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2009 - 2014

Committee on Economic and Monetary Affairs

2009/0064(COD)

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AMENDMENTS

508 - 699

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))

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PE439.125v01-00

EN

United in diversity

EN

Amendment 508
Pascal Canfin

Proposal for a directive
Chapter II - title

Text proposed by the Commission

Amendment

Authorisation of *AIFM*

Authorisation of *AIF*

Or. en

Justification

Authorisation should be given to products (AIF) and not to AIFM.

Amendment 509
Pascal Canfin

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that no *AIFM covered by this Directive provides management services to any AIF or markets shares or units thereof* without prior authorisation.

1. Member States shall ensure that ***no AIF are offered to investors in the Union*** without prior authorisation. *AIF* which are not authorised in accordance with this Directive ***shall not be allowed to be offered to investors in the Union.***

Entities which are ***neither*** authorised in accordance with this Directive ***nor, in case of AIFM not covered by this Directive, in accordance with the national law of a Member State,*** shall not be allowed ***to provide management services to AIF or market units or shares thereof within the Community.***

Or. en

Justification

All AIF receiving funds from European investors need to be covered by the directive.

Amendment 510

Olle Schmidt

Proposal for a directive

Article 4 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that no AIFM covered by this Directive provides management services to any AIF ***or markets shares or units thereof*** without prior authorisation.

Entities which are neither authorised in accordance with this Directive nor, in case of AIFM not covered by this Directive, in accordance with the national law of a Member State, shall not be allowed to provide management services to AIF or market units or shares thereof within the Community.

Amendment

1. Member States shall ensure that no AIFM covered by this Directive provides management services to any AIF without prior authorisation.

Or. en

Justification

Alignment with UCITS. The principle that entities not authorized as AIFM under this Directive should not be allowed to provide management services to AIF (except under delegation) should be clearly stated. For legal certainty, each AIF should have only one AIFM, regardless of its legal structure. The Directive should take into account existing differences among fund structures, for example the fact that some funds are self-managed, while others appoint an external manager. In the case of AIF which do not designate an external manager as AIFM, the AIF itself shall be the AIFM.

Amendment 511
Sirpa Pietikäinen

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that no AIFM covered by this Directive provides management services to any AIF **or markets shares or units thereof** without prior authorisation.

Entities ***which are neither authorised in accordance with this Directive nor, in case of AIFM not covered by this Directive, in accordance with the national law of a Member State***, shall not be allowed to provide management services to AIF **or market units or shares thereof within the Community**.

Amendment

1. Member States shall ensure that no AIFM covered by this Directive provides management services to any AIF without prior authorisation.

Member States shall require that only entities authorised in accordance with this Directive shall be allowed to provide management services to AIF, except under delegation by the AIFM in accordance with Article 18 of this Directive.

Or. en

Justification

Alignment with UCITS. The principle that entities not authorized as AIFM under this Directive should not be allowed to provide management services to AIF (except under delegation) should be clearly stated.

Amendment 512
Syed Kamall

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Entities which are neither authorised in accordance with this Directive nor, in case of AIFM not covered by this Directive, in accordance with the national law of a Member State, shall not be allowed to provide management services to AIF or market units or

Amendment

deleted

shares thereof within the Community.

Or. en

Justification

We agree with the proposed amendment in the Swedish Presidency Compromise Proposal. We are of the view that it is very important to ensure that AIFM not covered by the Directive (in particular, AIFM established outside the Community) should not be prohibited from marketing their AIF within the Community on a private placement basis.

Amendment 513

Sari Essayah

Proposal for a directive

Article 4 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Entities which are neither authorised in accordance with this Directive nor, in case of AIFM not covered by this Directive, in accordance with the national law of a Member State, shall not be allowed to provide management services to AIF or market units or shares thereof within the Community.

deleted

Or. en

Amendment 514

Catherine Stihler

Proposal for a directive

Article 4 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

Entities which are neither authorised in accordance with this Directive nor, in case of AIFM not covered by this Directive, in accordance with the national law of a Member State, shall not be allowed to provide management services

Entities which are neither authorised in accordance with this Directive nor, in case of *an AIFM established in the Union that is* not covered by this Directive, in accordance with the national law of a Member State, shall not be allowed to

to AIF *or market units or shares thereof within the Community.*

provide management services to AIF.

Or. en

Justification

It is important to recognise that in some instances, the AIF directly markets units or shares of the AIF. It is entirely appropriate to require that to permit this marketing, an EU AIFM is appointed but, where a third party is appointed by the AIF to perform the role of the AIFM, it is not necessary to require that in all instances only the authorised AIFM is able to market the units or shares itself.

Amendment 515
Gunnar Hökmark

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Entities which are neither authorised in accordance with this Directive nor, in case of AIFM not covered by this Directive, in accordance with the national law of a Member State, shall not be allowed to provide management services to AIF or market units or shares thereof within the *Community*.

Amendment

Entities which are neither authorised in accordance with this Directive nor, in case of AIFM not covered by this Directive, in accordance with the national law of a Member State, shall not be allowed to provide management services to AIF or market units or shares thereof within the *Union, except as expressly provided by this Directive.*

Or. en

Justification

To allow for exceptions such as those provided for in Article 35 (as amended by Hökmark's amendment number 34), thus clarifying that there can be exceptions to the blanket restriction in Article 4.

Amendment 516
Wolf Klinz

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Entities which are neither authorised in accordance with this Directive nor, in case of AIFM not covered by this Directive, in accordance with the national law of a Member State, shall not be allowed **to provide management services to** AIF or market units or shares thereof within the *Community*.

Amendment

Entities which are neither authorised in accordance with this Directive nor, in case of AIFM not covered by this Directive, in accordance with the national law of a Member State, shall not be allowed to **manage** AIF or market units or shares thereof within the *Union, except under delegation by the AIFM in accordance in Article 18 of this Directive*.

Or. en

Justification

Alignment with Community law (MIFID and UCITS) regarding delegation arrangements.

Amendment 517
Jean-Pierre Audy

Proposal for a directive
Article 4 – paragraph 1 – subparagraph 2a (new)

Text proposed by the Commission

Amendment

No AIFM may engage in activities other than the management of AIFs and the provision of discretionary portfolio management and investment advice regarding instruments listed in Annex I, Section C of Directive 2004/39/EC. Member States may authorize AIFM to provide also some administration and marketing services mentioned in the Annex to this Directive as non-core services.

Or. en

Amendment 518

José Manuel García-Margallo y Marfil, Íñigo Méndez de Vigo, Pablo Zalba Bidegain

Proposal for a directive

Article 4 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. An AIFM may apply for authorisation under this Directive in order to market in the Union, in accordance with this Directive, AIF which were established before the deadline for the transposition of this Directive, subject to the provision to competent authorities of the information referred to in Articles 31 and 33 and to investors of the information referred to in Article 20.

Or. en

Justification

It is important to introduce a grandfathering clause in this Directive and to give AIFM, and in particular their investors, a sufficient amount of time to adapt to the new measures, especially because they deal with closed-ended funds.

Amendment 519

Peter Skinner

Proposal for a directive

Article 4 – paragraph 1 b (new)

Text proposed by the Commission

Amendment

1b. The competent authority shall not grant authorisation to an AIF to be the AIFM unless the directors, or members of the governing body, of the AIF are of sufficiently good repute and sufficiently experienced, in relation to the type of business carried out by the AIF, to ensure that the requirements of this Directive are

complied with.

Or. en

Justification

Ensures that the AIF has sufficient substance to be able to carry out the requirements of the Directive. This requirement is based upon the requirement which applies to self-managed UCITS funds.

Amendment 520
Pascal Canfin

Proposal for a directive
Article 4 – paragraph 2

Text proposed by the Commission

Amendment

2. AIFM may be authorised to provide management services either for all or certain types of AIF. ***deleted***

An AIFM may hold an authorisation pursuant to this Directive and be authorised as a management or investment company pursuant to Directive 2009/.../EC – [UCITS Directive]

Or. en

Justification

No more justified due to previous amendments.

Amendment 521
Olle Schmidt

Proposal for a directive
Article 4 – paragraph 2 – subparagraph 2

Text proposed by the Commission

Amendment

An AIFM may hold an authorisation pursuant to this Directive and be ***deleted***

authorised as a management or investment company pursuant to Directive 2009/.../EC – [UCITS Directive]

Or. en

Justification

Alignment with UCITS. The principle that entities not authorized as AIFM under this Directive should not be allowed to provide management services to AIF (except under delegation) should be clearly stated. For legal certainty, each AIF should have only one AIFM, regardless of its legal structure. The Directive should take into account existing differences among fund structures, for example the fact that some funds are self-managed, while others appoint an external manager. In the case of AIF which do not designate an external manager as AIFM, the AIF itself shall be the AIFM.

Amendment 522

Peter Skinner

Proposal for a directive

Article 4 – paragraph 2 – subparagraph 2

Text proposed by the Commission

*An AIFM may hold an authorisation pursuant to this Directive **and be authorised as a management or investment company pursuant to Directive 2009/.../EC – [UCITS Directive]***

Amendment

If the AIFM holds** authorisation pursuant to this Directive **or a management or investment company holds an authorisation pursuant to Directive 2009/65/EC, the competent authorities shall authorise that AIFM under Directive 2009/65/EC or a management or investment company under this Directive, subject to fulfilment of relevant additional authorisation requirements. For this purpose, the competent authorities shall ask only for information which has not been submitted for the purpose of the original authorisation, provided that such information has not changed.

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. 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 523 **Catherine Stihler**

Proposal for a directive **Article 4 – paragraph 2 – subparagraph 2**

Text proposed by the Commission

An AIFM may hold an authorisation pursuant to this Directive *and be authorised as a* management or investment company pursuant to Directive 2009/.../EC – [UCITS Directive]

Amendment

If the AIFM holds authorisation pursuant to this Directive *or* a management or investment company *holds an authorisation* pursuant to Directive 2009/65/EC, *competent authorities shall authorise that AIFM under Directive 2009/65/EC or a management or investment company under this Directive, subject to fulfilment of relevant additional authorisation requirements.*

For this purpose, the competent authorities shall ask only for information which has not been submitted for the purpose of the original authorisation, provided that such information has not changed.

Or. en

Justification

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 524
Jean-Paul Gauzès

Proposal for a directive
Article 4 – paragraph 2 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

In addition to the management services, Member States may authorise AIFM to provide investment advice as a non-core service. This activity shall represent a minor part of the AIFM turnover.

Or. en

Amendment 525
Olle Schmidt

Proposal for a directive
Article 4 – paragraph 2 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Articles 4 to 8 shall not apply to industrial holding companies having their shares traded on a EU regulated market insofar as they hold shares in their subsidiaries or associated companies for the purpose of carrying out an industrial business strategy and which are not established for the main purpose of generating returns for its investors by means of divestment within a planned timeframe.

Or. en

Justification

Listed industrial holding companies are regulated by the Prospectus and Transparency Directives as well as national corporate law, listing rules and other national regulation. This ensures sufficient transparency in relation to investors, regulators and society at large. The provisions of articles 4 to 8 are irrelevant or inappropriate for this type of companies.

Amendment 526
Olle Schmidt

Proposal for a directive
Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. A management or investment company pursuant to Directive 2009/65/EC shall be deemed as authorised also for the purpose of this Directive, and shall be allowed to manage nationally regulated collective investment undertakings not covered by Directive 2009/65/EC.

When managing AIF, a management or investment company pursuant to Directive 2009/65/EC shall comply with the provisions of this Directive.

Or. en

Amendment 527
Gunnar Hökmark

Proposal for a directive
Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. A management or investment company pursuant to Directive 2009/65/EC shall be deemed as authorised also for the purpose of this Directive, and shall be allowed to manage nationally regulated collective investment undertakings not covered by Directive 2009/65/EC.

When managing AIF, a management or investment company pursuant to Directive 2009/65/EC shall comply with the provisions of this Directive.

Or. en

Justification

Alignment with UCITS. The principle that entities not authorized as AIFM under this Directive should not be allowed to provide management services to AIF (except under delegation) should be clearly stated. For legal certainty, each AIF should have only one AIFM, regardless of its legal structure. The Directive should take into account existing differences among fund structures, for example the fact that some funds are self-managed, while others appoint an external manager. In the case of AIF which do not designate an external manager as AIFM, the AIF itself shall be the AIFM.

Amendment 528 **Olle Schmidt**

Proposal for a directive **Article 4 – paragraph 2 b (new)**

Text proposed by the Commission

Amendment

2b. Without prejudice to Article 18, Member States shall ensure that each AIF falling under the scope of this Directive shall have a single AIFM, which shall be responsible for compliance with the requirements of this Directive.

Or. en

Justification

Alignment with UCITS. The principle that entities not authorized as AIFM under this Directive should not be allowed to provide management services to AIF (except under delegation) should be clearly stated. For legal certainty, each AIF should have only one AIFM, regardless of its legal structure. The Directive should take into account existing differences among fund structures, for example the fact that some funds are self-managed, while others appoint an external manager. In the case of AIF which do not designate an external manager as AIFM, the AIF itself shall be the AIFM.

Amendment 529
Peter Skinner

Proposal for a directive
Article 4 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Without prejudice to Article 18, Member States shall ensure that each AIF falling under the scope of this Directive shall have a single AIFM, which shall be responsible for compliance with the requirements of this Directive.

Or. en

Justification

For legal certainty, each AIF should have only one AIFM, regardless of its legal structure.

Amendment 530
Syed Kamall

Proposal for a directive
Article 4 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Without prejudice to Article 18, Member States shall ensure that each AIF falling within the scope of this Directive shall have a single AIFM which shall 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 531
Sirpa Pietikäinen

Proposal for a directive
Article 4 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Without prejudice to Article 18, Member States shall ensure that each AIF falling under the scope of this Directive shall have a single AIFM, which shall be responsible for compliance with the requirements of this Directive .

Or. en

Justification

For legal certainty, each AIF should have only one AIFM, regardless of its legal structure.

Amendment 532
Peter Skinner

Proposal for a directive
Article 4 – paragraph 2 b (new)

Text proposed by the Commission

Amendment

2b. Without prejudice to Article 18, Member States shall ensure that each AIF falling under the scope of this Directive shall have a single AIFM, which shall be responsible for compliance with the requirements of this Directive.

Or. en

Justification

For legal certainty, each AIF should have only one AIFM, regardless of its legal structure.

Amendment 533
Wolf Klinz

Proposal for a directive
Article 4 – paragraph 2 c (new)

Text proposed by the Commission

Amendment

2c. Only one legal entity should qualify as the AIFM for a respective AIF and should be responsible for compliance with the requirements of this Directive.

Or. en

Justification

Clarification.

Amendment 534
Olle Schmidt

Proposal for a directive
Article 4 – paragraph 2 d (new)

Text proposed by the Commission

Amendment

2d. Depending on their legal form, AIF may be internally managed or may appoint an external manager.

Where an AIF has not designated an external manager as AIFM, the AIF itself shall be the AIFM.

Or. en

Justification

Alignment with UCITS. The principle that entities not authorized as AIFM under this Directive should not be allowed to provide management services to AIF (except under delegation) should be clearly stated. For legal certainty, each AIF should have only one AIFM, regardless of its legal structure. The Directive should take into account existing differences among fund structures, for example the fact that some funds are self-managed, while others appoint an external manager. In the case of AIF which do not designate an

external manager as AIFM, the AIF itself shall be the AIFM.

Amendment 535
Peter Skinner

Proposal for a directive
Article 4 – paragraph 2 d (new)

Text proposed by the Commission

Amendment

2d. Depending on their legal form, AIF may be internally managed or may appoint an external manager. Where an AIF has not designated an external manager as AIFM, the AIF itself shall be the AIFM.

Or. en

Justification

The Directive should take into account existing differences among fund structures, for example the fact that some funds are self-managed, while others appoint an external manager. In the case of AIF which do not designate an external manager as AIFM, the AIF itself shall be the AIFM.

Amendment 536
Othmar Karas

Proposal for a directive
Article 4 – paragraph 2 d (new)

Text proposed by the Commission

Amendment

2d. Depending on their legal form, AIF may be internally managed or may appoint an external manager.
Where an AIF has not designated an external manager as AIFM, the AIF itself shall be the AIFM.

Or. en

Justification

The Directive should take into account existing differences among fund structures, for example the fact that some funds are self-managed, while others appoint an external manager. In the case of AIF which do not designate an external manager as AIFM, the AIF itself shall be the AIFM.

Amendment 537
Sirpa Pietikäinen

Proposal for a directive
Article 4 – paragraph 2 d (new)

Text proposed by the Commission

Amendment

2d. Depending on their legal form, AIF may be internally managed or may appoint an external manager.

Where an AIF has not designated an external manager as AIFM, the AIF itself shall be the AIFM.

Or. en

Justification

The Directive should take into account existing differences among fund structures, for example the fact that some funds are self-managed, while others appoint an external manager. In the case of AIF which do not designate an external manager as AIFM, the AIF itself shall be the AIFM.

Amendment 538
Catherine Stihler

Proposal for a directive
Article 4 – paragraph 2 e (new)

Text proposed by the Commission

Amendment

2e. Member States may authorise the AIF to be the AIFM. However, each AIF can only have one AIFM.

Or. en

Justification

Confirms that Member States may, but are not required, to authorise the AIF to act as the AIFM. However, to ensure clear regulatory accountability, only one AIFM would be permitted.

Amendment 539
Catherine Stihler

Proposal for a directive
Article 4 – paragraph 2 f (new)

Text proposed by the Commission

Amendment

2f. The AIFM shall be either:

(a) an external manager, which is the legal person appointed by the AIF or on behalf of the AIF (the appointed AIFM) and which through this appointment is responsible for managing the entire portfolio of the AIF; or

(b) where the law under which the AIF is established requires the AIF to have a governing body with responsibility for the management of the AIF and that governing body chooses not to designate an external manager as the AIFM, the AIF itself shall be authorised as the AIFM.

Or. en

Justification

The Directive should take into account the structure of an AIF which is constituted as a corporate entity under Member State company law and which has a legal requirement to establish a Board of Directors as its governing body, as in the case of investment trust companies, such directors being elected by, and owing fiduciary duties to, the AIFs shareholders. Any conflict would be overcome if the AIF itself can be authorised as the AIFM.

