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Mr Carlo Comporti
Secretary General
Committee of European Securities Regulators (CESR)
11-13, Avenue de Friedland
75008 Paris

Paris, 15 October 2008

AFG RESPONSE TO CESR CONSULTATION PAPER ON UCITS MANAGEMENT COMPANY PASSPORT

Dear Mr Comporti,

The Association Française de la Gestion financière (AFG)[1] warmly welcomes the CESR consultation paper on UCITS Management Company Passport (MCP) and congratulates its members and its team for having delivered, within the tight timetable imposed, a good draft advice which will be a very helpful basis for the forthcoming discussion on the topic at the level of European institutions.

[1] The Association Française de la Gestion financière (AFG)[1] represents the France-based investment management industry, both for collective and discretionary individual portfolio managements.

Our members include 405 management companies. They are entrepreneurial or belong to French or foreign banking or insurance groups.
AFG members are managing more than 2500 billion euros in the field of investment management, making in particular the French industry *the leader in Europe in terms of financial management location* for collective investments (with nearly 1500 billion euros managed from France, i.e. 22% of all EU investment funds assets under management), wherever the funds are domiciled in the EU, *and second at worldwide level after the US*. In the field of collective investment, our industry includes – beside UCITS – the employee savings schemes and products such as regulated hedge funds/funds of hedge funds as well as a significant part of private equity funds and real estate funds. AFG is of course an active member of the European Fund and Asset Management Association (EFAMA) and of the European Federation for Retirement Provision (EFRP). AFG is also an active member of the International Investment Funds Association (IIFA). AFG is registered on the European Commission's register of interest representatives

The MCP is an essential part of the new UCITS package the industry and its clients need to increase the efficiency of the UCITS market. It will allow for significant economies of scale and strengthen investor's protection by improving the transparency of the management structure and by enabling more effective risk management though the centralisation of functions in the core of the asset management business. Needless to say that the current crisis highlights the importance of this and shows that risks do not stop at national borders.

Once CESR will have released its final advice, we are confident that the European Commission will give CESR a mandate to start working as soon as possible on the Level 2 measures to make the passport fully effective, as CESR has already proposed in its draft advice. Finally, let's recall that we actively contributed to EFAMA's answer.

CESR's draft advice / Background

We believe that CESR should mention in its background introduction that the principle of the MCP was already legally adopted in Directive 2001/107/EC, amending the UCITS Directive. Article 6 of the *current* UCITS Directive provides both for the freedom to provide services and the right of establishment in the context of UCITS portfolio management, following their introduction through Directive 2001/107/EC. However, the MCP has never been made operational since the Article 3 of the same UCITS Directive (which provides that the MC and the UCITS have to be in the same Member State) was adopted before the revision in 2001 and has never been repealed to allow a workable MCP.

CESR's draft advice / Specific Comments

AFG broadly agrees with EFAMA's comments on detailed boxes and explanatory texts. However, we want to stress below a few comments, some of them quite significant.

Box 1:
AFG agrees with CESR's proposal.

Explanatory text:

Paragraph 6:
AFG welcomes the reference made to article 19 of Directive 2003/41/EC which states that institutions for occupational retirement provision should not be restricted from appointing, for the management of an investment portfolio, investment managers established in another Member State and duly authorised for this activity in accordance with the UCITS Directive. This example demonstrates that, to create a level playing field with the rest of financial service providers, the right of establishment and the freedom to provide services should be fully granted to the asset management industry also.

Paragraph 10:
AFG asks for clarification regarding the meaning of paragraph 10. The current wording, with the text into parenthesis, implies that setting up a branch would be a way of implementing the

freedom to provide services. In our view, it would be incorrect since the UCITS Directive makes a clear distinction between the freedom to provide services (allowing an entity to provide services in another Member State without any establishment in this Member State) and the right if establishment (allowing an entity to perform business in another Member State via the establishment of a branch).

Box 2:

Paragraph 1:

We do not believe that the only application for authorisation of a UCITS is the right criterion to define the UCITS home Member Sate. A UCITS will only exist if it has been authorised. Therefore it is not the mere application but also the actual authorisation which are relevant.

Box 3/ questions:

CESR has identified in its draft advice the set up of a local point of contact when a management company is willing to provide cross-border the activity of portfolio collective management for contractual funds. According to CESR, this point of contact would perform 4 functions:

i. it would provide a legal address. We agree with the need for investors and regulators for finding a legal address, but we have not found in CESR's advice a justification for the need of having such a legal address in the fund's domicile: why couldn't the management company in its home Member State be the relevant legal address?

