

Amendment 2**Marta Andreasen**

on behalf of the EFD Group

Report**A7-0171/2010****Jean-Paul Gauzès**

Alternative investment fund managers

COM(2009)0207 - C7-0040/2009 - 2009/0064(COD)

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.

(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 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 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

13.10.2010

A7-0171/3

Amendment 3

Marta Andreasen

on behalf of the EFD Group

Report

Jean-Paul Gauzès

Alternative investment fund managers

COM(2009)0207 - C7-0040/2009 - 2009/0064(COD)

A7-0171/2010

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. ***The process for*** valuation of assets ***and calculation of the net asset value (NAV)*** ***may be delegated*** by the AIFM ***to a third party.***

Or. en

13.10.2010

A7-0171/4

Amendment 4

Marta Andreasen

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Report

Jean-Paul Gauzès

Alternative investment fund managers

COM(2009)0207 - C7-0040/2009 - 2009/0064(COD)

A7-0171/2010

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

Amendment

(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

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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 professional investor in the home Member State of the AIFM. They are designed to

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 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

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.

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

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A7-0171/5

Amendment 5

Marta Andreasen

on behalf of the EFD Group

Report

Jean-Paul Gauzès

Alternative investment fund managers

COM(2009)0207 - C7-0040/2009 - 2009/0064(COD)

A7-0171/2010

Proposal for a directive

Article 2 – paragraph 2 – point a

Text proposed by the Commission

(a) AIFM which either directly or indirectly through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIF whose assets under management, including any assets acquired through use of leverage, in total do not exceed a threshold of **100 million Euro** or **500 millions euros** when the portfolio of AIF consists of AIF that are not leveraged and with no redemption rights exercisable during a period of 5 years following the date of constitution of each AIF;

Amendment

(a) AIFM which either directly or indirectly through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, manage portfolios of AIF whose assets under management, including any assets acquired through use of leverage, in total do not exceed a threshold of **EUR 250** million or **EUR 1 billion** when the portfolio of AIF consists of AIF that are not leveraged and with no redemption rights exercisable during a period of 5 years following the date of constitution of each AIF;

Or. en

13.10.2010

A7-0171/6

Amendment 6

Marta Andreasen

on behalf of the EFD Group

Report

A7-0171/2010

Jean-Paul Gauzès

Alternative investment fund managers

COM(2009)0207 - C7-0040/2009 - 2009/0064(COD)

Proposal for a directive

Article 2 – paragraph 2 – point g a (new)

Text proposed by the Commission

Amendment

***(ga) publicly listed closed-ended
investment trusts.***

Or. en

13.10.2010

A7-0171/7

Amendment 7

Marta Andreasen

on behalf of the EFD Group

Report

Jean-Paul Gauzès

Alternative investment fund managers

COM(2009)0207 - C7-0040/2009 - 2009/0064(COD)

A7-0171/2010

Proposal for a directive

Article 16 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. AIFM shall ensure that, for each AIF that it manages, a valuator is appointed ***which is independent of the AIFM*** to establish the value of assets acquired by the AIF and the value of the shares and units of the AIF.

Amendment

1. AIFM shall ensure that, for each AIF that it manages, a valuator is appointed to establish the value of assets acquired by the AIF and the value of the shares and units of the AIF.

Or. en

13.10.2010

A7-0171/8

Amendment 8

Marta Andreasen

on behalf of the EFD Group

Report

A7-0171/2010

Jean-Paul Gauzès

Alternative investment fund managers

COM(2009)0207 - C7-0040/2009 - 2009/0064(COD)

Proposal for a directive

Article 16 – paragraph 4 – subparagraph 1

Text proposed by the Commission

Amendment

*1. The Commission shall adopt
implementing measures further specifying
the criteria under which a valuator can be
considered independent in the meaning of
paragraph 1.*

deleted

Or. en

13.10.2010

A7-0171/9

Amendment 9

Marta Andreasen

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Jean-Paul Gauzès

Alternative investment fund managers

COM(2009)0207 - C7-0040/2009 - 2009/0064(COD)

A7-0171/2010

Proposal for a directive

Article 17 – paragraph 3

Text proposed by the Commission

3. The depositary shall be a credit institution having its registered office in the Community and be authorised in accordance with Directive 2006/48/EC of the European Parliament and Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions *(recast)*.

Amendment

3. The depositary shall be a credit institution having its registered office in the Community and be authorised in accordance with Directive 2006/48/EC of the European Parliament and Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions *or they may be registered in other jurisdictions with equivalent regulation.*

Or. en

13.10.2010

A7-0171/10

Amendment 10

Marta Andreasen

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Alternative investment fund managers

COM(2009)0207 - C7-0040/2009 - 2009/0064(COD)

A7-0171/2010

Proposal for a directive

Article 17 – paragraph 4

Text proposed by the Commission

4. Depositaries may delegate their tasks to other depositaries.

Amendment

4. Depositaries may delegate their tasks to other depositaries ***authorised in the Union or elsewhere.***

Or. en

13.10.2010

A7-0171/11

Amendment 11

Marta Andreasen

on behalf of the EFD Group

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Alternative investment fund managers

COM(2009)0207 - C7-0040/2009 - 2009/0064(COD)

A7-0171/2010

Proposal for a directive

Article 17 – paragraph 5 – subparagraph 2

Text proposed by the Commission

In case of any loss of financial instruments which the depositary safe-keeps, the depositary can only ***discharge itself of its liability*** if it ***can prove*** that it ***could not have avoided the loss which has occurred.***

Amendment

In case of any loss of financial instruments which the depositary safe-keeps, the depositary can ***be held liable*** only if it ***is proven*** that it ***failed to exercise due diligence and reasonable care or, in the alternative, that it failed to comply with the obligation of means over assets held.***

Or. en