

**ASSET MANAGEMENT AND INVESTORS COUNCIL**

Mr. Vittorio CONTI  
**Chair of the Investment Management Standing Committee**  
**European Securities and Markets Authorities**  
11-13 avenue de Friedland  
75008 Paris  
France

London, January 14, 2011

Dear Mr. Conti,

**ESMA Call for Evidence – AIFM Directive**

The ICMA Asset Management and Investors Council ('AMIC' or 'the Council') was established in March 2008 to represent the buy-side members of the ICMA membership. ICMA is one of the few trade associations with a European focus having both buy-side and sell-side representation.

The AMIC composition embraces the diversification and the current dynamics of the industry – representing the full array of buy side interests both by type and geography. The AMIC's focus is on issues which are of concern to its broad membership, rather than having a specific product focus.

The AMIC welcomes the opportunity to respond to ESMA Call for Evidence on implementing measures on the Alternative Investment Fund Managers Directive. The Council is presenting general comments on the implementing measures.

1. **Value of the alternative investment industry to the investors** – Council members have been concerned that one of the impacts of the AIFMD is the reduction of investment opportunities for investors. The AMIC believes that maintaining diversity of investment is crucial. There is concern that investors would lose the ability to design optimal portfolios representing a backwards set on terms of risk adjusted returns. Alternative investments are an important element in the investment landscape could be threatened by heavy handed regulation. Council members are concerned about losing access to specific individual funds. Given the substantial variation on the investment strategies of alternative investment funds this is a significant concern – notably those funds which are considered 'best in class'. Hence, the risk is that overly burdensome regulation results in addition to the reduction in the quantity of funds available, also in the reduction in both the variety of funds and also the quality of funds which EU investors can access.

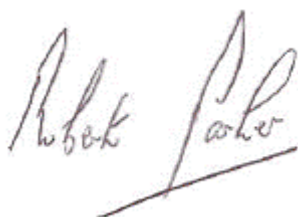
2. **Need for proportionality** – The Alternative Investment Fund industry is essentially populated by small businesses, even the some of the biggest managers count heads in the hundreds, not thousands. Proportionality therefore has to be clearly an essential element of the legislation.
3. **Need for principles as opposed to prescription** – The Alternative Investment Funds do not represent a homogeneous set of funds but rather represent a wide range of different types of funds (hedge funds, real estate funds, private equity etc.) and a variety of investment strategies. The diversity of the business models and investment strategies is too big for legislation to perfectly describe and prescribe the right models. For instance, there is no one-size-fits-all approach to risk management. A lot of the provisions would therefore need to be open-ended, recognising, that, for example there is not just one method of calculating leverage and there may be others which are not described in legislation which could be more appropriate and more desirable for AIFM to use but the legislation.
4. **Interaction with other existing European Directives** – The level 2 directives should not attempt to indiscriminately duplicate provisions already available in the EU regulatory landscape unless these are relevant to alternative fund management industry. One could be tempted to use UCITS as much as possible. However, one has to bear in mind that the AIFMD is a directive regulating the non-UCITS universe so it would be a rather strange outcome if the level 2 provisions were to draw heavily on the UCITS directive text where it is inappropriate. Generally speaking, MiFID seems to be a more preferable regulation to follow as it deals with asset management without the product restrictions imposed in the UCITS world which is necessary for the protection of retail investors. As MiFID has differentiated arrangements in relation to professional clients and eligible counterparties, those arrangements appear to be more suitable than some of the retail oriented UCITS provisions. So in terms of organisational requirements, conflicts of interest, delegation and some other operating conditions, MiFID looks like a better option given its more general scope of application.
5. **Alternative Retail Funds** – The AMIC understands that ESMA intends to consider alternative retail funds. Council Members believe that in fact most of the alternative funds are currently sold to professional investors and should be therefore considered as such in AIFMD discussions. On the basis of this premise, it is clear that a "light" regulation should be applied when compared to the UCITS regulatory framework. There is risk with having two regulatory frameworks for retail funds, i.e. UCITS and AIFMD. The scope of the AIFMD is understood as being that of professional investors, and should not consider potential retail market risks.
6. **Depositaries** – Too much rigidity in regulation of the depositaries and the creation of a liability standard which is too restrictive will impact the competitiveness of the European Alternative investment industry on a global scale. Managers and investors should be driving investment policies. However the fact that depositaries may not wish to provide their services for certain strategies because the law has set the liability bar too high may create barriers to entry to the market. For instance, there are many risks associated with holding emerging market securities and since depositaries could be liable for many of those risks (depending on how the liability issue is considered in the level 2 provisions), their services will either be prohibitively expensive as the liability risk they'll be

assuming will be simply too large. Level 2 text should therefore in no ways further restrict the scope of the liability discharge present in the Level 1.

7. **Directive vs. Regulations** – Council members believe as mentioned in point 1 that the value of the industry rests upon its diversity of legal structures and strategies. Therefore the AMIC believes that this calls for a legislative flexibility only offered by a Directive.

The AMIC would be happy to discuss further with you the points made in this letter. The Secretary of the AMIC, Nathalie Aubry-Stacey, can be reached at [Nathalie.aubry-stacey@icmagroup.org](mailto:Nathalie.aubry-stacey@icmagroup.org) should you need further information.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Robert Parker". The signature is written in a cursive style with a long horizontal stroke at the end.

Robert Parker  
AMIC Chairman