



# BAI

## BAI Alternative Investment Insight 2

### Vortrag 1

„The shifting alternatives landscape“



### A. Charles Baillie

**Managing Director & Partner, Goldman Sachs**

Charles is co-head of the Alternative Investments and Manager Selection (AIMS) businesses in the Investment Management Division, overseeing the Private Equity Group (PEG), Hedge Fund Strategies (HFS) Group, Global Manager Strategies (GMS) Group, and Petershill Group. The AIMS businesses represent over \$100 billion in assets under management, with a team of over 200 professionals across offices in New York, London, San Francisco, Tokyo, Hong Kong and Bangalore.

Charles is also co-chairman of the PEG Investment Committee, and previously served as co-head of PEG. Prior to joining PEG, Charles worked in the Mergers & Acquisitions Group in London, where he focused on restructurings. He has served as secretary to the Operating Committee, a group of senior partners that establish firmwide operating policy. He was named managing director in 2002 and partner in 2008. Charles joined the firm as an analyst in 1991 in the Corporate Finance Department of the Investment Banking Division.

Charles received a BAH from Queen's University, Canada, an MA from the University of Oxford, and an MBA from the Harvard Graduate School of Business Administration, where he graduated as a Baker Scholar.

### Vortrag 2

„The future regulatory framework for hedge funds,  
private equity & co.“ (in deutscher Sprache)



### Frank Dornseifer

**Managing Director Legal and Policy Affairs,  
Bundesverband Alternative Investments e.V.**

He studied law at the universities of Bonn, Dublin (Trinity College) and Lausanne. After admission to the German bar in 2000 he practised various years as attorney in an international law firm in the field of corporate and securities law before joining the German Financial Regulator BaFin as deputy head of the policy unit within the investment management department. In this function he also represented BaFin in the Investment Management Committee of IOSCO, which elaborated in this time various reports on (fund of) hedge funds. Mr. Dornseifer frequently publishes articles both on investment and corporate law and he is editor of the compendium „Corporate Business Forms in Europe“. The finance committee of the German Bundestag denominated him several times as authorized expert on capital market law. Mr. Dornseifer gives frequently speeches at national and international conferences on investment and regulatory topics.

**Ort:**

Messeturm

Friedrich-Ebert Anlage 49  
60327 Frankfurt

10. Stockwerk

**Datum:** 24. November 2009

**Agenda:** • ab 15:45 Uhr Registrierung  
• Von 16:30 Uhr Vorträge und  
Diskussion  
• Im Anschluss Imbiss

Mit freundlicher Unterstützung von:

Goldman  
Sachs

Asset  
Management

**Rückfragen:**

Diese richten Sie bitte an die BAI-Geschäftsstelle unter 0228-96987-0  
Ihre verbindliche Anmeldung nehmen Sie bitte mittels beigefügtem Formular vor.

Da die Teilnehmerzahl begrenzt ist, bitten wir um frühzeitige Anmeldung.

Nach der Veranstaltung möchten wir Sie herzlich zu einem Imbiss einladen.

**Teilnahme:**

Für BAI Mitglieder ist die Veranstaltung kostenlos.

Für Nicht-Mitglieder wird eine Teilnahmegebühr iHv. EUR 150 zzgl. MwSt. erhoben.

## Anmeldung (Anmeldeschluss: 20. November)

**BAI Alternative Investment Insight 2**  
**24. November 2009**  
Frankfurt/Main

Bitte zurücksenden an:  
**Fax-Nr.: +49 (0)228 - 96 98 7-90**

oder per Brief:  
BAI e.V.  
Poppelsdorfer Allee 106  
53115 Bonn

- Ich nehme an der BAI Alternative Investment Insight 2 teil. Als BAI-Mitglied ist die Teilnahme **kostenlos**.
- Ich nehme an der BAI Alternative Investment Insight 2 teil. Als Nicht-Mitglied beträgt die Teilnahmegebühr € 150,00 zzgl. 19% MwSt.

