

INTERNATIONAL FINANCIAL DATA SERVICES

The Committee of European Securities Regulators
11 – 13 Avenue de Friedland
75008 Paris
FRANCE

22nd August 2008

Submission via Website

Dear Sirs,

Call for Evidence on the Request for Advice to CESR: The UCITS Asset Management Company Passport

Within the UK, International Financial Data Services ("IFDS") provides a range of services to the collective investment scheme and ISA Management industry via three FSA-regulated companies. International Financial Data Services (UK) Limited ("IFDS UK") provides outsourced dealing and, in conjunction with International Financial Data Services Limited, registration services to collective investment products, supporting over 5.8 million accounts across 35 fund management companies (over 30% of the UK market). IFDS Financial Services Limited ("IFDS FS") offers investment wrapped products, such as ISAs, to investors in association with other regulated firms. IFDS Managers Limited ("IFDS ML") operates CIS products (unit trusts/OEICs) designed in conjunction with external asset management firms and product distributors, to whom we delegate certain functions.

Given our position in the UK market, and our desire to see free movement of financial services provision between EU Member States (and not excluding appropriate outsourcing arrangements with service providers outside the EU) IFDS are pleased to respond to the CESR's Call for Evidence.

We believe and agree that a full Management Company Passport will provide the basis for greater specialisation benefits, scale economies, and increased quality of customer service and risk management.

This submission provides:

1. A clear structure and principles for amendments to both the Level 1 UCITS Directive and the Level 2 Implementing Legislation.
2. Supervisory and technical conditions to support the ability of the supervision / other responsible body to monitor and enforce compliance of the Fund.
3. A clear and systematic allocation of regulatory responsibilities between competent authorities.
4. Sources of information and respective obligations of Competent Authorities.
5. Clarification of rules governing the activities of the Management Company and of the UCITS Fund, and respective responsibilities of different Competent Authorities and actors.
6. Suggestions for dealing with supervisory, legal, and operational risk which could be detrimental to the operation of Funds making use of the Management Company Passport.

7. A framework for ensuring that investors in Funds managed on a cross-border basis are not exposed to additional legal or operational risks, or to lower standards of supervision than those in domestically-managed UCITS.
8. A framework to ensure that a Competent Authority is clearly designated as responsible for the different fields of activity – with no omissions or duplication.
9. Guidance on the conditions and systems that respective Competent Authorities will need to monitor and enforce compliance with the relevant requirements of the Directive for which they are responsible.

Should you wish to discuss any aspect of our response further please call me on 01268 444989.
Alternatively please call Chris Selden, Head of Regulatory Business Development, on 01268 445725.

Yours sincerely,

Clive Shelton

Risk & Compliance Director

c.c. Paul Wright (FSA)
Tom Springbett (HM Treasury)
Jarkko Syyrila (IMA)



