

# Hedge Funds Regulation in Europe

A COMPARATIVE SURVEY

November 2005



**ASSOGESTIONI**

associazione del risparmio gestito

**efama**

European Fund and Asset Management Association



# Contents

## HEDGE FUNDS REGULATION IN EUROPE

|  |    |
|--|----|
| EXECUTIVE SUMMARY                                    | 3  |
| CHAPTER I<br>THE REGULATION OF HEDGE FUNDS IN EUROPE | 5  |
| CHAPTER II<br>OPTIONS FOR FUTURE EU ACTION           | 9  |
| APPENDICES   |    |
| 1. NATIONAL HEDGE FUND REGULATIONS                   | 11 |
| 2. PRODUCT FEATURES                                  | 12 |
| 3. MANAGEMENT COMPANY CHARACTERISTICS                | 35 |
| 4. DEPOSITARY CHARACTERISTICS                        | 38 |
| 5. PRIME BROKER                                      | 38 |
| 6. CROSS-BORDER HEDGE FUND OFFERS                    | 41 |





# Hedge Funds Regulation in Europe

## A COMPARATIVE SURVEY

### EXECUTIVE SUMMARY

In recent years, various European Union Member States have introduced specific regulations in relation to hedge funds, following the growing importance that this type of product is acquiring in the portfolios of domestic investors.

The focus of legislative intervention usually falls upon structural aspects of funds (e.g. any investment limits or restrictions on the possibility of investing in the fund) and/or upon distribution profiles (e.g. if and under what conditions a “domestic” product can be placed with the public and, correspondingly, if and in compliance with which limits “foreign” funds can be marketed in the individual Member State).

Furthermore, on a European level, there has been growing interest on the part of institutions and organisations which, each according to their own areas of responsibility, have produced various documents relating to hedge funds. These include: (aa) the European Parliament’s Purvis Report; (bb) the Post-FSAP Report on Asset Management; (cc) CESR’s mandate for the Asset Management Experts Group; (dd) the IOSCO report on “Issues Arising from the Participation of Retail Investors in Hedge Funds”. Finally, Article 2 of Directive 2001/108/EC (amending the UCITS directive 85/611 on investments) requires the European Commission to prepare a report aimed, inter alia, at “review(ing) the scope of the Directive in terms of how it applies to different types of products”, including hedge funds.

In such a fragmented regulatory panorama, the need was felt for a survey of the current position in a number of Member States. The starting point has been the listing of the common factors that characterise the rules governing this particular investment product in various countries: France, Germany, Ireland, Italy, Luxembourg, Spain, Sweden and Switzerland.

The survey revealed the existence of a partial, almost surreptitious “de facto harmonisation” of the European hedge fund regulations. However, a number of inconsistencies in the regulatory frameworks of hedge funds of the individual Member States appeared: for example, a minimum level of underwriting for purchasing shares in the hedge fund is not always specified, nor is there a set maximum number of participants in the fund. In the same way, while hedge funds allowed to deal directly with the retail sector are not always constrained by identical restrictions on investment (in terms, for example, of limits on the use of leverage or, for funds of funds, of target hedge funds to invest in), those systems governing hedge funds as a “selective” product prohibiting distribution amongst the general public do not adopt uniform rules for “private” investment. The present regulatory framework in these countries does not foster a single market for hedge funds.

This document aims at summarising the most important findings of the research and considers possible options for action at EU level. The Appendices to this document contain the individual responses of the eight Member States surveyed.



## PRODUCT FEATURES

## DEFINITION OF HEDGE FUND

The term “hedge fund”, even when used solely in a European context, does not always identify homogeneous financial products. This is because in some legal systems the expression identifies investment vehicles for which the freedom allowing managers to operate “without limits” is counter-balanced by a ban on offering to the public: this is the case for example, of the “*speculative funds*” under Italian law, of the “*Sondervermögen mit zusätzlichen Risiken*” under German law, of the “*FCIMT*”<sup>1</sup> under French law and of the “*Professional investor schemes*” and “*Qualified investor schemes*” under Irish law.

However, under other systems, the term “hedge fund” refers to a set of investment instruments which can be offered to the public, but at the cost of a drastic reduction in the manager’s freedom to determine the content of the investment. This is the case, for example, of the “*Dach-Sondervermögen mit zusätzlichen Risiken*” under German law, of the “*Collective Investment Schemes pursuing alternative investment strategies*” under Luxembourg law, of the “*Retail funds of hedge funds*” under Irish law and of the “*OPCVM<sup>2</sup> Aria simples*”, “*OPCVM à effet de levier*”, “*OPCVM contractuels*”, “*OPCVM de fonds alternatifs<sup>3</sup>*” under French law.

Furthermore, a number of funds now permitted under UCITS III could be partially characterised as hedge funds.

## LEGAL FORM, NATURE AND TYPE

Common features can be found in all Member States where regulations governing hedge funds exist. In fact, hedge funds are always defined as “collective investment undertakings” and are therefore clearly separate from other types of financial investments. They are also characterised by the same structural options offered at EU level by the UCITS directive (contractual form, trust and statutory form) and can be set up both as single hedge funds and as funds of hedge funds.

However, not all legal systems allow hedge funds to be set up both in open-ended and closed-ended form.

---

1 FCIMT = fonds commun d’intervention sur les marchés à terme (managed futures fund)

2 OPCVM = organisme de placements collectifs en valeurs mobilières (“Undertakings for Collective Investment in Transferable Securities” or “UCITS investment fund”)

3 Pooled investments in alternative funds

## INVESTMENT OBJECT AND POLICY

All Member States in the survey recognise that hedge funds allow the use of sophisticated management techniques such as short selling, leverage, derivatives contracts (in their different forms: swaps, forwards, options, futures, etc.). However, this broad discretionary power in terms of the management of hedge funds is narrower in countries where the public is allowed to invest in hedge funds. The survey showed that restrictions vary in nature and intensity from one Member State to another.

## INVESTING IN HEDGE FUNDS

Not all Member States surveyed impose a minimum subscription amount for purchasing units in hedge funds or qualitative requirements upon investors in the fund. Hence, whilst German and Luxembourg law does not specify any quantitative or qualitative limitation for investing in a hedge fund, Italian law requires a minimum subscription of €500,000 (but no qualitative restriction), French law imposes a minimum subscription depending on the type of hedge fund and on whether or not the fund is intended for qualified investors and Irish law only imposes quantitative and qualitative limits on hedge funds that cannot be offered to the retail public (*PIF* €125,000; *QIF* €250,000). Only Italian law sets a maximum number of investors in the fund (200).

## HEDGE FUND DISTRIBUTION

The offering of units in hedge funds to the public is only permitted by those countries surveyed that impose restrictions on the manager's freedom to determine the content of the investment. This is the case, for example, of the "*Dach-Sondervermögen mit zusätzlichen Risiken*" under German law, of the "*Collective Investment Schemes pursuing alternative investment strategies*" under Luxembourg law, of the "*Retail funds of hedge funds*" under Irish law and of the "*OPCVM Aria simples, OPCVM à effet de levier, OPCVM contractuels, OPCVM de fonds alternatifs*" under French law.

## REPORTING TO INVESTORS: FUNDS RULES, PROSPECTUS AND ANNUAL REPORTS

All Member States in the survey require the same information documents specified in Directive 85/611 for UCITS while at the same time requiring levels of transparency on the risks associated with hedge funds and the strategies adopted by the fund manager broader and more pervasive than those generally demanded for typical asset management products.

## MANAGEMENT COMPANY CHARACTERISTICS

All Member States surveyed require the existence of a company authorised to manage collective investment undertakings. No country envisages additional capital requirements for a hedge fund management company beyond that required for "traditional" fund management. However, the majority of the Member States surveyed impose specific requirements in terms of the specialisation of the managers of the company that has set up the hedge fund as a way of guaranteeing the fund manager's professionalism. Only Italian law requires the exclusiveness of the corporate purpose of the management companies that set up or manage speculative funds.

### *DEPOSITARY*

According to the results of the survey, all Member States, on the basis of the UCITS Directive, require the existence of a custodian for the fund's assets in order to ensure that investors' assets are kept separate. This model characterizes therefore all European hedge funds surveyed as opposed to U.S. and off-shore funds where separation is not guaranteed.

### *PRIME BROKER*

All Member States in the survey recognise that the fund manager can utilise the services offered by the prime broker. Only in Italy, Ireland and Luxembourg are there specific regulations on the requirements that the broker must possess in order to assume the role of prime broker and on the nature of the collateral that may be provided by the fund against any credits extended by the prime broker.

A further issue, tackled mainly in France, relates to the regulations governing the responsibilities of the custodian and prime broker in providing the custody service for the transferable securities constituting the fund's assets.

### *CROSS-BORDER HEDGE FUND OFFERS*

In principle, each Member State surveyed allows hedge funds coming from other Member States to "enter" the country provided that certain conditions are met. In some cases, (e.g. in Italy), the marketing of the foreign product is subject to the compliance of the same requirements as for domestic funds. In other countries (e.g. Germany), investment in the fund is only permitted in the form of a private placement, although there is no regulatory consistency over what constitutes a "private" placement. This definition is given sometimes by reference to the "institutional" nature of the investor, sometimes on the basis that there is a limited number of subscribers or sometimes by the fact that the client makes a specific request to purchase units in the fund.



## THE HEDGE FUND AS A “HARMONISED” PRODUCT

There are at least two options which could be pursued if it were to be decided that further action at EU level is needed and appropriate. One would be to seek to harmonise the product at EU level, either through a stand-alone directive or through amendment to the existing UCITS Directive. One could note, in this context, that the rules covering the use of derivatives contained in UCITS III are already being used to create hedge fund type strategies. The other option would be to focus on the type of investor to whom a fund was being offered, drawing up a harmonised “private placement” for funds, including hedge funds. This could be part of a broader regulatory action, that would include the distribution of financial instruments in the absence of a public offering from the issuer.

In order to create a fully-fledged harmonised hedge fund and thus create a basis for offering such funds directly to the “mass” market, the following issues at least would need to be considered, namely:

1. approval of investment by UCITS into hedge funds, in order to harmonise funds of hedge funds. This issue could already be considered by CESR within the framework of the clarification of definitions concerning eligible assets for UCITS that the Commission is planning to adopt;
2. provision of less stringent limits on investment and a broader possibility of resorting to financial leverage than those set out by the present UCITS Directive;
3. introduction of higher disclosure levels for risks associated with hedge funds and with the strategies pursued by hedge fund managers, in comparison with the standard requirements for non-sophisticated UCITS;
4. the rules governing the relationship with prime brokers;
5. the so-called “insolvency” of the hedge fund, a situation whereby the autonomous assets are unable to cover the obligations assumed on its behalf by the manager vis-à-vis third parties. This is a particularly delicate situation, in terms of legislative policy as well (as shown by the absence of any reference in these directives to harmonized funds), but one which must be part of the “DNA” for a hypothetical European “passport”, particularly where the manager of the hedge fund is allowed to make ample use of leverage.