Amendment 540
Wolf Klinz

Proposal for a directive
Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Authorised activities

1. Member States shall require that no externally appointed AIFM covered by this Directive shall engage in activities other than the management of one or more AIF in accordance with this Directive, with the exception of administrative activities and marketing as listed in Annex II of Directive 2009/65/EC, activities related to the underlying assets of AIF or to the issue and redemption of units or shares in the AIF, or of additional management of UCITS pursuant to authorisation under Directive 2009/65/EC and of services according to Article 6(2) of Directive 2009/65/EC for which the AIFM is authorised.

2. Member States shall ensure that no self-managed AIF covered by this Directive engages in activities other than the internal management activities listed in Annex II of Directive 2009/65/EC, except marketing of that AIF and activities related to the underlying assets of that AIF or to the issue and redemption of units or shares in the AIF.

3. By way of derogation from paragraph 1, Member States may authorise an externally appointed AIFM to provide, in addition to the activities listed in paragraph 1, the following services:

(a) management of portfolios of investments, including those owned by pension funds, institutions for occupational retirement provisions in accordance with Article 19(1) of Directive

2003/41/EC, in accordance with mandates given by investors on a discretionary, client-by-client basis;

(b) non-core services:

(i) reception and transmission of orders in relation to AIFs;

(ii) safekeeping and administration in relation to AIFs, including related services such as cash/collateral management;

(iii) investment advice concerning one or more of the instruments listed in Annex I, Section C to Directive 2004/39/EC.

Or. en

Justification

Alignment with UCITS and MiFID.

Amendment 541
Sirpa Pietikäinen

Proposal for a directive
Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Authorised activities

1. Member States shall require that no externally appointed AIFM covered by this Directive shall engage in activities other than the management of one or more AIF in accordance with this Directive, with the exception of the services referred to in points 2 and 3 of the Annex, activities related to the underlying assets of AIF or to the issue and redemption of units or shares in the AIF, of additional management of UCITS pursuant to authorisation under Directive 2009/65/EC, and of services according to

Article 6(2) of Directive 2009/65/EC for which the AIFM is authorised.

2. Member States shall require that no internally managed AIF covered by this Directive shall engage in activities other than the internal management activities of that AIF referred to in points 2 and 3 of the Annex and activities related to the underlying assets of that AIF or to the issue and redemption of units or shares in the AIF.

3. By way of derogation from paragraph 1, Member States may authorise an externally appointed AIFM to provide, in addition to the activities listed in paragraph 1, the following services:

(a) management of portfolios of investments and activities related to the underlying assets of these portfolios, including those owned by pension funds and institutions for occupational retirement provision in accordance with Article 19(1) of Directive 2003/41/EC, in accordance with mandates given by investors on a discretionary, client-by-client basis; and

(b) as non-core services:

(i) reception and transmission of orders in relation to AIFs;

(ii) investment advice concerning one or more of the instruments listed in Annex I, Section C to Directive 2004/39/EC;

(iii) safekeeping and administration in relation to AIFs, including related services such as cash/collateral management.

4. AIFM shall not be authorised under this Directive to provide only the services referred to in paragraph 3, or to provide non-core services without being authorised for the services referred to in point (a) of paragraph 3, or to provide only the activities referred to in points 2 and 3 of the Annex.

5. Article 2(2) and Articles 12, 13 and 19 of Directive 2004/39/EC shall apply to the provision by AIFM of the services referred to in paragraph 3 of this Article.

Or. en

Justification

Definition of management activities and non-core services an AIFM can provide. The limitation of management services to core services of collective portfolio management (in the Annex) in line with the UCITS Directive, as well as the non-core services (discretionary portfolio management and some ancillary services) is very important to avoid conflicts of interest between fiduciary activities related to investment management and other activities (banking, insurance, etc.).

Amendment 542
Olle Schmidt

Proposal for a directive
Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Authorised activities

1. Member States shall require that no externally appointed AIFM covered by this Directive shall engage in activities other than the management of one or more AIF in accordance with this Directive, with the exception of the services referred to in points 2 and 3 of the Annex, activities related to the underlying assets of AIF or to the issue and redemption of units or shares in the AIF, of additional management of UCITS pursuant to authorisation under Directive 2009/65/EC, and of services according to Article 6(2) of Directive 2009/65/EC for which the AIFM is authorised.

2. Member States shall require that no internally managed AIF covered by this Directive shall engage in activities other than the internal management activities of

that AIFM referred to in points 2 and 3 of the Annex and activities related to the underlying assets of that AIF or to the issue and redemption of units or shares in the AIF.

3. By way of derogation from paragraph 1, Member States may authorise an externally appointed AIFM to provide, in addition to the activities listed in paragraph 1, the following services:

(a) management of portfolios of investments and activities related to the underlying assets of these portfolios, including those owned by pension funds and institutions for occupational retirement provision in accordance with Article 19(1) of Directive 2003/41/EC, in accordance with mandates given by investors on a discretionary, client-by-client basis; and

(b) as non-core services:

(i) reception and transmission of orders in relation to AIFs;

(ii) investment advice concerning one or more of the instruments listed in Annex I, Section C to Directive 2004/39/EC;

(iii) safekeeping and administration in relation to AIFs, including related services such as cash/collateral management.

4. AIFM shall not be authorised under this Directive to provide only the services referred to in paragraph 3, or to provide non-core services without being authorised for the services referred to in point (a) of paragraph 3, or to provide only the activities referred to in points 2 and 3 of the Annex.

5. Article 2(2) and Articles 12, 13 and 19 of Directive 2004/39/EC shall apply to the provision by AIFM of the services referred to in paragraph 3 of this Article.

Or. en

Justification

The limitation of management services to core services of collective portfolio management (in the Annex) in line with the UCITS Directive, as well as the non-core services (discretionary portfolio management and some ancillary services) is very important to avoid conflicts of interest between fiduciary activities related to investment management and other activities (banking, insurance, etc.), in particular if entities such as credit institutions, insurance companies, etc. are no longer excluded from scope.

Amendment 543

Othmar Karas

Proposal for a directive

Article 4 a (new)

Text proposed by the Commission

Amendment

Article 4a

Activities of an AIFM

1. Member States shall require that no externally appointed AIFM covered by this Directive shall engage in activities other than the management of one or more AIF in accordance with this Directive, with the exception of the activities referred to in points 2 and 3 of the Annex to this Directive, activities related to the underlying assets of AIF or to the issue and redemption of units or shares in the AIF, or of additional management of UCITS pursuant to authorisation under Directive 2009/65/EC, and of services according to Article 6(2) of Directive 2009/65/EC for which the AIFM is authorised.

2. Member States shall require that no internally managed AIF covered by this Directive shall engage in activities other than the internal management activities referred to in points 2 and 3 of the Annex of that AIF and activities related to the underlying assets of that AIF and to the issue and redemption of units or shares in the AIF.

3. By way of derogation from paragraph 1, Member States may authorise an externally appointed AIFM to provide, in addition to the management of one or more AIF, the following services:

(a) management of portfolios of investments, including those owned by pension funds and institutions for occupational retirement provision in accordance with Article 19(1) of Directive 2003/41/EC, in accordance with mandates given by investors on a discretionary, client-by-client basis;

(b) as non-core services:

(i) investment advice;

(ii) safe-keeping and administration in relation to units of collective investment undertakings.

4. AIFM shall not be authorised under this Directive to provide only the services referred to in paragraph 3 or to provide only the activities referred to in points 2 and 3 of Annex I to this Directive.

5. Article 2(2) and Articles 12, 13 and 19 of Directive 2004/39/EC shall apply to the provision by AIFM of the services referred to in paragraph 3 of this Article.

Or. en

Justification

Definition of management activities and non-core services an AIFM can provide. The limitation of management services to core services of collective portfolio management (in Article 3d and the Annex) in line with the UCITS Directive, as well as the non-core services in Article 4a (new) (discretionary portfolio management and some ancillary services) is very important to avoid conflicts of interest between fiduciary activities related to investment management and other activities (banking, insurance, etc.).

Amendment 544
Pascal Canfin

Proposal for a directive
Article 5 – paragraph 1 - introductory part

Text proposed by the Commission

An AIFM applying for an authorisation shall provide the following to the competent authorities of the Member State where it has its registered office:

Amendment

Authorisation shall be granted by the competent authorities of the host Member State where the AIF intends to be offered to investors. Authorisation given by the competent authorities of the host Member State shall not be valid for offering the AIF in any other member State.

Authorisations valid for all Member States shall be granted by the ESMA. AIF which are not domiciled in the Union cannot apply for such an authorisation.

An AIF applying for an authorisation shall provide the following to the competent authorities:

Or. en

Justification

European Passport need to be given by an European agency in order to avoid any regulatory arbitrage between Members states. Host member State should have the possibility not to authorise a third country AIF to be offered to its national investors.

Amendment 545
Udo Bullmann

Proposal for a directive
Article 5 – paragraph 1 - introductory part

Text proposed by the Commission

An AIFM applying for an authorisation shall provide the following to the competent authorities of the Member State where it has its registered office:

Amendment

1. An AIFM applying for an authorisation shall provide the following to the competent authorities of the Member State where it has its registered office or, if the AIFM is not established in the Union, to the competent authority of the Member

State where it intends to have the most active marketing activity of the AIF it manages:

Or. en

Amendment 546
Sylvie Goulard

Proposal for a directive
Article 5 – paragraph 1 - introductory part

Text proposed by the Commission

An AIFM applying for an authorisation shall provide the following to the competent authorities of the Member State **where it has its registered office**:

Amendment

Member States shall require that an AIFM applying for an authorisation shall provide the following to the competent authorities of the **home** Member State:

Or. en

Justification

For efficient supervision and monitoring of systemic risks a mechanism is needed whereby the information exchanges between the Member states and European authorities would be clarified and organized in an efficient manner; and the ESMA would be granted powers allowing it to receive relevant information, intervene both on an ongoing and ad hoc basis vis-à-vis national authorities and funds managers, adopt legally binding technical standards to identify and address the risks on financial markets' integrity and stability, including systemic risk stemming from excessive leverage.

Amendment 547
Wolf Klinz

Proposal for a directive
Article 5 – paragraph 1 - point -a (new)

Text proposed by the Commission

Amendment

(-a) information on the persons effectively conducting the business of the AIFM;

Or. en

Justification

This information is essential and should be added.

Amendment 548

Wolf Klinz

Proposal for a directive

Article 5 – paragraph 1 - point a

Text proposed by the Commission

(a) information on the identities of the AIFM shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings.

Amendment

(a) information on the identities of the AIFM shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings ***at the time of applying for authorisation; this point shall not apply to self-managed AIF;***

Or. en

Justification

This obligation should not apply to self-managed funds.

Amendment 549

Sylvie Goulard

Proposal for a directive

Article 5 – paragraph 1 – point a

Text proposed by the Commission

(a) information on the identities of the AIFM shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings;

Amendment

(a) information on ***the persons who effectively conduct the business of the AIFM*** and the identities of the shareholders or members of the AIFM, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings;

Or. en

Justification

For efficient supervision and monitoring of systemic risks a mechanism is needed whereby the information exchanges between the Member states and European authorities would be clarified and organized in an efficient manner; and the ESMA would be granted powers allowing it to receive relevant information, intervene both on an ongoing and ad hoc basis vis-à-vis national authorities and fund managers, adopt legally binding technical standards to identify and address the risks on financial markets' integrity and stability, including systemic risk stemming from excessive leverage.

Amendment 550

Pascal Canfin

Proposal for a directive

Article 5 – paragraph 1 - point aa (new)

Text proposed by the Commission

Amendment

(aa) information on the identity of the AIFM;

Or. en

Justification

As the authorisation applied to AIF, the identity of AIFM is needed information.

Amendment 551

Udo Bullmann, Robert Goebbels

Proposal for a directive

Article 5 – paragraph 1 - point b

Text proposed by the Commission

Amendment

(b) a programme of activity, including information on how the AIFM intends to comply with its obligations under chapters III, IV and where applicable, V, VI and VII;

(b) a programme of activity, including information on how the AIFM intends to comply with its obligations under chapters III, IV and where applicable, V, VI and VII, ***and information on the Member States in which the AIFM intends to market the AIF it manages;***

Or. en

Amendment 552
Sylvie Goulard

Proposal for a directive
Article 5 – paragraph 1 – point b

Text proposed by the Commission

(b) a programme of activity, including information on how the AIFM intends to comply with its obligations under chapters III, IV and where applicable, V, VI and VII;

Amendment

(b) a programme of activity **setting out the organisational structure of the AIFM**, including information on how the AIFM intends to comply with its obligations under Chapters II, III, IV, and where applicable, V, VI and VII;

Or. en

Justification

For efficient supervision and monitoring of systemic risks a mechanism is needed whereby the information exchanges between the Member states and European authorities would be clarified and organized in an efficient manner; and the ESMA would be granted powers allowing it to receive relevant information, intervene both on an ongoing and ad hoc basis vis-à-vis national authorities and funds' managers, adopt legally binding technical standards to identify and address the risks on financial markets' integrity and stability, including systemic risk stemming from excessive leverage.

Amendment 553
Pascal Canfin

Proposal for a directive
Article 5 – paragraph 1 - point b

Text proposed by the Commission

(b) a programme of activity, including information on how the AIFM **intends** to comply with **its** obligations under chapters III, IV and where applicable, V, VI and VII;

Amendment

(b) a programme of activity, including information on how the **AIF and its** AIFM **intend** to comply with **their** obligations under chapters III, IV and where applicable, V, VI and VII;

Or. en

Justification

Consistency with previous amendments.

Amendment 554

Sylvie Goulard

Proposal for a directive

Article 5 – paragraph 1 – point c

Text proposed by the Commission

(c) *detailed* information about *the* characteristics of the AIF it intends to manage, including *the identification of* the Member States or third countries *on whose territory they are domiciled*;

Amendment

(c) information about *the investment strategies including the AIFM's policy as regards the use of leverage, and the risk profiles and other* characteristics of the AIF *it manages or* intends to manage, including *information about the* Member States or third countries *in which they are established or are expected to be established*;
(ca) information about the domicile of underlying funds, if such AIF is a fund of funds;
(cb) information about the domicile of the master fund;

Or. en

Justification

For efficient supervision and monitoring of systemic risks a mechanism is needed whereby the information exchanges between the Member states and European authorities would be clarified and organized in an efficient manner; and the ESMA would be granted powers allowing it to receive relevant information, intervene both on an ongoing and ad hoc basis vis-à-vis national authorities and funds' managers, adopt legally binding technical standards to identify and address the risks on financial markets' integrity and stability, including systemic risk stemming from excessive leverage.

Amendment 555
Pascal Canfin

Proposal for a directive
Article 5 – paragraph 1 - point c

Text proposed by the Commission

(c) detailed information about the characteristics of the AIF ***it intends to manage***, including the identification of the Member States or third countries on whose territory they are domiciled;

Amendment

(c) detailed information about the characteristics of the AIF, including the identification of the Member States or third countries on whose territory they are domiciled;

Or. en

Justification

Authorisation applied to AIF.

Amendment 556
Pascal Canfin

Proposal for a directive
Article 5 – paragraph 1 - point d

Text proposed by the Commission

(d) the fund rules or instruments of incorporation ***of each AIF the AIFM intends to manage***;

Amendment

(d) the fund rules or instruments of incorporation;

Or. en

Justification

Authorisation applied to AIF.

Amendment 557
Sylvie Goulard

Proposal for a directive
Article 5 – paragraph 1 – point d

Text proposed by the Commission

(d) the fund rules or instruments of incorporation of each AIF the AIFM ***intends to manage***;

Amendment

(d) the fund rules or instruments of incorporation of each AIF the AIFM ***manages***;

Or. en

Justification

For efficient supervision and monitoring of systemic risks a mechanism is needed whereby the information exchanges between the Member states and European authorities would be clarified and organized in an efficient manner; and the ESMA would be granted powers allowing it to receive relevant information, intervene both on an ongoing and ad hoc basis vis-à-vis national authorities and funds' managers, adopt legally binding technical standards to identify and address the risks on financial markets' integrity and stability, including systemic risk stemming from excessive leverage.

Amendment 558
Sylvie Goulard

Proposal for a directive
Article 5 – paragraph 1 – point d a (new)

Text proposed by the Commission

Amendment

(da) where already available, the fund rules or instruments of incorporation of each AIF the AIFM intends to manage;

Or. en

Justification

For efficient supervision and monitoring of systemic risks a mechanism is needed whereby the information exchanges between the Member states and European authorities would be clarified and organized in an efficient manner; and the ESMA would be granted powers allowing it to receive relevant information, intervene both on an ongoing and ad hoc basis vis-à-vis national authorities and funds' managers, adopt legally binding technical standards

to identify and address the risks on financial markets' integrity and stability, including systemic risk stemming from excessive leverage.

Amendment 559

Sylvie Goulard

Proposal for a directive

Article 5 – paragraph 1 – point e

Text proposed by the Commission

(e) information on arrangements made for the delegation to third parties of management services functions as referred to in Article 18 **and where applicable Article 35;**

Amendment

(e) **where already available,** information on arrangements made for the delegation to third parties of functions as referred to in Article 18;

Or. en

Justification

For efficient supervision and monitoring of systemic risks a mechanism is needed whereby the information exchanges between the Member states and European authorities would be clarified and organized in an efficient manner; and the ESMA would be granted powers allowing it to receive relevant information, intervene both on an ongoing and ad hoc basis vis-à-vis national authorities and funds' managers, adopt legally binding technical standards to identify and address the risks on financial markets' integrity and stability, including systemic risk stemming from excessive leverage.