Anmeldung bitte gut leserlich (in Druckbuchstaben) und vollständig ausfüllen:

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Telefax: \_\_\_\_\_ E-Mail: \_\_\_\_\_

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Ort / Datum

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Unterschrift / Stempel

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**BAI-Mitglieder** erhalten nach Anmeldung eine schriftliche Bestätigung zur kostenlosen Teilnahme.

Als **Nicht-Mitglied** des Verbandes erhalten Sie nach Eingang Ihrer Anmeldung eine Rechnung, die auch als Anmeldebestätigung dient. Der Veranstalter behält sich vor, Anmeldungen abzulehnen. Der Teilnahmebetrag ist fällig bei Erhalt der Rechnung, ohne Abzug. Bitte vermerken Sie Teilnehmernamen und Rechnungsnummer auf Ihrem Zahlungsbeleg. Eine Teilnahme kann nur gewährt werden, wenn Ihre Zahlung rechtzeitig beim BAI eingegangen ist. Bei Überweisung des Rechnungsbetrages später als 5 Bankarbeitstage vor Veranstaltungsdatum bitten wir Sie, eine Kopie des Zahlungsbeleges bei der Registrierung am Veranstaltungstag vorzulegen.

Ein Rücktritt bis 14 Tage vor Veranstaltungstermin ist kostenlos, danach erheben wir eine Stornierungsgebühr in Höhe der halben Teilnahmegebühr (zzgl. MwSt.). Bei Nichterscheinen wird die volle Teilnahmegebühr fällig. Die Stornierung bedarf der Schriftform (Brief, Fax). Grundlage für die Berechnung einer Stornierung ist das Datum des Mitteilungseingangs beim Veranstalter. Ein Ersatzteilnehmer kann jederzeit gestellt werden, bitte teilen Sie uns dessen Namen schnellstmöglich mit. Bei Absage durch den Veranstalter wird die gezahlte Gebühr voll erstattet, weitergehende Ansprüche sind ausgeschlossen. Inhaltliche, zeitliche und räumliche Programmänderungen aus wichtigem Grund behält sich der Veranstalter vor. Für Druckfehler übernehmen wir keine Haftung. Erfüllungsort für alle Ansprüche ist der Sitz des Veranstalters (Bonn).

■ Bundesverband Alternative Investments e.V.