## APPENDICES

### 1. NATIONAL HEDGE FUND REGULATIONS

#### What national legislative measures govern hedge funds?

|                    |  |
|--------------------|--|
| <b>France</b>      | <ol style="list-style-type: none"> <li>1. Financial Security Law of 1 August 2003: <ul style="list-style-type: none"> <li>• Art. L.214-35 and L.214-35-1 of financial and monetary code for funds with simplified investment rules (<i>OPCVM à règles d'investissement allégées</i> or "RIA"),</li> <li>• Art. L.214-35-2 to L.214-35-6 of financial and monetary code for contractual SICAV or funds (<i>OPCVM contractuels</i>);</li> </ul> </li> <li>2. Decree n° 89-623 of 6 September 1989 modified by Decree n° 2003-1103 of 21 November 2003 (Art. 14 to 14-6) for funds with lightened investment rules and fund of hedge fund (<i>OPCVM de fonds alternatifs</i>);</li> <li>3. Commission des Opérations de Bourse position of 3 April 2003;</li> <li>4. Autorité des Marchés Financiers general regulation (November 2004);</li> <li>5. Decree n° 89-623 of 6 September 1989.</li> </ol> |
| <b>Germany</b>     | <ol style="list-style-type: none"> <li>1. <i>Investmentgesetz</i> (Investment Act) of 1 January 2004;</li> <li>2. <i>Investmentsteuergesetz</i> (Investment Tax Act) of 1 January 2004.</li> </ol>   |
| <b>Ireland</b>     | <ol style="list-style-type: none"> <li>1. Unit Trusts Act 1990;</li> <li>2. Part XIII Companies Act 1990;</li> <li>3. Investment Limited Partnership Act 1994;</li> <li>4. Irish Financial Services Regulatory Authority Non-UCITS Notices: NU Notice 1, 12, 13, 16, 19, 20, 21, 24, 25;5;</li> <li>5. Irish Financial Services Regulatory Authority Guidance Notes: 1/97, 1/01, Draft -/04.</li> </ol>  |
| <b>Italy</b>       | <ol style="list-style-type: none"> <li>1. Treasury Ministry Decree n° 228 of 24 May 1999;</li> <li>2. Bank of Italy regulation of 14 April 2005.</li> </ol>  |
| <b>Luxembourg</b>  | <ol style="list-style-type: none"> <li>1. General legislative framework: Law of 20 December 2002 on undertakings for collective investment;</li> <li>2. Specific regulation: <ul style="list-style-type: none"> <li>• IML Circular 91/75 of 21 January 1991,</li> <li>• CSSF Circular 02/80 of 5 December 2002.</li> </ul> </li> </ol>   |
| <b>Spain</b>       | <ol style="list-style-type: none"> <li>1. Law 35/2003 of 4 November 2003;</li> <li>2. Final draft decree that will develop Law 35/2003, sent to State Council in July 2005. Final version to be published in November 2005.</li> </ol>   |
| <b>Sweden</b>      | <ol style="list-style-type: none"> <li>1. Swedish Investment Funds Act (2004:46);</li> <li>2. <i>Finansinspektionen's</i> regulatory code (FFFS) 2004:2 <i>Föreskrifter om Investeringsfonder</i> (regulates Swedish registered FMC and harmonised/non-harmonised funds incl. hedge funds);</li> <li>3. <i>Finansinspektionen's</i> regulatory code (FFFA) 2004:3 <i>Föreskrifter om utländska förvaltningsbolag och fondföretags verksamhet i Sverige</i> (regulates foreign FMC and investment funds incl. hedge funds).</li> </ol>  |
| <b>Switzerland</b> | Investment Funds Act 1994 with Ordinances.   |

## 2. PRODUCT FEATURES

### 2.1 LEGAL FORM, NATURE AND TYPE

#### What are hedge funds called?

|             |  |
|-------------|--|
| France      | 1. OPCVM Aria (OPCVM Aria simples, OPCVM Aria à effet de levier, OPCVM Aria de fonds alternatifs);<br>2. OPCVM contractuels;<br>3. FCIMT (Fonds communs d'intervention sur les marches à terme). |
| Germany     | Sondervermögen mit zusätzlichen Risiken (Hedgefonds) [funds with additional risks (hedge funds)].  |
| Ireland     | There is no specified legal title.   |
| Italy       | Fondi speculativi (speculative funds). <sup>4</sup>  |
| Luxembourg  | Hedge funds – Undertakings for collective investment pursuing alternative investment strategies.   |
| Spain       | Fondos de Inversión Libre (free investment funds); IIC de IIC de inversión libre - CIS of free investment CIS.   |
| Sweden      | There is no specified legal title, they fall under the category of Specialfonder (non-harmonized funds).   |
| Switzerland | “Other funds (i.e. non-UCITS) with special risks”.   |

#### Are hedge funds set up under the law and the regulation of a general collective investment scheme (CIS)?

|             | Yes            | No |
|-------------|----------------|----|
| France      | ■              |    |
| Germany     | ■              |    |
| Ireland     | ■              |    |
| Italy       | ■              |    |
| Luxembourg  | ■ <sup>5</sup> |    |
| Spain       | ■              |    |
| Sweden      | ■              |    |
| Switzerland | ■              |    |

#### What form can a hedge fund take?

|                    | Under law of contract<br>(as a common fund managed<br>by management company) | Trust Law<br>(as a unit trust) | Under statute<br>(as an investment company) | Other          |
|--------------------|--|--------------------------------|---|----------------|
| France             | ■  |                                | ■   |                |
| Germany            | ■  |                                | ■   |                |
| Ireland            |  | ■                              | ■   | ■ <sup>6</sup> |
| Italy <sup>7</sup> | ■  |                                |   |                |
| Luxembourg         | ■  |                                | ■   |                |
| Spain              |  |                                | ■   |                |
| Sweden             | ■ <sup>8</sup>   |                                |   |                |
| Switzerland        | ■  |                                |   |                |

<sup>4</sup> Funds that are allowed to carry out investment strategies not restricted by the prudential rules established for all other mutual funds

<sup>5</sup> The law of 20 December 2002 applies to all aspects not dealt with by the Circular

<sup>6</sup> Investment Limited Partnership

<sup>7</sup> Art. 16 Treasury Decree n° 228/99

<sup>8</sup> Applies to hedge funds registered in Sweden. Sweden has introduced quite liberal rules concerning marketing of foreign non-harmonised funds in the domestic market

### What is the nature of a hedge fund?

|                      | Open-ended | Closed-ended  | Other             |
|----------------------|------------|---|-------------------|
| France               | ■          |   | In very few cases |
| Germany <sup>9</sup> | ■          | ■   |                   |
| Ireland              | ■          | ■   | ■                 |
| Italy <sup>10</sup>  | ■          | ■   | ■                 |
| Luxembourg           | ■          | ■   | ■                 |
| Spain                | ■          |   |                   |
| Sweden               | ■          | Certain restrictions allowed. <i>Specialfonder</i> must however be open for redemptions at least once a year. |                   |
| Switzerland          | ■          | ■   |                   |

### What types of hedge funds can be set up?

|                     | Single Hedge Fund (SHF) | Fund of Hedge Funds (FoHF) |
|---------------------|-------------------------|----------------------------|
| France              | ■                       | ■                          |
| Germany             | ■                       | ■                          |
| Ireland             | ■                       | ■                          |
| Italy <sup>11</sup> | ■                       | ■                          |
| Luxembourg          | ■                       | ■                          |
| Spain               | ■                       | ■                          |
| Sweden              | ■                       | ■                          |
| Switzerland         | ■                       | ■                          |

<sup>9</sup> Certain restrictions on redemption dates are allowed

<sup>10</sup> Art. 16 Treasury Decree n° 228/99

<sup>11</sup> Art. 16 Treasury Decree n° 228/99

## 2.2 INVESTMENT OBJECT AND POLICY

### a) Single Hedge Fund (SHF)

| In what assets can an SHF invest? |  |  |  |
|-----------------------------------|--|--|--|
|                                   | Only in transferable securities and/or in other liquid financial assets as per Article 19 (1) of the UCITS Directive | Also in transferable securities and/or in other financial assets different from those cited in Article 19 (1) of the UCITS Directive | In any type of asset (i.e. even in precious metals)                                      |
| France                            | OPCVM Aria simples, OPCVM Aria à Effet de Levier ("ARIAEL"), OPCVM Aria de fonds alternatifs, FCIMT                  | OPCVM contractuels   |  |
| Germany                           |  |  | Except for real estate.  |
| Ireland                           |  |  | ■  |
| Italy                             |  |  | ■  |
| Luxembourg                        |  | ■  | In theory precious metals could be eligible, subject to specific approval from the CSSF. |
| Spain                             |  | Any financial assets, instruments. Also financial derivatives irrespective of any underlying assets.                                 |  |
| Sweden                            |  | Hedge fund ( <i>Specialfond</i> ) must apply for exemption from all deviations from the UCITS rules <sup>12</sup> .                  |  |
| Switzerland                       |  |  | Except for physical commodities.   |

<sup>12</sup> "In conjunction with the approval of the fund rules for a special fund, the Swedish Financial Supervisory Authority shall examine whether the fund has a suitable diversification of investments taking into account the requirements which should be imposed in respect of risk spreading. Provided the Swedish Financial Supervisory Authority has not granted an exemption thereto, the provisions of Chapter 5 (UCITS investment rules, own remark) shall apply to the management of assets in a special fund. However, where the instrument is subject to trading on any financial market and does not entail an obligation to deliver or receive the underlying assets, derivative instruments may have underlying assets other than such assets as are set forth in Chapter 5, section 12."