The UCITS Management Company Passport IFDS Response to CESR's Call for Evidence

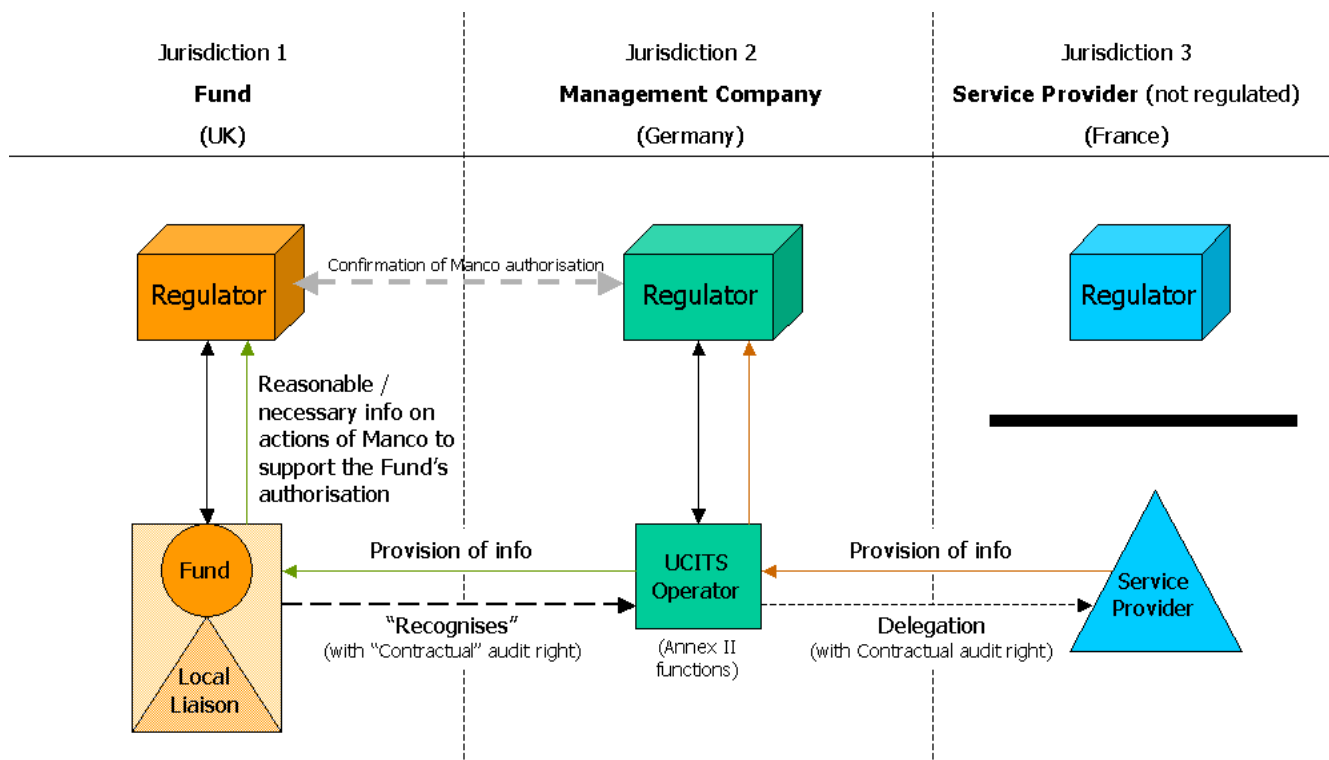
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Executive Summary:

In considering the EU Commissions Request for Assistance regarding the UCITS Management Company Passport and CESR's associated Call for Evidence we would note the following key points:

- Any Management Company Passport must enable all Annex II functions for any UCITS to be performed in a different jurisdiction to the domicile of the Fund (or, by delegation, of the UCITS Operator Firm).
- Full harmonisation of the roles and responsibilities of all parties would enable a Management Company Passport, but the impact on existing funds might be too great to implement.
- An alternative approach would be to establish a "Harmonised UCITS Funds" model to sit alongside the array of existing jurisdictional models, enabling those firms seeking a pan-EU approach to implement one.
- The approach would resemble an Outsourcing approach, whereby the Fund seeks authorisation from its Regulator, recording its "recognised" UCITS Operator (which might be domiciled in a different jurisdiction).
- Given jurisdictional differences, it might be necessary to create a "Local Liaison" who would support the Fund in its working with its Regulator and its recognised UCITS Operator Firm. We do not consider such a "Local Liaison" need be regulated, but should have appropriate experience of regulation in that jurisdiction.
- A mechanism will be required by which any party can confirm whether a given Firm is authorised as a UCITS Operator by its own Regulator – and therefore able to be recognised by a UCITS Fund. Such a mechanism might include each Regulator publishing a list of UCITS Operators on its website.
- We suggest that regulatory responsibility be distinguished so that the Fund's Regulator review outcomes (e.g. adherence with limits etc. of the UCITS Directive, such as investment and borrowing powers), while the Firm's Regulator continue a principles-based approach across the breadth of its business (though not the detailed outcomes of any UCITS domiciled in another jurisdiction).
- We also discuss a number of regulatory enforcement approaches that might be considered by CESR.
- While not reaching any conclusion regarding the role of Trustee / Depositary, we recognise a number of areas in which the Trustee / Depositary might play a valuable role in enabling a "Harmonised UCITS Funds" model.

Our submission explores the formation of such a "Harmonised UCITS Funds" model, and we offer the structure shown here for discussion by CESR Members (explained in greater detail within the paper itself):



The Harmonised UCITS Funds model

Some of the views expressed in this release may contain IFDS's own interpretation of the law, rules, and regulations and are not intended to be comprehensive or provide any specific legal advice.

