



CMVM

**MANAGING, SERVICING AND MARKETING HEDGE FUNDS IN EUROPE**

Comments from the Comissão do Mercado de Valores Mobiliários (CMVM) – Portugal

**General remarks:**

CMVM is the Portuguese Securities Commission and the authority responsible for the supervision of investment funds.

According to the Portuguese legal framework, both **special investment funds** (which both HF and FoHF) and management companies are registered, regulated and subjected to disclosure rules. In what regards the special funds investment policy, there are no legal constrains, such portfolio composition rules or restrictions regarding the usage os derivatives, leverage or short sales.

A recent regulatory change allows the fund manager to specify the minimum subscription amount for retail sales, so that there isn't a legal prescription. However CMVM may refuse the authorization for marketing the fund to some specific investor category if it is considered that the investor protection conditions are not adequate to the risks and complexity expected.

CMVM would like to make a few comments on specific recommendations, as follows:

**Recommendation Nr. 1**

We recognize the increasing appetite for hedge funds and consider that the Portuguese regulatory approach is adequate. Retail access to funds of hedge funds is not considered as a problem in our view.

Minimum threshold is not a sufficient condition to prevent non-informed investors to subscribe. Other conditions should be applicable, as for instance conduct of business requirements applicable to sales intermediaries.

We also believe that clear rules for management companies, including capital requirements should be considered.

**Recommendation Nr. 2**

We consider that it would be advisable to broaden the range of UCITS investments. However it is important to consider that financial products are always changing and the investment policy for UCITS is becoming more complex. We consider that regulatory changes should urgently consider and implement a risk based and principle driven regulation instead of a product-based approach.



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**Recommendation Nr. 3**

We agree that investment in derivatives based on hedge funds indices for UCITS is not recommendable, as the state of the art of HF indexes' composition, entry requirements and calculation procedures (mainly, selection bias and survivorship bias) does not mirrors the overall strategies' risk adjusted performance.

**Recommendation Nr. 4**

Cross-border market and distribution to retail investors under MIFID conditions are completely different from the UCITS passport. These conditions should be carefully assessed considering that subscriptions in hedge funds have special rules. We consider that the more effective way to pursue the goal under the Group's recommendation is to implement a reciprocity rule in marketing HF in other jurisdictions which may take the shape of bilateral or multilateral MoUs between Member States.

**Recommendation Nr. 11**

The valuation function should be played by an independent body and not by the fund manager and there should be some disclosure requirements of the criteria and methodologies used by the HF manager in order to grant some transparency and avoid mispricing or fraud practices.

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