

## EuropeanIssuers' Comments on the European Parliament's Legal Affairs Committee's Amendments to the European Commission's Proposal on Alternative Investment Fund Managers

Position  
14 April 2010

EuropeanIssuers welcomes the European Parliament's Legal Affairs Committee's (JURI) amendments to the European Commission's Proposal on Alternative Investment Funds (AIFM).

The large definition of AIFM in the European Commission's Proposal does not explicitly exclude "listed holding companies". Such companies do not pose a systemic risk per se and are subject to existing EU company law, national regulation and stock exchange listing rules offering effective protection for investors. Therefore they should be exempted from the scope of the AIFM future Directive.

Our concerns have already been addressed during the European Parliament's discussion and some amendments were proposed by Mr Lehne and Ms Wikstrom, Members of JURI, to exclude "holding companies" from the scope of the future Directive.

We fully agree with Mr Lehne's amendment 31 (Recital 5): indeed listed holding companies own "(...) *strategic stakes in undertakings with a view to long-term holding rather than for the purpose of generating returns through divestment within a defined timeframe (...)*" and therefore should not be considered as a AIFM. However, we believe that Ms Wikstrom's amendments related to this topic could be improved since they refer only to "industrial holding companies". This exemption would fall short of covering all listed companies.

Hence, it would be useful to slightly modify Ms Wikstrom's amendments to delete the word "industrial" as follows:

### **Amendment 62 (article 2§2):**

*-(ga) **industrial** holding companies whose shares are traded on a EU regulated market in so far as they hold shares in their subsidiaries or associated companies for the purpose of pursuing an industrial business strategy.*

#### **would become:**

*- Holding companies whose shares are traded on a EU regulated market in so far as they hold shares in their subsidiaries or associated companies for the purpose of pursuing business strategy.*

### **Amendment 73 (article 3 - point o a (new)):**

*oa) '**Industrial** holding companies' means long-term owners without a planned exit horizon **and having an industrial approach to their holdings – whether as holding companies of industrial conglomerates or as industrial investment companies.** Such companies pose limited systemic*

risk and, in so far as they are listed, are subject to existing EU company law, national regulation and stock exchange listing rules, which provides effective protection for investors. **Industrial holding companies** which are **more geared to the industrial sector than** to trading in their investments should therefore be exempted from the scope of the Directive

**would become:**

- "Holding companies" means long-term owners without a planned exit horizon. Such companies pose limited systemic risk and, in so far as they are listed, are subject to existing EU company law, national regulation and stock exchange listing rules, which provides effective protection for investors. Holding companies which are not geared to trading in their investments should therefore be exempted from the scope of this Directive";

**Amendment 76 (article 3- point o b (new)) :**

(ob) 'Associated company' means a company in which an **industrial** holding company, through direct or indirect ownership, holds **20 %** or more of the voting rights.

**would become:**

- "Associated company" means a company in which a holding company, through direct or indirect ownership, holds 5% or more of the voting rights.

Finally, we would like to point out that the mentioned amendments are only examples and other amendments concerning "industrial holding companies" need to be modified in a similar way.

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