

**MEMO# 24088**

January 19, 2010

## **Second ICI Letter on EU Commission Proposal for a Directive on Alternative Investment Fund Managers**

[24088]

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TO: INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 2-10 RE: SECOND ICI LETTER ON EU COMMISSION PROPOSAL FOR A DIRECTIVE ON ALTERNATIVE INVESTMENT FUND MANAGERS

As we previously informed you, the Commission of the European Union in April 2009 proposed a new directive for regulating managers of alternative investment funds (the "Directive"). [\[1\]](#) In July 2009 the Institute submitted a letter to the European Commission and Swedish Presidency expressing the Institute's concerns with the Directive. [\[2\]](#)

Since the submission of the original letter, the Institute has closely followed the work of the Commission, the European Parliament and the Presidency of the Council of the European Union on the proposed Directive. We remain concerned that the Directive as proposed to be amended by the Swedish Presidency of the Council (the "Swedish Presidency") and by the rapporteur of the Committee on Economic and Monetary Affairs, Jean-Paul Gauzès (the "Gauzès Draft Report"), is unnecessarily broad. We believe that these versions of the Directive will have significant, adverse and unintended consequences for investors and investment managers alike – both in the EU and elsewhere. The Institute, therefore, recently submitted another letter regarding the proposed Directive to the European Commission, the Spanish Presidency of the Council, Jean-Paul Gauzès, and other key persons. [\[3\]](#)

In the letter, the Institute expresses the following concerns:

- The proposed Directive would preclude US investment companies registered under the Investment Company Act of 1940 and regulated by the US Securities and Exchange Commission (each, a “US RIC”) from retaining an EU investment manager, to the detriment of US RICs and investors and EU managers.
- Contrary to sound and well-established global asset management practices, delegation of portfolio management to non-EU managers would be prohibited under the original form of the Directive and under the Gauzès Draft Report.
- Under the Gauzès Draft Report, sales of US RICs to EU investors under national law would require negotiated cooperation agreements among regulators, a process likely to be challenging and drawn-out, posing substantial disruption and adversely impacting investor access to US RICs and other non-EU funds.

To address these concerns, the Institute suggests that the Directive be amended as follows:

- To exclude from the Directive’s provisions non-EU funds that are neither marketed nor domiciled in the EU and that are subject to regulation in their own jurisdictions.
- To permit EU managers to delegate portfolio management of an alternative investment fund in a manner similar to that by which such functions are delegated under the UCITS Directive.
- To permit Member States the continuing ability to prescribe the terms and conditions under which non-EU funds may be marketed and sold to professional investors in their own jurisdictions.

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## [Attachment](#)

### **endnotes**

[1] See [Memorandum](#) to International Members No. 15-09 and SEC Rules Members No. 68-09, dated June 23, 2009.

[2] See [Memorandum](#) to International Members No. 19-09 and SEC Rules Members No. 82-09, dated July 29, 2009.

[3] A copy of the Institute’s letter to Mr. Emil Paulis, Director, DG MARKT/G, Financial Services Policy & Financial Markets, European Commission, is attached. The Institute additionally sent a separately-addressed letter to the following individuals: Mr. Ugo Bassi, Head of Unit, Asset Management, Internal Market and Services DG, European Commission;

Ms. Sharon Bowles, MEP, European Parliament; Ms. Dolores Durán Bono, Vocal Asesor, Subdirección General de Legislación y Política Financiera, Dirección General del Tesoro y Política Financiera, Ministerio de Economía y Hacienda; Mr. Enrique Ezquerro, Economic and Trade Counsellor, Permanent Representation of Spain to the European Union; Mr. Jean-Paul Gauzès, MEP, European Parliament; Dr. Wolf Klinz, MEP, European Parliament; Mr. Fernando Valero, Economic and Trade Counsellor, Permanent Representation of Spain to the European Union; Mr. David Wright, Deputy Director General Financial Services, DG MARKT, European Commission.

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