# The future regulatory framework for hedge funds, private equity & Co.

Frank Dornseifer, Attorney at Law  
Director Legal and Policy Affairs, BAI

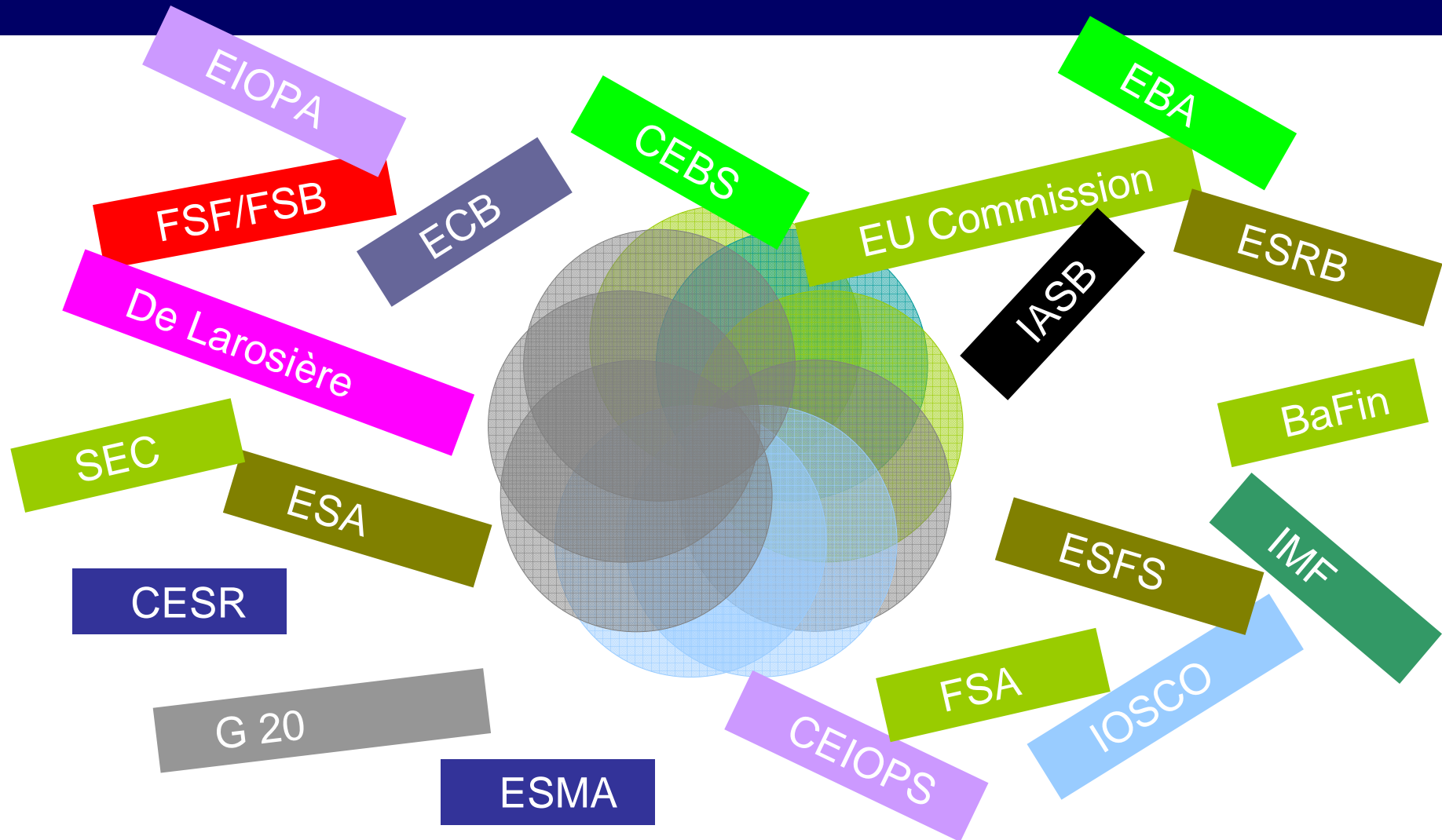
BAI Insight II  
Frankfurt, November 24, 2009

# Agenda

- Introduction
- G-20
- EU – the Swedish compromise proposal
- Germany



# Introduction - „The hour of the regulators“



# Introduction - „The hour of the regulators“

- Numerous consultations of EU Commission, CESR, IOSCO, CEBS, FSA, etc.
  - EU consultation on the improvement of supervision for the financial services sector
  - EU consultation on European Financial Supervision
  - IOSCO consultation „hedge fund oversight“
  - IOSCO consultation „regulation of short selling“
  - CESR call for evidence on short selling
  - EU consultation on hedge funds
  - CEBS consultation „high-level principles for risk management“
  - ...
- Various task forces and working groups: De Larosière, Turner, etc.

# Introduction – Key findings of consultations and task forces

- „The recent financial crisis is not actually a *hedge fund crisis*.“ (IOSCO)
- „Hedge funds are not actually ‚unregulated‘ in the strict sense of the word in many jurisdictions.“ (IOSCO)
- „AIFM were not the cause of the crisis, recent events have placed severe stress on the sector. The risks associated with their activities .... may in some cases have contributed to market turbulence.“ (EU Commission)
- „Private equity funds, due to their investment strategies and a different use of leverage than hedge funds, did not contribute to increase macro-prudential risks.“ (EU Commission)



