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### **DEVELOPING EUROPEAN PRIVATE EQUITY**

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 private equity and venture capital funds.

Considering the characteristics of the Portuguese market and the recent evolution of the private equity at a European level, we detect several constraints to the development of an efficient cross-border investment.

First of all we must reflect on the great number of family owned small and medium enterprises in Europe. Owners of a family business are sometimes reluctant to open its private capital to unknown investors, considering the lack of information available. European Authorities should develop a common approach to inform the SMEs on this possibility of raising capital.

Another barrier is the funds' dimension. Due to the capital available, funds invest usually on a national basis. Cross-border mergers should be promoted. This would give funds a bigger investment capacity. This also means that Member States should promote equivalent tax regimes for private equity investment.

We agree with most of the conclusions of the Expert Group and would like to make a few comments on specific recommendations, as follows:

#### **Recommendation**

The Group strongly encourages national policymakers to use the levers available to them to develop private equity finance. We would urge Member States to learn from each other and to create the optimal conditions at local/national level to facilitate the development of this important form of financing.

National public authorities should encourage private equity funds indirectly, rather than directly by incorporating their own private equity or other competing vehicles. The allocation of funds from the European programs to develop SME businesses by Member States should be channeled through the private venture capitalists in the market in order to improve the efficiency of such monies and, consequently, the achievement of the main objectives pursued by the European policy for this particular area..



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### **Recommendation of the Expert Group**

The guiding principle for enlightened and single-market-compatible taxation of private equity funds is that the investor only be taxed in its home country on capital gains.

For capital gains tax purposes Member States should look through the private equity vehicle to the end investor to ensure that tax is applied only in the home state of the investor – in respect of private equity funds that are deemed to be fiscally transparent in the private equity fund's home state. The EU institutions and Member States are urged to take appropriate steps to codify the mutual recognition of each other's fiscally transparent private equity fund structures.

The Group recommends that Member States treat private equity funds, which are used to pool assets for investment in private equity investment programmes, in the same way as they treat public equity investments. In particular, Member States in which private equity funds employ managers to manage local investments, should not use this local presence to claim jurisdiction over capital gains accruing to the fund.

Concerning private equity funds, we agree that capital gains tax should be applied only in the home state of the investor, with the purpose of avoiding double taxation.

In fact, different tax regimes between Member States are the most important barrier for cross border investment made by private equity and venture capital funds. In addition, most of the times the tax regime applied to private equity funds is less competitive when compared to direct investment at the stock exchange.

On the other hand, Member States have different ways to protect and support small sized companies, but those backups are not applicable to private equity funds.

### **Recommendation of the Expert Group**

The Expert Group encourages EU institutions and Member States to consider establishing – in non-legislative form – a common understanding of the parameters of "private placement". This could involve building on, with adaptation in relation to experience/dealing frequency, useful provisions of existing Community law as regards the notion of "qualified investors" which can be approached without triggering mandatory disclosure or conduct of business rules.

We agree with the approach referred to by the Expert Group. Member States should develop a common understanding on "private placement" and "qualified investors", based on the directives already existent, specifically the concept of qualified investors of the Prospectus Directive.

Some attention should also be given by the 3L3 Committees to this subject, considering that some of those investors are pension funds or retirement insurance products.

Although this is a product considered as a medium-long term investment, it is possible for private equity contractual funds to be marketed to retail investors. In this particular case, a common regulatory approach should be considered and special attention should be given by the supervisory authorities to the marketing and information disclosure conditions.

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In addition, there are some moves in Portugal towards the incorporation of Special Investment Funds that may invest its assets, in whole or in part, in private equity funds, both domestic and foreign funds. Taking in consideration the evolution of the hedge fund industry and the way it paved in these latest years and the current stage of the private equity industry, a *retailisation* of private equity funds through the Funds of Private Equity Funds (FoPEF) may be reasonably anticipated. Considering that these structures may reach, at least, the higher strip of retail investors, supervisors should implement (light) procedures to monitor the activities of private equity funds, mainly through reporting.

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