

Covington & Burling LLP Webinar: The Proposed European Regulation of Alternative Investment Fund Managers

Monday September 21, 2009

COVINGTON & BURLING LLP

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Simon Currie

Partner, Covington & Burling LLP

Purpose of Directive

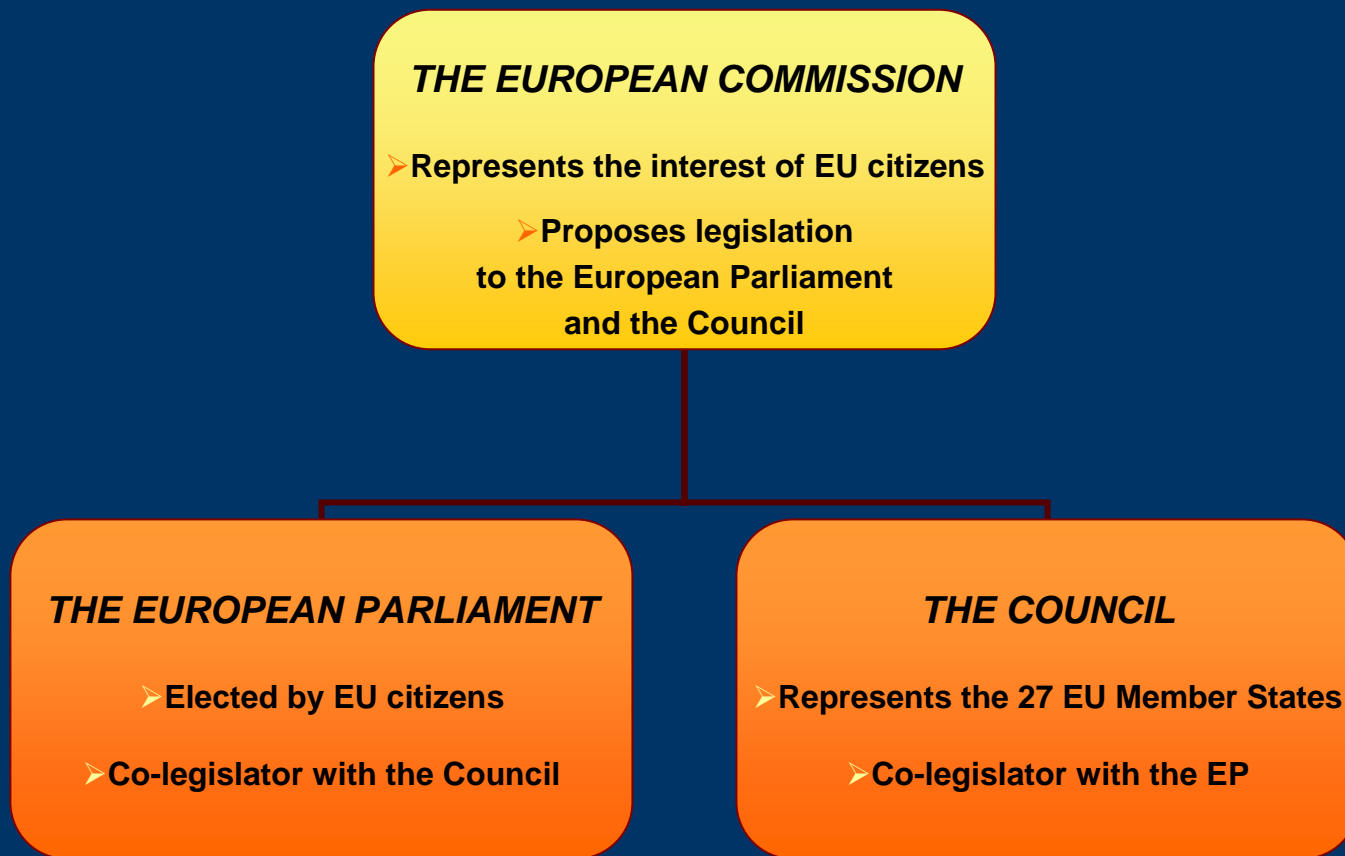
- Objectives: systemic risk/investor protection?
- Authorisation regime for managing and marketing any funds other than UCITS
- Conduct of business and capital requirements for managers
- Fund operational requirements
- Transparency and disclosure
- European passport



Wim van Velzen

Senior European Policy Advisor, Covington & Burling LLP

EU Institutions





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General Overview of the Co-Decision Procedure, First- Reading (Simplified Version)

- Commission adopts a legislative proposal
- Proposal sent to the Parliament and the Council
- Parliament first-reading: Parliament amendments
- Council first-reading: It adopts a “common position”
- Second-reading by the Parliament and the Council



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First Reading at the European Parliament

- The Economic and Monetary Affairs Committee (“ECON”) is responsible for drafting a report amending the Commission’s Proposal
- Jean-Paul Gauzès (EPP - FR) has been appointed rapporteur for ECON
- The Legal Affairs Committee (“JURI”) will provide an opinion
- This draft report will then go before a vote of the whole Parliament, concluding the EP’s first-reading



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Partner, Covington & Burling LLP

Key Concerns

- Lack of Differentiation – ‘one size fits all’
- Marketing Restrictions
- Increased Costs
- Capital Adequacy
- Disclosure
- Liability



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Impact on EU Managers

- No differentiation by fund type – practical impact of:
 - Disclosure requirements
 - Leverage limits
- Capital adequacy impact
- Interaction of proposed directive with MIFD
- Impact on private equity secondary transactions



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Why is it so important to be proactive now?