Amendment 560

Wolf Klinz

Proposal for a directive

Article 5 – paragraph 1 - point e

Text proposed by the Commission

(e) information on arrangements made for the delegation to third parties of management services functions as referred to in Article 18 **and where applicable Article 35;**

Amendment

(e) information on arrangements made for the delegation to third parties of management services functions as referred to in Article 18;

Or. en

Amendment 561
Wolf Klinz

Proposal for a directive
Article 5 – paragraph 1 - point f

Text proposed by the Commission

(f) information on the arrangements made for the safe-keeping of the assets of AIF **including**, where applicable, **arrangements made under Article 38**;

Amendment

(f) information on the arrangements made for the safe-keeping of the assets of AIF, where applicable;

Or. en

Amendment 562
Sylvie Goulard

Proposal for a directive
Article 5 – paragraph 1 – point f

Text proposed by the Commission

(f) information on the arrangements made for the safe-keeping of the assets of AIF **including**, where applicable, **arrangements made under Article 38**;

Amendment

(f) **where** already **available**, information on the arrangements made for the safe-keeping of the assets of AIF;

Or. en

Justification

For efficient supervision and monitoring of systemic risks a mechanism is needed whereby the information exchanges between the Member states and European authorities would be clarified and organized in an efficient manner; and the ESMA would be granted powers allowing it to receive relevant information, intervene both on an ongoing and ad hoc basis vis-à-vis national authorities and funds' managers, adopt legally binding technical standards to identify and address the risks on financial markets' integrity and stability, including systemic risk stemming from excessive leverage.

Amendment 563
Sylvie Goulard

Proposal for a directive
Article 5 – paragraph 1 – point g

Text proposed by the Commission

Amendment

(g) any additional information referred to in Article 20(1).

(g) ***where already available***, any additional information referred to in Article 20(1) ***for each AIF the AIFM manages or intends to manage.***

Or. en

Justification

For efficient supervision and monitoring of systemic risks a mechanism is needed whereby the information exchanges between the Member states and European authorities would be clarified and organized in an efficient manner; and the ESMA would be granted powers allowing it to receive relevant information, intervene both on an ongoing and ad hoc basis vis-à-vis national authorities and funds' managers, adopt legally binding technical standards to identify and address the risks on financial markets' integrity and stability, including systemic risk stemming from excessive leverage.

Amendment 564
Peter Skinner

Proposal for a directive
Article 5 – paragraph 1 - point g a (new)

Text proposed by the Commission

Amendment

(ga) where the AIF is applying for authorisation as the AIFM, the names of the directors, or members of the governing body, of the AIF and details of their background and experience in relation to the business of the AIF.

Or. en

Justification

Where the AIF is to be authorised as the AIFM, this provides the competent authority with

information to ensure that the directors or members of the governing body are able to discharge the obligations of the Directive.

Amendment 565

Wolf Klinz

Proposal for a directive

Article 5 – paragraph 1 - point g b (new)

Text proposed by the Commission

Amendment

(gb) where a self-managed AIF is applying for authorisation as the AIFM, the names of members of the governing body of the AIF and details of their background and experience in relation to the type of business carried out by the AIF.

Or. en

Justification

Necessary specification due to fund structure.

Amendment 566

Udo Bullmann, Robert Goebbels

Proposal for a directive

Article 5 – paragraph 1 - point g c (new)

Text proposed by the Commission

Amendment

(gc) information on the track record of the AIFM and, when the AIFM is a legal person, information on the track record of the legal representatives, directors and key employees of the AIFM;

Or. en

Amendment 567
Peter Skinner

Proposal for a directive
Article 5 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Where the AIF is authorised to be the AIFM, and the shares or units of the AIF are traded on public markets, the AIF is not required to provide the information set out in Article 5(1)(a), but should provide details of which markets its shares and units are traded on, and where its share register is available for inspection.

Or. en

Justification

For AIFs whose shares or units are traded on public markets, the information required in Article 5(1)(a) would be of limited value, and would very quickly become out-of-date, as trading in the shares would be happening continuously. The alternative would provide more useful information for competent authorities and ensure effective oversight.

Amendment 568
Udo Bullmann, Robert Goebbels

Proposal for a directive
Article 5 – paragraph 2

Text proposed by the Commission

Amendment

The AIFM must have its head office in the same Member State as its registered office.

deleted

Or. en

Justification

A coordinated procedure is set up to protect investors of Member States where the funds will be marketed. The ultimate decision remains with the home Member State, but host Member States are consulted and have access at all time to all relevant information.

Amendment 569
Derk Jan Eppink

Proposal for a directive
Article 5 – paragraph 2

Text proposed by the Commission

The AIFM must ***have its head office*** in the same Member State as its registered office.

Amendment

The AIFM must ***be legally established*** in the same Member State as its registered office.

Or. en

Justification

Non-EU AIFMs and AIFs (1)with a physical presence in an EU member state and (2) that are registered with an EU member state regulator should be treated under the Directive on the same basis as EU AIFMs and AIFs.

Amendment 570
Udo Bullmann, Robert Goebbels

Proposal for a directive
Article 5 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

The information provided to a competent authority pursuant to paragraph 1, as well as any amendment or addition thereto, shall be notified without delay by such authority to the Member States in which the AIFM intends to market the AIF it manages and filed without delay by such authority with the Committee of European Securities Regulators (CESR). The CESR shall set up and operate a specific database for this purpose, which shall be accessible to the competent authorities of all Member States.

Or. en

Justification

A coordinated procedure is set up to protect investors of Member States where the funds will be marketed. The ultimate decision remains with the home Member State, but host Member States are consulted and have access at all time to all relevant information.

Amendment 571

Udo Bullmann, Robert Goebbels

Proposal for a directive

Article 5 – paragraph 2a (new)

Text proposed by the Commission

Amendment

2a. The competent authorities of the Member States in which the AIFM intends to market the AIF it manages shall, within six weeks of receipt of the notification, be entitled to:

(a) require from the competent authority with which the AIFM has filed its application any additional information regarding the applicant AIFM that the latter competent authority is entitled to require;

(b) provide information to the competent authority with which the AIFM has filed its application;

(c) state any objection to the authorisation of the applicant and receive from the competent authority with which the AIFM has filed its application a detailed answer to such objections.

Or. en

Justification

A coordinated procedure is set up to protect investors of Member States where the funds will be marketed. The ultimate decision remains with the home Member State, but host Member States are consulted and have access at all time to all relevant information.

Amendment 572
Jürgen Klute

Proposal for a directive
Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5a

Central Register

1. The ESMA shall keep a central public register containing the following data for each AIF and each AIFM:

- (a) a distinct identifier;**
- (b) the names of each AIF and AIFM;**
- (c) the competent supervisory authority for the AIFM.**

2. For each AIF, the register shall contain:

- (a) the accountable AIFM;**
- (b) the depository;**
- (c) the valuator.**

3. The register shall be published in electronic form and shall be publicly accessible through the Internet. The start of commercial operation of AIF shall be dependent on and admissible after registration.

Or. en

Justification

The multitude of supervisory authorities would deem a central register at European level appropriate to facilitate identification of AIF and AIFM for investors and national supervisors. It would enhance cross-border transparency, the finding of documentation submitted for AIF authorization as well as the identification of potential correlated risks in portfolios of different AIFs.

Amendment 573
Bernd Lange

Proposal for a directive
Article 5 a (new)

Text proposed by the Commission

Amendment

Article 5a

Central Register

1. The ESMA shall keep a central public register containing the following data for each AIF and each AIFM:

- (a) a distinct identifier,**
- (b) the names of each AIF and AIFM,**
- (c) the competent supervisory authority for the AIFM.**

2. For each AIF, the register shall contain:

- (a) the accountable AIFM,**
- (b) the depository,**
- (c) the valuator.**

3. The register shall be published in electronic form and shall be publicly accessible through the Internet. The start of commercial operation of AIF shall be dependent on and admissible after registration.

Or. en

Justification

The multitude of supervisory authorities would deem a central register at European level appropriate to facilitate identification of AIF and AIFM for investors and national supervisors. It would enhance cross-border transparency, the finding of documentation submitted for AIF authorization as well as the identification of potential correlated risks in portfolios of different AIFs.

Amendment 574
Pascal Canfin

Proposal for a directive
Article 6 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. The competent authorities *of the home Member State* shall grant authorisation only if they are satisfied that the AIFM will be able to fulfil the conditions of this Directive.

Amendment

1. The competent authorities shall grant authorisation only if they are satisfied that the *AIF and its* AIFM will be able to fulfil the conditions of this Directive.

Or. en

Justification

Previous amendment defined the relevant competent authorities and the scope of authorisation.

Amendment 575
Sari Essayah

Proposal for a directive
Article 6 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. The competent authorities of the home Member State shall grant authorisation only if they are satisfied that the AIFM will be able to fulfil the conditions of this Directive.

Amendment

1. The competent authorities of the home Member State shall grant authorisation *to act as AIFM* only if they are satisfied that the AIFM will be able to fulfil the conditions of this Directive. *The fund rules or other instruments referred to in Article 5(1)(d) shall not be subject to authorisation.*

Or. en

Amendment 576
Udo Bullmann, Robert Goebbels

Proposal for a directive
Article 6 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. The competent authorities of the home Member State shall grant authorisation only if they are satisfied that the AIFM will be able to fulfil the conditions of this Directive.

Amendment

1. The competent authorities of the home Member State shall grant authorisation only if they are satisfied that the AIFM will be able to fulfil the conditions of this Directive, ***after taking into account any objection received pursuant to Article 5(2a).***

Or. en

Amendment 577
Pervenche Berès

Proposal for a directive
Article 6 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

They may consult ESMA in case of difficulties.

Or. en

Justification

The European Securities and Markets Authority should be consulted on difficult cases in order to ensure a level-playing field and effective implementation of this directive.

Amendment 578
Pascal Canfin

Proposal for a directive
Article 6 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The authorisation shall be valid for all Member States.

Amendment

Only the authorisation **granted by the ESMA to AIF domiciled in the Union** shall be valid for all Member States.

Or. en

Justification

Previous amendment defined the relevant competent authorities and the scope of authorisation.

Amendment 579
Pascal Canfin

Proposal for a directive
Article 6 – paragraph 2 – introductory part

Text proposed by the Commission

2. The competent authorities **of the home Member State** shall refuse authorisation where the effective exercise of their supervisory functions is prevented by any of the following:

Amendment

2. The competent authorities shall refuse authorisation where the effective exercise of their supervisory functions is prevented by any of the following:

Or. en

Justification

Previous amendments defined the relevant competent authorities.

Amendment 580
Othmar Karas

Proposal for a directive
Article 6 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

3. The authorisation shall cover any delegation arrangements made by the AIFM and communicated in the application. *deleted*

Or. en

Justification

An authorisation requirement for delegation arrangements would be a disproportionate requirement for AIFM with no discernible benefit for the objectives of the Directive. For further details, see Justification to the proposed amendments to Article 18.

Amendment 581
Wolf Klinz

Proposal for a directive
Article 6 – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

3. The authorisation shall cover any delegation arrangements made by the AIFM and communicated in the application. *deleted*

Or. en

Justification

Alignment with Community law (MIFID and UCITS) regarding delegation arrangements.

Amendment 582
Pascal Canfin

Proposal for a directive
Article 6 – paragraph 3 – subparagraph 2

Text proposed by the Commission

The competent authorities *of the home Member State* may restrict the scope of the authorisation, in particular as regards *the type of AIF the AIFM is allowed to manage, as well as* the delegation arrangements.

Amendment

The competent authorities may restrict the scope of the authorisation, in particular as regards the delegation arrangements.

Or. en

Justification

Authorisation applied to AIF.

Amendment 583
Othmar Karas

Proposal for a directive
Article 6 – paragraph 3 – subparagraph 2 a (new)

Text proposed by the Commission

Amendment

Particular attention shall be drawn at the risk classification of the AIF, which the AIFM is authorised to manage.

Or. en

Justification

Funds are endowed with different risk potential, which depends on the investment strategy. A market-neutral fund is to be evaluated differently than a, for example, “long only-fund”, which, as it is a one-directional model, boosts bubble formation.

Amendment 584
Wolf Klinz

Proposal for a directive
Article 6 – paragraph 4 – subparagraph 1

Text proposed by the Commission

4. The competent authorities shall inform the applicant, within two months of the submission of a complete application, whether or not authorisation has been granted.

Amendment

4. The competent authorities shall inform the applicant ***in writing***, within two months of the submission of a complete application, whether or not authorisation has been granted.

Or. en

Amendment 585
Udo Bullmann, Robert Goebbels

Proposal for a directive
Article 6 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Reasons shall be given whenever an authorisation is refused or when restrictions are imposed.

Amendment

Reasons shall be given whenever an authorisation is refused or when restrictions are imposed. ***In case the competent authorities do not inform the applicant, such lack of response shall be deemed a rejection without justification of the requested authorisation.***

Or. en

Amendment 586
Pascal Canfin

Proposal for a directive
Article 6 – paragraph 5

Text proposed by the Commission

5. AIFM may start ***providing management services in the home Member State*** as

Amendment

5. AIFM may start ***receiving funds from investors*** as soon as the authorisation is

soon as the authorisation is granted.

granted.

Or. en

Amendment 587
Pascal Canfin

Proposal for a directive
Article 6 a (new)

Text proposed by the Commission

Amendment

Article 6a

***Special conditions for granting
authorisation to AIF domiciled in third
countries***

1. If the AIFM of the AIF applying for authorisation is established in the Union, the AIFM will be responsible for compliance with the requirements of this Directive by the AIF domiciled in third countries as if the AIF was domiciled in the Union.

2. If the AIF and its AIFM are both established in a third country, the authorisation can only be given if the AIF and the AIFM comply with the following requirement of the directive :

(a) Chapter III except Articles 12 and 13 if the AIF is not operating on the Community financial markets;

(b) Chapter IV;

(c) Chapter V except if the AIF is not operating in the Union financial markets and does not buy non-listed companies in the Union.

The fulfilment of the requirements of this Directive needs to be validated by a due diligence process done by one or more persons empowered by law to audit accounts in accordance with Directive 2006/43/EC. Authorisation will be given by competent authorities on the basis of

this report that will have to be repeated on an annual basis.

3. Authorisation requires that the AIF is established in a country or jurisdiction which fully exchanges information for tax purposes with the member State in conformity with the internationally agreed standard included in Article 26 of the OECD Model Tax Convention.

4. Authorisation requires that the AIF is established in a country which ensures an effective exchange of information regarding prudential issues with the ESMA.

5. When AIF are domiciled in a third country the competent authorities may prolong the period referred to in Article 6(4), when this is necessary to check whether the conditions of this Directive are met.

6. When AIF are domiciled in a third country the competent authorities of the Member state, where the AIF applied for an authorisation, may impose supplemental requirement when it considered it necessary to protect its investors.

7. The Commission shall adopt delegated acts in accordance with Articles 49a, 49b and 49c further specifying the content of requested due diligence process and the content of an effective exchange information regarding prudential issues.

Or. en

Justification

Third countries AIF may have access to the European market as soon as they comply with the directive requirements regarding the protection of investors.

Amendment 588
Wolf Klinz, Carl Haglund

Proposal for a directive
Article 6 a (new)

Text proposed by the Commission

Amendment

Article 6a

***Procedure and conditions for registration
of non-systemically relevant AIFM***

1. A non-systemically relevant AIFM shall provide the information stipulated in Article 5(-a) to (a), (c) and (g) as well as the following information to the competent authorities of its home Member State when registering:

(a) a programme of activity, including information on how the AIFM intends to comply with its obligations under Chapter IV;

(b) the organisational structure of the AIFM.

2. The competent authorities shall confirm the registration immediately after the complete information as referred to in paragraph 1 is submitted.

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 589
Othmar Karas

Proposal for a directive
Article 7 – paragraph 1

Text proposed by the Commission

AIFM shall, before implementation, notify the competent authorities of the home Member State of any ***change regarding the information provided in their initial application that may substantially affect*** the conditions under which the authorisation has been granted, in particular changes of the investment strategy and policy of any AIF managed by it, ***of the AIF rules or instruments of incorporation and the identity of any further AIF the AIFM intends to manage.***

Amendment

AIFM shall, before implementation, notify the competent authorities of the home Member State of any ***material changes to*** the conditions under which the ***initial*** authorisation has been granted, in particular ***material changes in the programme of activity of the AIFM,*** of the investment strategy and policy of any AIF managed by it.

Or. en

Justification

The demands on investment of professional investors are often subject to changes on short notice. It must be possible for AIFM to adjust accordingly without delay. If such changes were subject to scrutiny by the competent authority within a period of one month, the resulting delays would adversely affect the AIFM within his competitive environment.

Amendment 590
Pascal Canfin

Proposal for a directive
Article 7 – paragraph 1

Text proposed by the Commission

AIFM shall, before implementation, notify the competent authorities ***of the home Member State*** of any change regarding the information provided in their initial application that may substantially affect the conditions under which the authorisation has been granted, in particular changes of the investment strategy and policy ***of any***

Amendment

AIFM shall, before implementation, notify the competent authorities of any change regarding the information provided in their initial application that may substantially affect the conditions under which the authorisation has been granted ***to an AIF,*** in particular changes of the investment strategy and policy, of the AIF rules or

AIF managed by it, of the AIF rules or instruments of incorporation ***and the identity of any further AIF the AIFM intends to manage***.

instruments of incorporation.

Or. en

Justification

Authorisation applied to AIF.

Amendment 591
Ramon Tremosa i Balcells

Proposal for a directive
Article 7 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

In the case of internally managed AIF whose shares are admitted to trading on a regulated market, information on changes concerning AIFM shareholders with a qualifying holding will have to be notified to the competent authorities before implementation only when those shareholders are, or request to be, represented at the board of the AIF or otherwise exert, or attempt to exert, control or influence on the board or management of the AIF.

Or. en

Justification

In order to avoid unnecessary obstacles to the trading and investment of the AIF shares, it seems desirable to limit the need for a previous notification to the supervisory authorities to those cases in which the changes in qualified holdings shall or may affect Board composition, change control of the AIF (e.g. as in a take-over) or result in any other non-controlling influence of the Board or management of the AIF (e.g. as in the case of an “activist” hedge fund or shareholder engaging the AIF management to influence its strategy or decisions).

Amendment 592
Othmar Karas

Proposal for a directive
Article 7 – paragraph 2

Text proposed by the Commission

The competent authorities shall, within a month of receipt of that notification, ***either approve, or impose restrictions, or reject those changes.***

Amendment

If the competent authorities decide to impose restrictions or reject those changes, they shall, within a month of receipt of that notification, inform the AIFM. If the competent authorities do not oppose the changes within the assessment period, they may be effected.

Or. en

Justification

The demands on investment of professional investors are often subject to changes on short notice. It must be possible for AIFM to adjust accordingly without delay. If such changes were subject to scrutiny by the competent authority within a period of one month, the resulting delays would adversely affect the AIFM within his competitive environment.

