Regulation 37 (Ways of acquiring control or shares)

We believe regulation 37(2) goes further than the Directive requires. Article 26(1) of the Directive clearly requires "control" to be assessed on a joint/concert party basis, as reflected in regulation 37(1). However, our understanding is that Article 27(1) of the Directive, which requires notifications to be made when an AIF acquires, disposes of or holds shares in a non-listed company, is intended to apply on a single entity basis. For this reason, Article 27(2) imposes a separate notification when control is acquired on a joint/concert party basis. However, regulation 37(2), in conjunction with regulation 40, would appear to require these notifications to be made on a joint/concert party basis, rather than on a single entity basis. We believe this is gold plating that would result in an increased administrative burden for AIFM.

The word "of" appears to be missing in regulation 37(2)(a).

Regulation 38 (Meaning of "control")

We believe the concepts described in regulations 38(2) and 38(3) are equally relevant to determining the proportion of voting rights held by an AIF for the purposes of regulation 40(1). Should both provisions therefore apply for the purposes of "this Part" as a whole?

Regulation 40 (Notification of the acquisition or disposal of major holdings and control of non-listed companies)

There are two apparent cross-referencing errors - should paragraph (3) reference "paragraph (2)" and paragraph (4) reference "paragraph (3)"?

Regulation 41 (Disclosure in case of acquisition of control)

Both the regulations and the Directive use the terms "non-listed company" and "issuer" distinctly. For consistency and clarity, we suggest it would be helpful to refer to "the company or issuer" throughout regulation 41 (although we note and accept that the Directive is worded in the same way as the draft regulations). From a practical perspective, it would also be helpful to copy out the Directive definitions of "non-listed company" and "issuer" in regulation 2.

In addition, we believe the obligation pro-actively to "provide" the prescribed information to the persons listed in regulation 41(1) is more onerous than the corresponding obligation in Article 28 of the Directive to "make the information available" to those persons, which we consider could reasonably be interpreted as an obligation to provide that information on request and/or to make the information available through a medium such as a website where those persons can access the information if they wish to. We note that the words "make available" were specifically negotiated into the Directive text at the instigation of the European Private Equity and Venture Capital Association (EVCA) and replaced the word "provide" (or equivalent) in an earlier draft of the Level 1 text. In particular, the ability to make information available through a website or similar (rather than sending a copy to the investor) is viewed by many AIFM as a valuable tool for ensuring that confidentiality is preserved.

If the obligation to "provide" the information is retained, it would be helpful to specify the timeframe within which the disclosure must be made. We would suggest 20 working days.

Regulation 42

As for regulation 41, we believe it would be helpful to specify the timeframe within which the disclosure must be made. We would suggest 20 working days.

Regulation 43 (Sensitive information)

There is an apparent cross-referencing error - should the reference be to regulation 40(4), not regulation 40(5)?

Regulation 45 (Asset stripping)

For clarity, we believe it would be helpful if regulation 45(2) were to state explicitly that "A distribution to shareholders falls within paragraph (1) if and only if". Likewise for regulation 45(3).

For the purposes of Article 30 of the Directive, we believe that share redemptions should be viewed as a form of acquisition of own shares, and should therefore be prohibited or permitted in the same circumstances as acquisitions of own shares (i.e. a share redemption should be prohibited if and only if it reduces the company's net assets below the amount referenced in regulation 45(2)(a)). However, as share redemptions are not specifically referenced in regulation 45(3), regulation 45(1) appears to operate as a blanket prohibition on all share redemptions. We do not believe this was the intention of Article 30, and it seems perverse that a company would be permitted to buy back redeemable shares but not to redeem those same shares.

We find the inclusion (and re-ordering) of the words "to the extent that acquisitions of own shares are permitted" in regulation 45(3) confusing. We understand this wording in Article 30 itself to mean "to the extent that acquisitions of own shares are otherwise permitted under applicable law in the relevant Member State", and hence not to require transposition. We are not clear what meaning these words carry in regulation 45(3) as drafted, especially given that regulation 45(1) *prima facie* prohibits all acquisitions of own shares, and query whether they should be deleted (or clarified).