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Opinion

Title **Proposal on Alternative Investment Fund Managers
(draft version of 6 March 2009)**

Lead DG **DG MARKT**

1) Impact Assessment Board Opinion

(A) Context

Following up on the Communication on Driving European Recovery [COM (2009)114], the Commission plans to bring forward legislative proposals to ensure appropriate oversight and regulation of all systemically important market players by the end of April 2009. Against this background, a particular area of concern refers to those investment funds which do not comply with the harmonised rules laid down by the UCITS Directive. Non-UCITS or "alternative investment" funds (AIFs) – such as hedge funds or private equity funds - do not form a homogenous class and are generally restricted to professional or institutional investors. AIFs and/or their managers (AIFMs) operate within the complex regulatory environment resulting from the combination of some indirect measures at the EU level and a patchwork of national regulations.

(B) Positive aspects

The report contains a significant amount of relevant background information in the annexes.

(C) Main recommendations for improvements

The recommendations below are listed in order of descending importance. Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report.

General recommendation: The Board acknowledges that the preparation of the report has been affected by the tight schedule for adoption of the related proposal as part of the Commission's response to the financial crisis, and that this has had a significant impact on the quality of the report. The current draft provides only a partial analysis and does not meet the standards expected of an impact assessment. Significant further work is needed on a number of issues: the report should better identify and substantiate the risks posed by AIFMs' activities, their systemic nature and their cross-border dimension. Against this background, it should more clearly

identify the problematic issues that can be addressed by EU regulatory intervention, provide a much more detailed analysis of the options for such action and set out the concrete measures proposed in sufficient detail in the preferred option. In so doing, the report should ensure that illustrate the principle-based nature of the envisaged regime and its implications for different types of AIFMs, national supervisors, relevant stakeholders and administrative costs. The report should also better specify the nature of the single market problems identified and the solution proposed to deal with them. Finally, the analysis of international aspects such as the role of non-EU funds, the potential for international regulation and the risk for the competitiveness of the EU industry should be strengthened.

During the IAB meeting DG MARKT stated its intention to take on board these recommendations, and to present a revised draft of the impact assessment for the inter-service consultation meeting on 25 March. Nevertheless, given the fundamental nature of these recommendations, the Board would like to examine a further revised draft before the completion of the decision-making process and issue a new opinion.

(1) Better identify and substantiate the risks posed by AIFMs' activities. The report should provide more extensive evidence with regard to the risks posed by AIFMs' activities and the cross-border dimension of these risks. In so doing, it should assess more clearly the systemic nature of the risks and differentiate more precisely between the more general problems affecting the financial services industry and those specific to the activities of AIFMs while differentiating between types of AIFM (such as hedge funds, private equity or commodity funds). The analysis of risks should also assess more clearly whether the on-shore / off-shore structure of the AIF industry is a specific source of potential risks.

(2) Substantially strengthen the presentation of the solutions proposed and the analysis of their impacts. The report should better identify the problematic issues that can be addressed by EU regulatory intervention, provide a more detailed analysis of the options for such action, which should also contain in more detail the concrete measures that are proposed. In this respect, the report should more clearly illustrate the principle-based nature of the envisaged regime showing how the chosen "all-encompassing" approach could still result in proportionate measures tailored to the specificities of the different types of AIFs. Providing stylized examples for major AIFs categories like hedge funds, private equity funds and commodity funds could be useful in this regard. Building on this analysis, the report should also clarify the precise role of national legislation and supervision, discuss the planned use of de minimis clauses and spell out how the envisaged Lamfalussy process would operate in practice. Finally, the report should considerably strengthen the analysis of impacts on stakeholders (investors, counterparties, SMEs and other recipients of AIFs' resources) including administrative costs.

(3) Better specify the content of the single market problems identified and the nature of the solution proposed. The report should more clearly identify the current obstacles to the establishment of a single market. It should provide explanatory examples reflecting differences between AIF and AIFMs and across types of funds. The nature of the various measures proposed to remove these obstacles should be more transparently spelled out. This applies in particular to the envisaged distribution of responsibilities for supervision across national and international bodies which needs to be more explicitly justified in comparison to the prevailing (or planned) architecture for other financial

markets (such as those for banking and insurance services where colleges of supervisors are deemed necessary).

(4) Strengthen the analysis of the international aspects. The report should more clearly assess the extent to which non-EU funds and managers could be a source of the problems identified and how the proposal would affect them. The option of regulating at the international level should also be analysed and, more generally, the implications of the preferred option for the on-going international process of regulatory convergence discussed. Finally, the report should assess the potential impact of the proposed measures on the international competitiveness of the EU AIF/AIFM industry and the risks of its relocation abroad.

(D) Procedure and presentation

Due to the urgency of the initiative and the commitments undertaken in the Commission Communication on Driving European Recovery, no formal Inter-Service Steering Group was created. Public consultations on issues specifically related to hedge funds took place at the end of 2008 but its results were not yet fully integrated into the draft report submitted to the Board. A summary of stakeholders' views should therefore be annexed along with an explanation of the Lamfalussy approach. Finally, the report should explicitly identify the legal basis of the proposal.

2) IAB scrutiny process

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External expertise used	No
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