15 October 2008

Mr. Carlo Comporti
Secretary General
The Committee of European Securities Regulators
11-13 Avenue de Friedland
75008 Paris
France

Dear Carlo

CESR DRAFT ADVICE ON MANAGEMENT COMPANY PASSPORT

Please find attached the Investment Management Association's (IMA)[1] views on the draft advice. We congratulate CESR for its determined approach to find pragmatic solutions to the supervisory arrangements which will enable the passport to work in practice and will provide at the same time a high level of investor protection. We also commend CESR for its extremely well organised drafting process which has allowed for two public consultations in the short period given by the Commission for CESR to prepare the advice.

We very much welcome CESR's draft. It proves that European supervisors can really co-operate and find solutions to arrange the supervision regarding cross-border activities in the true spirit of the Single Market. We believe that the draft provides already a good basis for the final advice, subject to our detailed comments below, which we hope CESR will find helpful when finalising its advice.

In IMA's view management company passport is one of the measures needed to enhance the efficiency of the UCITS framework. We therefore very much support CESR's work to advise the Commission which will enable including management company passport during the current legislature to the so-called UCITS IV package proposed by the Commission in last July.

[1] The IMA represents the asset management industry operating in the UK. Our Members include independent fund managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of £3.4 trillion of assets, which are invested on behalf of clients globally. These include authorised investment funds, institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles. In particular, our Members represent 99% of funds under management in UK-authorised investment funds (i.e. unit trusts and open-ended investment companies).

65 Kingsway London WC2B 6TD
Tel:+44(0)20 7831 0898 Fax:+44(0)20 7831 9975

www.investmentuk.org

The IMA supports the management company passport because it will:

- *Strengthen investor protection* by improving transparency of the management structure and enabling more effective risk management by the centralisation of functions in the core of the asset management business. The experiences of the last year and especially the last few weeks highlight the importance of this and show that risks do not stop at national borders. Strong investor protection has always been the cornerstone of the UCITS regime and it must remain so.
- *Deliver real economies of scale,* of which a moderate estimate is in the range €500-800 million a year.
- *Improve competition* by lowering barriers to entry for small and medium sized firms to operate across Europe. Improved competition will help to ensure that consumers benefit from the economies of scale.
- *Fulfil the objectives of the EU Treaty,* by bringing freedom to provide services cross-border at long last for asset management. The principle of the passport was included in the UCITS III Directive in 2001 but the wording has not in practice allowed it to operate effectively.

CESR has suggested a large amount of implementing measures in the draft. We suggest that CESR limits its requests to those absolutely necessary. These implementing measures should not delay the overall implementation of the Directive. Given the failure of the current simplified prospectus regime and the fact that regulator-to-regulator notification is widely used in other fields of financial services, these implementing measures should not delay the entering into force of the new notification and KII regime as soon as possible.

Please find below IMA's detailed responses to the questions raised in the consultation paper.

Definition of the domicile

Box 1

We support the approach taken by CESR to define the domicile of the management company. We ask, however, CESR to delete the sentence "Namely, it is important that the management company be authorised to manage at least one UCITS in its home Member State" from Paragraph 3 of the explanatory text. This is not in our opinion a meaningful test, for example in a case where the management company sets up only domestic funds in its home Member State and the UCITS funds for cross-border EU/ global distribution are set up in another domicile. In other words not managing a UCITS fund in the home MS does not mean that the manager would not have all the necessary capabilities to manage UCITS. We believe Paragraph 4 of Box 1 which quotes Recital 8 of Directive 2001/107/EC is self-explanatory and sufficient in this regard.

We have difficulties to understand Paragraph 10 of the explanatory text and ask CESR to clarify what is meant by it.

Box 2

IMA supports the approach taken by CESR to define the domicile of a common fund constituted under the law of contract or trust law. We do, however, think that it would be clearer to use the following wording which would cover all types of UCITS: "UCITS home Member State" means *the Member State in which the authorisation of the UCITS pursuant to Article 5 has been approved."*

Box 3

The IMA does not see a need for a local contact point in the fund domicile. In our view supervisors are perfectly able to fulfil their respective duties using the other detailed measures described in the draft advice to guarantee the necessary information flows.

However, as a pragmatic compromise and a temporary measure, to get the passport working in practice we are prepared to accept the local contact point provided that it is really only a contact point with no administrative functions to be required to be conducted at the fund domicile. Requiring administrative functions to be conducted at the fund domicile cannot be justified with any regulatory or supervisory needs.

The choice of the contact point must be left to the management company of the UCITS. The contact point should not be required to be a financial institution with capital requirements, as it is meant to be merely a contact point. It could be a local lawyer, the depositary, or a financial institution established in the Member State, but always by the choice of the management company.

CESR makes an important clarification in Paragraph 4 of the explanatory text: "Member States may not make the establishment of a point of contact or the provision of that role subject to any requirement to provide endowment capital or to any other measure having equivalent effect." We believe that this principle should be raised into the box as paragraph 3 to make this principle clear without any doubt.

Regarding the functions of the contact point, we see no justification to function 1. Relations with investors are normally dealt by distributors. Function 2 covers receipt of all documents addressed to the UCITS by investors. This covers therefore also complaints, so function 1 should be deleted.

Neither is there a justification for function 3. There is no reason why the contact point should itself provide the services of a paying agent to investors. It is an obligation of the management company to arrange these services to local investors, and it should be up to it to decide how best to provide this service and by what entity.

