

**The City of London Law Society
4 College Hill
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The European Commission
Markt-consult-hedge-funds@ec.europa.eu

31 January 2009

Dear Sirs

Consultation on hedge funds

The City of London Law Society is the local Law Society of the City of London and represents City solicitors, who make up 15% of the profession in England and Wales. Members of the Regulatory Committee advise a wide range of firms in the financial markets including banks, brokers, investment advisors, investment managers, custodians, private equity and other specialist fund managers as well as market infrastructure providers such as the operators of trading, clearing and settlement systems.

We have discussed the above consultation paper and though we do not wish to make substantive comments on specific aspects of it, we set out in this letter some high level comments, which we consider could be expedient to you in the preparation of a regulatory initiative on this matter to be presented to the European Parliament.

As you recognise in your consultation paper, there is a wide variety of actors within the hedge fund sector. Often, in practice, this diversity has caused confusion over what is actually intended by the term 'hedge fund'. On occasions it is used to mean the manager, on others, the fund itself and sometimes it is simply intended as the other players involved in the hedge fund industry. This lack of clarity should be borne in mind and care taken in articulating any regulation of the hedge fund industry.

Currently, many European-based hedge fund managers are already regulated by MiFID and the Capital Requirements Directive. We consider it imperative that any potential future regulation takes account of the current legislation and is suitably interlinked with it. Failure to do so risks creating a new regulatory regime for hedge fund managers which conflicts with the current systems. The problems such conflicts can cause is highlighted by the difficulties practitioners face in resolving the inherent conflicts caused by the divide between the UCITS and MiFID regimes. A repeat of this situation should be avoided if at all possible.

In addition, implementing new regulation for this industry sector would necessitate increased supervision requirements and it should be considered whether the authorities would have adequate monitoring tools at their disposal to monitor them effectively.

We note that the MiFID regime is aimed at investor protection and wonder whether regulation in the hedge fund sector would be of any further benefit to investors? Further, it seems to us that attempts to tighten controls on hedge funds in respect of short selling in

certain circumstances seems inappropriate given that short selling by hedge funds should not be distinguished from short selling by other (non-hedge fund) individuals or entities.

Yours sincerely

Margaret Chamberlain
Chair CLLS Regulatory Committee

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