| Are there limits to the investment of SHF assets? |   |   |
|---|---|---|
|   | Yes<br>(please specify)   | No  |
| France  | <p>Regulated limits depending on the different types of structure:</p> <p><i>OPCVM ARIA simples:</i></p> <ul style="list-style-type: none"> <li>• use a leverage<sup>13</sup> up to 200% of the fund's net assets (like UCITS);</li> <li>• invest up to 50% of the fund's net assets in share/units issued by a single collective investment scheme and up to 35% of the fund's assets in bonds or equities issued by a single entity.</li> </ul> <p><i>OPCVM ARIA à effet de levier (Ariael) :</i></p> <ul style="list-style-type: none"> <li>• use a leverage up to 400% of the fund's net assets.</li> </ul> | No legal limits for contractual OPCVM, but detailed investment rules, instruments and limits must be disclosed in the prospectus. |
| Germany   | Risk diversification must be obtained, max. 50% of NAV in target SHFs, max. 10% of NAV in each target SHF, max. 30% private equity.   |   |
| Ireland   | For PIF <sup>14</sup> : Generally 20% concentration limit.  | For QIF <sup>15</sup> :<br>No restrictions save that investment companies must comply with principle of risk-spreading.           |
| Italy   |   | ■   |
| Luxembourg <sup>16</sup>                          | <p>1) Risk diversification rules relating to short sales;</p> <p>2) Borrowings;</p> <p>3) Supplementary investment restrictions.</p> <p>Use of financial derivative instruments and other techniques.</p>   |   |
| Spain   | <p>Leverage limited to fivefold the assets;</p> <p>Not permitted to invest in raw materials;</p> <p>Risk diversification is not applied.</p>  |   |
| Sweden  | No legislative restrictions other than compliance with principle of risk-spreading.   |   |
| Switzerland                                       | The cumulative leverage from borrowing, short selling and derivative transaction is to be restricted in the fund rules.   |   |

<sup>13</sup> "Leverages" means: cash/securities borrowings and committed notional amounts on derivative transactions

<sup>14</sup> PIF: Professional Investor Scheme

<sup>15</sup> QIF: Qualifying Investor Scheme

<sup>16</sup> See CSSF Circular 02/80

b) Fund of Hedge Funds (FoHF)

**Are there any specific requirements relating to the target funds?**

|  | <p style="text-align: center;"><b>Yes</b><br/>(please specify)</p>   | <p style="text-align: center;"><b>No</b></p> |
|--|--|--|
| <p style="text-align: center;"><b>France</b></p> | <p>For <i>OPCVM de fonds alternatifs</i>:<sup>17</sup></p> <p>Target fund units must present the same characteristics as those of securities. In particular, they must respond to the following criteria:</p> <ul style="list-style-type: none"> <li>• the ownership of units must be transferred in a way that can be controlled;</li> <li>• units (or shares) that belong to a same class or to the same category must afford the same rights to their respective holders;</li> <li>• target funds must be capable of having rights and obligations through the constitution of a separate estate;</li> <li>• responsibility for the custody of the fund's assets must be borne by one (or more) company, different from the investment company, specifically regulated for this aim, and specified in the prospectus. Fund custody must be ensured separately from the assets of the abovementioned companies unless the compensation risk, as valued by the French investment company which selects the funds, is low, which happens when: a) fund assets are deposited in collateral; b) fund assets are constituted by cash. In any case, fund assets must be identified in a way separate from the assets of the custodian company;</li> <li>• there must be a natural or a corporate person that ensures both the management and the investment consultancy of the funds, who must be registered at the competent authority;</li> <li>• there must be (i) a legal obligation to audit the fund's accounts in the country in which it was set up and (ii) a legal certification, at least once a year, of the fund's accounts;</li> <li>• there must be a limitation of the investor's risk in the funds up to his investment;</li> <li>• there must be a fund prospectus describing its statutory and management rules;</li> <li>• there must be periodic information, at least every three months, on the management of the funds, which includes, specifically, main information on the evolution of the assets and the results of the funds;</li> <li>• evaluation of the fund's net asset value must be made systematically available to investors at least every month;</li> <li>• funds set up in a non-cooperative state or country appearing on the GAFI list are excluded.</li> </ul> | <p>For <i>OPCVM contractuels</i></p>         |

<sup>17</sup> Art. 14-5 of decree n°89-623 and art 2.2.1 of COB rules of 3 April 2003

| <b>Are there any specific requirements relating to the target funds? (cont'd.)</b> |  |                          |
|--|--|--------------------------|
|  | <b>Yes</b><br>(please specify)   | <b>No</b>                |
| <b>Germany</b>   | <p>Only single hedge funds according to German law or foreign hedge funds subject to similar regulation.</p> <p>The management company may not invest in foreign target funds from States which do not co-operate with regard to combating money laundering under international agreements.</p> <p>Management companies must ensure that they are in possession of all information relating to the target fund in which they intend to invest which is necessary for the investment decision, but at least:</p> <ol style="list-style-type: none"> <li>a) the latest annual and semi-annual report;</li> <li>b) the contractual terms and conditions and sales prospectuses or equivalent documents;</li> <li>c) information on organization, management, investment policy, risk management and custodian bank or a comparable institution;</li> <li>d) information on investment restrictions, liquidity, the extent of the leverage and the carrying out of short sales.</li> </ol> <p>The management companies must continually monitor the target funds in which they invest with regard to compliance with the investment strategies and risks, and must ensure that they are furnished at regular intervals with generally recognised risk ratios. The method according to which the risk ratio is calculated must be stated and explained to the management company by the respective target fund. The custodian bank or a comparable institution shall verify the value of the target fund.</p> |                          |
| <b>Ireland</b>   | <p>For PIF:<sup>18</sup></p> <p>Schemes in which the fund of funds scheme invests must be authorised in Ireland, or in another jurisdiction authorised by a supervisory authority set up in order to ensure the protection of unit-holders and which, in the opinion of the Authority, provides an equivalent level of investor protection as that provided under Irish law, regulations and conditions governing collective investment schemes.</p> <p>For Retail:<sup>19</sup></p> <p>In addition to the conditions provided for PIF the underlying schemes:</p> <ul style="list-style-type: none"> <li>• must be subject to independent audit in accordance with generally accepted international accounting standards;</li> <li>• must have arrangements in place such that all assets are held by a party/parties independent of the manager of the schemes.</li> </ul>   | <p>For QIF:<br/>None</p> |

<sup>18</sup> See NU Notice 1 (s1-4) and Guidance Note 1/01

<sup>19</sup> See NU Notice 25 (s1-3)

**Are there any specific requirements relating to the target funds? (cont'd.)**

|                    | Yes<br>(please specify)  | No   |
|--------------------|--|--|
| <b>Italy</b>       |  | ■  |
| <b>Luxembourg</b>  | UCIs that principally invest in other UCIs must make sure that their portfolio of target UCIs present appropriate liquidity features to enable the UCIs to meet their obligation to repurchase its shares. Their investment policy must comprise an appropriate description in that respect. |  |
| <b>Spain</b>       | Final draft decree establishes that target funds must fulfil Spanish SHF legislation requirements.<br>(Investments in tax haven funds could be possible if the management company of the target SHF is located and supervised in an OECD country.)   |  |
| <b>Sweden</b>      |  | No, beside the general principle of risk-spreading and suitability the <i>Specialfond</i> must apply for exemptions from the UCITS investment rules. |
| <b>Switzerland</b> | The Regulator (Swiss Federal Banking Commission, "SFBC") carefully analyses the due diligence process of the management company in selecting and monitoring SHFs. Special emphasis is placed on the prime broker(s) involved.  |  |

**Are there diversification rules for FoHF assets?**

|               | Yes<br>(please specify)   | No                            |
|---------------|---|-------------------------------|
| <b>France</b> | <p><i>For OPCVM de fonds alternatifs</i> :<sup>20</sup></p> <p>a) Funds of funds of funds are forbidden. <i>OPCVM de fonds alternatifs</i> can invest only in funds that do not invest more than 10% of their assets in other funds. In the same way, as a result of the above-mentioned prohibition, an <i>OPCVM de droit commun</i> cannot invest in an <i>OPCVM de fonds alternatifs</i> for more than 10%;</p> <p>b) The rule on risk sharing applicable to the investments in this kind of fund is the same rule applicable to UCITS (percentage of 5/10/40), but not that the one which regulates investments in <i>OPCVM</i> (currently 35% according to decree 89-623, and 20% according to the UCITS III).</p> | <i>For OPCVM contractuels</i> |

<sup>20</sup> Art 14-5 of decree n°89-623.

| Are there diversification rules for FoHF assets? (cont'd.) |   |    |
|--|---|----|
|  | Yes<br>(please specify)   | No |
| Germany  | <p>1) Limits on investments in target funds:</p> <p>a) no more than 20% of the value of the FoHF in a single target fund;</p> <p>b) no more than two target funds of the same issuer or fund manager and not in target funds which themselves invest their assets in other target funds;</p> <p>2) Limits on investment in bank deposit and money market instruments: no more than 49% of the value of the FoHF;</p> <p>3) Limits on investment in derivative financial instruments: currency futures contracts may be sold and put option rights for currencies or for currency futures contracts may be acquired, which are denominated in the same currency in order to hedge the currency rate of assets held in foreign currencies;</p> <p>4) Leverage and short sales may not be carried out.</p>   |    |
| Ireland <sup>21</sup>                                      | <p>For PIF:<br/>A PIF that is a fund of fund scheme may invest up to 100% in unregulated schemes, subject to a maximum of 20% in any one such unregulated scheme.</p> <p>For QIF:<br/>A QIF that is a fund of fund scheme may invests up to 100% in unregulated schemes, subject to a maximum of 40% in any one unregulated scheme.</p> <p>For Retail:<br/>The scheme may not invest more than 20% of net assets in the units of any one scheme.<br/>The scheme may not invest in units of another fund of funds scheme.<br/>Where the scheme invests in units of a collective investment scheme managed by the same management company or by an associated or related company, the manager of the scheme in which the investment is being made must waive the unregulated schemes, subject to a maximum of 20% in any one such unregulated scheme.</p> |    |
| Italy  |   | ■  |

<sup>21</sup> See Guidance Note 1/01

**Are there diversification rules for FoHF assets? (cont'd.)**

|                                | <b>Yes</b><br>(please specify)  | <b>No</b> |
|--------------------------------|---|-----------|
| <b>Luxembourg<sup>22</sup></b> | <p>A HF will not be entitled to invest more than 20% of their net assets in securities of the same target UCI. For the purpose of this limit, each sub-fund of an umbrella fund is considered as a distinct target UCI on condition that the principle of segregation of the commitments of the different sub-funds against third parties is assured.</p> <p>Subject to this, a HF will even be authorised to hold more than 50% of a target UCI on condition that if the target UCI is an umbrella fund the investment by the HF in the legal entity constituting the target UCI is less than 50% of the net assets of the HF.</p> |           |
| <b>Spain</b>                   | Final draft decree establishes a maximum of 10% in one single SHF; and a minimum of 60% of total assets must be invested in SHF.  |           |
| <b>Sweden</b>                  | Yes, but only under the general obligation of "Risk-Spreading".   |           |
| <b>Switzerland</b>             | Any fund investing more than 49% will be qualified as a "FOHF". The SFBC has developed detailed risk diversification rules. Max. 20% may be invested in one single target fund.   |           |

