed.

Amendment 307

Syed Kamall

Proposal for a directive

Recital 28

Text proposed by the Commission

(28) Since those *measures* are of general scope and are designed to amend non-

Amendment

(28) Since those *acts* are of general scope and are designed to amend non-essential

essential elements of this Directive, by supplementing it with new non-essential elements, they must be adopted in accordance with the *regulatory procedure with scrutiny* provided for in *Article 5a of Decision 1999/468/EC*. Measures not falling under the above category should be subject to the regulatory procedure provided in Article 5 of *that Decision*.

Those measures are designed to state that the fund valuation standards of a specific third country are equivalent to those applicable in the Community where the valuator is established in a third country. They are designed to state that the legislation on depositaries of a specific third country is equivalent to this Directive. They are designed to state that the legislation on prudential regulation and on-going supervision of AIFM in a specific third country is equivalent to this Directive. They are designed to state whether a specific third country grants Community AIFM effective market access comparable to that granted by the Community to AIFM from that third country. They are designed to specify standard models for notification and attestations and to specify the procedure for the exchange of information between competent authorities.

elements of this Directive, by supplementing it with new non-essential elements, they must be adopted in accordance with the procedure provided for in *Article 290 of the Treaty*. Measures not falling under the above category should be subject to the regulatory procedure provided in Article 5 of *Decision 1999/468/EC*. *Those measures should specify standard models for notification and attestations and to specify the procedure for the exchange of information between competent authorities.*

Or. en

Justification

These amendments are consequential upon previous amendments.

Amendment 308
Pascal Canfin

Proposal for a directive
Recital 28

Text proposed by the Commission

(28) Since those *measures* are of general scope and are designed to amend non-essential elements of this Directive, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in *Article 5a of Decision 1999/468/EC*. Measures not falling under the above category should be subject to the regulatory procedure provided in Article 5 of *that Decision*. Those measures are designed to state that the fund valuation standards of a specific third country are equivalent to those applicable in the *Community* where the valuator is established in a third country. They *are* designed to state that the legislation on depositaries of a specific third country is equivalent to this Directive. ***They are designed to state that the legislation on prudential regulation and on-going supervision of AIFM in a specific third country is equivalent to this Directive. They are designed to state whether a specific third country grants Community AIFM effective market access comparable to that granted by the Community to AIFM from that third country.*** They *are* designed to specify standard models for notification and attestations and to specify the procedure for the exchange of information between competent authorities.

Amendment

(28) Since those *acts* are of general scope and are designed to amend non-essential elements of this Directive, by supplementing it with new non-essential elements, they must be adopted in accordance with the procedure provided for in *Article 290 of the Treaty*. Measures not falling under the above category should be subject to the regulatory procedure provided in Article 5 of *Decision 1999/468/EC*. Those measures *should* state that the fund valuation standards of a specific third country are equivalent to those applicable in the *Union* where the valuator is established in a third country. They *should also be* designed to state that the legislation on depositaries of a specific third country is equivalent to this Directive. They *should also be* designed to specify standard models for notification and attestations and to specify the procedure for the exchange of information between competent authorities.

Or. en

Justification

Consistency with previous amendments.

Amendment 309

Pervenche Berès, Leonardo Domenici

Proposal for a directive

Recital 29

Text proposed by the Commission

(29) Since the objectives of *the action to be taken*, namely to ensure a high level of consumer and investor protection by laying down a common framework for the authorisation and supervision of AIFM cannot be sufficiently achieved by the Member States, as evidenced by the deficiencies of existing nationally based regulation and oversight of these actors, and can therefore, be better achieved at *Community level*, the *Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty*. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

Amendment

(29) Since the objectives of *this Directive*, namely to ensure a high level of consumer and investor protection by laying down a common framework for the authorisation and supervision of AIFM cannot be sufficiently achieved by the Member States, as evidenced by the deficiencies of existing nationally based regulation and oversight of these actors, and can therefore, be better achieved at *Union level*, the *Union should entitle the ESMA to act as an Investor Protection Agency aimed at certifying new financial products and monitoring their evolution*. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

Or. en

Justification

An investor protection agency is urgently needed on European level to certify financial products and label them in different risk categories before they are marketed. ESMA should act as such.