

CESR

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Dr. Rudorfer/St

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**Re: CESR - Risk Management Principles for UCITS - Consultation Paper**

The Division Bank and Insurance of the Austrian Federal Economic Chamber representing the entire Austrian bank- and investmentfunds industry, would like to comment on the consultationspaper as follows:

The risk management principles drafted are generally sound and widely reflect the current risk management standards already implemented in Austria.

Nevertheless concerning the draft guidelines we would like to address some key points especially expressing efficiency concerns. Two 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 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 (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. Measurement of risks - Part III (point 25 to 38)

We agree with the guidelines reflecting on the risk management function, outsourcing and the identification of risks.

We cannot accept 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 distinction between risk management measurement of sophisticated and risk measurement of non sophisticated funds. We are of the opinion that the draft could go beyond the recommendation of the EU Commission.

From a 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 guidelines could 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.

We hope that our remarks will find agreement of CESR.

Yours sincerely,

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