**2.3 INVESTING IN A HEDGE FUND**

*a) Single Hedge Fund (SHF)*

**Are SHF subscriptions subject to limitations?**

|               | <b>Yes</b><br>(please specify)  | <b>No</b> |
|---------------|---|-----------|
| <b>France</b> | <p><i>OPCVM ARIA simples:</i></p> <p>The minimum initial subscription may not be less than:</p> <ul style="list-style-type: none"> <li>• €125,000: for any person;</li> <li>• €10,000 for individual/natural persons that (i) certify to have a minimum net worth of €1,000,000, or (ii) have a position in the financial sector since one year (at least).</li> </ul> <p>No minimum subscription amount is required for qualified investors (as defined under French law), sovereign investors, CBE, Central Banks, World Bank, IMF, EIB, corporates which comply with two of the following criteria: (i) a balance sheet in excess of €20,000,000; a turnover in excess of €40,000,000 and/or a stockholders' equity in excess of €2,000,000.</p> |           |

<sup>22</sup> Restrictions ensuring risk diversification are provided for in Chapter C of CSSF Circular 02/80

| Are SHF subscriptions subject to limitations? (cont'd.) |  |  |
|---|--|--|
|   | Yes<br>(please specify)  | No   |
| France  | <p><i>OPCVM à effet de levier:</i><br/>The restrictions are those described above for <i>OPCVM ARIA simples</i>.</p> <p><i>OPCVM contractuels:</i></p> <ul style="list-style-type: none"> <li>• €250,000 for any investor;</li> <li>• €30,000 for individuals/natural persons provided that (i) certify to have a minimum net worth of €1,000,000; (ii) have a position in the financial sector for one year (at least), such position allowing them to understand merits/advantages and risks associated to the hedge fund strategy conducted by the funds in which they intend to invest;</li> <li>• no minimum subscription amount is required for : qualified investors (as defined under French law : e.g. banks, insurance companies ...), sovereign investors, CBE, Central Banks, World Bank, IMF, EIB, corporates which comply with two of the following criteria: (i) a balance sheet in excess of €20,000,000; (ii) a turnover in excess of €40,000,000 and/or a stockholder's equity in excess of €2,000,000.</li> </ul> <p><i>FCIMT:</i></p> <ul style="list-style-type: none"> <li>• €10,000 for any investor;</li> <li>• no minimum subscription amount is required for : qualified investors (as defined under French law : e.g. banks, insurance companies ...), sovereign investors, CBE, Central Banks, World Bank, IMF, EIB, corporates which comply with two of the following criteria : (i) a balance sheet in excess of €20,000,000; (ii) a turnover in excess of €40,000,000 and/or a stockholder's equity in excess of €2,000,000.</li> </ul> |  |
| Germany   |  | ■  |
| Italy   | <p>The minimum initial subscription may not be less than €500,000.</p> <p>The SHF may not have more than 200 investors.</p>  |  |
| Ireland   | <p>1) For <i>PIF</i>: €125,000 per investor</p> <p>2) For <i>QIF</i><sup>23</sup>: €250,000 per investor</p>   |  |
| Luxembourg  |  | ■  |
| Spain   | Final draft decree establishes a minimum investment of €50,000.  |  |
| Sweden  |  | No legal requirements although SHF may have investment limits. |
| Switzerland   | No statutory minimum subscription requirements. Discussed and set on a case-by-case-basis after discussion with the SFBC. Written contract note with risk warning required.  |  |

23 Financial status of Qualifying Investors (institutions: €25 mio. ; individuals: €1.25 mio.)

**Must those who invest in an SHF possess special requirements (e.g. professional qualification)?**

|             | Yes<br>(please specify) | No  |
|-------------|-------------------------|---|
| France      | See above               |   |
| Germany     |                         | ■   |
| Ireland     | Capital/Wealth          |   |
| Italy       |                         | ■   |
| Luxembourg  |                         | ■   |
| Spain       |                         | ■   |
| Sweden      |                         | ■   |
| Switzerland |                         | Except in the case of “Investment Funds for Institutional Investors”. |

*b) Fund of Hedge Funds (FoHF)*

**Are FoHF subscriptions subject to limitations?**

|             | Yes<br>(please specify)   | No  |
|-------------|---|---|
| France      | <p>OPCVM ARIA de fonds alternatifs</p> <ul style="list-style-type: none"> <li>• €10,000: for any investor;</li> <li>• no minimum subscription amount is required for qualified investors (as defined under French law), sovereign investors, CBE, Central Banks, World Bank, IMF, EIB, corporates which comply with two of the following criteria: (i) a balance sheet in excess of €20,000,000; (ii) a turnover in excess of €40,000,000 and/or a stockholder’s equity in excess of €2,000,000;</li> <li>• any investor and without any minimum subscription amount provided that the fund is guaranteed.</li> </ul> |   |
| Germany     |   | ■   |
| Ireland     | <p>For PIF: €25,000<br/>For QIF: €250,000</p>   |   |
| Italy       | The minimum initial subscription may not be less than €500,000. The FoHF may not have more than 200 investors.  |   |
| Luxembourg  |   | ■   |
| Spain       |   | Final draft decree considers FoHF as retail funds, so it does not establish a minimum amount. |
| Sweden      |   | No legal requirements although FoHF may have investment limits.                               |
| Switzerland |   | ■   |

### Must those who invest in FoHF possess special requirements (e.g. professional qualification)?

|             | Yes<br>(please specify) | No |
|-------------|-------------------------|----|
| France      | See above               |    |
| Germany     |                         | ■  |
| Ireland     | Capital/Wealth          |    |
| Italy       |                         | ■  |
| Luxembourg  |                         | ■  |
| Spain       |                         | ■  |
| Sweden      |                         | ■  |
| Switzerland |                         | ■  |

### Are any special redemption policies foreseen?

|                       | Yes<br>(please specify)  | No |
|-----------------------|--|----|
| France                | <p><i>OPCVM ARIA simples, OPCVM à effet de levier, OPCVM de fonds alternatifs :</i></p> <ul style="list-style-type: none"> <li>NAV shall be published at least once a month;</li> <li>notice periods applicable to subscription/redemption request can be mandatory (however such notice period cannot exceed 35 calendar days).</li> </ul> <p><i>OPCVM contractuels:</i></p> <ul style="list-style-type: none"> <li>NAV shall be published at least once a quarter;</li> <li>a maximum lock-up period (since launch date of the fund) is permitted (2 years max.);</li> <li>a maximum mandatory notice period of 3 months is authorised for redemption requests;</li> <li>approval of such funds is made a posteriori by the AMF (but still subject to the specific pre-approval of the management company).</li> </ul> |    |
| Germany               | Redemptions may be limited to certain redemption dates (at least quarterly), subject to terms of contract.   |    |
| Ireland <sup>24</sup> | <p>Where the scheme is open-ended it must provide at least one dealing day per month. The maximum interval between submission of a redemption request and payment of settlement proceeds must not exceed 95 calendar days.</p> <p>The scheme may retain up to 10% of redemption proceeds, where this reflects the redemption policy of the underlying scheme(s) until such time as the full redemption proceeds from the underlying scheme(s) is received.</p>   |    |
| Italy                 |  | ■  |
| Luxembourg            |  | ■  |
| Spain                 | Final draft decree mentions that subscriptions and redemptions must be done on a quarterly basis and could be extended to a semi-annual basis.   |    |
| Sweden                | For <i>Specialfonder</i> including hedge funds with limitations on redemptions, i.e. on a monthly or quarterly basis, prospectus, fund rules and simplified prospectus must entail information about when redemptions are possible with references to possible investment limits. All <i>Specialfonder</i> must however be open for redemptions at least once a year.  |    |
| Switzerland           |  | ■  |

<sup>24</sup> See NU Notice 25, s13 and Guidance Note 1/01

## 2.4 HEDGE FUND DISTRIBUTION

### a) Single Hedge Fund (SHF)

| Can SHF units be offered publicly? |  |  |
|------------------------------------|--|--|
|                                    | Yes  | No<br>(please specify how SHF units are placed)                            |
| <b>France</b>                      | <i>OPCVM ARIA simples, OPCVM à effet de levier, OPCVM contractuels</i><br>However, whenever an initial subscription is made, the promoter/manager doing (in)direct solicitation is required to obtain a letter from the investor certifying that the latter has been informed on investment restrictions applicable to the fund (e.g. authorised categories of investors). | <i>FCIMT</i> can be sold by advertising but not by “door-to-door” methods. |
| <b>Germany</b>                     |  | Private placement  |
| <b>Italy</b>                       |  | Private placement  |
| <b>Ireland</b>                     |  | Private placement  |
| <b>Luxembourg</b>                  | ■  |  |
| <b>Spain</b>                       | Without advertising campaigns to qualified investors only.   |  |
| <b>Sweden</b>                      | ■  |  |
| <b>Switzerland</b>                 | Yes, but may only be subscribed on the basis of a written contract; any advertisements must include a Risk Warning approved by the SFBC.   |  |

| Can FoHF units be offered publicly? |                                   |  |
|-------------------------------------|-----------------------------------|--|
|                                     | Yes                               | No<br>(please specify how FoHF units are placed) |
| <b>France</b>                       | <i>OPCVM de fonds alternatifs</i> |  |
| <b>Germany</b>                      | ■                                 |  |
| <b>Ireland</b>                      | ■                                 |  |
| <b>Italy</b>                        |                                   | Private placement                                |
| <b>Luxembourg</b>                   | ■                                 |  |
| <b>Spain</b>                        | ■                                 |  |
| <b>Sweden</b>                       | ■                                 |  |
| <b>Switzerland</b>                  | ■                                 |  |

## 2.5 REPORTING TO INVESTORS

## 2.5.1 DOCUMENTATION

## a) Single Hedge Fund (SHF)

|   |
|---|
| <p><b>Is the documentation of an SHF (provided or made available to investors) the same as that required for UCITS?</b></p> |
|---|

(The fund rules or investment company's charter; prospectus; annual report for each financial year; mid-year report covering the first six months of the financial year; the issue, sale, repurchase or redemption price of its units)

|             | Yes  | No<br>(please specify what documentation is provided or made available)             |
|-------------|--|---|
| France      | The general scheme is the same as required for UCITS.  | For the OPCVM <i>contractuels</i> and the FCIMT, there is no simplified prospectus. |
| Germany     | ■  |   |
| Ireland     | For PIF and QIF: The periodic report must, where relevant, disclose if distributions have been made out of the capital of the scheme.  |   |
| Italy       | Yes, with the exception of the prospectus, which is not required since sale to the public of units is prohibited.  |   |
| Luxembourg  | ■  |   |
| Spain       | Draft Decree mentions that a monthly report is compulsory in contrast to those quarterly, semi-annual and annual reports, applicable to UCITS. However, Government sources recently indicated that it could be ruled out, and the general rule related to UCITS periodical reports, could be maintained for hedge funds. |   |
| Sweden      | ■  |   |
| Switzerland | ■  |   |

