



**DOMINIQUE LECOQCQ** on how proposed EU regulation will impact the funds industry in Switzerland

**“Whether the EU proposals reduce industry migration to Switzerland will depend on the government’s ability to ensure its standards are recognised as equivalent”**

Switzerland has been under considerable pressure lately. First, the US Internal Revenue Service tried to force disclosure of 52,000 depositors’ names; second, the Organisation for Economic Co-Operation and Development (OECD) added Switzerland with many other countries to a grey list of non-cooperative countries. The Swiss government has been proactive and has negotiated with a discrete and diplomatic approach. It is cur-

rently signing a number of double tax treaties in order to be removed from the OECD grey listing. The Swiss authorities have refused to grant automatic exchange of information.

Notwithstanding the recent financial and political turmoil against Switzerland, the country has seen a number of hedge fund managers relocating all or part of their operations in the cantons of Geneva, Zurich and Zug. The stability of the country, together with favour-

able tax mitigation tools, high quality of life, a renowned banking industry and a geographical position in the heart of Europe have all added fuel to hedge funds’ exodus to Switzerland.

Whether this move will continue if and when the EU’s proposal to regulate Alternative Investment Fund Managers (AIFM) enters into force remains to be seen. The approach taken in the proposal is to regulate the managers of alternative investment funds rather than to impose requirements directly on the funds themselves.

Due to the negative reactions of the European and the US hedge fund industry on the current versions of the proposal, the text may still be subject to significant changes. A period of intense lobbying has commenced.

The proposal sets forth an obligation for managers to be licensed and to maintain a specific level of capital adequacy. While it does not restrict any type of strategies, it imposes rules on leverage, short-selling, securitisation, risk monitoring, valuation, reporting, disclosure of conflicts of interest and risk and liquidity management.

The directive, if approved, will not apply in Switzerland. The question of whether the enactment of the proposal will reduce the

industry migration to Switzerland will depend on the Swiss government’s ability to ensure its regulatory standards are recognised as equivalent to those in the EU. If not, hedge fund managers based in Switzerland might face difficulties in targeting EU investors.

The Swiss fund industry does not expect significant obstacles in obtaining mutual recognition of the Swiss prudential standards. In 2007, a fully revised version of the Swiss Federal Act on Collective Investment Scheme (CISA) was enacted. The CISA sets forth a duty for managers of Swiss-based funds to register and operate under a licence by the Swiss Financial Market Supervisory Authority (FINMA). Most of the issues raised by the EU proposal are already addressed by Swiss law, whether at the level of the Swiss manager or at the level of the fund.

As a matter of capital requirement, a minimum capital of CHF200,000 (\$180,000) is required. For persons and partnerships based in Switzerland, FINMA can permit the deposit of collateral to the same amount (bank guarantee, cash deposit to escrow account) or another minimum amount. In addition to the paid-up capital, the manager shall maintain sufficient capital adequacy representing not

less than 1/4 of the fixed costs calculated based on previous financial statements (for example, the aggregation of salaries, operational expenses, amortisation of non-current assets and charges resulting from specific provisions and losses). Before issuing the licence, FINMA will review information and documents relating to the shareholders/beneficial owners of the manager, the capital structure, the scope of activity, the internal organisation and policies of the company and the past experience of the traders.

The Swiss rules applying to Swiss-based fund managers and hedge funds are close to the requirements of the EU proposal. Some adjustments may still be needed to be fully compliant. At this stage, no licence is required for managers of offshore hedge funds (only Swiss funds); this may have to change in the future if the proposal is approved by the EU parliament. The Swiss government will have three years following the enactment of the draft proposal to amend CISA in this respect. ■

**Dominique Lecocq** is a partner with the law firm lecocqassociate in Geneva. He specialises in regulatory banking and finance, including investment funds, banking law and structured finance.



**MY LIFE IN HEDGE FUNDS**

**RICHARD HELLER**, partner at law firm, Thompson Hine

**HOW DID YOU FIRST GET INVOLVED WITH THE HEDGE FUND SECTOR?**

I became involved with my first hedge fund client over 20 years ago. The client had a major problem with a state regulator that could have resulted in the fund going out of business. I was able to go in and negotiate a settlement that satisfied the securities issues and enable the fund to go on with its business (it has over \$5bn in AUM today). That led to representing numerous start-ups along with well-established firms.