IFDS Compliance

**Background:**

We recognise the difficulty in creating an efficient approach to the Management Company Passport given the distinctive features in fund structure and regulatory approach between the various EU jurisdictions. However, we consider that the benefits of an operational Passport make this a prize worth gaining.

We have approached this issue from the basis of UCITS and MiFID, and have set out in our submission a model for discussion. We recognise that certain Regulators may need to review aspects of their approach and processes in order to accommodate UCITS functioning under the Passport. We also identified a number of areas where CESR would need to determine the optimum solution, and we have summarised potential approaches to assist such discussions.

The Call to be Radical:

The EU Commission's request to CESR invites the radical step of harmonising the roles and responsibilities of operating UCITS schemes across all EU Member States. Given the vast number of funds already in operation, supported by the documentation appropriate to their respective regulatory and legislative regimes, to undertake such a radical step would generate significant work for all firms and regulators concerned. While the prize of a fully-harmonised EU marketplace could be of great benefit to some actors (those who aspire to pan-EU business models), other firms could see such change as unmerited expense. It will be important that CESR's deliberations reflect the scale of such a project, and both the costs and competitive implications of full harmonisation to a single model.

With our experience we consider that the UK model provides a good starting point for harmonisation, given the distinct roles of each party. We would support harmonisation of UCITS roles based upon this UK model:

- Fund: has no direct responsibilities;
- Authorised Fund Manager ("AFM"): responsible for virtually all aspects of the fund, from seeking authorisation to operational aspects; and
- Trustee / Depositary: an independent body, itself authorised to act in this capacity, holding all assets in its registration and overseeing the treatment and interests of investors.

However, given the complexity of arrangements across other jurisdictions, we recognise that CESR will need to perform detailed analysis of all underlying issues in order to conclude that this would be the best course of action for the EU market.

In the rest of our submission we therefore explore an alternative approach and, in so doing, discuss issues that would also be applicable to the radical approach (such as the ability of Competent Authorities to enforce regulatory compliance, and the segregation of oversight between different tasks / duties).

That approach would be to create "the Harmonised UCITS Model" – but bring the Model into being *alongside* the existing regime in any given jurisdiction. Such an approach would minimise change for firms that do not seek to operate Harmonised UCITS, and firms wishing to exploit the opportunities offered by such a regime would be responsible for ensuring that their operations could satisfy the requirements of the new regime.

Domicile:

We suggest that the matter of domicile must be simple; ample complexity will arise in detailed matters, and we consider that the following should be acceptable:

- A UCITS is domiciled and regulated in the jurisdiction in which it resides for tax purposes; and
- A Firm is domiciled and regulated in the jurisdiction in which it resides for tax purposes.

We consider this to provide a reliable foundation, given that the taxation regime is a prime consideration to firms deciding where a Fund should reside. Success in establishing a Management Company Passport should therefore be based on this factor.

While regulatory responsibility remains in the relevant domicile this does not mean that the activities involved are necessarily performed in that domicile. To achieve cost efficiencies and value for investors the use of lower-cost facilities (e.g. in India) must be available to Operators – subject to appropriate Senior Management and system controls



Structural Differences:

We recognise that UCITS in different jurisdictions are subject to a range of organisational structures. While we believe the same core tasks and activities to be performed (being recorded in Annex II of the UCITS Directive), the party having direct regulatory responsibility for any given action might be different between jurisdictions. As an example, the UK model puts the “Authorised Fund Manager” (“AFM”) in the prime role: performing the Annex II tasks and having regulatory responsibility for the fund (including applying for authorisation of a new UCITS). We understand that in other jurisdictions the UCITS itself has a more defined form, entering into contracts in its own name, etc. and performing functions. Similarly, the role of Trustee / Depositary differs between jurisdictions.

As noted above, one approach for consideration would be to create a Harmonised UCITS Model to sit alongside the array of existing jurisdictional models – so that any Firm seeking to exploit the potential of functional passporting would ensure it could operate in line with that Model. This would build upon the foundation of existing Level 1 and Level 2 UCITS material and present an evolutionary approach that could attract support across the EU.

We recognise that such an approach will result in many actors simultaneously operating under two separate regimes. If the potential for ambiguity would prevent such an approach at this time the Management Company Passport will need to operate *despite* the underlying structural and legislative differences across Member States. We therefore explore generic current arrangements, and build up a model for consideration by CESR Members.

