

Best Practices reports for hedge funds review

On 15 January 2009, the President's Working Group on Financial Markets (USA) released two reports relevant for the hedge funds industry: Best Practices for the Hedge Fund Industry and Principles for Hedge Fund Investors.

In times when hedge funds, intermediaries and hedge fund investors are facing financial challenges, it is crucial to have effective practices in place to help protect entities and their investors' assets and reputation.

The reports highlight both the hedge fund managers' and their investors' responsibilities for adopting appropriate practices around internal controls, including the ongoing monitoring of these practices.

Luxembourg: CSSF new Circular on guidelines

On 4 February 2009, the CSSF released Circular 2009/392 concerning the publication of common guidelines by CEBS, CESR and CEIOPS for the prudential assessment of acquisitions and increase of shareholdings in the financial services industry.

These guidelines are to be read together with Directive 2007/44/EC enacted within the Law of 5 April 1993 on financial services as amended by the Law of 17 July 2008 on acquisitions in the financial services industry which shall take effect on 21 March 2009.

AML requirements updated by the CSSF

The CSSF issued a new Circular 2008/387 on 19 December 2008 combating money laundering and terrorist financing and the use of the financial services industry for the purpose of money laundering and terrorist financing.

It supersedes Circular 2005/211 of 13 October 2005 and follows on from the Laws of 17 July 2008. The Circular 2008/387 brings clarifications concerning the professional obligations which apply to financial services professionals with regards to the fight against money laundering and terrorist financing:

- obligation to apply due-diligence measures with regards to clients;
- obligation to pay particular attention to certain activities and transactions;
- obligation to keep a record of certain documents and information;
- obligation to have an adequate internal organisation;
- obligation to co-operate with the authorities;
- obligation to include information on the payer in transactions and transfers of funds as well as in related messages in accordance with the Regulation (EC) No 1781/2006 of 15 November 2006 on information on the payer accompanying transfers of funds.

UCITS IV draft Directive approved by European Parliament

On 13 January 2009, the European Parliament voted in favour of the proposed reform of the UCITS Directive.

This vote is another milestone in the UCITS revision process. As a reminder, the UCITS IV proposal was first published in July 2008, without the Management Company Passport which, after having been debated at CESR (Committee of European Securities Regulators) level, was reintroduced in the reforming directive early December 2008 (vote of the ECON Committee).

The UCITS IV proposal thus includes the following amendments to the current UCITS framework:

- Simplified notification procedure to facilitate cross-border distribution of UCITS;
- Replacement of the Simplified Prospectus by a short and harmonized document called “Key Investor Information” (KII);
- New framework for (cross-border) mergers of UCITS and 'master-feeder' structures;
- Improved co-operation between national supervisors;
- Management Company Passport, allowing a UCITS to be managed remotely by a management company established in a different EU country.

The next step is the approval of the Directive by the European Council, however with the vote in favour by the European Parliament, this is now considered a formality.

The deadline for EU Member States to enact the changes into their national legislation is announced as 1 July 2011.

FLASH NEWS

Italy: CONSOB updates its fee schedule for the financial year 2009

France: the AMF updates its guidelines on marketing documents