## b) Fund of Hedge Funds (FoHF)

|  |
|--|
| <p><b>Is the documentation of an FoHF (provided or made available to investors) the same as that required for UCITS?</b></p> |
|--|

(The fund rules or investment company's charter; prospectus; annual report for each financial year; mid-year report covering the first six months of the financial year; the issue, sale, repurchase or redemption price of its units)

|         | Yes   | No<br>(please specify what documentation is provided or made available) |
|---------|---|---|
| France  | The general scheme is the same as required for UCITS. |   |
| Germany | ■   |   |

**Is the documentation of an FoHF (provided or made available to investors) the same as that required for UCITS? (cont'd.)**

(The fund rules or investment company's charter; prospectus; annual report for each financial year; mid-year report covering the first six months of the financial year; the issue, sale, repurchase or redemption price of its units)

|             | Yes  | No<br>(please specify what documentation is provided or made available) |
|-------------|--|---|
| Ireland     | The periodic report must list the names of the underlying schemes, their manager and their domicile. The annual report must provide information on the impact of fees, including performance fees, on returns to unit-holders.   |   |
| Italy       | Yes, with the exception of the prospectus, which is not required since sale of units to the public is prohibited.  |   |
| Luxembourg  | ■  |   |
| Spain       | ■<br>Draft decree mentions that a monthly report is compulsory in contrast to those quarterly, semi-annual and annual reports, applicable to UCITS. However Government sources recently indicated that it could be ruled out, and the general rule related to UCITS periodical reports, could be maintained for hedge funds. |   |
| Sweden      | Yes, including simplified prospectus. For <i>Specialfonder</i> (incl. hedge funds) there are however some additional information requirements to the documents.  |   |
| Switzerland | Yes, but additional requirements whenever appropriate. And investors have the right to receive any additional information they want on the single target funds contained in the portfolio.   |   |

## 2.5.2 FUND RULES

### a) Single Hedge Fund (SHF)

**Must the fund rules of an SHF carry any additional indications as compared with those of a harmonised fund (or investment company charter)?**

|                       | Yes<br>(please specify)   | No              |
|-----------------------|---|-----------------|
| France                |   | ■ <sup>25</sup> |
| Germany               | The fund rules must state all circumstances and conditions for cancellation and payment-out of units out of the fund in return for the return of the units.   |                 |
| Ireland <sup>26</sup> | For <i>PIF/QIF</i> any proposed relationship with a prime broker must be clearly disclosed.   |                 |
| Italy <sup>27</sup>   | The fund rules must indicate:<br>1. The risk associated with such investments and specify that they are made by way of waiver from the prohibitions and prudential rules laid down by the Bank of Italy for the limitation and diversification of risk (for instance, financial instruments may be sold short); |                 |

<sup>25</sup> As for all funds, extended detailed information is required in the fund's general prospectus

<sup>26</sup> Draft Guidance Note 2/00

<sup>27</sup> Art. 16 Treasury Decree n° 228/99

**Must the fund rules of an SHF carry any additional indications as compared with those of a harmonised fund (or investment company charter)? (cont'd.)**

|             | Yes<br>(please specify)   | No |
|-------------|---|----|
| Italy       | 2. The eligible assets subject to investment;<br>3. Investment modalities with regard to investor participation and unit redemption.  |    |
| Luxembourg  |   | ■  |
| Spain       |   | ■  |
| Sweden      | In respect of special funds, information shall be provided as to whether the fund is intended for the public or a limited group of investors. In the latter case, the group shall be identified. The fund rules shall also contain information regarding:<br>1. the extent to which the fund deviates from provisions applicable to UCITS;<br>2. the risk level sought; and<br>3. the manner in which risks are assessed. <sup>28</sup> |    |
| Switzerland | Extensive Risk Warning in a) prospectus which also includes a glossary of terms and a detailed catalogue of all risks involved, b) any advertisements.  |    |

*b) Fund of Hedge Fund (FoHF)*

**Must the fund rules of an FoHF carry any additional indications as compared with those of a harmonised fund (or investment company charter)?**

|                       | Yes<br>(please specify)  | No              |
|-----------------------|--|-----------------|
| France                |  | ■ <sup>29</sup> |
| Germany               | The fund rules must state all circumstances and conditions for cancellation and payment-out of units out of the fund in return for the return of the units.<br>In addition, they have to state the following: <ul style="list-style-type: none"> <li>• principles according to which target funds are selected;</li> <li>• the fact that target funds are SHF;</li> <li>• investment policy of target SHF;</li> <li>• extent of possible loans or use of derivative and short sales;</li> <li>• extent of possible investing in bank deposits and money market instruments;</li> <li>• minimum investment of 51% of FoHF assets in target SHFs.</li> </ul> |                 |
| Ireland <sup>30</sup> | For PIF/QIF any proposed relationship with a prime broker must be clearly disclosed  |                 |
| Italy <sup>31</sup>   | The fund rules must indicate: <ol style="list-style-type: none"> <li>1. the risk associated with such investments and specify that they are made by way of waiver from the prohibitions and prudential rules laid down by the Bank of Italy for the limitation and diversification of risk (for instance, financial instruments may be sold short);</li> <li>2. the eligible assets subject to investment;</li> <li>3. investment modalities with regard to investor participation and unit redemption.</li> </ol>   |                 |

<sup>28</sup> Swedish Investment Funds Act (2004:46) Chapter 4 § 8 p. 12

<sup>29</sup> As for all funds, extended detailed information is required in the fund general prospectus

<sup>30</sup> Draft Guidance Note 2/00

<sup>31</sup> Art. 16 Treasury Decree n° 228/99

**Must the fund rules of an FoHF carry any additional indications as compared with those of a harmonised fund (or investment company charter)? (cont'd.)**

|                    | Yes<br>(please specify)  | No |
|--------------------|--|----|
| <b>Luxembourg</b>  |  | ■  |
| <b>Spain</b>       |  | ■  |
| <b>Sweden</b>      | <p>In respect of special funds, information shall be provided as to whether the fund is intended for the public or a limited group of investors. In the latter case, the group shall be identified. The fund rules shall also contain information regarding:</p> <ol style="list-style-type: none"> <li>1. the extent to which the fund deviates from provisions applicable to UCITS;</li> <li>2. the risk level sought; and</li> <li>3. the manner in which risks are assessed.<sup>32</sup></li> </ol> |    |
| <b>Switzerland</b> | Detailed disclosure of all special risk factors, investment restrictions and the cooperation with the prime broker.  |    |

### 2.5.3 PROSPECTUS

#### a) Single Hedge Fund (SHF)

**Must the prospectus of an SHF carry any additional indications as compared with that (if required) of a harmonised fund?**

|               | Yes<br>(please specify)   | No |
|---------------|---|----|
| <b>France</b> | <p>These are the same rules as those of the prospectus but adapted to the alternative investment. In particular, the information note must indicate:</p> <ul style="list-style-type: none"> <li>• the percentage of maximum detention and maximum exposure to HFs;</li> <li>• a warning containing the description of risks associated with investing in HFs;</li> <li>• the geographic distribution of the target funds;</li> <li>• the impact of investment in these funds on the general profile of the global risk of the OPCVM;</li> <li>• the impact of the costs (direct and indirect) of the acquisition of funds;</li> <li>• the multi-management strategy of the OICR. To this end, on the one hand the objective of management describes the maximum percentage or the spread between maximum and minimum of the exposition examined by each alternative strategy, with a short description of the principles of the strategy; on the other hand, if there is no description of the consideration of the alternatives strategies, it must be specified that the management is diversified and discretionary, according to the predictions of the investment company;</li> <li>• a quantitative indicator of the measure of risk. The relevant indicators, for example, the volatility, the maximum loss risk approximated with extreme scenarios (“stress test”) or the “value at risk”, are chosen by the company and depend on the kind of strategy adopted. The meaning of the above-mentioned indicators is to be explained.</li> </ul> <p>The management report must contain document management and a table displaying the different alternative strategies that distinguish the nature of the target funds.</p> |    |

<sup>32</sup> Swedish Investment Funds Act (2004:46) Chapter 4 § 8 p. 12

**Must the prospectus of an SHF carry any additional indications as compared with that (if required) of a harmonised fund? (cont'd.)**

|                | Yes<br>(please specify)   | No |
|----------------|---|----|
| <b>Germany</b> | <p>Prominent warning message on prospectus, additional requirements as laid down for FoHFs are likely to be applied also for SHFs (see below).</p> <p>For PIF:<sup>33</sup></p> <p>The prospectus must indicate, in a prominent position, that it has been authorised by the Authority to be marketed solely to professional investors. It must specify its minimum subscription requirements and add the following:</p> <p><i>“Accordingly, the requirement of the Irish Financial Services Regulatory Authority which are deemed necessary for the protection of retail investor, in particular the conditions set down by the Irish Financial Services Regulatory Authority in relation to investment and leverage, do not apply to the scheme.”</i></p> <p>The prospectus must describe the investment objectives of the scheme and this description must be comprehensive and accurate, readily comprehensible to investors and be sufficient to enable investors to make an informed judgement on the investment proposed to them.</p> <p>The prospectus must contain quantitative parameters, which limit the extent of leverage that will be engaged in by the scheme and the extent to which the investments of the scheme will be concentrated in a single or narrow range of exposure. These limits should be relevant to the investment policies of the scheme. Where the scheme may employ more than one investment policy different limits may apply to each such policy.</p> <p>For QIF:<sup>34</sup></p>  |    |
| <b>Ireland</b> | <p>The prospectus must indicate, in a prominent position, that a scheme has been authorised by the Authority for marketing solely to qualifying investors. It must specify its minimum subscription requirements and add the following:</p> <p><i>“Accordingly, while this scheme is authorised by the Irish Financial Services Regulatory Authority, the Authority has not set any limits or other restriction on the investment objectives, the investment policies or the degree of leverage which may be employed by the scheme.”</i></p> <p>In the case of investment companies the following sentence must be added to the above statement:</p> <p><i>“The scheme must comply with the aim of spreading investment risk in accordance with Section 253 (2) (a) of the Companies Act, 1990 Part XIII.”</i></p> <p>The prospectus must describe the investment objectives and investment and borrowing policies of the scheme and these descriptions must be comprehensive and accurate, readily comprehensible to investor and be sufficient to enable investors make an informed judgement on the investment proposed to them. The prospectus must contain quantitative parameters on the extent of leverage which will be engaged in by the scheme.</p> <p>The prospectus must contain a prominent risk warning which will make specific reference to the following:</p> <ul style="list-style-type: none"> <li>• the potential for above average risk involved, and</li> <li>• the suitability of this type of investment only for people who are in a position to take such a risk.</li> </ul> |    |