# Introduction - Conclusions

- „...improve transparency in all financial markets – and notably for systemically important hedge funds – by imposing ... direct information requirements on hedge fund managers“ (de Larosière report)
- „...extend regulation and oversight to all systemically important financial institutions, instruments and markets. This will include, for the first time, systemically important hedge funds“ (G-20 group London summit declaration)
- „The global hedge fund industry should review and enhance existing sound practice benchmarks for hedge fund managers in the light of expectations for improved practices set out by the official and private sectors.“ (FSF)
- „Um eine angemessene Aufsicht und Regulierung aller systemisch wichtigen Finanzinstitute, -märkte und -instrumente sicherzustellen, sollten alle alternativen Investmentfonds, zum Beispiel Hedge Fonds, und deren Manager einem international abgestimmten Regelwerk unterworfen werden.“ (coalition agreement CDU/CSU, FDP)

# G-20 / IOSCO: six high level principles on the regulation of hedge funds (1)

- Hedge funds and/or hedge fund managers/advisers should be subject to mandatory registration.
- Hedge fund managers/advisers which are required to register should also be subject to appropriate ongoing regulatory requirements relating to:
  - Organisational and operational standards;
  - Conflicts of interest and other conduct of business rules;
  - Disclosure to investors; and
  - Prudential regulation.
- Prime Brokers and banks which provide funding to hedge funds should be subject to mandatory registration/regulation and supervision. They should have in place appropriate risk management systems and controls to monitor their counterparty credit risk exposures to hedge funds.

## G-20 / IOSCO: six high level principles on the regulation of hedge funds (2)

- Hedge fund managers/advisers and prime brokers should provide to the relevant regulator information for systemic risk purposes (including the identification, analysis and mitigation of systemic risks).
- Regulators should encourage and take account of the development, implementation and convergence of industry good practices, where appropriate.
- Regulators should have the authority to co-operate and share information, where appropriate, with each other, in order to facilitate efficient and effective oversight of globally active managers/advisers and/or funds and to help identify systemic risks, market integrity and other risks arising from the activities or exposures of hedge funds with a view to mitigating such risks across borders.

# EU – AIFM directive: scope/authorisation

## ➤ Scope

- Threshold of EUR 100 million for leveraged funds
- Threshold of EUR 500 million for funds which are not leveraged and have no redemption rights exercisable during a period of 5 years following the date of constitution (PE, closed-ended funds)
- Various other exemptions, e.g. securitisation SPVs

## ➤ Authorisation requirements

- initial capital:
  - In general at least EUR 125,000; additional own funds depending on AuM
  - PE, closed-ended funds at least EUR 50/60,000
- good reputation and sufficient experience of the persons effectively conducting the business (at least two)
- suitable shareholders or members of the AIFM with qualifying holdings to ensure sound and prudent management
- head and registered office located in the same Member State

# EU – AIFM directive: ongoing supervision

## ➤ Conduct of business for AIFM

- act in the best interests of the AIF or the investors and the integrity of the market
- act with due skill, care and diligence in the best interests of the AIF or the investors and the integrity of the market
- have and employ effectively the resources and procedures necessary for the proper performance of its business activities

## ➤ Remuneration

- Policies and practices consistent with and promote sound and effective risk management and do not encourage risk-taking that exceeds the level of tolerated risk of AIFM or which is inconsistent with the risk profiles, fund rules of the AIF

## ➤ Management of conflicts of interest

- AIFM <> AIF/investors
- AIF <> AIF
- AIF/investor <> other AIFM clients

# EU – AIFM directive: ongoing supervision

## ➤ Risk management

- RM and PM have to be separate so far as appropriate and proportionate in view of nature, scale and complexity of AIFM and AIF (initially mandatory separation)

## ➤ Short selling

- Access to information for the purpose of identifying the extent to which the use of short selling contributes to the build-up of systemic risk in the financial system or risks or disorderly markets (CESR, ESRB, ESMA)