Amendment 593
Othmar Karas

Proposal for a directive
Article 7 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

Paragraphs 1 and 2 shall not apply if the changes solely constitute changes in the investment strategies and policies of AIF managed by the AIFM which have been marketed solely to professional investors. The AIFM shall inform the competent authorities in an appropriate manner about such changes.

Or. en

Justification

The demands on investment of professional investors are often subject to changes on short notice. It must be possible for AIFM to adjust accordingly without delay. If such changes were subject to scrutiny by the competent authority within a period of one month, the resulting delays would adversely affect the AIFM within his competitive environment.

Amendment 594

José Manuel García-Margallo y Marfil, Íñigo Méndez de Vigo, Pablo Zalba Bidegain

Proposal for a directive

Article 7 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

In the case of internally managed AIF whose shares are admitted to trading on a regulated market, information on changes concerning AIFM shareholders with a qualifying holding will have to be notified to the competent authorities before implementation only when those shareholders are, or request to be, represented at the board of the AIF or otherwise exert, or attempt to exert, control or influence on the board or management of the AIF.

Or. en

Justification

In AIF listed and traded on regulated markets, ordinary market trading may result in occasional or frequent changes in holdings in excess of 10% of the capital or voting rights in the AIF.

In order to avoid unnecessary obstacles to the trading and investment of the AIF shares, it seems desirable to limit the need for a previous notification to the supervisory authorities to those cases in which the changes in qualified holdings shall or may affect Board composition, change control of the AIF or result in any other non-controlling influence of the Board or management of the AIF.

Amendment 595
Jean-Pierre Audy

Proposal for a directive
Article 7 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

The Commission shall adopt delegated acts in accordance with Articles 49a, 49b and 49c further specifying criteria for evaluating substantial changes to the conditions under which the authorisation was granted.

Or. en

Amendment 596
Pascal Canfin

Proposal for a directive
Article 8 – introductory part

Text proposed by the Commission

Amendment

The competent authorities may withdraw the authorisation issued to an **AIFM** where that **AIFM**:

The competent authorities may withdraw the authorisation issued to an **AIF** where that **AIF**:

Or. en

Justification

Authorisation applied to AIF.

Amendment 597
Pervenche Berès

Proposal for a directive
Article 8 a (new)

Text proposed by the Commission

Amendment

Article 8a

The competent authorities will inform ESMA on a quarter yearly basis and under a consolidated form of authorisations granted or not and on the application of Articles 6, 7 and 8 of this Directive.

Or. en

Justification

The European Securities and Markets Authority needs to be given all relevant information for statistical and monitoring purposes so as to ensure a level-playing field and effective implementation of this directive.

Amendment 598
Sirpa Pietikäinen

Proposal for a directive
Chapter 2 a (new)

Text proposed by the Commission

Amendment

Chapter 2a

Obligations for AIFM managing portfolios of non-leveraged AIF and with assets under management below €1bn

Article 8a

Scope

This section shall apply to AIFM which manage portfolios of AIF whose assets under management in total do not exceed a threshold of 1,000 million euros when the portfolio of AIF consists of AIF that are not leveraged and have no redemption

rights exercisable during a period of 5 years following the date of constitution of each AIF.

Article 8b

Requirement for authorisation

1 Member States shall ensure that no AIFM covered by this Directive provides management services to any AIF or markets shares or units thereof without prior authorisation.

Undertakings which are neither authorised in accordance with this Directive nor, in case of AIFM not covered by this Directive, in accordance with the national law of a Member State, shall not be allowed to provide management services to AIF within the Union.

Undertakings which are not authorised under:

(a) Chapter II or Chapter VII of this Directive;

(b) Directive 2004/39/EC; or

(c) Directive 2006/48/EC

shall not be allowed to market units or shares of AIF to investors within the Union provided that any person may market shares or units of AIFs to investors in a Member State in accordance with the national law of that Member State.

2. AIFM may be authorised to provide management services either for all or certain types of AIF.

An AIFM may hold an authorisation pursuant to this Directive and be authorised as a management or investment company pursuant to Directive 2009/65/EC.

Article 8c

Procedure for granting the authorisation

An AIFM applying for an authorisation shall provide the following to the competent authorities of the Member State where it has its registered office:

(a) information on the identities of the AIFM shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings;

(b) a programme of activity, including information on how the AIFM intends to comply with its obligations under the applicable provisions of Chapters III, IV, V, VI and VII;

(c) information about the types of AIF it intends to manage;

(d) where applicable, information on arrangements made for the delegation to third parties of critical or important management services functions as referred to in Article 18 and where applicable Article 35;

(e) information on the arrangements made for the safe-keeping of the assets of AIF.

The AIFM must have its head office in the same Member State as its registered office.

Article 8d

Conditions for granting the authorisation

1. The competent authorities of the home Member State shall grant authorisation only if they are satisfied that the AIFM will be able to fulfil the conditions of this Directive.

The authorisation shall be valid for all Member States.

2. The competent authorities of the home Member State shall refuse authorisation where the effective exercise of their supervisory functions is prevented by any of the following:

(a) the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the AIFM has close links as defined in Article 4(31) of Directive 2004/39/EC;

(b) difficulties involved in the enforcement of those laws, regulations and administrative provisions.

3. The competent authorities of the home Member State may restrict the scope of the authorisation, in particular as regards the type of AIF the AIFM is allowed to manage.

4. The competent authorities shall inform the applicant, within two months of the submission of a complete application, whether or not authorisation has been granted.

Reasons shall be given whenever an authorisation is refused or when restrictions are imposed.

5. AIFM may start providing management services in the home Member State as soon as the authorisation is granted.

Article 8e

Supplemental notifications and changes in the scope of the authorisation

AIFM shall, within 30 days after implementation, notify the competent authorities of the home Member State of any change regarding the information provided in their initial application that may substantially affect the conditions under which the authorisation has been granted, in particular material changes of the investment strategy and policy of any AIF managed by it, of the AIF rules or instruments of incorporation or formation and the identity of any further AIF the AIFM intends to manage.

If a proposed change would be contrary to a restriction placed on an AIFM's scope of permission by the competent authorities

of its home Member State then the AIFM shall notify such competent authorities before implementation and the competent authorities shall, within a month of receipt of that notification, either approve, or impose restrictions, or reject those changes.

Article 8f

Withdrawal of the authorisation

The competent authorities may withdraw the authorisation issued to an AIFM where that AIFM:

(1) has obtained the authorisation by making false statements or by any other irregular means;

(2) no longer fulfils the conditions under which authorisation was granted;

(3) has seriously or systematically infringed the provisions transposing this Directive.

Before withdrawing such authorisation the competent authorities shall consider the interests of the investors in the AIF and seek to make or facilitate appropriate arrangements for the subsequent management of the AIF in accordance with its terms.

Article 8g

General principles

1. Member States shall ensure that AIFM may provide their management services to AIF domiciled or established within the Community only if they comply with the provisions of this Directive on an ongoing basis.

The AIFM shall:

(a) act honestly, with due skill, care and diligence and fairly in conducting its activities;

(b) act in the best interests of the AIF it manages, and the AIF's investors (collectively in accordance with the

constitutional documents of the AIF);
(c) comply with the law and regulations regarding the integrity of the market; and
(d) ensure that all AIF investors are treated fairly.

No investor may obtain a preferential treatment, unless this is disclosed to all investors.

2. The Commission shall adopt delegated acts in accordance with Articles 49a, 49b and 49c specifying the criteria to be used by competent authorities to assess whether AIFM comply with their obligation under paragraph 1 which are appropriate and proportionate taking account of the different size, resources, complexity, nature, investments, investment strategies and techniques, structures and investors of different types of AIFM.

Article 8h

Conflicts of interest

1. Member States shall require AIFM to take all reasonable steps to identify conflicts of interest between the AIFM, including their managers, employees or any person directly or indirectly linked to the AIFM by control, and the investors in AIF managed by the AIFM or between one investor and another that arise in the course of managing one or more AIF.

AIFM shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of the AIF and its investors.

AIFM shall, where appropriate and proportionate in view of the nature, scale and complexity of their business, segregate within its own operating environment, tasks and responsibilities

which may be regarded as incompatible with each other. AIFM shall assess whether its operating conditions may involve any other material conflicts of interest and disclose them to the AIF investors.

2. Where organisational arrangements made by the AIFM to manage conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to investors' interests will be prevented, the AIFM shall clearly disclose the general nature or sources of potential conflicts of interest to the investors before undertaking business on their behalf, and develop appropriate policies and procedures.

Article 8i

Initial and ongoing capital

AIFM shall have own funds of at least EUR 50,000.

Irrespective of the amount of the requirements set out in the first subparagraph, the own funds of the AIFM other than an AIFM which manages solely AIF which:

(a) are not leveraged; and

(b) do not have redemption rights exercisable during a period of 5 years following the date of constitution of the AIF

shall never be less than the amount required under Article 21 of Directive 2006/49/EC. The required total own funds shall not, however, exceed EUR 1,000,000.

For the purposes of the second subparagraph the following portfolios shall be deemed to be the portfolios of the AIFM:

(a) any AIF portfolios managed by the AIFM, including AIF for which the AIFM has delegated one or more

functions in accordance with Article 18 but excluding portfolios that it is managing under delegation.

Article 8j

Annual report

1. An AIFM shall, for each of the AIF it manages, make available an annual report for each financial year. The annual report shall be made available to investors and competent authorities no later than four months following the end of the financial year or in circumstances where information is required from third parties (such as the audit of any underlying investments of the AIF) no later than six months following the end of the financial year.

2. The annual report shall at least contain the following:

(a) a balance-sheet or a statement of assets and liabilities;

(b) an income and expenditure account for the financial year;

(c) a report on the activities of the financial year.

3. The accounting information given in the annual report shall be prepared in accordance with the accounting standards or principles required by the applicable AIF rules or instruments of incorporation or formation and audited by one or more persons empowered by law to audit accounts in accordance with Directive 2006/43/EC. The auditor's report, including any qualifications, shall be reproduced in full in the annual report.

4. The Commission shall adopt delegated acts in accordance with Articles 49a, 49b and 49c further specifying the content and format of the annual report. These acts shall be appropriate and proportionate and adapted to the type of

AIFM to which they apply and the AIF to which the report relates taking account of the different size, resources, complexity, nature, investments, investment strategies and techniques, structures and investors of different types of AIFM and the AIF they manage.

Article 8k

Disclosure to investors

1. AIFM shall ensure that, so far as applicable to the AIF concerned, AIF investors receive the following information before they invest in the AIF, as well as any changes thereof:

(a) a description of the investment strategy and objectives of the AIF, all the types of assets which the AIF can invest in and of the techniques it may employ and of all associated risks, any applicable investment restrictions, the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the associated risks and of any restrictions to the use of leverage;

(b) a description of the procedures by which the AIF may change its investment strategy or investment policy, or both;

(c) a description of the legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, applicable law and on the existence, or not, of any legal instruments providing for the recognition and enforcement of judgments on the territory where the fund is domiciled;

(d) the identity, if applicable, of the AIF's current or proposed depositary, valuator, auditor and any other current or proposed critical or important service providers and a description of their duties and the investors' rights should any failure arise;

(e) a description of any critical or important delegated management function and the identity of the third party to whom the function has been delegated;

(f) a description of the AIF's valuation procedure and, where applicable, of the pricing models for valuing assets, including the methods used in valuing hard-to-value assets;

(g) where the AIF has redemption rights exercisable, a description of the AIF's liquidity risk management, including the redemption rights both in normal and exceptional circumstances, existing redemption arrangements with investors, and how the AIFM ensures a fair treatment of investors;

(h) a description of all fees, charges and expenses which are directly or indirectly borne by investors;

(i) whenever an investor obtains a preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment and whether there is any connection between the AIFM and that investor;

(j) the latest annual report if there is such a report in relation to the AIF;

(k) a confirmation that either the AIFM is subject to the capital requirements under Article 14 or maintains professional indemnity insurance at an appropriate level reasonably available in the market; and

(l) If the AIFM falls below the thresholds in Article 2(2)(a) or is otherwise not subject to all the provisions of this Directive a statement of that fact.

2. For each AIF an AIFM manages in respect of which redemption rights are exercisable, it shall periodically disclose to investors:

(a) the percentage of the AIF's assets

which are subject to special arrangements arising from their illiquid nature;

(b) any new arrangements for managing the liquidity of the AIF;

(c) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage these risks.

3. The Commission shall adopt delegated acts in accordance with Articles 49a, 49b and 49c further specifying the disclosure obligations of AIFM and the frequency of the disclosure referred to in paragraph 2. These acts shall be adapted to the type of AIFM to which they apply and proportionate taking account, amongst other things, of the different size, resources, complexity, nature, investments, investment strategies and techniques, structures and investors of different types of AIFM.

Article 81

Reporting obligations to competent authorities

1. AIFM shall regularly report to the competent authorities of its home Member State on the principal markets and instruments in which it trades on behalf of the AIF it manages.

It shall provide aggregated information on the main instruments in which it is trading, markets of which it is a member or where it actively trades, and on the principal trading exposures and most important resulting concentrations of each of the AIF it manages.

2. For each AIF an AIFM manages in respect of which redemption rights are exercisable, the AIFM shall periodically report the following to the competent authorities of its home Member State:

(a) the percentage of the AIF's assets which are subject to special arrangements

arising from their illiquid nature;

(b) any new arrangements for managing the liquidity of the AIF;

(c) the actual risk profile of the AIF and the risk management tools employed by the AIFM to manage these risks;

(d) the main categories of assets in which the AIF invested;

(e) where relevant, the use of short selling during the reporting period.

3. For each of the AIF it manages the AIFM shall submit the following documents to the competent authorities of its home Member State:

(a) an annual report of each AIF managed by the AIFM for each financial year, within four or six months as appropriate from the end of the periods to which it relates;

(b) a detailed list of all AIF which the AIFM manages for the end of each quarter.

4. The Commission shall adopt delegated acts in accordance with Articles 49a, 49b and 49c further specifying the reporting obligations referred to in paragraphs 1, 2 and 3 and their frequency. These acts shall be appropriate and proportionate and adapted to the type of AIFM and AIF to which they apply taking account, amongst other things, of the different size, resources, complexity, nature, investments, investment strategies and techniques, structures and investors of different types of AIFM.

Article 8m

Marketing of shares or units of AIF in the home Member State

1. An authorised AIFM may market shares or units of AIF to professional investors in the AIFM's home Member

State.

2. The AIFM shall submit a notification to the competent authorities of its home Member State within 30 days after final closing of the subscription process for shares or units in an AIF (or, in the case of AIF which are open for subscription throughout their life, rather than having a single launch period, within 30 days after the acceptance of initial subscriptions) in respect of each AIF that it markets.

That notification shall comprise the following:

(a) identification of the AIF and information on where the AIF are domiciled;

(b) the AIF rules or instruments of incorporation or formation;

(c) a description of, or any information on the AIF available to investors;

(d) details of the arrangements made to ensure that the AIF was only marketed to professional investors or, if the Member State concerned permits the AIF to be marketed to retail investors, that any applicable restrictions relating to marketing to retail investors were followed, including in the case where the AIFM relies on activities of independent entities to provide marketing services in respect of its AIF.

3. Subject to the implementing measures referred to in the second subparagraph and provided that such measures do not prevent marketing to professional investors, the competent authorities may impose restrictions or conditions on the marketing of AIF in their territory pursuant to this Article.

The Commission shall adopt delegated acts in accordance with Articles 49a, 49b and 49c specifying the types of restrictions or conditions that can be imposed on the marketing of AIF pursuant to the second

subparagraph of this paragraph.. Such acts shall not permit any restriction or condition preventing marketing to professional investors.

Article 8n

Option for Member States to allow the marketing of AIF to retail investors

Member States may allow the marketing of AIF to retail investors in their territory.

Member States may for that purpose impose requirements on AIFM or the AIF which may differ from those imposed under this Directive.

A Member State which permits marketing to retail investors shall permit any AIFM authorised under this Directive to market to retail investors on the same basis and subject to the same requirements as a national AIFM, regardless of the domicile of the AIF managed by the AIFM.

Member States that permit the marketing of AIF to retail investors on their territory, shall, within one year of the date referred to in Article 54(1) inform the Commission of:

(a) the types of AIF which AIFM may market to retail investors on their territory;

(b) any additional requirements that the Member State imposes for the marketing of AIF to retail investors on their territory.

Member States shall also inform the Commission of any subsequent changes with regard to the first subparagraph.

Article 8o

Conditions for marketing in other Member States

1. An authorised AIFM may market shares or units of AIF to professional investors in another Member State. Where an authorised AIFM markets to professional investors the units or shares

of an AIF it manages in another Member State, it shall submit the following documents to the competent authorities of its home Member State within 30 days after receipts of funds from investors in the other Member State subscribing for shares or units in the AIF:

(a) a notification letter, identifying the AIF it markets and information on where the AIF are domiciled;

(b) the AIF rules or instruments of incorporation or formation;

(c) a description of, or any information on the AIF available to investors;

(d) the indication of the Member State in which the units or shares of an AIF under its management were marketed to professional investors;

(e) arrangements made for the marketing of AIF and, where relevant, information on the arrangements established to prevent units or shares of that AIF from being marketed to retail investors.

2. The competent authorities of the home Member State shall, no later than ten working days after the date of receipt of the complete documentation, transmit the complete documentation referred to in paragraph 1 to the competent authorities of the Member State where the AIF was marketed. They shall enclose an attestation that the AIFM concerned is authorised.

3. Upon transmission of the documentation, the competent authorities of the home Member State shall without delay notify the AIFM about the transmission.

4. The host Member States shall not impose any additional requirements on the AIFM concerned in respect of the matters covered by this Directive but arrangements referred to in point (e) of paragraph 1 relating to the marketing of

the AIF to retail investors shall be subject to the laws and supervision of the host Member State.

5. Member States shall ensure that the notification letter and the attestation referred to in paragraph 1 are provided in a language customary in the sphere of international finance.

Member States shall ensure that electronic transmission and filing of the documents referred to in paragraph 2 is accepted by their competent authorities.

6. In the event of a change in any of the particulars communicated in accordance with paragraph 2, an AIFM shall give written notice of that change to the competent authorities of its home Member State within 30 days of implementing the change.

