



22 May 2012

### **AIFM Directive**

#### IMPLEMENTATION MEASURES

##### *Introduction*

In Europe, companies, and especially small and medium-sized companies, depend highly on bank lending to access finance. New capital rules for banks will affect the ability of banks to lend to businesses and liquidity requirements will lead to a bias towards government debt as opposed to equity which is considered more risky.

As demand for capital intensifies, companies will find it increasingly difficult to obtain the finance they need for investment. It is crucial that European rules on private equity and venture capital support market liquidity and make it easier for businesses to access debt and equity funding investments. Investors should be encouraged to invest long-term risk capital in European companies at a time when we need such partnerships between European companies and long-term European investors to generate employment and economic growth.

##### *Third Country Provisions*

EU competent authorities should not be obliged to enter into binding agreements with the competent authorities of third countries as this could seriously hinder the establishment of the necessary mutual arrangements which allow fund managers in non-EU jurisdictions to access EU investors.

A memorandum of understanding between EU and non-EU regulators would be the right tool for such arrangements and also be consistent with the framework agreed by the International Organisation of Securities Commissions (IOSCO).

In addition, it is important that derogations from the general EU data protection equivalence requirements are permitted as important third countries such as the US, Japan and Australia are not deemed equivalent or adequate to EU standards.

##### *Depository rules*

BUSINESSEUROPE is concerned about proposals that would require depositaries to treat third parties, such as brokers appointed by alternative investment fund managers and central counterparties, as delegates of the custody function whenever they hold alternative investment fund assets as collateral.



We are similarly concerned about proposals that would require depositaries to treat financial instruments held at a prime broker as custody assets, even though they are being held for the purpose of securing financial obligations owed to the prime broker by the fund or the fund manager acting on behalf of the fund.

These proposals will make depositaries strictly liable for the return of assets over which the depositary may not have any control. This will force depositaries to hold additional capital which could be treated as contingent liabilities, increasing costs for depository activities and ultimately lending to businesses. To limit the burden for both the manager and the depositary, the ownership control should not go as far as looking through all subsidiaries of operative companies. It should also be possible to rely on existing information, such as due diligence, etc.

### *Negligence protection*

It is important to maintain the choice between professional indemnity insurance and additional own funds in the context of protection against negligence. Delegation should also be defined in a way that maintains enough margin of manoeuvre allowing managers to function and work properly.

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