We are strongly of the opinion that no additional functions should be required to be provided by the local contact point. There is no justification to require it to maintain the unit-holder register. The value of the register in fund supervision is very limited. In any case it is enough for the fund supervisor to get information from the register by request when necessary, despite its physical location.

Box 4

We support CESR's approach. We believe that the existence of the fund and its depositary in the same Member State is a crucial element making the management company passport possible.

Applicable law and allocation of supervisory responsibilities

Box 5

We broadly support CESR's proposals, except for the following. CESR should clarify that the list presented in Paragraph 2 is exhaustive.

We do not see it necessary to have implementing measures on the scope and content of the fund rules (Paragraph 3). This is an issue which goes to the area of civil law/ contract law, and will therefore be difficult to address. Furthermore, given the extensive implementing measures proposed in Paragraph 7 which cover all the main aspects of a management company's organisational and operational conditions, we do not see a need to provide implementing measures regarding the fund rules specifically. CESR has to be realistic not to ask for more implementing measures than is absolutely necessary, to ensure preparation of these measures in a reasonable timescale and not delaying the implementation of the Directive.

We do not support the transitional measure proposed in second half of Paragraph 7 and suggest this to be deleted. It would be unbearable and very costly for asset managers to apply several different national sets of requirements to a management company regarding delegation arrangements, risk management, conflicts of interest and conduct of business rules. The rules of the management company's home Member State must be the ones applied. Surely the way forward must be that adequate harmonisation is reached by CESR and the Commission by the implementation deadline of the Directive.

We strongly object Level 2 measures on which activities can be delegated (Paragraph 9). There is no basis for this as long as there is no level playing field under the Directive i.e. Member States do not need to allow delegation of functions. It would not be acceptable to provide further detailed harmonisation only for those jurisdictions which allow delegation. As long as the Level 1 Directive (proposed Art. 13 (1)) states "If Member States allow delegation", there can be no Level 2 measures on this.

Box 6

We support CESR's approach but reiterate the point made regarding Box 5 i.e. there is no need to have implementing measures regarding fund rules and certainly there is no need to repeat this requirement (Paragraph 3).

Box 7

We support the suggested provisions. Co-operation between the supervisors is indeed a necessary prerequisite for a well-functioning management company passport. Therefore we support giving the supervisors the necessary tools to enable

their co-operation. Art. 96 of the Commission proposal already includes many provisions meant to facilitate this.

Authorisation procedure for UCITS funds whose management company is established in another Member State

Box 8

The IMA supports generally CESR's proposals except for the following. Given the thirty pages of well considered draft advice on how to arrange properly the supervision of cross-border fund management, including lot of detail on how to ensure that the management company has the necessary systems in place, it is absolutely unjustified and unacceptable to add the proposed Pandora's box in point (iii) of Paragraph 4, stating that the fund supervisor can decide not to approve the choice of the management company, if it considers that the choice of the management company does prevent the effective exercise of its supervisory function. There can be no such a case based on CESR's advice, when all the other conditions are met. This requirement is therefore absolutely unnecessary and should be deleted.

On-going supervision of the management of the fund

Box 9

The IMA supports CESR's approach. Regarding Paragraph 2 we note that CESR suggests that regular reports by the UCITS provided to the fund supervisor should also be accessible to the management company supervisor. We call for caution in this regard as double-reporting would be a costly solution for the industry. Therefore CESR should aim to minimise any additional reporting. It should indeed be enough that the management company supervisor has access to the reports when it so wishes.

In our view the ability of the UCITS' supervisor to require cooperation and access as regards the management company in Paragraph 5 should be conditional upon it being "necessary with respect to the supervision of the UCITS", thereby mirroring the condition placed upon the management company supervisor in Paragraph 6.

We would ask the following sentence to be raised from Paragraph 1 of the explanatory text to Paragraph 2 of Box 9 to stress the importance of this statement: "Those reports which are solely addressed to competent authorities should be made available in a language which is common in the sphere of international finance."

Box 10

We believe that the whole box should rather be deleted as it does not add anything compared to Box 4 which already deals with the flow of information between the management company and depositary.

At least, as a minimum, the term 'UCITS' should be deleted both from the box and the explanatory text. Otherwise it will only create confusion. It is the responsibility of the management company to ensure necessary information flows within its organization to comply with all the relevant laws and requirements. Depending of the

legal structure of the UCITS in question, the flows will be different. Regarding contractual funds, the local contact point is a contact point indeed and should not be required to receive all the information the explanatory text seems to suggest. Otherwise CESR's advice would suggest that the contact point needs to build systems to receive and maintain all this information. This would mean creating an administrative function to the contact point via a back door, which is not acceptable. Paragraph 3 of the explanatory texts suggests this and it should be deleted. Paragraph 5 refers to the contact point being a paying agent of the management company, which should not be the case as explained above.

The reference to the contact being a 'financial institution' should be deleted from the explanatory text (Paragraph 1 and 6). As explained above, a contact point does not need to be a financial institution.

Box 11

We have no comments.

Dealing with breaches of rules governing the management of the fund

Box 12

We support CESR's approach but would suggest that it be made clear that any management company subject to a UCITS' competent authority sanction should be able to access the appeals and recourse structures of that authority as if it were directly regulated by it.

Box 13

We have no comments.

Please do not hesitate to contact us with any queries you may have on our submission or points you would like to follow up.

Yours sincerely

Jarkko Syyrilä
Director, International Relations