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KEY PROVISIONS OF THE EU DIRECTIVE ON ALTERNATIVE INVESTMENT FUND MANAGERS

The European Commission proposed a Directive on Alternative Investment Fund Managers (AIFMs) on April 29, 2009, which will significantly impact all managers of hedge funds and private equity funds in Europe. The following summarizes the key provisions of the Directive.

For further updates and developments please visit our blog at: curtis-ifg.blogspot.com or contact one of the Curtis attorneys listed below.

KEY OBJECTIVES

According to the European Commission, the Directive will introduce a harmonized, comprehensive and effective regulatory and supervisory framework for AIFMs in the EU. Among the objectives of the Directive are: (i) to ensure that all AIFMs are subject to appropriate authorization and registration requirements; (ii) to provide a framework for the enhanced monitoring of macro-prudential risks; and (iii) to improve public accountability for Alternative Investment Funds (AIFs) that hold controlling stakes in companies.

AFFECTED FUND MANAGERS

All AIFMs are subject to the Directive. AIFs are defined as all funds that are, at present, not regulated under the UCITS Directive, which generally includes all hedge funds, private equity funds, commodity funds, real estate funds and infrastructure funds.

EU-DOMICILED FUND MANAGERS AUTHORIZATION

All EU domiciled AIFMs with assets under management of 100 million EUR or more will need to be authorized by the competent authority in their home Member State, and will be subject to ongoing requirements. AIFMs that do not use leverage, and provide a lock-up period of at least 5 years, will be exempt from the Directive unless their assets under management equal or exceed 500 million EUR.

QUALIFICATIONS FOR AUTHORIZATION

All AIFMs operating in the EU will be required to demonstrate that they are qualified to provide AIF management services and provide detailed information on the planned activity of the AIFM, the identity and characteristics of the AIF managed, the governance of the AIFM (including arrangements for the delegation of management services), internal arrangements with respect to risk management, arrangements for the valuation and safe-keeping of assets, audit arrangements, and the systems of regulatory reporting, where required.

MINIMUM CAPITALIZATION OF FUND MANAGERS

Under the Directive, each AIFM will be required to hold and retain a minimum level of capital in the amount of EUR 125,000. Additional capital will be required if the assets under management exceed EUR 250 million.

REPORTING REQUIREMENTS

AIFMs will be required to report to the relevant authority, on a regular basis, on the principal markets and instruments in which they trade, their principal exposures, performance data and concentrations of risk. AIFMs will also be required to notify the competent authority of their home Member State of the identity of each AIF managed, the markets and assets in which that AIF will invest and the organizational and risk management arrangements established in relation to that AIF. Further, AIFMs will be required to disclose to AIF investors the risk, return and liquidity characteristics of the AIF, the identity of the AIF's service providers, and the risk management systems employed by the AIFM. For each AIF an AIFM manages, it must also periodically disclose to investors the percentage of the AIF's assets which are subject to side pockets or other illiquid special arrangements. AIFMs must also disclose all direct or indirect fees and charges which investors will bear, as well as any preferential arrangements the AIFM provides to other investors.

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USING LEVERAGE/ TAKING CONTROLLING STAKES

Additional reporting requirements to the competent authority of their home Member State will apply to AIFMs that employ leverage in managing AIFs or acquire controlling stakes in companies.

EU PASSPORT REGIME

An AIFM authorized in its home Member State will be entitled to market its funds to professional investors (as defined by the Markets in Financial Instruments Directive) in any Member State. The cross-border marketing of AIFs would be subject to a notification procedure, under which relevant information must be provided to the home Member State and transmitted to the host. AIFMs will also be entitled to provide management services in Member States other than their home Member State, subject to a notification procedure.

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