Current State:

Figure 1 illustrates the current state we believe applicable in any generic jurisdiction:

- The Regulator authorises both the Operator and the Fund;
- Both the Operator and the Fund will be domiciled in the same jurisdiction as the Regulator;
- The Operator might delegate functions to another entity (in the same jurisdiction or another);
- The Operator must ensure that any such outsourcing does not prevent the Regulator from fulfilling its duties. The Operator must retail the information / evidence necessary to satisfy its Regulator that the functions are appropriately performed; and
- Dependent upon national requirements and the task being outsourced, that Service Provider might not itself be a regulated entity.

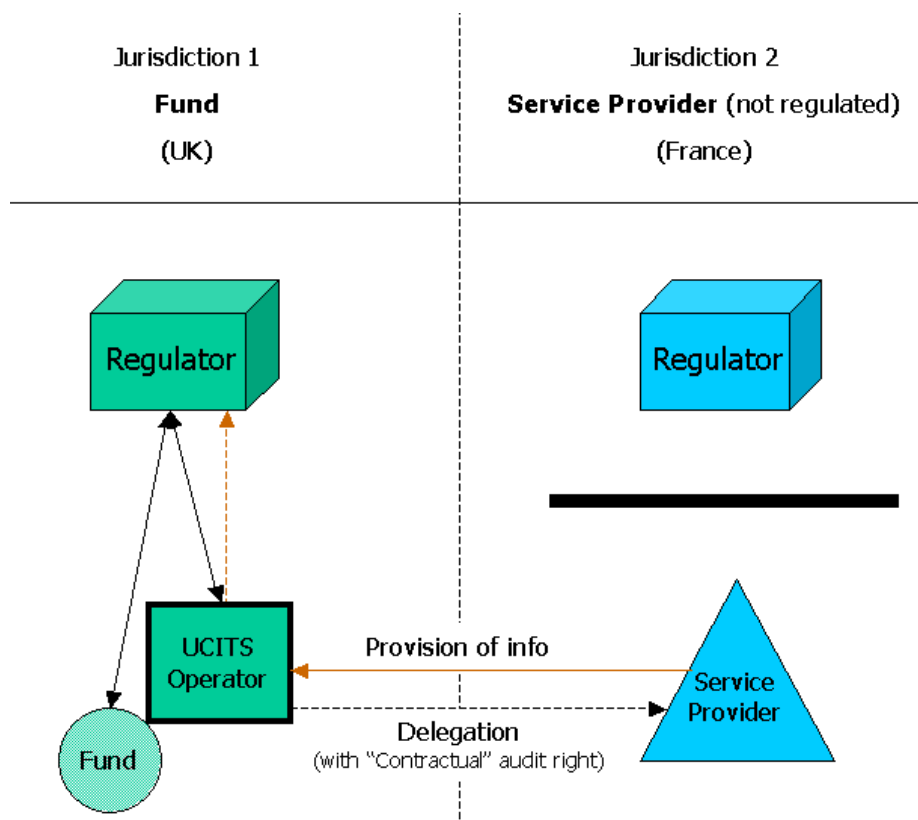


Figure 1

*Key to diagrams:*

- Regulators are shown as 3D blocks
- Regulated Firms (such as UCITS Operators) are shown in square boxes
- UCITS Funds are shown as circles
- Unregulated parties (such as the Service Provider above) are shown as triangles

In order to keep the focus on the Management Company Passport we do not, at this time, consider the responsibilities and duties of the Trustee / Depositary.

Delegation of Duties:

Under the UK Current State described above, the AFM (as UCITS Operator) bears regulatory responsibility for the functions noted in Annex II of the UCITS Directive (though the Trustee remains responsible for registration within some older unit trust funds). The AFM can freely outsource performance of these functions – including outsourcing to service providers outside the EU (e.g. those in low cost areas, such as India).

The Regulator will continue to require the relevant party (here the UCITS Operator) to comply with all regulations applicable to its activities. The delegating party should retain sufficient records about the outsourced service to satisfy its Regulator. (Note: while our diagram shows the Operator as the delegating party, we recognise that in some jurisdictions the Fund itself might delegate).

The Passport must enable all Annex II functions to be performed outside a jurisdiction in which the relevant UCITS is domiciled. To prevent investment management (for example) from being performed in a different jurisdiction would be a retrograde step, and inconsistent with the MiFID approach to outsourced activities.