<sup>33</sup> See NU Notice 12 (s3-5)

<sup>34</sup> See NU Notice 24 (s5-7)

**Must the prospectus of an SHF carry any additional indications as compared with that (if required) of a harmonised fund? (cont'd.)**

|                                 | Yes<br>(please specify)  | No |
|---------------------------------|--|----|
| <b>Italy</b>                    |  | ■  |
| <b>Luxembourg</b> <sup>35</sup> | <p>The prospectus must contain a description of the investment strategy of the UCI concerned as well as a description of the specific risks inherent to its investment policy. The prospectus must, if applicable, provide that:</p> <ul style="list-style-type: none"> <li>• the potential losses resulting from short sales on transferable securities differ from the possible losses resulting from the investment of liquid assets in such transferable securities. In the first case, the loss may be unlimited whereas, in the second case, the loss is limited to the amount of liquid assets invested in the transferable securities concerned;</li> <li>• leverage generates an opportunity for higher return and therefore more important income, but, at the same time, increases the volatility of the value of the assets of the UCI and, hence, the risk to lose capital. Borrowing generated interest costs which may be higher than the income and capital gains produced by the assets of the UCI;</li> <li>• due to the limited liquidity of the assets of the UCI, it may not be in a position to meet the redemption request of its units which may be presented to it by its investors.</li> </ul> <p>In addition, the prospectus must state that the investment in the UCI entails an above-average risk and is only appropriate for persons who can take the risk to lose their entire investment. If appropriate, the offering prospectus must contain a description of the investment strategy in forward contracts and options pursued by the UCI as well as the risks resulting from such investment policy. It must for example mention that the forward contract and option markets are extremely volatile and that the risk to incur a loss in relation to such markets and/or in relation to short sales is very high.</p> |    |
| <b>Spain</b>                    | <p>Final draft decree mentions that the prospectus must indicate:</p> <ul style="list-style-type: none"> <li>• The limit of the debt, no higher than five times its assets;</li> <li>• Clearly the special risks of these investments;</li> <li>• Asset valuation rules;</li> <li>• Conflict of interest in affiliated transactions;</li> <li>• Commissions and expenses applicable;</li> <li>• Redemption rules.</li> </ul>   |    |
| <b>Sweden</b>                   | <p>In addition, the full prospectus and simplified prospectus for an investment fund shall state:</p> <ol style="list-style-type: none"> <li>1) the types of assets in which the fund's assets may be invested; and</li> <li>2) whether the fund's assets may be invested in derivative instruments and, in such case, for which purpose and the manner in which the potential results of the use of derivative instruments may affect the risk profile of the fund.</li> </ol> <p>The following information shall be presented in a prominent place in the full prospectus and simplified prospectus as well as in all other advertising material:</p>  |    |

<sup>35</sup> See chapter H of CSSF Circular 02/80

**Must the prospectus of an SHF carry any additional indications as compared with that (if required) of a harmonised fund? (cont'd.)**

|                    | Yes<br>(please specify)  | No |
|--------------------|--|----|
| <b>Sweden</b>      | <p>1) the investment focus of the fund in the event fund assets will be invested in assets other than transferable securities and money market instruments or where the fund is an index fund pursuant to Chapter 5, section 7;</p> <p>2) whether the fund's value may vary significantly due to the composition of the fund or to the management methods used by the Swedish management company; and</p> <p>3) where the fund has been authorised pursuant to Chapter 5, section 8, the identity of the issuers or guarantors who have issued or guaranteed such debt securities in which fund assets exceeding 35 per cent of the value of the fund have been invested or are intended to be invested.</p> <p>Where the fund is a special fund, such fact shall be stated in the full prospectus, simplified prospectus, and all other advertising information regarding the fund.<sup>36</sup></p>  |    |
| <b>Switzerland</b> | <p>The prospectus must contain a description of the investment strategy of the UCI concerned as well as a description of the specific risks inherent to its investment policy. The prospectus must, if applicable, provide that:</p> <ul style="list-style-type: none"> <li>• the potential losses resulting from short sales on transferable securities differ from the possible losses resulting from the investment of liquid assets in such transferable securities. In the first case, the loss may be unlimited whereas, in the second case, the loss is limited to the amount of liquid assets invested in the transferable securities concerned;</li> <li>• the investment in the UCI entails an above-average risk and is only appropriate for persons who can take the risk to lose their entire investment. If appropriate, the offering prospectus must contain a description of the investment strategy in forward contracts and options pursued by the UCI as well as the risks resulting from such investment policy. It must for example be mentioned that the forward contract and option markets are extremely volatile and that the risk to incur a loss in relation to such markets and/or in relation to short sales is very high.</li> </ul> <p>Glossary of terms (only for HFs to be marketed to a wider public).</p> |    |

b) Fund of Hedge Funds (FoHF)

**Must the prospectus of an FoHF carry any additional indications as compared with that (if required) of a harmonised fund?**

|                | Yes<br>(please specify)   | No |
|----------------|---|----|
| <b>France</b>  | See above for SHF.  |    |
| <b>Germany</b> | <p>Additional information requirements for the sales prospectus (§ 117 InvG):</p> <ol style="list-style-type: none"> <li>1. Information on the principles pursuant to which the target funds are selected;</li> <li>2. Information on the extent to which units in foreign unsupervised target funds may be acquired, together with a notice that such target funds are investment funds, the investment policies of which are subject to requirements comparable with those applicable to funds with additional risks pursuant to § 112, but which are possibly not subject to public supervision comparable to that provided for in this Act;</li> <li>3. Information on the requirements to be met by the management of the target funds;</li> <li>4. Information on the extent to which the selected target funds may borrow and execute short sales under their investment strategy, including a notice on the risks that can be connected therewith;</li> <li>5. Information on the fee structure of the target funds, with a notice concerning particularities of the amount of such fees and information on the method of calculating the aggregate costs to be borne by the investor;</li> <li>6. Information on the details and terms of the redemption and payment of units, together with, if applicable, an express notice in highlighted text that, notwithstanding § 37 (1), the investor may not demand from the investment company at all times the redemption of units and payment of the amount of the fund attributable to the units;</li> <li>7. Prominent warning message on prospectus.</li> </ol> |    |
| <b>Ireland</b> | <p>For <i>PIF</i>: see above for SHF.<br/>           For <i>QIF</i>: see above for SHF.<br/>           For Retail:<sup>37</sup></p> <p>The prospectus must include the following risk warning, in bold, in a prominent position on the cover of the prospectus and on the application form attached to the prospectus:</p> <p><i><b>“This scheme will invest in unregulated collective investment schemes which may not be subject to the same legal regulatory protection as afforded by collective investment schemes authorized and regulated in the European Union or equivalent jurisdictions. An investment in this scheme is not suitable for all investors. A decision to invest in this scheme should take into account your own financial circumstances and the suitability of the investment as a part of your portfolio. You should consult a professional investment advisor before making an investment.”</b></i></p>   |    |

<sup>37</sup> See NU Notice 25 (s5-7)

**Must the prospectus of an FoHF carry any additional indications as compared with that (if required) of a harmonised fund? (cont'd.)**

|                    | Yes<br>(please specify)   | No |
|--------------------|---|----|
| <b>Ireland</b>     | <p>In addition to the normal information provided, the prospectus must include information on the special risks. It must provide specific information drawing attention to:</p> <ul style="list-style-type: none"> <li>• The investment policies of underlying schemes in which the scheme proposes to invest and the relevant risks associated with such policies;</li> <li>• The levels of leverage employed by the underlying schemes;</li> <li>• The expected impact of fees charged at both the level of the scheme and the underlying schemes on overall performances;</li> <li>• Cumulative effect of performance fees, which may arise at both the scheme and underlying scheme level;</li> <li>• Potential liquidity problems;</li> <li>• Potential valuation difficulties.</li> </ul> <p>The prospectus must provide an explanation, in plain English, including a glossary of terms if necessary, of the alternative investment strategies, which the underlying schemes may employ.</p> <p>The prospectus must describe the diversification policies of the scheme including information on the extent to which the scheme will diversify between trading strategies and also the extent to which it will invest in underlying schemes which have demonstrated a high volatility of return.</p> |    |
| <b>Italy</b>       |   | ■  |
| <b>Luxembourg</b>  | See above for SHF.  |    |
| <b>Spain</b>       | <p>Final draft decree mentions that the prospectus and the advertising campaigns must indicate:</p> <ul style="list-style-type: none"> <li>• Clearly the special risks of these investments;</li> <li>• Aims and investment policy;</li> <li>• Commissions and expenses applicable;</li> <li>• Redemption rules.</li> </ul>   |    |
| <b>Sweden</b>      | See above for SHF.  |    |
| <b>Switzerland</b> | As above; additionally, there are specific requirements to inform about the risk of extra costs. "Double dipping" is not allowed.   |    |

## 2.5.4 ANNUAL AND SEMI-ANNUAL REPORTS

### a) Single Hedge Fund (SHF)

**Must the annual and semi-annual reports of SHFs be published by the same deadlines as those of UCITS?**

(i.e. within four months for the annual report and two months for the semi-annual report)

|             | Yes   | No<br>(please specify deadlines) |
|-------------|---|----------------------------------|
| France      | Same requirements as those of UCITS as specified under the AMF Règlement Général.   |                                  |
| Germany     | ■   |                                  |
| Ireland     | ■   |                                  |
| Italy       | ■   |                                  |
| Luxembourg  | ■   |                                  |
| Spain       | ■<br>Additionally, in Spain UCITS must publish a quarterly report and send it to investors, on request.                         |                                  |
| Sweden      | ■   |                                  |
| Switzerland | ■<br>Whenever appropriate, additional information must be provided depending on the specific investment strategies of the fund. |                                  |

### b) Fund of Hedge Funds (FoHF)

**Must the annual and semi-annual reports of FoHFs be published by the same deadlines as those of UCITS?**

(i.e. within four months for the annual report and two months for the semi-annual report)

|             | Yes   | No<br>(please specify deadlines) |
|-------------|---|----------------------------------|
| France      | Same requirements as those of UCITS as specified under the AMF Règlement Général.                       |                                  |
| Germany     | ■   |                                  |
| Ireland     | ■   |                                  |
| Italy       | ■   |                                  |
| Luxembourg  | ■   |                                  |
| Spain       | ■<br>Additionally, in Spain UCITS must publish a quarterly report and send it to investors, on request. |                                  |
| Sweden      | ■   |                                  |
| Switzerland | ■   |                                  |