The competent authorities of the home Member State shall without delay inform the competent authorities of the host Member State of those changes.

7. The Commission shall, in accordance with Articles 49a, 49b and 49c, adopt delegated acts specifying the following:

(a) the form and content of a standard model of the notification letter;

(b) the form and content of a standard model of attestation.

Or. en

Justification

AIFM managing portfolios of non-leveraged AIF and with assets under management below EUR 1bn should not be subject to all obligations under this Directive. Any regulation imposed on those AIFMs should be very carefully tailored to the limited risks they present.

Amendment 599
Pascal Canfin

Proposal for a directive
Chapter III – title

Text proposed by the Commission

Amendment

Operating conditions for AIFM

Operating conditions for ***AIF and their***
AIFM

Or. en

Justification

Operating conditions concern both AIF and AIFM.

Amendment 600
Wolf Klinz

Proposal for a directive
Article 9 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that AIFM may provide their management services within the Community only if they comply with the provisions of this Directive on an ongoing basis.

1. Member States shall ensure that AIFM may provide their ***cross-border*** management services within the Community only if they comply with the provisions of this Directive on an ongoing basis.

Or. en

Amendment 601
Sari Essayah

Proposal for a directive
Article 9 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that AIFM may provide their management services

1. Member States shall ensure that AIFM may provide their ***cross-border***

within the Community only if they comply with the provisions of this Directive on an ongoing basis.

management services within the Community only if they comply with the provisions of this Directive on an ongoing basis.

Or. en

Amendment 602
Hans-Peter Martin

Proposal for a directive
Article 9 – paragraph 1 – point c a (new)

Text proposed by the Commission

Amendment

(ca) lay down the principles of remuneration practices that work against the desire for short-term gain and safeguard the long-term interests of the AIFMs and investors;

Or. de

Amendment 603
Markus Ferber

Proposal for a directive
Article 9 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Member States may require AIFM to annually disclose their internal remuneration policy in general terms.

Or. en

Justification

Remuneration should remain a private matter between the AIF, AIFM, its investors and the competent authority.

Amendment 604
Sharon Bowles

Proposal for a directive
Article 9 – paragraph 2

Text proposed by the Commission

2. The Commission **shall adopt implementing** measures specifying the criteria to be used by competent authorities to assess whether AIFM comply with their obligation under paragraph 1.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).

Amendment

2. The Commission **may lay down, by means of delegated acts in accordance with Articles 49, 49a and 49b**, measures specifying the criteria to be used by competent authorities to assess whether AIFM comply with their obligation under paragraph 1.

Or. en

Justification

This is appropriate wording under the new ‘comitology’ procedures if this Article is retained.

Amendment 605
Udo Bullmann, Robert Goebbels

Proposal for a directive
Article 9 a (new)

Text proposed by the Commission

Amendment

Article 9a

Remuneration

1. Member States shall require AIFM to have remuneration policies and practices that are consistent with and promote sound and effective risk management and do not encourage excessive risk-taking or which is inconsistent with the risk profiles, fund rules or instruments of

incorporation of the AIF it manages.

The policies and practices shall be comprehensive and proportionate to the nature, scale and complexity of the AIFM's activities and to the AIF it manages. The principles set forth in Annex I shall in all cases be complied with.

2. The Commission shall adopt delegated acts in accordance with Articles 49a, 49b and 49c specifying the principles described in Annex I. The CESR shall ensure the existence of guidelines on sound remuneration policies which comply with the principles set out in Annex I. The guidelines shall also take into account the principles on sound remuneration policies set out in the Commission Recommendation of 30 April 2009 on remuneration policies in the financial services sector and shall take into account the size of the AIFM and the size of AIF they manage, their internal organisation and the nature, the scope and the complexity of their activities. The CEBS shall cooperate closely with the CESR in ensuring the existence of guidelines on remuneration policies.

Or. en

Justification

Measures on remuneration should be applicable throughout the financial industry to avoid excessive risk taking. These measures must be compulsory and not indicative only. They must in particular capture what is one of the key components of this remuneration, i.e. the carried interest. Main principles must be laid down in the directive but more specific rules should be left to levels 2 and 3. At the level of the guidelines, the principles may be made specific to the size and type of AIFM and AIF.

Amendment 606
Syed Kamall

Proposal for a directive
Article 9 a (new)

Text proposed by the Commission

Amendment

Article 9a

Remuneration

- 1. Member States shall require AIFM to have remuneration policies and practices that are consistent with and promote sound and effective risk management and long term value creation and which do not encourage risk-taking which is inconsistent with the risk profiles, fund rules or instruments of incorporation of the AIF it manages.***
- 2. The remuneration policies and practices shall be proportionate to the nature, scale and complexity of the AIFM's activities and to the AIF it manages.***

Or. en

Justification

The principles should align to those developed by the Financial Stability Board for Sound Compensation Practices (25 September 2009). The Leaders' Statement following the Pittsburgh Summit (24-25 September 2009) fully endorses the implementation standards of the FSB aimed at aligning remuneration with long-term value creation and not excessive risk taking.

We consider that the FSB principles endorsed by the G20 should apply to systemically important AIFM in common with other financial services firms. Whilst we do not consider that there is any need for detailed requirements in relation to remuneration to be proposed under this Directive, it is important that, in the event any relevant Level 2 measures are to be implemented under this Directive, such measures take account of the principle of proportionality and ensure the competitiveness of the industry in the EU is maintained by having regard to consistent implementation of such initiatives by the Commission working with the Financial Stability Board as envisaged by the FSB.

In particular, any amendment to require an AIFM to ensure that its remuneration rules are compatible with the rules applicable to credit institutions and investment firms should be

resisted as there are very good reasons why remuneration policies for AIFM should validly differ from banks and broker/dealers, for example.

Amendment 607

Jürgen Klute

Proposal for a directive

Article 9 a (new)

Text proposed by the Commission

Amendment

Article 9a

Remuneration policy

- 1. The remuneration policy of the AIFM shall be such that it does not encourage risk-taking disproportionate to the risk profile of the AIF it manages.**
- 2. When establishing and applying the remuneration policies for those categories of staff whose professional activities have a material impact on their risk profile, AIFM shall comply with the principles laid down in Annex I of Directive 2010/.../EU [amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations], and the supervisory review of remuneration policies.**
- 3. In addition, the remuneration policy shall be so that the independence of the risk function, the compliance function, and the valuation function is maintained.**

Or. en

Justification

This amendment addresses the concerns that the compensation structure may encourage excessive risk-taking. At the same time, the formulation does recognize the special nature of AIF. Risk taking as such is not sanctioned, but risk taking disproportionate to the risk profile of the AIF.

Amendment 608
Bernd Lange

Proposal for a directive
Article 9 a (new)

Text proposed by the Commission

Amendment

Article 9a

Remuneration policy

- 1. The remuneration policy of the AIFM shall be such that it does not encourage risk-taking disproportionate to the risk profile of the AIF it manages.**
- 2. When establishing and applying the remuneration policies for those categories of staff whose professional activities have a material impact on their risk profile, AIFM shall comply with the principles laid down in Annex I of Directive 2010/.../EU [amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations], and the supervisory review of remuneration policies.**
- 3. In addition, the remuneration policy shall be so that the independence of the risk function, the compliance function, and the valuation function is maintained.**

Or. en

Justification

This amendment addresses the concerns that the compensation structure may encourage excessive risk-taking. At the same time, the formulation does recognize the special nature of AIF. Risk taking as such is not sanctioned, but risk taking disproportionate to the risk profile of the AIF.

Amendment 609
Pascal Canfin

Proposal for a directive
Article 9 a (new)

Text proposed by the Commission

Amendment

Article 9a

Remuneration policy

- 1. Competent authorities shall require AIF and AIFM to have remuneration policies and practices that are consistent with and promote sound and effective risk management and do not encourage risk-taking which is inconsistent with the risk profiles, fund rules or instruments of incorporation of the AIF it manages. The technical criteria laid down in Annex I shall be taken into account.**
- 2. Competent authorities shall ensure that AIF and AIFM comply with the requirements set out in Annex I.**

Or. en

Justification

Sound remuneration policies are needed for avoiding excessive risk-taking strategies.

Amendment 610
Arlene McCarthy

Proposal for a directive
Article 9 a (new)

Text proposed by the Commission

Amendment

Article 9a

Remuneration policies for AIFM

Member States shall require AIFM to set up and implement sound remuneration policies and practices that are consistent with effective risk management and that

ensure that incentives are aligned with the long-term interests of the AIFM, AIF and investors.

Or. en

Justification

EU rules on sound remuneration practices for credit institutions and investment firms will be implemented by amendment to Dir 2006/48/EC. 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 Dir 2006/48/EC. To ensure proper oversight by Parliament and Council such guidance should be established by means of a delegated act. Member States competent authorities must have the necessary powers to supervise and enforce compliance with this legislation.

Amendment 611

Diogo Feio

Proposal for a directive

Article 9 a (new)

Text proposed by the Commission

Amendment

Article 9a

Remuneration policy

The AIFM shall set up and implement sound remuneration policies and practices that are consistent with effective risk management and long-term value creation.

Or. en

Amendment 612
Syed Kamall

Proposal for a directive
Article 9 b (new)

Text proposed by the Commission

Amendment

Article 9b

Notification

The AIFM shall inform Member States' competent authorities about the characteristics of its remuneration policies and practices.

Or. en

Justification

The principles should align to those developed by the Financial Stability Board for Sound Compensation Practices (25 September 2009). The Leaders' Statement following the Pittsburgh Summit (24-25 September 2009) fully endorses the implementation standards of the FSB aimed at aligning remuneration with long-term value creation and not excessive risk taking.

We consider that the FSB principles endorsed by the G20 should apply to systemically important AIFM in common with other financial services firms. Whilst we do not consider that there is any need for detailed requirements in relation to remuneration to be proposed under this Directive, it is important that, in the event any relevant Level 2 measures are to be implemented under this Directive, such measures take account of the principle of proportionality and ensure the competitiveness of the industry in the EU is maintained by having regard to consistent implementation of such initiatives by the Commission working with the Financial Stability Board as envisaged by the FSB.

In particular, any amendment to require an AIFM to ensure that its remuneration rules are compatible with the rules applicable to credit institutions and investment firms should be resisted as there are very good reasons why remuneration policies for AIFM should validly differ from banks and broker/dealers, for example.

Amendment 613
Diogo Feio

Proposal for a directive
Article 9 b (new)

Text proposed by the Commission

Amendment

Article 9b

Notification

The AIFM shall inform Member States' competent authorities about the characteristics of its remuneration policies and practices.

Or. en

Amendment 614
Arlene McCarthy

Proposal for a directive
Article 9 b (new)

Text proposed by the Commission

Amendment

Article 9b

Notification

The AIFM shall inform the relevant competent authorities about the characteristics of its remuneration policies and practices.

Or. en

Justification

EU rules on sound remuneration practices for credit institutions and investment firms will be implemented by amendment to Dir 2006/48/EC. 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 Dir 2006/48/EC. To ensure proper oversight by Parliament and Council such guidance should be established by means of a delegated act. Member States competent authorities must have the necessary powers to supervise and enforce compliance with this legislation.

Amendment 615
Syed Kamall

Proposal for a directive
Article 9 c (new)

Text proposed by the Commission

Amendment

Article 9c

Competent authorities

Member States' competent authorities may react and take appropriate corrective measures to offset risks that may result in the failure of an AIFM to implement sound remuneration policies and practices.

Or. en

Justification

The principles should align to those developed by the Financial Stability Board for Sound Compensation Practices (25 September 2009). The Leaders' Statement following the Pittsburgh Summit (24-25 September 2009) fully endorses the implementation standards of the FSB aimed at aligning remuneration with long-term value creation and not excessive risk taking.

We consider that the FSB principles endorsed by the G20 should apply to systemically important AIFM in common with other financial services firms. Whilst we do not consider that there is any need for detailed requirements in relation to remuneration to be proposed under this Directive, it is important that, in the event any relevant Level 2 measures are to be implemented under this Directive, such measures take account of the principle of proportionality and ensure the competitiveness of the industry in the EU is maintained by having regard to consistent implementation of such initiatives by the Commission working with the Financial Stability Board as envisaged by the FSB.

In particular, any amendment to require an AIFM to ensure that its remuneration rules are compatible with the rules applicable to credit institutions and investment firms should be resisted as there are very good reasons why remuneration policies for AIFM should validly differ from banks and broker/dealers, for example.

Amendment 616
Diogo Feio

Proposal for a directive
Article 9 c (new)

Text proposed by the Commission

Amendment

Article 9c

Competent authorities

Member States' competent authorities may react and take appropriate corrective measures to offset risks that may result in the failure of an AIFM to implement sound remuneration policies and practices.

Or. en

Amendment 617
Arlene McCarthy

Proposal for a directive
Article 9 d (new)

Text proposed by the Commission

Amendment

Article 9d

Remuneration policies for AIFM

Member States shall ensure that, for the purposes of the first paragraph, their respective competent authorities have the power to impose financial and non-financial penalties or measures. Those penalties or measures must be effective, proportionate and dissuasive.

Or. en

Justification

EU rules on sound remuneration practices for credit institutions and investment firms will be implemented by amendment to Dir 2006/48/EC. 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 Dir 2006/48/EC. To ensure proper oversight by Parliament and Council such guidance should be established by means of a delegated act. Member States competent authorities must have the necessary powers to supervise and enforce compliance with this legislation.

Amendment 618
Arlene McCarthy

Proposal for a directive
Article 9 e (new)

Text proposed by the Commission

Amendment

Article 9e

Remuneration policies for AIFM

In order to ensure the consistent application in the Union the Commission shall, no later than the date of entry into force of this directive, lay down, by means of delegated acts in accordance with Articles 49a, 49b and 49c, binding guidance on sound remuneration policies for AIFM. This guidance should ensure compliance with the applicable elements of provisions set out in Annex V of Directive 2006/48/EC.

Or. en

Justification

EU rules on sound remuneration practices for credit institutions and investment firms will be implemented by amendment to Dir 2006/48/EC. 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 Dir 2006/48/EC. To ensure proper oversight by Parliament and Council such guidance should be established by means of a delegated act. Member States competent authorities must have the necessary powers to supervise and enforce compliance with this legislation.

Amendment 619
Sharon Bowles

Proposal for a directive
Article 10 – paragraph 3 – subparagraph 1 – introductory part

Text proposed by the Commission

Amendment

3. The Commission ***shall adopt implementing*** measures:

3. The Commission ***may lay down, by means of delegated acts in accordance with Articles 49a, 49b and 49c,*** measures:

Or. en

Justification

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

Amendment 620
Sharon Bowles

Proposal for a directive
Article 10 – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).

deleted

Or. en

Justification

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

Amendment 621
Olle Schmidt

Proposal for a directive
Article 10 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. This article shall not apply to industrial holding companies having their shares traded on a EU regulated market insofar as they hold shares in their subsidiaries or associated companies for the purpose of carrying out an industrial business strategy and which are not established for the main purpose of generating returns for its investors by means of divestment within a planned timeframe.

Or. en

Justification

Industrial holding companies do not have potential conflicts of interest of the kind referred to in Article 10. Under national company law, the Boards of such companies are subject to a fiduciary duty to the shareholders.

Amendment 622
Corien Wortmann-Kool

Proposal for a directive
Article 11 – paragraph 1

Text proposed by the Commission

Amendment

1. The AIFM shall ensure that the functions of risk management and portfolio management are separated ***and subject to separate reviews.***

1. The AIFM shall ensure that the functions of risk management and portfolio management are separated ***so far as is appropriate and proportionate in view of the nature, scale and complexity of the AIFM and the AIF it manages.***

Or. en

Justification

The requirement to have a separate risk management function should be proportionate to the risks presented by the AIFM and the funds it manages. This will assist in ensuring that costs associated with compliance with the requirements of the AIFM Directive (which will inevitably be passed on to investors in AIF) are incurred only where there is a commensurate benefit to investors. The proposed amendment reflects the similar requirement for investment firms subject to MIFID (see Article 7(2) of the MIFID Implementing Directive 2006/73/EC). Many AIFM will also provide investment services and activities within the scope of MIFID and there should be consistency between the requirements of MIFID and the requirements of the AIFM Directive in this respect.

Amendment 623

Carl Haglund

Proposal for a directive

Article 11 – paragraph 1

Text proposed by the Commission

1. The AIFM shall ensure that the functions of risk management and portfolio management are separated ***and subject to separate reviews.***

Amendment

1. The AIFM shall ensure that the functions of risk management and portfolio management are separated ***so far as is appropriate and proportionate in view of the nature, scale and complexity of the AIFM and the AIF it manages.***

Or. en

Justification

Requiring all AIFM to maintain completely separated functions is not necessary, it is more essential to ensure the proportionality of the required measures.

Amendment 624

Syed Kamall

Proposal for a directive

Article 11 – paragraph 1

Text proposed by the Commission

1. The AIFM shall ensure that the functions of risk management and portfolio

Amendment

1. The AIFM shall ensure that the functions of risk management and portfolio

management are separated **and subject to separate reviews.**

management are separated **so far as is appropriate and proportionate in view of the nature, scale and complexity of the AIFM and the AIF it manages.**

Or. en

Justification

It is considered that it would be unduly onerous and disproportionate to require all AIFM to maintain wholly separated functions as is recognised by the Swedish Presidency Compromise Proposal and implicitly by Amendment 16 in the Gauzès Report.

Amendment 625
Syed Kamall

Proposal for a directive
Article 11 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. Where it is not considered to be appropriate or proportionate for an AIFM to establish and maintain a risk management function that is separated from the portfolio management, the AIFM must nevertheless be able to demonstrate that the risk management process satisfies the requirements of this article and is consistently effective.

Or. en

Justification

This amendment is consequential to Syed Kamall's amendment to Article 3, point pa.

Amendment 626
Carl Haglund

Proposal for a directive
Article 11 – paragraph 1 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

Where it is not considered to be appropriate or proportionate for an AIFM to establish and maintain a risk management function that is separated from the portfolio management, the AIFM must be able to demonstrate that the risk management process satisfies the requirements of this article.

Or. en

Justification

Requiring all AIFM to maintain completely separated functions is not necessary, it is more essential to ensure the proportionality of the required measures. This amendment follows the argumentation in Carl Haglund's amendment to Article 11, paragraph 1.

