

Mr. Carlo Comporti
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Brussels, 15 October 2008

Subject: Consultation paper on UCITS Management Company Passport (MCP)

Dear Mr Comporti,

The European Banking Federation (EBF)¹ would like to express its general support for the work that CESR has over the last weeks carried out on the asset management company passport for UCITS funds. We attach great importance to this passport and believe that its introduction would not only in itself have positive benefits in terms of increased financial markets integration, but would also be a useful complement to the simplified notification procedure.

In our view, CESR's advice is an important step in that direction and goes far in suggesting an appropriate solution for the context in which the MCP could be introduced. It clearly highlights the main points of potential concern, and it is of great help, in particular, in defining the respective role of the competent authorities and the co-operation requirements; reporting requirements for the management company; the roles of depositaries; and issues of consumer protection.

On a general note, in view of the need to avoid duplication of supervision between the competent authorities of the management company and that of the UCITS, we support the harmonisation of applicable rules across jurisdictions and underline the importance of ensuring their consistent interpretation and implementation. We welcome in particular CESR's attention to the questions that arise as a result of the divergent functions currently carried out by depositaries across Member States, and we agree with the suggestion to explore at Level 2 what additional measures might need to be established to enhance convergence of depositaries' duties under the UCITS Directive, as well as to achieve an adequate degree of harmonisation in other relevant areas.

¹ Set up in 1960, the European Banking Federation is the voice of the European banking sector, with over 30 000 billion EUR assets and 2.4 million employees in 31 EU & EFTA countries. The EBF represents the interests of some 5000 European banks: large and small, wholesale and retail, local and cross-border financial institutions.
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However, our concerns focus on CESR's proposal for a local point of contact in the case of common funds as set out by CESR in Box 3, and in particular in the case that the local point of contact should be the UCITS' depositary. In a first instance, we are unsure that it would be structurally right to appoint the depositary to fulfil the suggested functions, as the blurring of the clear separation between the management company and the depositary could lead to potential conflicts of interest.

This being said, we do not altogether want to dismiss at this stage the option of appointing the depositary as the local point of contact but believe that further work is needed to consider how such conflicts of interest could be appropriately dealt with, for example through the establishment of "Chinese Walls".

Further work is also necessary in our view to clarify the legal responsibilities and the degree of liability that could be incurred by the depositary. Indeed, we believe that all functions exercised by the institution appointed as the local point of contact on behalf of the management company must remain in the legal competence of the management company, and that the management company could delegate tasks, but not responsibilities. It is moreover obvious to us that the depositary must be duly rewarded for the additional tasks assumed.

In order to ensure that such arrangements are sound and legal responsibilities clear, a possibility would be to require written agreements between the management company and the depositary, which would ideally be approved by the UCITS' competent authority.

Finally, we are unclear on the relationship and allocation of respective responsibilities between the local point of contact and distributors, in particular if the local point of contact were indeed to maintain relations with unit holders as currently suggested by CESR. In our view, this suggestion is not only counter-intuitive as unit holders' natural first point of reference would be the distributor, but it also raises legal questions with regard to the role assigned to distributors under the MiFID.

We hope that you will find these comments helpful and look forward to CESR's final advice to the European Commission. In the meantime, we remain at your disposal should you wish to discuss any of these points further.

Yours sincerely,



Guido RAVOET