## 3. MANAGEMENT COMPANY CHARACTERISTICS

## 3.1 CAPITAL REQUIREMENTS

**Is the management company setting up or managing Hedge Funds required to have any initial capital other than those required for “harmonised management companies”?**

|             | Yes<br>(please specify) | No |
|-------------|-------------------------|----|
| France      |                         | ■  |
| Germany     |                         | ■  |
| Ireland     |                         | ■  |
| Italy       |                         | ■  |
| Luxembourg  |                         | ■  |
| Spain       |                         | ■  |
| Sweden      |                         | ■  |
| Switzerland |                         | ■  |

## 3.2 DIRECTOR OF MANAGEMENT COMPANY REQUIREMENTS

**Are there any special requirements for directors of management companies setting up or managing Hedge Funds?**

|                          | Yes   | No |
|--------------------------|---|----|
| France                   | Appropriate experience and expertise in relation to alternative investment scheme.  |    |
| Germany                  | Persons responsible for the investment decisions must have a suitable qualification, sufficient experience and practical knowledge.   |    |
| Ireland                  | <p>The management of the scheme and its delegate(s), where applicable, must demonstrate appropriate experience and expertise in relation to alternative investment scheme.</p> <p>Detailed information must be submitted to enable the Bank to be satisfied that appropriate controls and systems are in place to monitor constantly the activities of the underlying schemes, their manager and risk assessment procedures. This will include, <i>inter alia</i>, information on the extent to which the management of the scheme and its delegate(s) will:</p> <ul style="list-style-type: none"> <li>• Review the background, expertise and experience of the underlying managers;</li> <li>• Review, on an ongoing basis, the risks of the underlying schemes and the risks of the strategies being employed, including the amount of gearing inherent in these strategies and counterpart risk;</li> <li>• Monitor overall leverage of the scheme.</li> </ul> <p>The management of the scheme must be able to provide the Bank, on request, with a detailed report on the risk profile and recent performance of the scheme’s investments.</p> |    |
| Italy                    |   | ■  |
| Luxembourg <sup>38</sup> | Particular attention is paid by the CSSF to the professional qualification and experience of directors.   |    |
| Spain                    |   | ■  |
| Sweden                   |   | ■  |
| Switzerland              | At least 2 members of the management company’s staff must have min. 5 years of professional experience/education in the relevant area of alternative investment.  |    |

38 See preamble of CSSF Circular 02/80

### 3.3 ADDITIONAL REQUIREMENTS FOR MANAGEMENT COMPANIES

| <b>Can a management company setting up or managing harmonised fund also set up or manage a HF?</b> |  |   |
|--|--|---|
|  | <b>Yes</b>   | <b>No</b>   |
| <b>France</b>  | <p><i>OPCVM ARIA simples:</i></p> <p>The principle is that no specific business programme is required by the French regulator to allow French investment management companies to promote and manage this category of funds. However, there are 2 exceptions :</p> <ul style="list-style-type: none"> <li>• where the <i>OPCVM ARIA simple</i> invests in an offshore hedge fund. In such case, the French manager will be required by AMF to deliver a business programme specific to the “fund of hedge funds” activity; and</li> <li>• where the <i>OPCVM ARIA simple</i> enters into credit derivative transactions (e.g. credit default swaps). In such case, the French manager will be required by AMF to deliver a business programme specific to the “credit derivatives” activity.</li> </ul> <p><i>OPCVM ARIA à effet de levier:</i></p> <p>A specific business programme is required by the French regulator to allow French investment management companies to promote and manage this category of funds. The purpose of such programme is to detail internal organization, human resources and system capabilities allowing the asset management company to monitor properly the leverage used by the <i>OPCVM ARIAEL</i>.</p> <p><i>OPCVM de fonds alternatifs:</i></p> <p>A specific business programme is required by the French regulator to allow French investment management companies to promote and manage this category of funds. The purpose of such programme is mainly to detail the internal process implemented by the asset management company (e.g. due diligence, risk management) to select properly the targeted hedge funds invested by the <i>OPCVM ARIA de fonds alternatifs</i>.</p> <p><i>OCVM contractuels:</i></p> <p>A specific business programme is required by the AMF. Such programme must detail internal organization, human resources and system capabilities allowing the asset management company to monitor properly this category of funds whose investment rules may be unrestricted.</p> |   |
| <b>Germany</b>   | Extension of license is required.  |   |
| <b>Ireland</b>   | IFSRA must be satisfied that management company has necessary expertise. <sup>39</sup>   |   |
| <b>Italy</b> <sup>40</sup>   |  | <p>■</p> <p>The management company must have as its exclusive object of activity the setting up or management of hedge funds.</p> |

<sup>39</sup> See NU Notice 25-s9, 10,11,12

<sup>40</sup> Art. 16 Treasury Decree n° 228/99

| Can a management company setting up or managing harmonised fund also set up or manage a HF?<br>(cont'd.) |  |    |
|--|--|----|
|  | Yes  | No |
| Luxembourg   |  | ■  |
| Spain  | ■<br>Any additional requirements to be developed by a CNMV circular.   |    |
| Sweden   | In the authorisation process for <i>Specialfonder</i> , <i>Finansinspektionen</i> puts particular focus on the fund manager who shall have the management experience needed for the type of fund being authorised. |    |
| Switzerland  | Yes, provided the management company has the special expertise and risk management tools required in each individual case.   |    |

## 3.4 DELEGATION OF FUNCTIONS

| Are there any special rules (as compared with those envisaged by the UCITS Directive) regarding the management company's acceptance and assignment of the delegation of functions? |   |    |
|--|---|----|
|  | Yes   | No |
| France   | The scheme of the delegation (acceptant and assignment) must get specific accreditation from the AMF <sup>41</sup> .  |    |
| Germany  |   | ■  |
| Ireland  | Exception: Multi-Advisory Funds: see Guidance Note 1/97<br>The delegates of the management of the scheme must demonstrate appropriate experience and expertise in relation to alternative investment scheme.  |    |
| Italy <sup>42</sup>  | "Speculative" management companies are permitted to accept delegations to manage third hedge fund assets.<br>It is not clear if "Speculative" management companies are permitted to delegate the management of speculative fund assets to an intermediary that does not manage hedge funds. |    |
| Luxembourg   |   | ■  |
| Spain  |   | ■  |
| Sweden   |   | ■  |
| Switzerland  | Delegation to external party possible, but also in that case the management company must have qualified staff of its own.   |    |

41 COB rules of 3 April 2003

42 Bank of Italy regulation of 14 April 2005

## 4. DEPOSITARY CHARACTERISTICS

**Are there any special rules (as compared with those envisaged by the UCITS Directive) regarding the depositary?**

|                    | Yes   | No   |
|--------------------|---|--|
| <b>France</b>      | To obtain the specific accreditation, the fund manager has to describe the depositary's abilities to administrate and control such activities and products (e.g. the case of the FoHF <sup>43</sup> and credit derivatives accreditation).                          |  |
| <b>Germany</b>     |   | Individual tasks of the depositary may be performed by another comparable institution as long as the liability for faults remains with the depositary. |
| <b>Ireland</b>     |   | ■  |
| <b>Italy</b>       |   | ■  |
| <b>Luxembourg</b>  |   | ■  |
| <b>Spain</b>       |   | ■  |
| <b>Sweden</b>      |   | ■  |
| <b>Switzerland</b> | Depositary must prove it has sufficient expertise and resources to effectively perform its functions. In the case of FoHF, the main responsibility lies not with the depositary, but with the prime broker (normally not based in Switzerland, but e.g. in London). |  |

## 5. PRIME BROKER

**Is it possible for a Hedge Fund to make use of a prime broker?**

|                           | Yes<br>(please specify the characteristics of the prime broker)   | No |
|---------------------------|---|----|
| <b>France</b>             | AMF and industry are still discussing about the articulation between prime broker and depositary in the French law.   |    |
| <b>Germany</b>            | ■   |    |
| <b>Ireland</b>            | The prime broker must be regulated to provide prime broker services by recognised regulatory authority, and it, or its parent company, must have shareholders' fund in excess of €200 million (or its equivalent in another currency). In addition, the prime broker, or its parent company, must have a minimum credit rating of A1/P1 <sup>44</sup> . |    |
| <b>Italy<sup>45</sup></b> | Prime brokers must: (i) be leading primary intermediaries; (ii) be subject to adequate forms of prudential supervision; (iii) have a high standing and proven experience in the sector.   |    |
| <b>Luxembourg</b>         | ■   |    |
|                           | The prime broker must employ specialised first class professionals <sup>46</sup> .  |    |
| <b>Spain</b>              |   | ■  |

43 COB rules of 3 April 2003

44 See Draft guidance note-04

45 Bank of Italy Communiqué n. 00190562 of 13 August 2002

46 See Chapter A.5 and B of CSSF Circular 02/80

### Is it possible for a Hedge Fund to make use of a prime broker? (cont'd.)

|                    | Yes<br>(please specify the characteristics of the prime broker)  | No |
|--------------------|--|----|
| <b>Sweden</b>      | <p>But no specific legislation/regulation in place yet. Legislative proposal regarding depositaries etc. are expected in the legislative proposal planned for autumn 2005. In the meantime <i>Finansinspektionen</i> has included opinions on the use of PB in their <i>Handbok</i> <sup>47</sup>:</p> <p>The <i>Finansinspektionen</i> is of the opinion that to be able to use a PB, the PB contract together with an assessment of the PB shall be sent to the <i>Finansinspektionen</i> for assessment. Prime responsibility for the use of a PB has been put on the depositary since the use of a PB must not lead to a situation where the depositary loses the ability to perform its duties (sort of sub-custodian arrangement). The depositary shall:</p> <ul style="list-style-type: none"> <li>• make a suitability test of the PB (authorised institute, supervised by a Financial Authority or other competent authority, credit rating etc.);</li> <li>• assess the quality of the custody service (competence, quality of Clearing and Settlements processes);</li> <li>• have a technical solution in place to guarantee a momentary and continuous control according to its responsibilities as a depositary;</li> <li>• present a legal opinion on whether there is a satisfactory separation of the assets as protection against seizure in case of bankruptcy and make certain there are insurance and/or guarantees to cover possible losses of securities or liquidity.</li> </ul> |    |
| <b>Switzerland</b> | Yes, this is encouraged.   |    |

