

March 8, 2010

Mr. Jean Paul Gauzès
MEP – Rapporteur for the AIFM Directive
European Parliament
ASP 13E258
Rue Wiertz
B-1040 Brussels
Belgium

Dear Mr. Gauzès:

This letter concerns the proposed EU Directive on Alternative Investment Fund Managers (the “Proposal”) as it relates to private equity and conveys the perspectives of the Institutional Limited Partners Association (ILPA).

The ILPA is a global organization dedicated to the interests of institutional limited partners in private equity. The ILPA, an investor-only forum, has 220 member organizations spanning all categories of small and large institutions, including public pensions, corporate pensions, endowments, foundations, family offices and insurance companies. The ILPA has broad global representation from North America, Europe, Asia, Australia, New Zealand and the Middle East. In total, members of the ILPA represent well over US\$1 trillion in private equity assets under management. Core activities of the ILPA include networking, research, education and the development of industry best practices.

Most of ILPA’s member organizations manage retirement assets for millions of hard working people and retirees, who have been meaningfully impacted by the recent global financial crisis. Other ILPA members manage assets for educational institutions and non-profit organizations, which have overall experienced significant declines in assets over the last three years. Therefore, we recognize the critical importance of market reform and appropriate oversight in order to protect both investors and individuals, who our members represent and serve. Accordingly, we welcome aspects of the Proposal and are supportive, in general, of an increase in transparency and disclosure as well as the clear articulation of manager fiduciary duties. However, we do have some concerns that key elements of the Proposal will, in fact, have a negative impact on private equity as an institutional investment asset class through both decreased choice and investment returns without a corresponding proportionate increase in investor protections. This will ultimately have an adverse impact on the beneficiaries of the ILPA’s institutional members, who are the very people and organizations that the Proposal is designed to protect. As others have noted, the fact that the Proposal has a one size fits all approach to alternative investment funds is highly problematic. We also want to be clear that our views relate to investment in private equity, and so to the extent that we discuss our view of the limitations of the Proposal, these relate to private equity funds and not to hedge funds.

Below, we have outlined our key concerns with respect to the Proposal.

Reduction of Investment Opportunities to EU Investors – The reduced access of EU investors to non-EU funds would create a material adverse situation. The Proposal will close investment opportunities in third party countries and reduce portfolio diversification to EU investors. This lack of choice is likely to lower returns to EU investors and elevate their overall risk profile by having a more concentrated portfolio. It would, in effect, harm rather than help EU investors and create an uneven playing field vis-à-vis their non-EU institutional investor counterparts.

Diminished Access to Capital for EU Companies Will Harm European Private Equity – Following on the point above, not only will EU investors have reduced access to non-EU private equity managers, there exists a real concern that the Proposal will effectively close Europe off from the capital solutions currently available through managers and institutions that comprise the global private equity industry. As a result, EU companies would suffer from limited access to foreign direct investment relative to the vast amounts of non-EU capital currently allocated to the region. This outcome would reduce the overall competitiveness of the European private equity industry and put EU companies at a disadvantage relative to their global peers.

Risk that Division between EU and Non-EU Investors Develops – Many of the investment funds set up to make investments in specific industries or geographic regions are established outside the EU and have a global investor base, with European institutions constituting only a minority of this base. It is our understanding that it is highly unlikely, as required by the draft Directive, that global funds would redomicile to the EU and that US fund managers, supervised by the SEC, would relocate to Europe in order to benefit from the European internal market. More likely, the global fund design and management would be severely disturbed with EU institutional investors potentially being excluded all together from the investor base of these funds. This would further harm EU institutional investors who invest outside of the EU in order to lower risk through geographic diversification by participating in global funds.

Harmonization Approach Favoured with Third Countries – The objectives and impact of the Proposal are far-reaching and greatly impact all EU and non-EU constituents, including – and importantly - institutional investors. Private equity is a global business that requires harmonization and consistency to ensure continued levels of access to global investment opportunities. When managers are restricted as to investor domicile and vice versa, we are concerned that the result will be a harmful one. The EU should not go it alone; rather, the ILPA would strongly advocate consultation with regulators and industry groups in both the EU and other jurisdictions, in order to address common areas of regulation or oversight. Mutual recognition and / or deference to other countries' regimes would be more productive than insisting on compliance with EU-only rules which seem sure to generate protectionist responses. Both EU and non-EU investors would be caught in the middle. The ILPA favours harmonization measures which result in clear protection and efficiency to investors; however such measures must also be commercial and consistent with the objectives of investors and beneficiaries of private equity institutional investment organizations.

Limits on the Use of Leverage – The aspects of the Proposal which relate to limits on the leverage ratio allowed in funds are concerning. While it is well recognized that leverage introduces risk into private equity transactions, it is also a fundamental part of the reason institutional investors choose the asset

class and the managers that use leverage, as appropriate, in transactions. Unfortunately, one size fits all rules on the use of leverage introduce risks into the equation in addition to the leverage itself. We strongly recommend against generic regulation of leverage and leverage ratios in private equity funds.

Our major concerns are noted above, however the ILPA has focused on the following points as well:

- Disclosure of Portfolio Company Information – There is a strong possibility that mandated public disclosure of certain sensitive financial and other private equity portfolio company information will lead to the loss of competitiveness for private equity-backed companies. Disclosure of such sensitive information – often categorized as “trade secret” in nature - beyond the institutional investors who monitor their portfolio companies may hamper the objectives of private equity investing, which focuses on a strong alignment between companies and investors with a goal of achieving long-term value creation for all participants. If private companies are subject to making public disclosure of their trade secret information in conjunction with receiving capital from private equity firms, these companies will likely shun ownership by private equity firms. This would limit such companies’ universe of choices when accessing capital, and eliminate the benefits of the deep knowledge and strategic guidance that private equity firms offer their portfolio companies along with their capital. This situation would negatively impact the returns for both private equity firms and the institutional investors who support them with investment capital while also creating an uneven playing field.
- Compliance Costs - Increased compliance costs to AIFMs are sure to be passed through to investors, lowering overall net returns. We do not make any broad comments against warranted compliance measures; however there is a real end cost and so the effectiveness and costs of compliance measures implemented need to be considered carefully.

Institutional investors globally have chosen to diversify their investment platforms among countries, regions and strategies. This diversification has directly contributed to the large amounts of capital committed to European companies through private equity (as it has in other regions). To silo regulations to target EU private equity fund managers and EU investors simply does not work in many regards and causes new problems and risks that will directly harm the very constituents the Proposal is trying to protect.

We are very concerned about the net negative impact to both EU and non-EU investors, the higher real costs of doing business in Europe which may lead to a new reduction in investment into the EU and the lack of competitiveness that will result to European private equity. The ILPA has concerns, on behalf of its membership, about the repercussions the Proposal as currently worded will have on the interaction between the countries and regions where today, both EU and non-EU investors commonly invest.

We have followed with interest the detailed submissions that have been made from within Europe and sincerely hope that meaningful changes will continue to be considered so that any resulting legislation is a net move forward for the asset class, but more importantly for the institutional investors who have allocated meaningful capital to private equity managers in the EU and globally.

We would be happy to engage in any follow up consultation, given the importance of this issue to all of our members. You should feel free to contact the ILPA's Executive Director Kathy Jeramaz-Larson or me with any questions. We look forward to future discussions on the Proposal.

Sincerely,



Joncarlo R. Mark
Chairman

CC: Kathy Jeramaz-Larson
Executive Director
ILPA