We consider that MiFID provides a good basis for the establishment and oversight of Outsourcing relationships within financial services provision. While recognising that UCITS Operators are exempt from MiFID, it represents a developed European standard that should be applied. Therefore, if a radical approach is not possible, we recommend that the Management Company Passport be approached as a matter of Outsourcing and Delegation, modelled on the existing MiFID approach (though with any minor modifications necessary to recognise the UCITS industry).

The remainder of this submission explores a model based on outsourcing. The comments should not be interpreted as arguing against a Harmonised model centred on the UCITS Operator, rather as an attempt to approach the underlying issues from a different perspective.

The Fund as “Delegator”:

In a delegation model where the Management Company will be providing services, the Fund must logically act as Principal. This would require the Fund to have a greater sense of identity than is currently the case in some jurisdictions.

The key requirements for such a model must be:

- Defined responsibilities of both the Fund and Management Company;
- Clear lines of regulatory oversight and responsibility;
- Minimal / no duplication of regulatory oversight;
- The ability for the Management Company to centralise its operations and retain existing ability to delegate performance of tasks.
- A requirement that the Management Company (UCITS Operator) is duly authorised by its own Regulator to act in this capacity in respect of UCITS funds.

Figure 2 separates the UCITS fund from the UCITS Operator, so that the Fund and Firm are no longer located within the same jurisdiction. This is a transitional diagram only, as various features must then be added to create a full model:

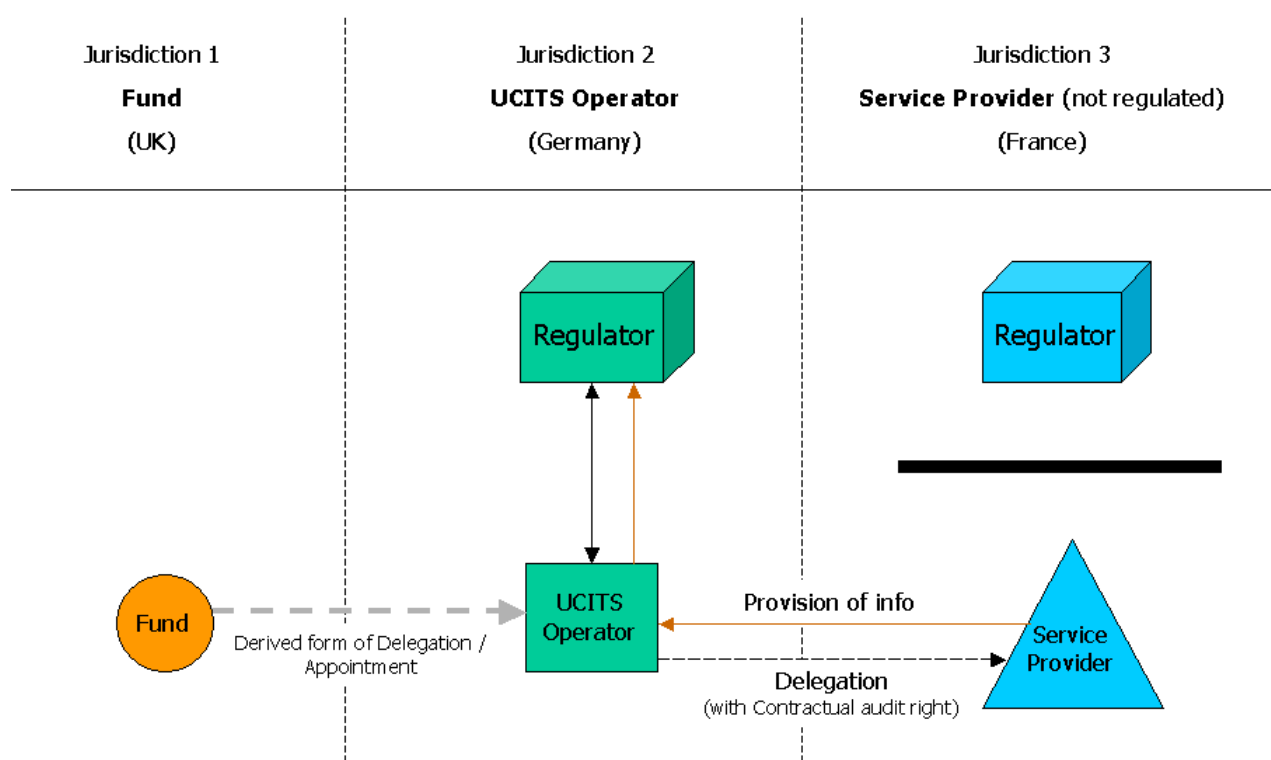


Figure 2

This model must now be extended in order to represent a viable fulfilment of the Management Company Passport.