**WHAT DO YOU LIKE ABOUT THE INDUSTRY?**

I like the ever-changing landscape in the industry. While there are various strategies that managers employ, I don’t think there’s any one hedge fund that has identical issues with any other fund. Like the people who manage them, each fund has its own identity and character and the really good managers are able to pivot (within the parameters of their risk models) to adapt to change – it keeps me on my toes.

**WHAT WILL CHANGE ABOUT YOUR AREA OF BUSINESS IN 2009?**

I have been going back and forth to Congress this

year as a director of the Hedge Fund Association to let our national legislature know that while we, as an industry, recognise that regulation is coming, we don’t want a ‘one size fits all’ bill to be adopted. Having said that, I anticipate that my focus will be to both ready my clients for the inevitable and help them comply when the legislation is passed. While it’s a tough time to raise capital, we continue to see emerging managers setting up their own funds or people who are starting their own broker-dealers rather than try to go after Wall Street jobs that have evaporated.

**WHAT WOULD YOU DO IF YOU WERE IN PRESIDENT OBAMA’S SHOES**

I don’t know anyone who’d want to be in his shoes right now. I think his energy and deliberative nature are to be admired (whether you voted for him or not). Change, to many people, myself included, is hard to accept, even when you know that things are just not working. Having the economy, two wars, and an ambitious agenda to deal with are overwhelming and while there are many who disagree with his positions, you can’t help but admire the unflappable nature of the man. ■

**THE WEEK IN QUOTES**

**“Today, I want to talk to you about the dirtiest word that any of you 9th graders know...”**

Tudor Capital’s Paul Tudor Jones delivers a meditation on that dirty word ‘failure’ to the pupils of US prep school, Buckley

**“The advantage of Ucits are the rules and restrictions. The counter argument, however, is that these are disadvantages because you can only map via Ucits if you meet those requirements”**

Simon Wilson, marketing director at Old Mutual weighs up the pros and cons of Ucits funds

**“This is not the end of rehypothecation – things haven’t changed as dramatically as some of the headline numbers would have it”**

Paul Brannan, head of European prime brokerage at JP Morgan, tells *HFMWeek* how news of the ‘death’ of rehypothecation may have been greatly exaggerated



**EDITOR’S VIEW**

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President Obama is the ultimate innovator. In the time taken to swat a recalcitrant fly he’s changed politics, shifted perceptions of race and even shaken America’s deeply-rooted obsession with hands-off government. Beleaguered UK-prime minister Gordon Brown would love to be perceived as this dynamic.

Obama frequently leads from the front, but, for such a first-footer, he is surprisingly considered. The US actually followed old-Europe’s lead on bail-outs and last week Obama was the final global leader to issue plans for fiscal reform. It’s a slow-burn that seems to have helped the US hedge fund community, who emerged unscathed from a tightly worded statement on Wednesday.

The president’s version of a ‘new-deal’ for economic regulation owes little to the current draconian European Commission approach. It may have acknowledged the global perspective of the G20, but was mostly a re-engineering of a very American way of looking after the markets.

Some have criticised this as a missed opportunity. However, Obama’s rigorous consultation with the US financial services sector have earned him deserved plaudits. His administration clearly understands that hedge

funds are not a systematic risk. Inevitably, funds will have to register with the SEC, but this could ratchet up trust levels, while eventually relaxing marketing barriers.

This isn’t to say the Obama-way is perfect. By ignoring the international dimensions of the problem – and a suitably international solution – we risk regulatory arbitrage. It could be massively damaging to witness a merry-go-round of businesses chasing across the globe for the weakest jurisdiction.

However, with the competing regulatory recommendations now having the potential to descend into a playground squabble, by coming a considered second, Obama has once again finished first. His changes are proportionate and, with many European managers threatening to quit Europe if the AIFM Directive goes through, could even act as an American magnet for refugee managers.

**Gwyn Roberts, editor**

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