Amendment 627
Wolf Klinz

Proposal for a directive
Article 11 – paragraph 2 – subparagraph 1

Text proposed by the Commission

Amendment

2. The AIFM shall implement risk management systems in order to measure ***and*** monitor appropriately all risks ***associated*** to each AIF investment strategy and to which each AIF is or can be exposed ***to***.

2. The AIFM shall implement risk management systems in order to measure, monitor ***and manage*** appropriately all risks ***relevant*** to each AIF investment strategy and to which each AIF is or can be exposed. ***The risk management shall be appropriate to the nature, scale and complexity of the AIF.***

Or. en

Justification

The underlying size and investment strategy should be taken into account when determining an appropriate risk management procedure.

Amendment 628
Jean-Paul Gauzès

Proposal for a directive
Article 11 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Where the AIFM uses the services of a prime broker, this shall be materialised by a contract. In particular the possibility of transfer and reuse of AIF assets shall be made clear and shall be in compliance with the AIF rules. The depositary shall be informed about that contract. The contract between the AIFM and the depositary shall foresee this information obligation. Before they invest in the AIF, investors are informed about that clause and are updated about the identity of the prime broker.

In particular investors shall be informed about the transfer of liability to the prime broker that may exist, including in case of loss of financial instruments. In that case, the delay for restitution shall be in accordance with the terms of the contract between the AIFM and the prime broker.

AIFM shall exercise due skill, care and diligence in the selection and appointment of prime brokers with whom they have concluded a contract.

Or. en

Amendment 629
Wolf Klinz, Carl Haglund

Proposal for a directive
Article 11 – paragraph 4

Text proposed by the Commission

Amendment

4. In the case of AIFM which engage in short selling when investing on behalf of one or more AIF, Member States shall ensure that the AIFM operates procedures which provide it with access to the securities or other financial instruments at the date when the AIFM committed to deliver them, and that the AIFM implements a risk management procedure which allows the risks associated with the delivery of short sold securities or other financial instruments to be adequately managed. ***deleted***

Or. en

Justification

Asking for a horizontal measure in this respect.

Amendment 630
Syed Kamall

Proposal for a directive
Article 11 – paragraph 4

Text proposed by the Commission

Amendment

4. In the case of AIFM which engage in short selling when investing on behalf of one or more AIF, Member States shall ensure that the AIFM operates procedures which provide it with access to the securities or other financial instruments at the date when the AIFM committed to deliver them, and that the AIFM implements a risk management procedure which allows the risks ***deleted***

associated with the delivery of short sold securities or other financial instruments to be adequately managed.

Or. en

Justification

We feel that short selling is too important an issue to be dealt with in an ad hoc manner and is not unique to alternative investment fund managers. Therefore it should be addressed in the forthcoming review of the Market Abuse Directive.

**Amendment 631
Olle Schmidt**

**Proposal for a directive
Article 11 – paragraph 4**

Text proposed by the Commission

Amendment

4. In the case of AIFM which engage in short selling when investing on behalf of one or more AIF, Member States shall ensure that the AIFM operates procedures which provide it with access to the securities or other financial instruments at the date when the AIFM committed to deliver them, and that the AIFM implements a risk management procedure which allows the risks associated with the delivery of short sold securities or other financial instruments to be adequately managed.

deleted

Or. en

Justification

Regulating short selling not only for AIF but also for other market participants which are not covered by AIFMD in horizontal measures covering all market participants should not be included into a specific directive such as AIFMD. In this regard both CESR and IOSCO are working on possible frameworks. Furthermore, the Commission creates an unacceptable degree of legal uncertainty as it avoided providing a definition of short selling. Article 11 paragraph 4 should be deleted and not amended as suggested by the Rapporteur in Amendments 53, 54 and 55.

Amendment 632
Sharon Bowles

Proposal for a directive
Article 11 – paragraph 4

Text proposed by the Commission

Amendment

4. In the case of AIFM which engage in short selling when investing on behalf of one or more AIF, Member States shall ensure that the AIFM operates procedures which provide it with access to the securities or other financial instruments at the date when the AIFM committed to deliver them, and that the AIFM implements a risk management procedure which allows the risks associated with the delivery of short sold securities or other financial instruments to be adequately managed.

deleted

Or. en

Justification

Other market-participants than AIFM engage in short selling so a comprehensive approach must be adopted to ensure a level-playing field and avoid regulatory arbitrage.

Amendment 633
Burkhard Balz

Proposal for a directive
Article 11 – paragraph 4

Text proposed by the Commission

Amendment

4. In the case of AIFM which engage in short selling when investing on behalf of one or more AIF, Member States shall ensure that the AIFM operates procedures which provide it with access to the securities or other financial instruments at the date when the AIFM

4. AIFM which engage in short selling when investing on behalf of one or more AIF shall ensure that the provisions governing short selling in Directive 2003/6/EC (market abuse) are met.

committed to deliver them, and that the AIFM implements a risk management procedure which allows the risks associated with the delivery of short sold securities or other financial instruments to be adequately managed.

Or. en

Justification

There is no need to adopt a separate solution for AIFMs. The problem should, if necessary, be addressed within the scope of a reform of the Market Abuse Directive.

Amendment 634

Bernd Lange

**Proposal for a directive
Article 11 – paragraph 4**

Text proposed by the Commission

4. In the case of AIFM which engage in short selling when investing on behalf of one or more AIF, ***Member States shall ensure that the AIFM operates procedures which provide it with access to the securities or other financial instruments at the date when the AIFM committed to deliver them, and that the AIFM implements a risk management procedure which allows the risks associated with the delivery of short sold securities or other financial instruments to be adequately managed.***

Amendment

4. In the case of AIFM which engage in short selling when investing on behalf of one or more AIF, ***AIFM shall be in the possession of the securities or other financial instruments at the beginning of the short selling act. Member States shall ensure that the AIFM implements a risk management procedure which allows the risks associated with the delivery of short sold securities or other financial instruments to be adequately managed.***

Or. en

Justification

So-called 'naked' short selling can severely undermine financial stability. Temporary measures adopted by regulators in EU member states and legislation in the US have banned so-called 'naked' short selling in financial markets. The EU should proceed with a permanent ban so as to enhance financial stability.

Amendment 635
Jürgen Klute

Proposal for a directive
Article 11 – paragraph 4

Text proposed by the Commission

4. In the case of AIFM which engage in short selling when investing on behalf of one or more AIF, **Member States shall ensure that the AIFM operates procedures which provide it with access to the securities or other financial instruments at the date when the AIFM committed to deliver them, and** that the AIFM implements a risk management procedure which allows the risks associated with the delivery of short sold securities or other financial instruments to be adequately managed.

Amendment

4. In the case of AIFM which engage in short selling when investing on behalf of one or more AIF, **AIFM shall be in the possession of** the securities or other financial instruments **at the beginning of the short selling act. Member States shall ensure** that the AIFM implements a risk management procedure which allows the risks associated with the delivery of short sold securities or other financial instruments to be adequately managed.

Or. en

Justification

So-called 'naked' short selling can severely undermine financial stability. Temporary measures adopted by regulators in EU member states and legislation in the US have banned so-called 'naked' short selling in financial markets. The EU should proceed with a permanent ban so as to enhance financial stability.

Amendment 636
Pascal Canfin

Proposal for a directive
Article 11 – paragraph 4

Text proposed by the Commission

4. **In the case of AIFM which engage in short selling when investing on behalf of one or more AIF, Member States shall ensure that the AIFM operates procedures which provide it with access to**

Amendment

4. **At the time of the beginning of the short selling, AIF engaged in short selling shall be in possession of** the securities or other financial instruments. **Member States shall ensure that** the AIFM implements a risk

the securities or other financial instruments ***at the date when the AIFM committed to deliver them, and that*** the AIFM implements a risk management procedure which allows the risks associated with the delivery of short sold securities or other financial instruments to be adequately managed.

management procedure which allows the risks associated with the delivery of short sold securities or other financial instruments to be adequately managed.

Or. en

Justification

Naked short selling is a market abuse and should be banned.

Amendment 637
Robert Goebbels

Proposal for a directive
Article 11 – paragraph 4

Text proposed by the Commission

4. In the case of AIFM which engage in short selling when investing on behalf of one or more AIF, Member States shall ensure that the AIFM operates procedures which provide it with access to the securities or other financial instruments at the date when the AIFM committed to deliver them, and that the AIFM implements a risk management procedure which allows the risks associated with the delivery of short sold securities or other financial instruments to be adequately managed.

Amendment

4. Naked short selling of equity securities, including securities convertible into equity securities, is prohibited. In order to be able to deliver such securities on the settlement date of the transaction, the seller shall ensure access to securities available for borrowing (and control over these securities) prior to undertaking short sales.

AIFM engaged in short selling shall disclose information on significant short positions to the Member States competent authorities. In extreme market situations, the Member State competent authority can request AIFM to report all short positions and securities borrowed.

The relevant Member State authority shall share information relating to short selling

with the ESMA.

Or. en

Justification

Naked short selling results in transactions intentionally failed in order to manipulate the price of securities and thus enjoy an arbitrage benefit or to avoid the borrowing costs associated with regular short sales. As a misrepresentation by seller about its ownership of shares, naked short selling shall be prohibited.

Amendment 638

Wolf Klinz, Carl Haglund

Proposal for a directive

Article 11 – paragraph 5

Text proposed by the Commission

Amendment

**5. The Commission shall adopt
implementing measures further specifying
the following:**

deleted

**(a) 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;**

**(b) 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.**

**Those measures, designed to amend non-
essential elements of this Directive by
supplementing it, shall be adopted in
accordance with the regulatory procedure
with scrutiny referred to in Article 49(3).**

Or. en

Justification

Implementing measures superfluous. Asking for a horizontal measure in this respect.

Amendment 639
Olle Schmidt

Proposal for a directive
Article 11 – paragraph 5

Text proposed by the Commission

Amendment

5. The Commission shall adopt implementing measures further specifying the following:

deleted

(a) 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;

(b) 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.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).

Or. en

Justification

Regulating short selling not only for AIF but also for other market participants which are not covered by AIFMD in horizontal measures covering all market participants should not be included into a specific directive such as AIFMD. In this regard both CESR and IOSCO are working on possible frameworks. Furthermore, the Commission creates an unacceptable degree of legal uncertainty as it avoided providing a definition of short selling. Article 11 paragraph 4 should be deleted and not amended as suggested by the Rapporteur in Amendments 53, 54 and 55.

Amendment 640
Sharon Bowles

Proposal for a directive
Article 11 – paragraph 5

Text proposed by the Commission

5. The Commission ***shall adopt implementing*** measures further specifying ***the following:***

(a) 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;

(b) ***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.***

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).

Amendment

5. The Commission ***may lay down, by means of delegated acts in accordance with Articles 49a, 49b and 49c*** measures further specifying 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.

Or. en

Justification

This is appropriate wording under the new ‘comitology’ procedures if this Article is retained. Other market-participants than AIFM engage in short selling so therefore, a horizontal approach must be adopted to ensure a level-playing field and avoid regulatory arbitrage.

Amendment 641
Syed Kamall

Proposal for a directive
Article 11 – paragraph 5 – point b

Text proposed by the Commission

Amendment

(b) 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. **deleted**

Or. en

Justification

Consequential changes to be made when Article 17 is finalised.

Amendment 642
Derk Jan Eppink

Proposal for a directive
Article 11 – paragraph 5 – point b a (new)

Text proposed by the Commission

Amendment

(ba) Naked short selling will not be permitted.

Or. en

Justification

Short selling transactions can considered to be market correction tools, while naked short selling could be seen as pure speculation.

Amendment 643
Syed Kamall

Proposal for a directive
Article 11 – paragraph 5 a (new)

Text proposed by the Commission

Amendment

5a. AIFM shall not be obliged to comply with the provisions of this Article in relation to any Feeder AIF.

Or. en

Justification

The provisions of this Article as a regulatory measure only really make sense in the context of the underlying portfolio of a master AIF – where the real portfolio risk arises – as opposed to the portfolio of a Feeder AIF, which consists primarily of shares or units in the underlying master AIF.

Accordingly, the investor protections that the provisions of this Article seek to achieve in relation to the measurement and monitoring of risks should be adequately covered at the level of the master AIF. It is not clear how matters such as investment due diligence and stress testing could sensibly take place at the Feeder AIF level, when in substance all that the Feeder AIF will be doing is investing in the master AIF. Their application, even as a technical matter, would seem to devalue these measures.

Amendment 644
Pascal Canfin

Proposal for a directive
Article 12 – paragraph 1

Text proposed by the Commission

Amendment

1. For each AIF it manages the AIFM shall employ an appropriate liquidity management system and adopt procedures which ensure that the liquidity profile of the investments of the AIF complies with its underlying obligations.

The AIFM shall regularly conduct stress tests, both under normal and exceptional liquidity conditions and monitor the

1. AIF shall have an appropriate liquidity management ***and*** ensure that the liquidity profile of ***its*** investments complies with its underlying obligations.

The AIFM shall regularly conduct stress tests, both under normal and exceptional liquidity conditions and monitor the

liquidity risk of the AIF accordingly.

liquidity risk of the AIF accordingly. ***The results of these stress tests need to be communicated to competent authorities.***

Close-ended AIF that do not use leverage are exempted from the requirements of this paragraph.

Or. en

Justification

AIF must have appropriate liquidity management. Supervisor must have access to the information on liquidity.

Amendment 645

Wolf Klinz

Proposal for a directive

Article 12 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. For each AIF it manages the AIFM shall employ an appropriate liquidity management system and adopt procedures which ensure that the liquidity profile of the investments of the AIF complies with its underlying obligations.

Amendment

1. For each AIF it manages the AIFM shall employ an appropriate liquidity management system and adopt procedures which ensure that the liquidity profile of the investments of the AIF complies with its underlying obligations ***and the nature of the AIF, the investment horizon and redemption policy, as laid down in the AIF fund rules or instruments of incorporation.***

Or. en

Justification

See risk management.

Amendment 646
Othmar Karas

Proposal for a directive
Article 12 – paragraph 2

Text proposed by the Commission

2. AIFM shall ensure that each AIF it manages **has a redemption policy which is appropriate to the liquidity profile of the investments of the AIF and which must be laid down in the AIF rules or instruments of incorporation.**

Amendment

2. AIFM shall ensure that, **for** each AIF it manages, **the investment strategy, the liquidity profile and the redemption policy are consistent.**

Or. en

Justification

Article 12, paragraph 2, as proposed by the Commission, does not take the broad variety of products covered into account. The proposed amendment allows for adjustments to the demands of various products.

Amendment 647
Wolf Klinz

Proposal for a directive
Article 12 – paragraph 2

Text proposed by the Commission

2. AIFM shall ensure that each AIF it manages has a **redemption policy which is appropriate to the** liquidity profile of the investments of the AIF and which must be laid down in the AIF rules or instruments of incorporation.

Amendment

2. AIFM shall ensure that each AIF it manages has a liquidity profile of the investments of the AIF **which is appropriate to the redemption policy** and which must be laid down in the AIF rules or instruments of incorporation.

Or. en

Justification

The liquidity profile should be appropriate to the redemption policy and not the other way round. This also allows for different fund types to be able to comply with the provisions.

Amendment 648
Wolf Klinz

Proposal for a directive
Article 12 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall adopt implementing measures further specifying:

deleted

(a) the liquidity management requirements set out in paragraph 1 and

(b) in particular, the minimum liquidity requirements for AIF which redeem units or shares more often than half-yearly.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).

Or. en

Justification

Implementing measures superfluous.

Amendment 649
Othmar Karas

Proposal for a directive
Article 12 – paragraph 3

Text proposed by the Commission

Amendment

3. The Commission shall adopt implementing measures further specifying:

deleted

(a) the liquidity management requirements set out in paragraph 1 and

(b) in particular, the minimum liquidity requirements for AIF which redeem units or shares more often than half-yearly.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).

Or. en

Justification

Article 12 appears sufficiently precise to supersede a Level 2 empowerment.

Amendment 650
Sharon Bowles

Proposal for a directive
Article 12 – paragraph 3

Text proposed by the Commission

3. The Commission **shall adopt implementing** measures further specifying:

(a) the liquidity management requirements set out in paragraph 1 and

(b) in particular, the minimum liquidity requirements for AIF which redeem units or shares more often than half-yearly.

Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).

Amendment

3. The Commission **may lay down, by means of delegated acts in accordance with Articles 49a, 49b and 49c,** measures further specifying:

(a) the liquidity management requirements set out in paragraph 1 and

(b) in particular, the minimum liquidity requirements for AIF which redeem units or shares more often than half-yearly.

Or. en

Justification

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

Amendment 651
Syed Kamall

Proposal for a directive
Article 12 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. AIFM shall not be obliged to comply with the provisions of this Article in relation to any Feeder AIF to the extent this Article is complied with in respect of the relevant master AIF.

Or. en

Justification

Again, the provisions of this Article only really make sense in the context of the underlying portfolio of a master AIF as opposed to a Feeder AIF. It is not clear, for example, how viable a portfolio “stress test” is or how liquidity management systems would apply in the Feeder AIF context. However, we have provided for the possibility of the provisions applying should the same standards of liquidity not have been applied at the master AIF level.

Amendment 652
Olle Schmidt

Proposal for a directive
Article 12 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. This article shall not apply to industrial holding companies having their shares traded on a EU regulated market insofar as they hold shares in their subsidiaries or associated companies for the purpose of carrying out an industrial business strategy and which are not established for the main purpose of generating returns for its investors by means of divestment within a planned timeframe.

Justification

Listed industrial holding companies are closed-end entities. Consequently the proposal's requirements regarding liquidity management system and redemption policy are irrelevant. Shareholders in a listed industrial holding company can sell its shares on the market.

Amendment 653**Olle Schmidt****Proposal for a directive****Article 12 – paragraph 3 b (new)***Text proposed by the Commission**Amendment*

3b. This article shall not apply to AIFM managing 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 nor to industrial holding companies having their shares traded on a EU regulated market insofar as they hold shares in their subsidiaries or associated companies for the purpose of carrying out an industrial business strategy and which are not established for the main purpose of generating returns for its investors by means of divestment within a planned timeframe.

