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THE LONG



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Right to reply: Dermot Butler

Dermot Butler, chairman of Custom House Global Fund Services, responds to a recent HFMWeek article which stated that a number of fund directors have been 'blacklisted' by pension funds...

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I was interested to read Shannon Hawthorne's analysis article in HFMWeek issue 189. In this article, she reports on the reaction of some institutional investors in hedge funds to the performance of independent directors, particularly with regard to the implementation of redemption gates in 2008 and 2009.

Shannon reported that "a number of pension funds are reportedly refusing to invest in hedge funds that have particular directors on board - namely ones who demonstrated with their decision to gate a fund, that the protection of investor interests was not their priority".

Whilst I accept that there were some hedge funds that imposed gates, at the behest of the manager, solely to ensure that the manager retained AUM, I would contend that the majority of gates (and in this I include side-pockets) were imposed because some of the investments that the funds had made became illiquid and it was, therefore, necessary to impose the gate in order that all investors were treated fairly, or at least equally.

Whilst I would not argue with "blackballing" directors who had kow-towed to the fund's manager without confirming to their own satisfaction that the gate was necessary and many directors may have acted the ostrich, nevertheless, I think it should be made absolutely clear that, from a legal point of view, the directors of a company owe their duty and responsibility to the company. In the case of funds, that means the fund company and not the manager nor the investors, per se.

Of course, whilst carrying out their duties, they should be aware and ensure that all investors are treated properly. However, there is no doubt in my mind that most of the gates and side-pockets that were introduced, were introduced in order to enable the fund to be managed in the interests of the fund company and, as a result, also ensured that all investors were treated equally.

I can sympathise with investors who put in a redemption notice and subsequently found that they were unable to get that money out because market circumstances had changed, but it is not reasonable to automatically blame the directors for market circumstances. And, of course, it wasn't the directors who put the funds into what turned out to be illiquid assets - that was the manager's responsibility - but that is a whole other discussion.

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