## ➤ Liquidity management

- Only for open-ended AIF



# EU – AIFM directive: ongoing supervision

## ➤ Valuation

- Valuation and PM functionally independent in view of nature, scale and complexity of AIF (initially mandatory separation)
- At least once a year or, where relevant, each time shares/units are issued/redeemed, unless value is deemed stable enough to make more frequent valuation unnecessary
- Competent authority may require internal valuation being verified by external valuer or auditor

## ➤ Depositary (credit institution, investment firm; for PE, closed-ended AIF also legal person subject to prudent regulation and ongoing supervision or function is part of business activity and subject to mandatory professional registration)

- Ensure correct booking of payments in segregated accounts
- Safe-keeping of financial instruments
- Verifying of ownership of other assets
- In addition: ensuring proper issuance/redemption, etc. of units/shares, proper calculation of value of units/shares; transaction and legality control (!)
- Sub-custody permitted for safe-keeping and ownership verification
- No strict liability

# EU – AIFM directive: ongoing supervision

## ➤ Delegation

- Notification to competent authority (no approval)
- PM can be delegated to third country asset manager

## ➤ Transparency

- Annual report (for investors on request)
  - Balance-sheet / A/L-statement
  - Income and expenditure account
  - Activity report
  - total amount of remuneration, distinguishing fixed and variable remuneration paid by AIFM and – if relevant – carried interest paid by AIF (!)
  - Individualised amount of remuneration of employees whose remuneration exceeds the average remuneration of the directors (!)

# EU – AIFM directive: ongoing supervision

## ➤ Transparency (contd.)

### – Usage of leverage

- To investors: maximum level, any right of the re-use of collateral or any guarantee granted under the leveraging arrangement, total amount employed
- To competent authority: information about overall level, breakdown between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives; 5 largest sources of borrowed cash or securities and the amounts
- Temporary limits to ensure stability and integrity of the financial system

# EU – AIFM directive: ongoing supervision

## ➤ Transparency (contd.)

- Controlling influence (>50% of voting rights) in non-listed companies (not issuers): Annual AIF report for competent authority, investors (on request)
  - operational and financial developments, in particular a presentation of revenues and earnings, capital structure and a description of and key factors relating to the nature of the company's operations and its principal activities stating the main categories of products sold and/or serviced performed, and an indication of any significant new products and/or services that have been introduced and, to the extent the development of new products or services has been publicly disclosed, the status of development
  - Financial risks associated with the capital structure
  - Turnover, terminations, recruitment regarding employees
  - Significant divestments

# EU – AIFM directive: marketing

- Shares/units of AIF established in a Member State (no circumvention through feeder structures)
- Subject to notification, material changes have to be notified as well
- Marketing can be prevented only if information provided in the notification demonstrates that management will not be in accordance with provisions of the Directive
- Marketing of third country AIF managed by AIFM under national regimes
  - Requirements for these AIF i.a. compliance with IOSCO standards on HF oversight, appropriate cooperation agreements between supervisory authorities

# EU – AIFM directive: third country issues

- Depositary tasks non limited to EU credit institutions
- Requirements for valuers modified (no equivalence test for valuation standards)
- PM and RM can be delegated to authorised or registered asset managers subject to prudential supervision in third countries if co-operation between authorities is ensured
- No EU passport for third country AIFM/AIF
- Member States may allow on their territory AIFM marketing of shares/units of AIF they manage that are established in a third country if
  - relevant legislation is in line with IOSCO standards on HF oversight
  - a cooperation agreement between authorities is established



# Berlin

- Internationally aligned regulation for all Alternative Investment Funds - i.a. hedge funds – and their manager taking into account particularities of German funds
- Strengthening the German Private Equity sector, especially Venture Capital
- Amendment Investment Act
- Enhancing parameters i.a. for Microfinance and REITs

# Contact BAI

It's never too late for INSIGHT !!!!!!!!!!!!!!!!!!!!!!!

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