- EP has equal voice with the Council in the decision-making process
- EP is expected to fight for stricter rules
- The legislative procedure will be long and complex
- Strong Franco-German domination
- British MEPs are likely to have little influence
- Possibilities to lobby efficiently exist but they need to be undertaken quickly



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Position of Non-EU Managers

- Significantly reduced access to EU investors
- In-ability to provide management services on a delegated basis
- Equivalency/mutual recognition



David Bailey

Managing Partner, Augentius Fund Administration

Effect on Offshore Domiciles?

- What is an Offshore Domicile under the Directive
- Potential Effect on Cayman, Channel islands and others
- Effect on new and emerging “Offshore” domiciles



David Bailey

Managing Partner, Augentius Fund Administration

Timeframe

- Originally planned for 2010 – but slipping?
No Impact Analysis – agreement now that IA needs to be done
- Change of Presidency – Spain
- Desire to implement but a dawning realisation that what has been proposed is flawed?



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First-Reading at the European Parliament

Timeline

- A first exchange of views took place on September 2, in ECON, and a second exchange of view is planned on October 6
- The ECON draft report will be considered on December 1
- Deadline for MEPs to table amendments in ECON: January 6, 2010;
Consideration of the amendments: January 26, 2010
- The vote in ECON is scheduled for March 17, 2010; and the vote in plenary for June 14, 2010
- The timeline for JURI is not yet known



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Partner, Covington & Burling LLP

US Regulatory Proposals

- Registration of fund managers under the Investment Advisers Act of 1940 (de minimis exception for funds with \$30 mm AUM or less)
- Provision of information regarding funds managed by registered US fund managers (subject to confidential treatment); aimed at identifying “systemic risks”
- New custody requirements
- Ban on use of placement agents in connection with placement of public pension plan commitments; limits on compensation received from public pension plans within 2 years of making a political contribution to a pension plan representative



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Wim van Velzen advises clients on European affairs, including the functioning of the European institutions, EU policy-making processes, development of EU legislation and accession of new EU members. Since joining Covington in 2007, he has successfully advised a range of Fortune 500 companies on how best to achieve their European public affairs objectives.

Prior to joining Covington, Mr. van Velzen served for a decade with distinction as a Member of the European Parliament, where he was vice president of the European Peoples Party (“EPP”) and the EPP-European Democrats Group, which was then and remains the largest political group in the European Parliament. During his time in Parliament, Mr. van Velzen was engaged in a broad range of complex institutional negotiations, serving among other roles as co-rapporteur for the first and second energy packages, and taking the lead within the EPP-ED on the accession of the EU 10+.



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Augentius Fund Administration is the leading Private Equity and Property Fund administration group in London administering over \$65bn of assets on behalf of 60 plus GP groups with over 100 staff. In addition to offices in London and Guernsey, Augentius has recently opened an office in New York to service US clients and is progressing with further expansion into Luxembourg and Mauritius.

David is one of the Founder Partners of Augentius, following the MBO of the business from Ansbacher.



Tim Clark

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Tim Clark is a partner in Covington's New York office and co-head of the firm's Private Equity/Funds practice. He represents sponsors and investors in private investment funds, including funds focusing on buyouts, venture capital, secondary transactions and credit opportunities. His focus is global in nature including funds focused on investments in North America, Latin America, Europe, Asia, India and the emerging markets. A significant portion of Tim's practice includes advice to clients on the US regulatory and other regulatory issues associated with investment funds, including issues under the U.S. Investment Advisers Act and the U.S. Investment Company Act, with a particular focus on new regulatory developments affecting the funds industry. Tim is a frequent speaker on private equity topics and is recognized as a leader in his field by Chambers and other international organizations.



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Simon Currie is a partner based in the London office specialising in financial services regulation and investment funds. He advises in particular on securities and financial services regulatory issues in relation to the investment industry, including the application of EU single market directives and the UK Financial Services and Markets Act 2000, the conduct of business and other rules of the Financial Services Authority, collective investment schemes, authorisation applications, customer documentation and general compliance issues. In addition, Mr. Currie advises on anti-money laundering legislation and practice and market abuse issues. He regularly assists listed investment companies in relation to public and private capital raisings and other corporate finance transactions.



Hilary Prescott

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Hilary Prescott is a partner in Covington's London office with a wide ranging corporate practice. Much of Ms. Prescott's practice focuses on private equity and other investment funds and includes, on the fund side, fund formation, primary investment, secondary transactions and co-investments. She also has over 20 years of experience advising clients on other corporate and significant commercial matters, including cross border mergers and acquisitions, venture capital investments, international joint ventures and other strategic alliances and UK and pan-European corporate restructuring.

In her funds practice, Ms. Prescott has recently represented a fund-of-funds on the acquisition of a significant portfolio of secondary interests, advised a fund-of-funds and a family office on their investment in a co-investment fund established to finance a \$645 million acquisition of two business divisions from a US-based conglomerate and represented the sponsor of several Guernsey domiciled funds and their subsequent listing on the Irish Stock Exchange.



Lisa Peets

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Lisa Peets is a partner whose practice focuses on EU legislative advocacy, and she co-chairs the firm's European public affairs team. During her tenure with the firm, she has been actively engaged in a wide range of commercial, trade, IP, Internet and technology-related law reform efforts on multilateral, regional and national levels. Ms. Peets' clients have included several of the world's leading companies, including in the technology and pharmaceutical sectors.

Legal 500 UK (2008) describes Ms. Peets as "an amazing professional".

Thank you

If you have any questions about the proposed Directive, please do not hesitate to contact us:

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