

OPINION

of the

BUNDESVERBAND ALTERNATIVE INVESTMENTS e.V. (BAI)

on

CESR

**Call for evidence on the request for advice to CESR on the UCITS
asset management passport**

BAI currently cannot comment on the call for evidence in detail in the time frame given, however BAI wishes to point out that we are very much interested in further contributing to this topic.

At this stage we would like to address only as a general remark that the concept of a management company passport should entail a significant strengthening of the role of the depositary. The Commission highlighted various concerns if the home Member State of the management company is different from the home Member State of the UCITS (fund). Protection of investor rights and assets, clear and systematic allocation of rights and duties of the entities involved as well as clear and systematic allocation of regulatory responsibilities are key issues addressed. As the recent discussions between the Commission and various Member States, but also between Member States themselves prove, the implementation of the management passport requires a compromise, which will not affect investor rights and not harm regulatory supervisory and enforcement possibilities.

Thus one approach might be to stipulate in a first stage, that if the home Member State of the management company is different from the home Member State of the UCITS (fund), at least the depositary must be domiciled in the Member State in which the UCITS (fund) is domiciled. In a second stage the depositary should be endowed with increased rights and obligations regarding the UCITS (fund), which will enable it on the one hand to control more intensively the activities of the management company, and on the other hand to better protect rights and assets of investors. In consequence not just investors would have an entity in the Member State, in which the UCITS (fund) is located, to file complaints, claims etc. The regulatory body of the Member State in which the UCITS (fund) is located likewise could take immediate actions against the depositary at least to protect the investor assets if necessary and if measures against the management company cannot be taken in the short term.

As mentioned above, at this stage BAI cannot comment in more detail. Of course we would like to explain this approach in more detail and therefore kindly ask to inform us whether CESR would be prepared to grant additional time to further comment on and elaborate this topic.

For the moment we kindly ask not to publish our draft statement as it is only preliminary.

This opinion was issued on August 22, 2008. For any further information on this opinion please contact:

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Bundesverband Alternative Investments e.V. (BAI) is the lobby association for the alternative investment industry in Germany. Its main goal is to encourage diversification of especially institutional investors and to higher the level of awareness and deepen the public understanding of alternative investment strategies as an asset class. BAI engages in an intense dialogue with political institutions as well as supervisory authorities. Furthermore BAI cooperates with various national and international organisations and associations. The BAI pursues the aim to actively conduct legal reforms to build up an attractive and competitive regulatory environment for the alternative investments industry in Germany. At present, BAI counts more than 130 member companies from all areas of the alternative investments industry and is growing continuously.