- The UCITS Fund must be regulated by its Home Regulator;
- The nature of delegation / appointment of the UCITS Operator must be established;
- The Fund's Regulator will require comfort that the UCITS Operator is appropriately regulated by its own Regulator;
- The regulatory responsibilities of both Fund and UCITS Operator must be clarified, in order that each Regulator can fully oversee the aspects relevant to its own obligations; and
- Each Regulator must be able to enforce compliance within its jurisdiction.

Delegation / Appointment by the Fund

For this model to be implemented, the UCITS Fund must have the capacity to delegate or appoint the Annex II functions to the UCITS Operator. However, for regulatory responsibility for all such functions to reside in the Fund would negate the Management Company Passport; the fundamental responsibility for tasks would continue to be located within the same Member State as the Fund's domicile. As such, the relationship between Fund and UCITS Operator cannot follow the standard outsourcing approach.

It will be important to find the correct terminology to describe this relationship (to avoid any overlap with existing regulatory terminology within the various jurisdictions), and so for the purposes of this paper we will describe this relationship as "Recognition".

Therefore, the Fund's obligation to its Regulator would be to "Recognise" a UCITS Operator who would act in that capacity. We suggest this would be established within the fund authorisation process with the Fund's Regulator. This would subtly change the position in some jurisdictions, as the Fund (rather than the Operator) would seek the Fund's authorisation.

Given that in some jurisdictions "the Fund" may not have any resources or legal capacity to perform any action, and given the need to ensure that the UCITS Operator is not seen to operate within the Fund's domicile (as to do so would undermine the purpose of the Management Company Passport), we consider that some form of "Local Liaison" will be required in the jurisdiction of the Fund. The role of this "Local Liaison" is to act in respect of the Fund to support its relationships (with Regulator and UCITS Operator), retain any materials necessary for the Fund



to demonstrate its ongoing compliance with its Regulator's requirements, and to complete any legal documentation within the jurisdiction where the fund itself does not have sufficient contractual capacity.

We do not believe the "Local Liaison" would need to be a regulated entity (though this point is discussed further below). However, a regulated entity might be selected to fulfil this function. We consider the "Local Liaison" to be an extended parallel to the "Facilities Agent" function required where a UCITS is currently passported into another jurisdiction, though here its role is more to liaise between organisations than to support local investors.

We consider that the "Local Liaison" need not be connected with the UCITS Operator; this function could be performed by an independent party, provided that an appropriate business model could be determined and commercial arrangements agreed between the relevant parties. If CESR's discussions suggest some potential in this approach we would encourage CESR to ensure that any limitations / barriers on the firms / entities able to act as "Local Liaison" be minimised.

We further consider it should be permitted for the UCITS Operator to delegate its work to the "Local Liaison" (or a related company), provided that the UCITS Operator can justify such delegation to its regulator (in line with any other delegation of relevant duties)

While it is not appropriate for us to comment in detail upon the role of Trustee / Depositary across the various EU jurisdictions, and whether the Trustee / Depositary role should itself be capable of being passported, there could be value in CESR discussing the extent to which the Trustee / Depositary (if resident in the same domicile as the Fund) could fulfil this function. Again, comments below would be relevant to such debate.

Acceptance of the Operator by the Fund's Regulator

With the Fund making its application to be authorised, and recording the identity of its Recognised UCITS Operator, the Fund's Regulator would need confirmation that the UCITS Operator was correctly regulated to act in that capacity (in whatever jurisdiction the UCITS Operator is domiciled and regulated).

Three approaches seem viable in this regard, and discussion between CESR Members would be valuable in determining which would be most effective for the EU industry.