Or. en

Justification

PE funds are typically closed-ended and unleveraged. Investors only receive their funds back once the investments are exited. Cash is not kept on accounts but only drawn as and when needed to make investments or service fixed fees. Consequently the proposal's requirements regarding liquidity management system and redemption policy are irrelevant. There also exists a limited secondary market for investors being forced to sell their interests in a fund. Exchange of cash and fund interests takes place directly between the selling and buying investor.

Amendment 654
Peter Skinner

Proposal for a directive
Article 12 – paragraph 3 c (new)

Text proposed by the Commission

Amendment

***3c. Paragraphs (1) to (3) do not apply to
unleveraged closed-ended AIF.***

Or. en

Justification

Liquidity management in relation to possible demands for redemption are not required for a closed-ended fund, as investors are not entitled to realise their investment out of the assets of the fund. Where a close-ended fund is leveraged this exemption should not apply.

Amendment 655
Syed Kamall

Proposal for a directive
Article 13

Text proposed by the Commission

Amendment

Article 13

deleted

Investment in securitisation positions

In order to ensure cross-sectoral consistency and to remove misalignment between the interest of firms that repackage loans into tradable securities and other financial instruments (originators) and AIFM that invest in these securities or other financial instruments on behalf of one or more AIF, the Commission shall adopt implementing measures laying down the requirements in the following areas:

(a) the requirements that need to be met by the originator in order for an AIFM to be allowed to invest in securities or other financial instruments of this type issued

after 1 January 2011 on behalf of one or more AIF, including requirements that ensure that the originator retains a net economic interest of not less than 5 per cent;

(b) qualitative requirements that must be met by AIFM which invest in these securities or other financial instruments on behalf of one or more AIF.

Those measures, designed to amend to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).

Or. en

Justification

The effect of this article is to seek to impose a restriction on the investment portfolio of the AIF itself, contrary to the express intention of the Directive (see Recital 4). This accords also with the Opinion of the European Central Bank (16 October 2009).

Amendment 656
Sirpa Pietikäinen

Proposal for a directive
Article 13

Text proposed by the Commission

Amendment

Article 13

deleted

Investment in securitisation positions

In order to ensure cross-sectoral consistency and to remove misalignment between the interest of firms that repackage loans into tradable securities and other financial instruments (originators) and AIFM that invest in these securities or other financial instruments on behalf of one or more AIF, the Commission shall adopt implementing measures laying down the

requirements in the following areas:

(a) the requirements that need to be met by the originator in order for an AIFM to be allowed to invest in securities or other financial instruments of this type issued after 1 January 2011 on behalf of one or more AIF, including requirements that ensure that the originator retains a net economic interest of not less than 5 per cent;

(b) qualitative requirements that must be met by AIFM which invest in these securities or other financial instruments on behalf of one or more AIF.

Those measures, designed to amend to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 49(3).

Or. en

Justification

The effect of this article is to seek to impose a restriction on the investment portfolio of the AIF itself, contrary to the express intention of the Directive. This accords also with the Opinion of the European Central Bank (16 October 2009).

Amendment 657
Wolf Klinz

Proposal for a directive
Article 13 – paragraph 1 – introductory part

Text proposed by the Commission

In order to ensure cross-sectoral consistency and to remove misalignment between the interest of *firms that repackage loans into tradable securities and other financial instruments (originators)* and AIFM that invest in these securities or other financial instruments on

Amendment

In order to ensure cross-sectoral consistency and to remove misalignment between the interest of *originators within the meaning of Article 4(40) of Directive 2006/48/EC* and AIFM that invest in these securities or other financial instruments on behalf of one or more AIF,

behalf of one or more AIF, the Commission shall adopt implementing measures laying down the requirements in the following areas:

the Commission shall adopt implementing measures laying down the requirements in the following areas:

Or. en

Justification

Alignment and clarification of definition.

Amendment 658
Sirpa Pietikäinen

Proposal for a directive
Article 13 – paragraph 1 – introductory part

Text proposed by the Commission

In order to ensure cross-sectoral consistency and to remove misalignment between the interest of *firms that repackage loans into tradable securities and other financial instruments (originators)* and AIFM that invest in these securities or other financial instruments on behalf of one or more AIF, the Commission shall adopt implementing measures laying down the requirements in the following areas:

Amendment

In order to ensure cross-sectoral consistency and to remove misalignment between the interest of *originators within the meaning of Article 4(40) of Directive 2006/48/EC* and AIFM that invest in these securities or other financial instruments on behalf of one or more AIF, the Commission shall adopt implementing measures laying down the requirements in the following areas:

Or. en

Justification

Investors should not be required to ensure that the issuers/originators retain a net economic interest in its portfolio, as the obligation should be imposed directly on issuers/originators. AIF shall be entitled to rely on the representations by an issuer/originator throughout the existence of such securities.

Amendment 659
Sari Essayah

Proposal for a directive
Article 13 – paragraph 1 – introductory part

Text proposed by the Commission

In order to ensure cross-sectoral consistency and to remove misalignment between the interest of firms that repackage loans into **tradable** securities and other financial instruments (originators) and AIFM that invest in these securities or other financial instruments on behalf of one or more AIF, **the** Commission shall adopt *implementing measures* laying down the requirements in the following areas:

Amendment

Member States shall take all reasonable steps to ensure cross-sectoral consistency and to remove misalignment between the interest of firms that repackage loans into **transferable** securities and other financial instruments (originators) and AIFM that invest in these securities or other financial instruments on behalf of one or more AIF. The Commission shall adopt *delegated acts in accordance with Articles 49a, 49b and 49c* laying down the requirements in the following areas:

Or. en

Amendment 660
Sirpa Pietikäinen

Proposal for a directive
Article 13 – paragraph 1 - point a

Text proposed by the Commission

(a) the requirements that need to be met by the originator in order for an AIFM to be allowed to invest in securities or other financial instruments of this type issued after 1 January 2011 **on behalf of one or more AIF, including requirements that ensure that the originator** retains a net economic interest of not less than 5 per cent;

Amendment

(a) the requirements that need to be met by the originator in order for an AIFM to be allowed to invest **on behalf of one or more AIF** in securities or other financial instruments of this type issued after 1 January 2011, **including the requirements that the Originator: (1)** retains a net economic interest of not less than 5 per cent **in any such issue of securities and (2) represents in the prospectus or other issuing documentation of such securities that it has, and will maintain, such interest (“Originator’s Representation”); and**

Justification

Investors should not be required to ensure that the issuers/originators retain a net economic interest in its portfolio, as the obligation should be imposed directly on issuers/originators. AIF shall be entitled to rely on the representations by an issuer/originator throughout the existence of such securities.

Amendment 661

Udo Bullmann, Robert Goebbels

Proposal for a directive

Article 13 – paragraph 1 - point a

Text proposed by the Commission

(a) the requirements that need to be met by the originator in order for an AIFM to be allowed to invest in securities or other financial instruments of this type issued after 1 January 2011 on behalf of one or more AIF, including requirements that ensure that the originator retains a net economic interest of not less than **5 per cent**;

Amendment

(a) the requirements that need to be met by the originator in order for an AIFM to be allowed to invest in securities or other financial instruments of this type issued after 1 January 2011 on behalf of one or more AIF, including requirements that ensure that the originator retains a net economic interest of not less than **10 per cent**;

Amendment 662

Bernd Lange

Proposal for a directive

Article 13 – paragraph 1 - point a

Text proposed by the Commission

(a) the requirements that need to be met by the originator in order for an AIFM to be allowed to invest in securities or other financial instruments of this type issued after 1 January 2011 on behalf of one or more AIF, including requirements that ensure that the originator retains a net

Amendment

(a) the requirements that need to be met by the originator in order for an AIFM to be allowed to invest in securities or other financial instruments of this type issued after 1 January 2011 on behalf of one or more AIF, including requirements that ensure that the originator retains a net

economic interest of not less than **5 per cent**;

economic interest of not less than **10 per cent**;

Or. en

Justification

The value of 5 per cent (COM proposal) corresponds with regulation of securitisation for banks (CRD). In the case of riskier AIF, 10 per cent seems more appropriate for the corresponding risk accumulation. In addition to the originator and the AIFM, implementing measures should also cover the repackaged loans themselves (see Article 13 b a (new)).

Amendment 663
Wolf Klinz

Proposal for a directive
Article 13 – paragraph 1 - point a

Text proposed by the Commission

(a) the requirements that need to be met by the originator in order for an AIFM to be allowed to invest in securities or other financial instruments of this type issued after 1 January 2011 on behalf of one or more AIF, including requirements that ensure that the originator retains a net economic interest of not less than 5 per cent;

Amendment

(a) the requirements that need to be met by the originator in order for an AIFM to be allowed to invest in securities or other financial instruments of this type issued after 1 January 2011 on behalf of one or more AIF, including requirements that ensure that the originator retains a net economic interest of not less than 5 per cent. ***The AIFM shall be entitled to rely on a written documentation by the originator that it has and will maintain the net economic interest;***

Or. en

Justification

This clarifies the responsibilities between the originator and the AIFM and under what circumstances the AIFM has performed its due diligence.

Amendment 664
Sirpa Pietikäinen

Proposal for a directive
Article 13 - paragraph 1 - point b

Text proposed by the Commission

(b) qualitative requirements that must be met by AIFM which invest in these securities or other financial instruments on behalf of one or more AIF.

Those measures, designed to amend to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with *the regulatory procedure with scrutiny referred to in Article 49(3)*.

Amendment

(b) qualitative requirements that must be met by AIFM which invest in these securities or other financial instruments on behalf of one or more AIF.

AIF shall be entitled to rely on an Originator's Representation for the entire existence of any such securities when determining whether to invest in any such securities.

Those measures, designed to amend to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with *Articles 49a, 49 b and 49c*.

Or. en

Justification

Investors should not be required to ensure that the issuers/originators retain a net economic interest in its portfolio, as the obligation should be imposed directly on issuers/originators. AIF shall be entitled to rely on the representations by an issuer/originator throughout the existence of such securities.

Amendment 665
Bernd Lange

Proposal for a directive
Article 13 – paragraph 1 - point b a (new)

Text proposed by the Commission

Amendment

(ba) the transparency requirements that need to be met regarding repackaged loans.

Justification

The value of 5 per cent (COM proposal) corresponds with regulation of securitisation for banks (CRD). In the case of riskier AIF, 10 per cent seems more appropriate for the corresponding risk accumulation. In addition to the originator and the AIFM, implementing measures should also cover the repackaged loans themselves.

Amendment 666**Jürgen Klute****Proposal for a directive****Article 13 – paragraph 1 - point b a (new)***Text proposed by the Commission**Amendment*

(ba) the transparency requirements that need to be met regarding repackaged loans.

Justification

The value of 5 per cent (COM proposal) corresponds with regulation of securitisation for banks (CRD). In the case of riskier AIF, 10 per cent seems more appropriate for the corresponding risk accumulation. In addition to the originator and the AIFM, implementing measures should also cover the repackaged loans themselves.

Amendment 667**Sharon Bowles****Proposal for a directive****Article 13 – paragraph 2***Text proposed by the Commission**Amendment*

Those measures, designed to amend to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in

The Commission may lay down by means of delegated acts in accordance with Articles 49a, 49b and 49c, measures specifying originator retention of a net economic interest of not less than 5 per

Article 49(3).

cent and qualitative requirements that must be met by AIFM that invest in securities or other financial products.

Or. en

Justification

This is appropriate wording under the new 'comitology' procedures if this article is retained.

Amendment 668

Pascal Canfin

Proposal for a directive

Article 13 a (new)

Text proposed by the Commission

Amendment

Article 13a

Investment in commodities markets

AIF that invest in commodities markets shall regularly provide the ESMA with information about their direct or indirect position on these markets. In order to avoid any disturbance of the commodities prices due to operations made by AIF, the ESMA may impose limits to the positions taken by AIF on commodities markets.

AIF are not allowed to invest directly or indirectly in agricultural commodities.

Or. en

Justification

AIF involvement in commodities markets need to be regulated. AIF should be banned to invest in agricultural commodities.

Amendment 669
Udo Bullmann, Robert Goebbels

Proposal for a directive
Chapter III – Section 2 – Title

Text proposed by the Commission

Amendment

CAPTIAL REQUIREMENTS

LIABILITY RESERVES

Or. en

Amendment 670
Hans-Peter Martin

Proposal for a directive
Article 14

Text proposed by the Commission

Amendment

Article 14

deleted

Initial and ongoing capital

***AIFM shall have own funds of at least
EUR 125 000.***

***Where the value of the portfolios of AIF
managed by the AIFM exceeds EUR 250
million, the AIFM shall provide an
additional amount of own funds; that
additional amount of own funds shall be
equal to 0.02 % of the amount by which
the value of the portfolios of the AIFM
exceeds EUR 250 million.***

***Irrespective of the amount of the
requirements set out in the first and
second subparagraphs, the own funds of
the AIFM shall never be less than the
amount required under Article 21 of
Directive 2006/49/EC of the European
Parliament and of the Council of 14 June
2006 on the capital adequacy of
investment firms and credit institutions
(recast).***

***For the purposes of the first, second and
third subparagraphs the following***

portfolios shall be deemed to be the portfolios of the AIFM:

(a) any AIF portfolios managed by the AIFM, including AIF for which the AIFM has delegated one or more functions in accordance with Article 18;

(b) any AIF portfolios that the AIFM is managing under delegation.

Or. de

Amendment 671
Wolf Klinz

Proposal for a directive
Article 14 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. Where an AIF is self-managed, namely, authorised as an AIFM, the AIF shall have initial capital of at least EUR 300 000.

Or. en

Justification

Alignment with UCITS.

Amendment 672
Olle Schmidt

Proposal for a directive
Article 14 – paragraph -1 (new)

Text proposed by the Commission

Amendment

-1. Member States shall require that an AIFM which is an internally managed AIF has an initial capital of at least EUR 300 000.

Justification

Alignment with UCITS. Capital requirements should follow the model of the UCITS Directive which has worked well since its adoption. Following the example of the UCITS Directive, there should be a cap for the capital requirements of an AIFM based on the assets under management. Furthermore amendments are made in order to avoid double counting in the situation where two AIF Managers (both the delegating AIFM and the AIFM managing under delegation) hold capital for the same portfolios in case of delegation. The final responsibility lies with the outsourcer and investors' and the assets are kept separate from the fund managers' assets and in the event of the managers' insolvency there will be no impact on investors' assets. Double counting would lead to additional costs to investors without adding any substantial investor protection. Finally, managers who manage both UCITS and AIF will not have to comply with double capital requirements.

Amendment 673
Olle Schmidt

Proposal for a directive
Article 14 – paragraph 1

Text proposed by the Commission

AIFM *shall have own funds* of at least EUR 125 000.

Amendment

1. Member States shall require that an AIFM which is appointed as external manager of one or more AIF has an initial capital of at least EUR 125 000, taking into account the following paragraphs.

Justification

Alignment with UCITS. Capital requirements should follow the model of the UCITS Directive which has worked well since its adoption. Following the example of the UCITS Directive, there should be a cap for the capital requirements of an AIFM based on the assets under management. Furthermore amendments are made in order to avoid double counting in the situation where two AIF Managers (both the delegating AIFM and the AIFM managing under delegation) hold capital for the same portfolios in case of delegation. The final responsibility lies with the outsourcer and investors' and the assets are kept separate from the fund managers' assets and in the event of the managers' insolvency there will be no impact on investors' assets. Double counting would lead to additional costs to investors without adding any substantial investor protection. Finally, managers who manage both UCITS and AIF will

not have to comply with double capital requirements.

Amendment 674
Gunnar Hökmark

Proposal for a directive
Article 14 – paragraph 1

Text proposed by the Commission

AIFM shall have own funds of at least
EUR 125 000.

Amendment

1. AIFM shall have own funds of at least
EUR 75 000.

Or. en

Justification

This brings the capital requirement closer but not equal to the level required by the Capital Requirements Directive and Long Only Funds (EUR 50,000 basic capital). AIFMs do not hold investors' funds so that the risk to investors is minimal. Unnecessarily high capital requirements for AIFMs will only inhibit new entrants and desirable competition.

Amendment 675
Olle Schmidt

Proposal for a directive
Article 14 – paragraph 2

Text proposed by the Commission

Where the value of the portfolios of AIF managed by the AIFM exceeds EUR 250 million, the AIFM shall provide an additional amount of own funds; **that additional amount of own funds shall be** equal to 0.02 % of the amount by which the value of the portfolios of the AIFM exceeds EUR 250 million.

Amendment

2. Where the value of the portfolios of AIF managed by the AIFM exceeds EUR 250 million, the AIFM shall provide an additional amount of own funds, equal to 0,02 % of the amount by which the value of the portfolios of the AIFM exceeds EUR 250 million; **the required total initial capital and the additional amount shall not, however, exceed EUR 10 million.**

Or. en

Justification

Alignment with UCITS. Capital requirements should follow the model of the UCITS Directive which has worked well since its adoption. Following the example of the UCITS Directive, there should be a cap for the capital requirements of an AIFM based on the assets under management. Furthermore amendments are made in order to avoid double counting in the situation where two AIF Managers (both the delegating AIFM and the AIFM managing under delegation) hold capital for the same portfolios in case of delegation. The final responsibility lies with the outsourcer and investors' and the assets are kept separate from the fund managers' assets and in the event of the managers' insolvency there will be no impact on investors' assets. Double counting would lead to additional costs to investors without adding any substantial investor protection. Finally, managers who manage both UCITS and AIF will not have to comply with double capital requirements.

Amendment 676 **Gunnar Hökmark**

Proposal for a directive **Article 14 – paragraph 2**

Text proposed by the Commission

Where the value of the portfolios of AIF managed by the AIFM exceeds **EUR 250 million**, the AIFM shall provide an additional amount of own funds; **that additional amount of own funds shall be equal to 0.02 %** of the amount by which the value of the portfolios of the AIFM exceeds **EUR 250 million**.

Amendment

2. Where the value of the portfolios of AIF managed by the AIFM exceeds **EUR 150 million**, the AIFM shall provide an additional amount of own funds equal to **at least 0,01 %** of the amount by which the value of the portfolios of the AIFM exceeds **EUR 150 million**.

