

CNMV'S CONSULTATIVE PANEL COMMENT ON THE CESR'S CONSULTATION PAPER ON UCITS MANAGEMENT COMPANY PASSPORT

1.- INTRODUCTION

The CNMV's Consultative Panel has been set by the Spanish Securities Market Law as the consultative body of the CNMV. This Panel is composed by market participants (members of secondary markets, issuers, retail investors, intermediaries, the collective investment industry, etc) and its opinions are independent from those of the CNMV.

The CNMV's Consultative Panel welcomes CESR's the present consultation and strongly appreciates the valuable effort undertaken by CESR to facilitate and put under public consultation for a reasonable period of time this document on Management Companies Passport, specially taking into account the tight schedule available for the UCITS IV Directive discussions.

The CNMV's Consultative Panel broadly agrees with almost all the proposals included in the CESR advice. There are only a few questions that, in our opinion, should be included or clarified, as detailed in the second part of this response.

2.- COMENTS ON THE TECHNICAL ADVICE

- **BOX 3, PARAGRAPH 1: LOCAL POINT OF CONTACT**

According to the current drafting, "If the management company of a common fund is not established in the UCITS home Member State, it should appoint a financial institution or the depositary subject to prudential supervision established in that State, including through a branch, to act as a local point of contact for investors and the UCITS competent authority".

The requirement of a local point of contact is acceptable, insofar as this entity will be the "visible face" of the management company with investors and/or supervisors, of the UCITS home Member State. Notwithstanding, we would propose that the range of eligible entities to be selected as local point of contact should not be confined to "financial institutions subject to prudential supervision" as long as these entities justify that they have appropriate means and can be subject to a certain degree of control.

- **BOX 3, PARAGRAPH 2: MAINTENANCE OF THE UNIT-HOLDER REGISTER**

Amongst the questions regarding this Box, CESR raise the issue of whether the maintenance of the unit-holder register should be entrusted to the local point of contact or not. It is not possible to give a single answer to this question, insofar as such answer depends on the management company structure as well as on the jurisdictions where distribution of the UCITS is planned. Therefore, it would be convenient that the final CESR advice leaves this question open allowing the management company to decide depending on the particular circumstances whether to entrust the unit-holder register to the local point of contact or to keep it in the management company's sphere.

Besides, the issue of the maintenance of the unit-holder register poses the question of **the convenience of analysing at European level the use of the global accounts, setting a basic common legislation.**

▪ ***Box 5: APPLICABLE LAW***

When a management company provides management services to a UCITS domiciled in another member state, CESR distinguishes some functions that will be subject to the rules of the UCITS home member state, whilst others will be under the applicable law of the management company home member state.

There are certain functions that should be subject to the UCITS domestic law, for example, those regarding limits applicable to management and/or depository fees, as well as those regarding methods of calculation of such commissions. It must be noted that some jurisdictions (the Spanish one among others) provide limits on these fees, as well as detailed rules on fees calculation (in relation to profits and to assets). In case that a management company located in a certain Member State would apply for the registration of a Fund in another member State, such Fund should also be subject to those rules on commissions; otherwise legal framework of UCITS domiciled in the same State would be different, in an aspect so essential as fees are, depending on which is the home Member State of the management company in charge of its management.

Therefore, and for the sake of transparency and legal certainty of investors, it would be advisable that the Fund would be regulated in any case by the legislation of the Member State where it is domiciled.

▪ ***Box 9 AND 12: INFORMATION FLOW TO THE COMPETENT AUTHORITIES AND ENFORCEMENT***

One of the main challenges that the management company passport poses is that regarding cooperation between authorities. This collaboration must combine the

lack of gaps or “grey areas” (not subject to supervision by none of the competent authorities involved) with the absence of overlapping responsibilities (that would led to a duplication of the costs incurred to attend supervisory requirements).

In this sense, any Level 1 measures enhancing mutual cooperation between authorities, as well as a clear definition of their respective functions, will be welcomed by the CNMV's Consultative Panel.