ii. it would maintain relations with unit-holders. Currently this task is not performed by the management company itself since it has no direct relationship with the unit-holders, as usually the management companies do not distribute themselves their UCITS. The MCP will not change the situation. Therefore, it would seem logical to ask the professionals which are in contact with the unit-holders to receive their complaints and forward them to the relevant management company. Anyway, regarding the possible maintenance of the unit-holder register, we recall here that this function is in practice subject to national law. In many jurisdictions, no register is maintained or it is maintained in another Member State without any negative consequences for investors. In most cases, the registered shareholder is not identical to the beneficiary and hence the supervisor would not have access to the names of the underlying investors. If a shareholder register is nevertheless required, it needs to be ensured that the UCITS supervisor can request access to it as it can, according to CESR's draft advice, directly contact the management company situated in a different Member State. The enforceability, and not the actual location of the register, matters ;

iii. it would provide facilities for payments, RTO and subscription/redemption. We understand that this requirement would be inspired by a similar approach followed in the context of the Product Passport, where most Member States have put in practice a local correspondent (paying agent for example) to centralise investors' orders at national level. But we think that this requirement is not clearly justified by CESR in a fully different context,

which is the Management Company Passport. There doesn't seem to be a clear need for keeping such a function in the fund's domicile. First of all, the UCITS domiciled in another Member State is not always sold in that Member State. Secondly, it would potentially introduce a discrimination between domestic UCITS set up/managed by foreign management companies (for which such a requirement would apply in any case) and the ones managed by local management companies (for which there might be no similar requirement, in particular if they don't sell their funds locally) ;

iv. It would make information available to the public/competent authority. As for our comment on letter (i), we don't see why, to answer questions or provide information, the management company should be forced to have a physical presence in the UCITS Member State.

We thus think that the case for a point of contact has not been really made.

Even much more importantly, we do not understand at all why the local point of contact should be either a financial institution or a depositary. Even on the basis on the 4 functions identified by CESR in its draft advice to be performed locally, there does not seem to be a justification for requiring such a level of legal and financial structures for performing these functions.

Box 4:
AFG agrees with the proposal. In paragraph 6, however, we do not believe that standard agreements between depositary and management company should be made compulsory.

Box 5:
AFG globally agrees with the proposal but makes some comments regarding the content of the box.

Paragraph 1:
A management company should be entitled to provide on a cross-border basis all the services that collective portfolio management allows (i.e. investment management as well as administration) as described in Annex II of the current UCITS Directive. We would therefore suggest CESR changing the wording of the second sentence of paragraph 1 amending 'providing the activity of cross-border management' by 'providing the activity of cross-border collective portfolio management'. Same comment for paragraphs 2 and 6.
We have noted that CESR in the first paragraph of the explanatory text rightly mentions that 'this part of the advice deals with the conditions that should be complied with by the management company performing **the functions of collective portfolio management** in free provision of services'. As we suggest, it needs to be reflected in the wording of the box.

Paragraph 2:
It should be made clear that the list is exhaustive.

Paragraph 3:
AFG is wondering whether implementing measures to specify the scope and content of fund rules are necessary or – in view of the differences in civil and contractual laws across Member

States – even feasible. We do not believe that such measures are specifically linked to the management company passport and would be very useful.

Paragraph 7:
AFG agrees with the proposals in paragraphs 2, 5 and 6 regarding applicable law for the management company. However, second subparagraph of paragraph 7 should be deleted, as it contradicts the principle of home Member State supervision provided by paragraph 6 and might delay the implementation of a true management company passport for several years. As management companies often manage UCITS in many different Member States, complying with several sets of different regulations would be unduly burdensome, greatly increase costs, and potentially create legal uncertainty.

Paragraphs 7 and 9:
We believe that the "*organisational requirements*" as provided by the first bullet point of paragraph 7 should be defined.

Paragraph 9:
We do see the need for implementing measures specifically regarding activities that can be delegated. As article 5g of the Directive (future article 13(1)) gives Members States the power to restrict delegation ("*If Member States permit management companies to delegate to third parties…*"), it might be very difficult to harmonise delegation rules, except in a very restrictive way.

Box 6:
We agree with the proposal but would suggest, in paragraph 2, amending the second sentence into 'the service of cross-border **collective portfolio** management'. Everywhere in the draft advice 'cross-border management' should be replaced by 'cross-border collective portfolio management'.

Box 7:
We agree with the proposal but would suggest in paragraph 3 to provide for implementing measures and then the European Commission would have the obligation to adopt these measures. The modal 'may' should be replaced by 'should' in the first sentence.

Box 8:
Apart from our comment right below, we agree with most of the paragraphs and particularly support paragraph 10 enabling the UCITS competent authority to directly ask the management company for clarification and information.

Paragraph 4 (iii):
We suggest deleting the sentence as the meaning seems to be too broad and unclear.

Paragraph 7:
As already said, we remain to be convinced that a local point of contact would be needed as a legal address for the management company.

Box 9:
We agree with the proposal.

Box 10:
We agree with the proposal.

Explanatory text:
We think that there is not enough justification for a local point of contact and therefore the references made to it.

Box 11:
We agree with the proposal.

Box 12:
We agree with the proposal.

Box 13:
We agree with the proposal.

We, finally, acknowledge the enhancement of cooperation between the competent authorities, which has already been reinforced in the draft UCITS IV Directive. However, we believe that in the medium term, to stimulate even more a good cooperation between regulators, CESR should be granted an arbitral role in case of conflicts. We also welcome the fact that the case for a real European regulator, which we have been making for a long time, is now gaining momentum.

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We thank CESR very much for taking into consideration our comments and remain at your disposal for any further questions. Please feel free to contact myself at 01 44 94 94 14 (e-mail: p.bollon@afg.asso.fr), our Head of International Affairs Stéphane Janin at 00 33 1 44 94 94 04 (e-mail: s.janin@afg.asso.fr) or his deputy Catherine Jasserand at 00 33 1 44 94 96 58 (e-mail: c.jasserand@afg.asso.fr).

Yours sincerely,

(signed)
Pierre Bollon