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NFU Response to the Consultation on Hedge Funds

About NFU

The Confederation of the Nordic Bank, Finance and Insurance Unions (NFU) is an organisation for co-operation between trade unions that organise employees in the banking, finance and insurance sectors in the five Nordic countries. At present, eight trade unions are affiliated to the NFU; two in Denmark, two in Finland, two in Sweden, and one in each Iceland and Norway. Through these trade unions, NFU represents 155 000 employees in the Nordic financial market.

General remarks

NFU strongly agrees with the Commission that the hedge fund sector is an area where the need for further work is needed, with respect to combating the financial crisis. NFU is not, however, of the opinion that this work should take its starting point in self-regulatory actions. On the contrary, the global financial crisis has shown that there is a need to ensure that all financial markets, products and market participants are regulated in a fair and thorough fashion, thus ensuring a level playing field and sound competition. We can not have a situation where small regional banks and insurance companies in Europe are subject to strict supervision, while the rules do not apply to hedge funds, private equity companies and sovereign wealth funds. Hedge funds and its likes must not only be regulated just like all other actors on the financial market, but also supervised. The supervisory authorities in the European Union must enhance their international cooperation, and ensure that all companies are supervised according to the same criteria, wherever they are based. International supervision standards must be regularly updated to keep up with new requirements and with the innovativeness of the industry.

Some of the questions asked by the Commission in the consultation paper are dealing with matters that are largely oriented towards the hedge fund industry itself, and hence not for NFU to comment specifically.

In our reply, we have focused on matters that will, from our perspective, have a great impact on employees in the finance sector now and in the future.

Question 2:

Regardless of whether a purely European response to hedge fund activities will be sufficient or not, it is important that the matter is dealt with on European level. The European market is the second biggest in terms of hedge fund activity, and it is of the utmost importance that the European Union sends the message that it will not stand aside and watch while the hedge fund industry utilises a situation where international legislators are awaiting each other's next move. Time is of the essence regarding the financial crisis, and the European Union's role in setting the agenda for how these actors can be properly regulated and supervised cannot be underestimated.

Question 4:

As NFU has previously stated, we cannot have a situation where hedge funds and its likes are not regulated, while other players on the financial market have to adhere to quite burdensome rules. This does not imply that the rules should be watered down for everybody else, but that the hedge fund industry should be made subject to the rules as well. "Indirect regulation" basically means that regulated entities on the financial markets, such as banks, are restricted in its dealings with hedge funds. This of course fulfils a purpose, since it insulates the banking system from the risks of hedge fund failure. It is however symptomatic for the inequality of the regulatory systems that these rules are laid upon banks rather than hedge funds.

When discussing regulatory approaches, it is important to stress that regulation should not only encompass high-level financial decisions. The primary purpose of financial institutions should always be to provide responsible and sustainable financial services, not to make profit for shareholders. Europe must move away from the short-termism that has caused the crisis, and acknowledge that giving good advice and having excellent customer service is a precondition for the sustainable and long-term success of any financial institution. The essential asset to achieve this is the employees, since they are the face of the company. Thus, the European Union must ensure that hedge funds and private equity that own and control companies must be regarded as employers and have to adhere to employers' legal obligations. NFU fully agrees with the report of the European Parliament with recommendations to the Commission on hedge funds and private equity (A6-0338/2008), where it is stated that the Commission should ensure that Directive 2001/23/EC always grants the same rights to employees, including the right to be informed and consulted, whenever control of the undertaking or business concerned is transferred by any investors, including private equity and hedge funds.

Another aspect that needs to be high-lighted when discussing regulation is the issue of pension schemes. Regulators, employers and employees have to cooperate in finding solutions for how pension provisions are managed. Pension funds and life assurance companies have become a major part of people's pension provision, and acts of regulation on financial investment for

these entities must prohibit high risk investments, for example in hedge funds or private equity funds, since any failure would negatively affect the pension entitlements of the pension schemes' members. NFU would once again like to point to the report of the European Parliament with recommendations to the Commission on hedge funds and private equity. The report states that the Commission, in reviewing Directive 2003/41/EC, should ensure that employees or staff representatives are informed directly or via trustees about the way in which their pensions are invested and the associated risks.

Question 10:

The discussion regarding hedge funds' own information obligations once again highlights the inequality in terms of regulatory and administrative burdens. In the consultation document it is pointed out that banks, when distributing hedge funds, should comply with existing rules concerning the provision of investment services. In comparison it is also acknowledged that when hedge funds are distributed directly to professional investors, disclosure practice is driven largely by contractual arrangements. In conjunction with this practice, it is also stated in the consultation document that it has been claimed that hedge funds do not always provide sufficient information on a precontractual and ongoing basis to allow investors to assess the risks of their investments. For example, information on investment policies or risk management procedures may be incomplete or infrequently updated.

NFU is of the opinion that the balance sheet must show all the risks taken by a financial services company. Moreover it should no longer be possible to do business via other businesses, for example via conduits, if they do not appear on the balance sheet. Once again NFU would like to stress that all players on the financial market should be subject to the same duties and controls. Hedge funds, sovereign wealth funds and private equity companies must be subject to the same rules on transparency as banks and insurance companies.

That said, NFU would like to point to the quality of information in itself. At several meetings with DG Internal Market we have stressed the importance of training and education – of both finance sector employees and of consumers. Given the increasing interlinkage between the players on the financial markets it is also of course vital that investors receives and understands the information given from hedge funds and similar actors. As we have previously stated, it is essential that hedge funds and private equity that own and control companies must be regarded as employers and have to adhere to employers' legal obligations. This of course also means that they must take responsibility for ensuring that their employees have the competence and the time to provide this information to investors.

Yours faithfully

NORDISKA FINANSANSTÄLLDAS UNION (NFU)



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