### Are there any special rules for guarantees issued by the fund in case of financing disbursed by the prime broker?

|                | Yes<br>(please specify the characteristics of the prime broker)   | No |
|----------------|---|----|
| <b>France</b>  | <p>The rules regulating the sharing of liabilities between French custodians and offshore prime brokers (acting as sub-custodians) have not yet been clarified (same issue is pending for <i>OPCVM ARIAEL</i>). Indeed, the AMF has recently provided unofficial guidelines on provisions it would require to be inserted under the prime brokerage agreement and the custody agreement. However, no master agreements have been drafted/approved by the AMF, the French managers and French custodians.</p> <p>Offshore prime brokers will be required to deliver a specific business programme to the AMF before being authorised to be appointed as prime broker of the French fund.</p> |    |
| <b>Germany</b> |   | ■  |

<sup>47</sup> "A "non-binding" document which explains Authority decisions, practice and recommendations  
[http://www.fi.se/upload/20\\_Publicerat/30\\_Sagt\\_och\\_utrett/30\\_Skrivelser/2005/Fondhandbok\\_050525.pdf](http://www.fi.se/upload/20_Publicerat/30_Sagt_och_utrett/30_Skrivelser/2005/Fondhandbok_050525.pdf)

**Are there any special rules for guarantees issued by the fund in case of financing disbursed by the prime broker? (cont'd.)**

|                            | Yes<br><small>(please specify the characteristics of the prime broker)</small>  | No                           |
|----------------------------|---|------------------------------|
| <b>Ireland</b>             | <p>In the case of a <i>PIF</i>, the assets so passed shall not exceed 140% of the level of the PIF's indebtedness to the PB. For the purposes of this limitation, "assets so passed" will include cash on deposit with the PB.</p> <p>In the case of a <i>QIF</i> there is no limit on the extent to which assets may be passed to the PB, but the extent to which assets are available to the PB must be fully disclosed in the prospectus issued by the QIF.</p> <ol style="list-style-type: none"> <li>1. The agreement between the fund and the prime broker must incorporate a procedure to mark positions to market daily;</li> <li>2. Prime broker must agree to return same or equivalent assets to the scheme;</li> <li>3. The arrangement incorporate a legally enforceable right of set-off for the scheme.</li> </ol>   |                              |
| <b>Italy <sup>48</sup></b> | <p>When the fund assets are passed to the prime broker, the asset management company has to ensure, through adequate contractual mechanisms, that:</p> <ul style="list-style-type: none"> <li>• the value of the assets entrusted as collateral — measured on the basis of market prices — may not exceed the amount of financing beyond a limited extent. The generic reference to a "limited extent" will only be given substance by its application in practice;</li> <li>• the unconditional right of the fund to close its position if the broker is involved in any events that put the restitution of the collateral at risk. In other words contracts must give funds the right to obtain the restitution of their collateral immediately in the event of the prime broker default, against repayment of the financing disbursed.</li> </ul> <p>The fund's rules must disclose the proposed relationship with the prime broker. Depository bank must always be in a position to monitor all the assets of the fund and the claims against them.</p> |                              |
| <b>Luxembourg</b>          | <p>In order to secure the financing of leverage provided by the prime broker, it is possible to transfer ownership of assets of the fund to the prime broker for an amount exceeding the debt of the fund to the prime broker by 20% of the market value of the assets. (This is important for prime brokers as market fluctuations may reduce the value of assets transferred.) Remaining assets may be pledge in favour of the prime broker.</p> <p>The custodian bank may have to work closely with a prime broker. Such a prime broker could act as a global sub custodian.</p>   |                              |
| <b>Spain</b>               |   | ■                            |
| <b>Sweden</b>              |   | Under discussion, see above. |
| <b>Switzerland</b>         | <p>No general rules - to be discussed with the SFBC on a case-by-case basis. No license will be granted if the applicant has not been able to secure the services of a renowned prime broker.</p>   |                              |

48 Bank of Italy regulation of 14 April 2005

### Are there any rules in the case of “insolvency” of the Hedge Fund?

|             | Yes   | No   |
|-------------|---|--|
| France      |   | ■<br>(investors cannot lose more)  |
| Germany     |   | ■  |
| Ireland     | There must be an enforceable right to set off.      |  |
| Italy       |   | ■  |
| Luxembourg  |   | ■<br>(general rules applicable to undertakings in collective investment apply)   |
| Spain       |   | ■  |
| Sweden      | General rules applicable to investment funds apply. |  |
| Switzerland |   | General rules as for UCITS apply. Investors are barred by law from having to pay more than their original investment to cover the HF' s obligations. |

## 6. CROSS-BORDER HEDGE FUND OFFERS

### Can foreign Hedge Funds be offered (or placed) in your country?

|         | Yes<br>(please specify the conditions)   | No |
|---------|--|----|
| France  | <p>Foreign HFs normally fall within the definition of “financial instruments”.</p> <p>The possibility of their distribution in France is very limited as it is subject to the following restriction: share or units in foreign non-coordinated fund cannot be marketed directly to French investors (even to qualified investors or to a restricted circle of investors) unless the marketing and distribution of them are specifically approved by the AMF.</p> <p>However, it is the current position of the AMF not to allow the direct marketing/distribution of foreign HF to French investors. In fact, since 2003, French law and the AMF have allowed the indirect distribution of shares or units of such HF in France only through French fund-of- hedge fund which can take the form of <i>OPCVM de fonds alternatifs</i> or <i>OPCVM contractuels</i>.</p> <p>However, such indirect distribution is also subject to certain restrictions: specifically, the manager of FoHF, as well as their intended programme of activity, must be approved by the AMF and the FoHF themselves must:</p> <ol style="list-style-type: none"> <li>1. have their distribution programme approved by the AMF,</li> <li>2. set a minimum subscription requirement of €10,000, and</li> <li>3. comply with specific levels of investment diversification.</li> </ol> |    |
| Germany | Distribution of foreign HF by way of private placement requires a pre-existing relationship with the targeted investors.   |    |

**Can foreign Hedge Funds be offered (or placed) in your country? (cont'd.)**

|                                 | <b>Yes</b><br>(please specify the conditions)   | <b>No</b> |
|---------------------------------|---|-----------|
| <b>Ireland</b>                  | Foreign HFs normally fall within the definition of “unregistered funds”.<br>Unregistered funds can be marketed and distributed if: <ol style="list-style-type: none"> <li>1. only a limited number (numbered documents) of pre-selected people is targeted;</li> <li>2. the documents state disclaimers regarding confidentiality and no public marketing.</li> </ol>   |           |
| <b>Italy</b>                    | Foreign HFs normally fall within the definition of foreign non-harmonised funds.<br>Any offer in Italy of non-harmonised fund must be authorised by the Bank of Italy, after consulting with the CONSOB, provide the operating arrangement are compatible with those prescribed for Italian undertakings. This authorization is necessary also when the offering is addressed only to professional investors.<br>The Bank of Italy set out the following conditions for the authorisation: <ol style="list-style-type: none"> <li>1. The fund must have a functioning structure consistent with the one prescribed for Italian funds (the main features of which are: a number of shareholders not exceeding two hundred, a minimum initial subscription of €500,000 and prohibition of public offering in respect of the share);</li> <li>2. The fund must be subject in its country of origin to appropriate forms of supervisions to be carried out by (i) a public controlling authority or (ii) a controlling authority recognised by a public authority that exercises over the activity controls similar to those to which Italian funds are subject;</li> <li>3. The fund must market its shares (or units) in the country of origin;</li> <li>4. The fund must attend to the diffusion of information to the public and use of organisational modules designed to ensure the exercise of patrimonial rights of shareholders residing in Italy pursuant to the relevant provisions set out in the regulations;</li> <li>5. The fund must employ managers who meet requirements of good standing and professional skill equivalent to those prescribed by current Italian provisions for officers of funds’ managing companies.</li> </ol> In addition to the above-listed requirements, for the purpose of the authorisation, the following conditions are also to be taken into account: <ol style="list-style-type: none"> <li>1. the existence of co-operation agreements, established with the purpose of facilitating funds’ supervision, between the Italian supervising authorities and those of the fund’s country of origin;</li> <li>2. satisfaction by the country of origin of reciprocity conditions, within the limits defined by international agreements.</li> </ol> Under the circumstances described above, marketing of foreign HFs that have not been authorised by the Bank of Italy, would only be possible where a person (irrespective of such person qualifying as professional investor or not) request to purchase a share, without such share having been previously offered to him/her. In other words, if the purchase of the share by the investor occurs as a result of the investor’s initiative and request, an offer may not be said to have taken place in Italy. |           |
| <b>Luxembourg</b> <sup>49</sup> | The law does not recognize an explicit private placement regime but offers restricted to a limited number of sophisticated and previously known investors do not require prior authorisation or other regulatory requirements.  |           |

<sup>49</sup> See chapter 12 of the Law of 20 December 2002

| Can foreign Hedge Funds be offered (or placed) in your country? (cont'd.) |   |    |
|---|---|----|
|   | Yes<br>(please specify the conditions)  | No |
| <b>Spain</b>  | Technically possible on a case-by-case basis.   |    |
| <b>Sweden</b>   | <p style="text-align: center;">■ 51</p> <p>The key principle is that if a non-harmonised fund, i.e. a hedge fund would have been acceptable in Sweden or a similar one already exists, then the foreign non-harmonised fund shall be granted authorisation to be marketed in Sweden.</p> <p>The same level of extra legal requirements applying to Swedish <i>Specialfonder</i>, for example regarding organisation for redemptions and information, applies to foreign non-harmonised funds. The level of supervision in the home country should be comparable to that of Sweden and there should be a functioning cooperation established by the <i>Finansinspektionen</i> and the foreign supervisory authority. No differences in treatment should in theory be made between funds registered within EES and outside.</p> |    |
| <b>Switzerland</b>  | Foreign HFs may be marketed based on an authorization of the SFBC as a “foreign non-UCITS” subject to the same rules and requirements as a Swiss “Other Fund with special risks”. Private placement is governed by a Circular of the SFBC (max. 20 investors only).   |    |

51 See chapter 1 § 9 Swedish Investment Funds Act (2004:46) and §§ 8-10 of Finansinspektionens regulation FFFS 2004:3 om utländska förvaltningsbolags och fondföretags verksamhet i Sverige (activities of foreign investment undertakings and management companies in Sweden)





EFAMA

European Fund and Asset Management Association

Address: 18 Square de Meeûs, B-1050 BRUSSELS

Tel.: +32 2 513 39 69 - Fax: +32 2 513 26 43

E-mail: [info@efama.org](mailto:info@efama.org) - <http://www.efama.org>

ASSOGESTIONI

Associazione Italiana del Risparmio Gestito

Address: 17 Via in Lucina, I-00186 ROMA

Tel.: +39 06 684 05 91 - Fax: +39 06 689 32 62

E-mail: [info@assogestioni.it](mailto:info@assogestioni.it) - <http://www.assogestioni.it>