Or. en

Justification

This brings the capital requirement closer but not equal to the level required by the Capital Requirements Directive and Long Only Funds (EUR 50,000 basic capital). AIFMs do not hold investors' funds so that the risk to investors is minimal. Unnecessarily high capital requirements for AIFMs will only inhibit new entrants and desirable competition.

Amendment 677

Udo Bullmann, Robert Goebbels

Proposal for a directive

Article 14 – paragraph 2

Text proposed by the Commission

Where the value of the portfolios of AIF managed by the AIFM exceeds EUR 250 million, the AIFM shall provide an additional amount of own funds; that additional amount of own funds shall be equal to **0.02 %** of the amount by which the value of the portfolios of the AIFM exceeds EUR 250 million.

Amendment

2. Where the value of the portfolios of AIF managed by the AIFM exceeds EUR 250 million, the AIFM shall provide an additional amount of own funds; that additional amount of own funds shall be equal to ***a specified percentage*** of the amount by which the value of the portfolios of the AIFM exceeds EUR 250 million.

Or. en

Justification

The capital of the AIFM must be sufficient to cover its potential exposure to professional liability. The precise amount needs to be in line with its actual risk profile.

Amendment 678

José Manuel García-Margallo y Marfil, Íñigo Méndez de Vigo, Pablo Zalba Bidegain

Proposal for a directive

Article 14 – paragraph 2

Text proposed by the Commission

Where the value of the portfolios of AIF managed by the AIFM exceeds EUR 250 million, the AIFM shall provide an additional amount of own funds; that additional amount of own funds shall be equal to **0.02 %** of the amount by which the value of the portfolios of the AIFM exceeds EUR 250 million.

Amendment

2. Where the value of the portfolios of AIF managed by the AIFM exceeds EUR 250 million, the AIFM shall provide an additional amount of own funds; that additional amount of own funds shall be equal to **0,02 %** of the amount by which the value of the portfolios of ***AIF managed by*** the AIFM exceeds EUR 250 million.

Or. en

Amendment 679
Olle Schmidt

Proposal for a directive
Article 14 – paragraph 3

Text proposed by the Commission

Amendment

Irrespective of the amount of the requirements set out in the first and second subparagraphs, the own funds of the AIFM shall never be less than the amount required under Article 21 of Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast).

deleted

Or. en

Justification

Alignment with UCITS. Capital requirements should follow the model of the UCITS Directive which has worked well since its adoption. Following the example of the UCITS Directive, there should be a cap for the capital requirements of an AIFM based on the assets under management. Furthermore amendments are made in order to avoid double counting in the situation where two AIF Managers (both the delegating AIFM and the AIFM managing under delegation) hold capital for the same portfolios in case of delegation. The final responsibility lies with the outsourcer and investors' and the assets are kept separate from the fund managers' assets and in the event of the managers' insolvency there will be no impact on investors' assets. Double counting would lead to additional costs to investors without adding any substantial investor protection. Finally, managers who manage both UCITS and AIF will not have to comply with double capital requirements.

Amendment 680
Hans-Peter Martin

Proposal for a directive
Article 14 - paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. All AIFMs must have available own resources constituting at least the amount required by Article 21 of Directive

**2006/49/EC of the European Parliament
and of the Council of 14 June 2006 on the
capital adequacy of investment firms and
credit institutions (recast)¹;**

Or. de

Justification

¹ OJL 17, 30.6.2006, p. 201.

**Amendment 681
Syed Kamall**

**Proposal for a directive
Article 14 – paragraph 4 – introductory part**

Text proposed by the Commission

For the purposes of the first, second and third subparagraphs the following portfolios shall be deemed to be the portfolios of the AIFM:

Amendment

For the purposes of the first, second and third subparagraphs the following portfolios shall be deemed to be the portfolios of the AIFM **but excluding any portfolio of a Feeder AIF to the extent that it consists of shares or units in a master AIF:**

Or. en

Justification

A clarification is necessary to ensure that this provision does not have the effect of “double counting” the portfolios of Feeder AIF (which in general will consist solely of shares or units in the relevant master AIF, along with any residual cash balances) the value of which is already accounted for in the portfolio of the relevant master AIF. The proposed amendment will only exempt units or shares from “double counting” to the extent that they would be counted anyway at the master AIF level. So the 15% that a Feeder AIF may invest other than in the master AIF will still count for the purposes of this Article.

Amendment 682
Olle Schmidt

Proposal for a directive
Article 14 – paragraph 4

Text proposed by the Commission

For the purposes of ***the first, second and third subparagraphs the following*** portfolios shall be deemed to be the portfolios of the AIFM:

(a) any AIF portfolios managed by the AIFM, including AIF for which the AIFM has delegated one or more functions in accordance with Article 18;

(b) any AIF portfolios that the AIFM is managing under delegation.

Amendment

4. For the purposes of ***paragraph 2***, AIF managed by the AIFM, including AIF for which the AIFM has delegated one or more functions in accordance with Article 18 ***but excluding*** AIF portfolios that the AIFM is managing under delegation, shall be deemed to be the portfolios of the AIFM.

Or. en

Justification

Alignment with UCITS. Capital requirements should follow the model of the UCITS Directive which has worked well since its adoption. Following the example of the UCITS Directive, there should be a cap for the capital requirements of an AIFM based on the assets under management. Furthermore amendments are made in order to avoid double counting in the situation where two AIF Managers (both the delegating AIFM and the AIFM managing under delegation) hold capital for the same portfolios in case of delegation. The final responsibility lies with the outsourcer and investors' and the assets are kept separate from the fund managers' assets and in the event of the managers' insolvency there will be no impact on investors' assets. Double counting would lead to additional costs to investors without adding any substantial investor protection. Finally, managers who manage both UCITS and AIF will not have to comply with double capital requirements.

Amendment 683
Olle Schmidt

Proposal for a directive
Article 14 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States may authorise AIFM not to provide up to 50 % of the additional amount of own funds referred to in paragraph 2 if they benefit from a guarantee of the same amount given by a credit institution or an insurance undertaking which has its registered office in a Member State, or in a third country where it is subject to prudential rules considered by the competent authorities as equivalent to those laid down in Union law.

Or. en

Justification

Alignment with UCITS. Capital requirements should follow the model of the UCITS Directive which has worked well since its adoption. Following the example of the UCITS Directive, there should be a cap for the capital requirements of an AIFM based on the assets under management. Furthermore amendments are made in order to avoid double counting in the situation where two AIF Managers (both the delegating AIFM and the AIFM managing under delegation) hold capital for the same portfolios in case of delegation. The final responsibility lies with the outsourcer and investors' and the assets are kept separate from the fund managers' assets and in the event of the managers' insolvency there will be no impact on investors' assets. Double counting would lead to additional costs to investors without adding any substantial investor protection. Finally, managers who manage both UCITS and AIF will not have to comply with double capital requirements.

Amendment 684
Wolf Klinz

Proposal for a directive
Article 14 – subparagraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Member States may authorise AIFM not to provide up to 50 % of the additional amount of own funds referred to in the paragraph 2 if they benefit from a guarantee for the same amount given by a credit institution or an insurance undertaking; the credit institution or insurance undertaking shall have its registered office in a Member State, or a third country provided that it is subject to prudential rules considered by the competent authorities as equivalent to those laid down in Union law.

Or. en

Justification

Alignment with UCITS.

Amendment 685

José Manuel García-Margallo y Marfil, Íñigo Méndez de Vigo, Pablo Zalba Bidegain

Proposal for a directive
Article 14 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Notwithstanding paragraph 4, AIF portfolios meeting the following criteria shall be excluded from the calculation of the value of the portfolios of the AIFM, namely those that;

- (i) are not leveraged;***
- (ii) have no redemption rights exercisable during a period of five years following the date of constitution of each***

AIF; and

(iii) in accordance with their investment strategy and objectives, make investments and divestments infrequently.

The Member States shall require that the initial capital of AIFM only managing AIF which fulfil the conditions set out in the first subparagraph is at least EUR 50 000.

Or. en

Amendment 686
Olle Schmidt

Proposal for a directive
Article 14 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4b. Paragraphs - 1, 1, 2, 4 and 4a shall not apply to AIFM not reaching the threshold of EUR 500 million set out in Article 2a(1)(a), which opt in as AIFM falling under the scope of this Directive, when only managing AIF which:

(a) are not leveraged at the level of the AIF;

(b) have no redemption rights exercisable during a period of five years following the date of initial investment in each AIF;
and

(c) in accordance with their investment strategy and objectives, make investments and divestments infrequently.

The Member States shall require that an AIFM which fulfils the conditions set out in the first subparagraph has an initial capital of at least EUR 50 000.

Or. en

Amendment 687
Corien Wortmann-Kool

Proposal for a directive
Article 14 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Paragraphs 1 to 4 shall not apply to AIFM only managing AIF which:

(a) are not leveraged;

(b) have no redemption rights exercisable during a period of five years following the date of constitution of each AIF; and

(c) in accordance with their investment strategy and objectives, make investments and divestments infrequently.

The Member States shall require that the initial capital of an AIFM which fulfils the conditions set out in the first subparagraph is at least EUR 50 000.

Or. en

Justification

These capital requirements are inspired by the UCITS Directive which applies to open-ended funds distributed to the public. This approach disregards the fact that professional investors in closed-ended funds are not confronted with the same operational risks as retail investors in an open-ended fund that requires active management

Amendment 688
Sirpa Pietikäinen

Proposal for a directive
Article 14 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Paragraphs 1 to 4 shall not apply to AIFM only managing AIF which;

- (a) are not leveraged;*
 - (b) have no redemption rights exercisable during a period of five years following the date of constitution of each AIF; and*
 - (c) in accordance with their investment strategy and objectives, make investments and divestments infrequently.*
- The Member States shall require that the initial capital of an AIFM which fulfils the conditions set out in the first subparagraph is at least EUR 50 000.*

Or. en

Justification

These capital requirements are inspired by the UCITS Directive which applies to open-ended funds distributed to the public. This approach disregards the fact that professional investors in closed-ended funds are not confronted with the same operational risks as retail investors in an open-ended fund that requires active management.

Amendment 689
Diogo Feio

Proposal for a directive
Article 14 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The above paragraphs shall not apply to AIFM only managing AIF:

- (a) which are not leveraged;***
- (b) which have no redemption rights exercisable during a period of five years following the date of constitution of each AIF;***
- (c) which have fixed capital commitments;***
- (d) where fees are based on capital commitments;***
- (e) where investors have the right to change the AIFM;***

(f) where specific provisions are included in the contractual agreement regarding the winding-up of an AIFM to protect investors during a transition.

The above paragraphs shall also not apply to portfolios of a feeder AIF insofar as it consists of shares or units in a master AIF.

Or. en

Justification

Need to adjust the specificities of the risk profile of investors on the various AIF.

Amendment 690
Syed Kamall

Proposal for a directive
Article 14 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The above paragraphs shall not apply to AIFM only managing AIF:

(a) which are not leveraged;

(b) which have no redemption rights exercisable during a period of five years following the date of constitution of each AIF;

(c) which have fixed capital commitments;

(d) where fees are based on capital commitments;

(e) where investors have the right to change the AIFM; and

(f) where specific provisions are included in the contractual agreement regarding the winding-up of an AIFM to protect investors during a transition.

Or. en

Justification

These capital requirements are inspired by the UCITS Directive which applies to open-ended funds distributed to the public. This approach disregards the fact that professional investors in closed-ended funds are not confronted with the same operational risks as retail investors in an open-ended fund that requires active management.

Amendment 691

Ślawomir Witold Nitras, Danuta Jazłowiecka, Danuta Maria Hübner

Proposal for a directive

Article 14 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The above paragraphs shall not apply to AIFM only managing AIF:

(a) which are not leveraged;

(b) which have no redemption rights exercisable during a period of five years following the date of constitution of each AIF;

(c) which have fixed capital commitments;

(d) where fees are based on capital commitments;

(e) where investors have the right to change the AIFM; and

(f) where specific provisions are included in the contractual agreement regarding the winding-up of an AIFM to protect investors during a transition.

Or. en

Justification

These capital requirements are inspired by the UCITS Directive which applies to open-ended funds distributed to the public. Professional investors in closed-ended funds are protected by different mechanisms. Higher capital of the AIFM does not increase investor protection. Investors in Private Equity funds are not confronted with the same operational risks as retail investors in an open-ended fund that requires active management.

Amendment 692
Olle Schmidt

Proposal for a directive
Article 14 – paragraph 4 c (new)

Text proposed by the Commission

Amendment

4c. This Article shall apply neither to AIFM managing funds that are non-leveraged and with no redemption rights exercisable during a period of five years following the date of constitution of each AIF insofar as they make private equity investments, nor to industrial holding companies having their shares traded on a EU regulated market insofar as they hold shares in their subsidiaries or associated companies for the purpose of carrying out an industrial business strategy and which are not established for the main purpose of generating returns for its investors by means of divestment within a planned timeframe.

Or. en

Justification

Listed industrial holding companies are closed-ended funds which do not grant their shareholders any redemption or repurchase rights. Further, these entities are the legal and beneficial owners of their assets. This gives them substantial capital resources to draw on to continue to discharge their regulatory obligations. Mechanisms already exist for the orderly wind-up of the company if required. This is governed by EU law. Private Equity funds are typically closed-ended funds which do not grant their investors any redemption rights. The management fees are predictable and based on commitments to the fund and not valuations. Funds to investors are only returned as and when investments in portfolio companies are exited. These companies are legal entities with their own boards and operating management. In addition fund documentation provides mechanisms for the orderly wind-up of a manager should that be required by the investors, who in such case will typically pay a break-fee equal to 12-18 months of management fees.

Amendment 693
Olle Schmidt

Proposal for a directive
Article 14 – paragraph 4 d (new)

Text proposed by the Commission

Amendment

4d. This Article shall not apply to industrial holding companies having their shares traded on a EU regulated market insofar as they hold shares in their subsidiaries or associated companies for the purpose of carrying out an industrial business strategy and which are not established for the main purpose of generating returns for its investors by means of divestment within a planned timeframe.

Or. en

Justification

Listed industrial holding companies are closed-ended funds which do not grant their shareholders any redemption or repurchase rights. Further, these entities are the legal and beneficial owners of their assets. This gives them substantial capital resources to draw on to continue to discharge their regulatory obligations. Mechanisms already exist for the orderly wind-up of the company if required. This is governed by EU law.

Amendment 694
Gunnar Hökmark

Proposal for a directive
Article 14 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Notwithstanding paragraph 1, an AIFM which is already authorised under Directive 2004/39/EC and/or subject to capital requirements under Directive 2006/49/EC or Directive 85/611/EEC shall not be required to meet additional requirements under this Directive.

Justification

Many AIFMs are already authorised under MiFIC and subject to capital rules under the Capital Requirements and UCITS Directives. It is unnecessary, and potentially duplicative, to require such firms to meet additional requirements under the AIFMD.

Amendment 695**Olle Schmidt****Proposal for a directive****Article 14 – paragraph 4 e (new)***Text proposed by the Commission**Amendment*

4e. This Article shall not apply to management companies authorised under Directive 2009/65/EC which also manage AIF.

Justification

Alignment with UCITS. Capital requirements should follow the model of the UCITS Directive which has worked well since its adoption. Following the example of the UCITS Directive, there should be a cap for the capital requirements of an AIFM based on the assets under management. Furthermore amendments are made in order to avoid double counting in the situation where two AIF Managers (both the delegating AIFM and the AIFM managing under delegation) hold capital for the same portfolios in case of delegation. The final responsibility lies with the outsourcer and investors' and the assets are kept separate from the fund managers' assets and in the event of the managers' insolvency there will be no impact on investors' assets. Double counting would lead to additional costs to investors without adding any substantial investor protection. Finally, managers who manage both UCITS and AIF will not have to comply with double capital requirements.

Amendment 696
Udo Bullmann, Robert Goebbels

Proposal for a directive
Article 14 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The Commission shall adopt delegated acts laying down the specified percentage, which shall be set between 1 % and 5 % referred to in paragraph 2, in accordance with the risk profile of the AIF, and specifying the assets in which the own funds may be invested.

Those acts, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the procedure referred to in Article 290 of the Treaty on the Functioning of the European Union.

Or. en

Justification

The capital of the AIFM must be sufficient to cover its potential exposure to professional liability. The precise amount needs to be in line with its actual risk profile.

Amendment 697
Robert Goebbels, Udo Bullmann

Proposal for a directive
Article 14 – paragraph 4 b (new)

Text proposed by the Commission

Amendment

4b. The amount invested by AIFM in each AIF they manage shall be such that, on an annual basis, the AIFM hold a net economic exposure superior or equal to a specified percentage of the total amount invested by all the investors in that AIF.

Or. en

Justification

The AIFM need to align their interest with their investors. The alignment typically exists by way of agreements to share profits. It is also important to make sure that, to a certain extent, AIFM suffer from the losses they cause. This provision is similar to the requirement for banks to keep 5% of the loans for which they are originators. The precise percentage will be different on the basis of the risk profile of the AIF.

Amendment 698

Robert Goebbels, Udo Bullmann

Proposal for a directive

Article 14 – paragraph 4 c (new)

Text proposed by the Commission

Amendment

4c. The Commission shall adopt delegated acts laying down the requirements in the following areas:

(a) the specified percentage to be invested by the AIFM, which shall be set between 1 % and 5 % of the total amount invested by all the investors, in accordance with the risk profile of the AIF;

(b) the manner in which the computation is to be made;

(c) the process to be followed by the AIFM in order to comply with the above requirements.

Those acts, designed to amend to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the procedure referred to in Article 290 of the Treaty on the Functioning of the European Union.

Or. en

Justification

The AIFM need to align their interest with their investors. The alignment typically exists by way of agreements to share profits. It is also important to make sure that, to a certain extent, AIFM suffer from the losses they cause. This provision is similar to the requirement for banks to keep 5% of the loans for which they are originators. The precise percentage will be

different on the basis of the risk profile of the AIF.

Amendment 699

Udo Bullmann, Robert Goebbels

Proposal for a directive

Article 14 – paragraph 4 d (new)

Text proposed by the Commission

Amendment

4d. Own funds shall be invested in liquid assets or assets readily convertible to cash in the short term and shall not include speculative positions.

Or. en

Justification

The capital of the AIFM must be sufficient to cover its potential exposure to professional liability. The precise amount needs to be in line with its actual risk profile.