

The Committee of European Securities Regulators

avenue de Friedland
75008 Paris
France

Wien am 16.10.2008

Consultation: CESR – Risk Management Principles for UCITS

Dear Sirs,

We want to congratulate CESR for giving the possibility to consult on the paper „Risk management principles for UCITS“ from an Austrian Investment Funds perspective.

Generally speaking we agree with the risk management standards set up by CESR. The risk management principles drafted are generally sound and widely reflect the current risk management standards already implemented by the Austrian investment funds industry.

Nevertheless concerning the draft guidelines we want to address some key points especially expressing efficiency concerns. The following topics are of main concern:

1. Supervision - Part I (point 5 and 6)

- a) We do not agree with the principle drafted that the risk management process of (each) UCITS fund should be assessed (ex ante) by the competent authority before a new fund can be launched. This special process of licensing cannot be described as efficient as
 - the issuing of new funds would be disrupted. This ex ante licensing process would be very burdensome and inefficient for the industry as well as for the authorities.
 - Furthermore, this obligation would go beyond the UCITS Directive as the authorization process of a UCITS is regulated in Article 4 where such obligation is not mentioned. Provisions regarding risk management process are solely set out in Article 21 UCITS Directive. According to this article the Company is obliged to communicate the risks associated with derivative instruments to the competent authority on a **regularly** basis. It is sufficient to assess the risk management process in the process for **licensing the Company** (and not for each UCITS) and to monitor the risk on an ongoing basis as it is foreseen in Article 21 UCITS Directive.
 - Risk management guidelines for UCITS companies already give clear guidance of the risk management processes the companies have set up for managing funds. This includes overall risk management principles processes of the company as well as the risk management processes of UCITS funds. More detailed guidelines on the risk management of funds are reflected in the funds prospectus as well as in the funds regulation.

- b) We also disagree with the idea that changes to the risk management process of funds should be assessed (ex ante by the competent authorities). Major and essential changes of the risk management of funds have to be disclosed by the fund management company (this requirement is fulfilled by a change of the funds prospectus as well as the funds regulation). Assessment of changes of the risk management processes of funds (by the competent authority) should not be done ex ante (when the risk management principles of funds are changed) but better on a ex post basis. This process should be executed on a regular basis (argumentation see a) above).

2. Governance and organization of the risk management process - Part II

In point 15 the consultation paper says, that portfolio managers should not be responsible for the measurement of the risks which they themselves have taken on, nor for the review of the specific limits or the overall risk limit system. Due to the fact that the portfolio manager is the person responsible for the investment decisions, he/she, of course, should heavily rely on recent risk assessments by risk management. But assessments of new investment decisions with respect to risk limits should be done by the portfolio manager before the decision is realized. This is in line with the quality standards of the Austrian investment fund industry, where the portfolio manager has the obligation to act in the best interest of the investors, thus preserving all relevant limits. Delegating pre trade limit checks to risk management would not contribute to timely actions by the portfolio manager in the interest of investors.

3. Measurement of risks - Part III (point 25 to 38)

VÖIG fully agrees with the guidelines reflecting on the risk management function, outsourcing and the identification of risks.

VÖIG cannot agree that CESR strictly neglects the structure set up in the EU recommendation on the use of derivative instruments in UCITS funds (2004/383/EC of 27 th April 2004) where there is a clear distinction between risk management measurement of sophisticated and risk measurement of non sophisticated funds. We are of the opinion that the draft would go beyond the recommendation of the EU Commission.

From an legal and economic point of view it is fully justified to offer two strings of risk management sets. Funds which do not use derivative instruments on a large scale or which use derivative instruments only for purposes of efficient portfolio management should be allowed to stick to simplified risk measurement methods (ie commitment approach) whereas funds which use derivative instruments on a large scale are required to stick to qualified risk management methods (ie Value at Risk etc).

It is our view that this distinction between risk management methods of sophisticated and non-sophisticated funds is key and should be preserved. The distinction should be explicitly integrated in CESRs consultation paper (especially point 28), otherwise the CESR guidelines would go beyond the EU recommendation. Measurement of risks as stated in BOX 7, points 32 – 38 only refers to qualified risk management measurement and should therefore only be applicable to sophisticated funds.

4. Management of risks relevant to UCITS - Part IV

Regarding stress tests in point 49, it has to be emphasized, that risk management has to provide the basis for the investment decision making process, but the investment decision making process rests with the portfolio manager.

This is in line with the stated principle 2 in Box 3 of the consultation paper, where it says that the risk management function should be independent from the operating units. This is also covered by the quality standards of the Austrian investment fund industry.

We hope that our remarks will find agreement of CESR. Many thanks for giving the possibility for consultation.

Für etwaige Rückfragen stehen wir Ihnen gerne jederzeit zur Verfügung.

Kind regards
VEREINIGUNG ÖSTERREICHISCHER
INVESTMENTGESELLSCHAFTEN

The image shows two handwritten signatures in black ink. The signature on the left is 'Mag. Dietmar Rupar' and the signature on the right is 'Thomas Zibuschka'. Both signatures are written in a cursive, flowing style.

Mag. Dietmar Rupar

Mag. Thomas Zibuschka