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CESR´s Consultation Paper “Clarification of the definition concerning eligible assets for investment by UCITS: can hedge fund indices be classified as financial indices for the purpose of UCITS?”

Dear Mr. Secretary General!

1. Preface

The Bank and Insurance Division of the Austrian Federal Economic Chamber welcomes the opportunity to comment on CESRs Consultation Paper, regarding the possibility for a UCITS to acquire hedge fund indices (HFI) as a “financial index” according to Art. 19 (1) (g) of the UCITS Directive. In October 2006 we already used the possibility to provide some in-put to CESRs issue paper on that topic, where the positive approach to HFI as an appropriate investment tool was emphasized. To keep pace with innovative investments is crucial for the fund industry, especially in the light of a “level playing field”. Through this work done by CESR, UCITS III is becoming an innovative legislation in its own right that will make Europe a more innovative and sophisticated investment market.

2. Answers

Q1: If you believe that there should be additional guidelines relating to diversification for HFIs, please explain what they should be and why the requirements for HFIs should be higher than those for 'traditional' indices in this respect?

As already postulated by CESR we assume that the diversification requirements of the UCITS Directive as sufficient and no additional guidelines should be set up for HFI.

1) representing all Austrian Credit Institutions and Capital Management Companies

Q2: Should the definition of what the index is trying to represent be available to the public as a whole, just to the UCITS, or to UCITS investors as well? Is there a need for a guideline to state that the information should be available free-of-charge to UCITS investors? Do you have any comments on how the information would be made available in practice (e.g. the index provider's website)?

Q3: Do you have any other comments on these proposed level 3 guidelines?

We feel that the definition of what the index is trying to represent can be made available for the general public (e.g. internet) and free-of-charge regarding the basic information of the underlyings. It should be kept in mind that the detailed composition of the underlyings are - in many cases - confidential (business) information and are currently only exchanged between business partners after a longer commercial relationship and against due payment ("license fee").

The danger that a competitor (of an index provider) reproduces and tracks the index is after all omnipresent. Regular financial index providers do only disclose the exact index components under very special circumstances; it should therefore not be excessive with respect to HFI.

Q4: Respondents are invited to provide their comments on the above, taking into account that the UCITS always needs to properly value its portfolio and assess the risks therein (disclosure of the value of the assets)

The requirement to publish the total value of the assets of each index component would increase the transparency of the product and would provide useful information for the UCITS. The information of the total value of assets is furthermore not confidential and could therefore be made available.

Q5: Please provide your comments on these proposed level 3 guidelines (verification and confirmation by UCITS)

It should be realised that the requirements set up in Box 2 und 3 cause substantial time and efforts for the UCITS, but should nevertheless be accepted as a proper tool to assess the quality of a HFI. In this context it is crucial to emphasise that the UCITS must be able to rely on the correctness of the documents provided by the HFI provider since these are the prevailing sources of information.

Q6: Respondents are invited to provide their comments on the above (fee-sharing).

The absence of "selection bias" and objective/ traceable criteria for components of the HFI are clearly vital for UCITS. It should therefore be prevented that payments are made from hedge funds (to HFI) with the purpose of becoming part of the index.

Q7: Do index providers currently carry out the type of annual audit described, or would the eligibility of many current HFIs be negatively impacted by such a requirement? If so, please give an estimate of the cost of introducing such an audit procedure. Is the scope of disclosure of the audit (full opinion or summary, to the UCITS/UCITS investor/the public) appropriate?

Q8: Please provide your comments on this proposed level 3 guideline.

Due to the fact that currently (normal) index providers carry out these types of audits and this requirement would definitely mean additional burdens for HFI, it should not be required. If an (independent) audit is postulated as a requirement for HFI there is no reason to conceal the conclusions of it to the public (since it contains only confirmations/ certifications with respect to methodologies and calculation methods).

Q9: Please provide your comments on these proposed level 3 guidelines (verification by UCITS)

The information whether the components are "investable" or "non-investable" should clearly be provided to the UCITS since it is standard information that also can be found out by other means. Only the basic information of the index components should be made available (see answer to Q 2, 3).

Yours sincerely,

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