The first option would see each Regulator maintain a list of all Firms it regulates as UCITS Operator. The list would need to be readily accessible in order that a Fund could demonstrate to its own Regulator that its Recognised UCITS Operator was appropriately authorised, and the Fund's Regulator would be able to confirm this fact. Such confirmation might be made via the internet (e.g. the FSA Register, available at <http://www.fsa.gov.uk/register/home.do>).

This approach enables confirmation of status with minimum paperwork or formalised communications between parties, and also provides openness for all firms. However, a potential weakness is that the UCITS Operator's Regulator would not be formally aware that one of its Firms is to act as UCITS Operator to a specific fund in another jurisdiction (a fact that could be beneficial to that Regulator in its oversight of the Operator firm).

The second approach would see the Fund's Regulator contact the Firm's Regulator to advise of the application made, enabling the Firm's Regulator to comment if appropriate (such as if the Firm was not authorised to act as UCITS Operator) and to record for its future reference that the UCITS Operator Firm had increased the number of funds to which it acts as Management Company. Note that this approach could be combined with published lists of authorised UCITS Operators (again, accessible via the internet), to support openness within the industry, with the communication between Regulators being minimal (though sufficient to support their own obligations).

The third option would see a Firm seek a specific "licence" from its Regulator to offer UCITS Operator services in other EU States. In this way the Firm's Regulator is aware of the intention to passport its Management Company activities, and the Fund seeking to recognise the UCITS Operator could do so with reference to the "licence". Issues of longevity, documentation, expiry, etc. of such licences would need to be considered by CESR Members if this approach were progressed.



Distinguishing Regulatory Responsibilities

Both Regulators will have a need to fulfil their obligations in respect of their own jurisdiction. It is important to the successful implementation of a Management Company Passport that both Regulators are not required to perform oversight of the same actions to the same ends.

We would suggest that the Fund's Regulator should be responsible only for ensuring that the Fund demonstrates at authorisation, and continues to demonstrate, that it complies with the requirements to be an authorised fund within that jurisdiction. CESR Members will need to debate the degree of change that might be appropriate to increase harmonisation of these expectations, but we think it is important to remember that the Management Company Passport does not need to resolve all aspects of cross-border activity. The ability to sell a fund into other jurisdictions already exists, and those firms that seek the benefits of centralising their operations in a single location must recognise and accept their obligation to effectively manage those operations across a range of different jurisdictional models (subject to the level of harmonisation that CESR concludes is achievable at this time).

While the Fund's Regulator will be concerned with detailed aspects of the Fund's operations, the Regulator of the UCITS Operator Firm should not perform any direct oversight of the activities of the Fund. Rather, it should focus its attention on the actions of the UCITS Operator, ensuring that the breadth of that Firm's business is in line with that Regulator's expectations for a firm within that regime. From the UK perspective (by way of example), the FSA would seek to ensure that the UCITS Operator was embodying its "Treating Customers Fairly" principles across its full business. Likewise the FSA regulations relating to 'Conduct of Business' and 'Senior Management Systems and Controls' would remain applicable to the Firm regardless of the jurisdiction of any underlying vehicle being serviced.

We do not believe that the UCITS Operator's Regulator would need to consider whether fund valuation processes relating to a UCITS in a different jurisdiction are correct – such a responsibility would rest with the Fund's Regulator (as expert on local requirements for tax etc.). The role of the Trustee / Depositary is also relevant here. Similarly, while the Fund's Regulator would need to assure itself that the UCITS remained in compliance with Investment & Borrowing Powers rules it would not be required to investigate the underlying investment management processes employed by the UCITS Operator; the Operator's Regulator would review such processes and associated risk management protocols as part of confirming that the Firm was capable to act as a UCITS Operator.

To aid discussion between CESR Members, we have drawn up a table showing how we consider each Regulator could focus their attention, avoiding duplication and ambiguity. This table can be found in **Appendix 1** to our submission. You will note that certain items are potentially subject to the requirements of different jurisdictions, and it may be that extending this approach across the range of jurisdictions would usefully inform the debate on the degree of harmonisation that can be achieved.

The Ability of Each Regulator to Enforce Compliance

The ability of each Regulator to enforce compliance must be relative to their responsibilities. Therefore, under this model, the UCITS Operator's Regulator must ensure that the processes and controls established within that Firm remain of a sufficiently high standard to remain authorised to act as UCITS Operator – regardless of the underlying jurisdictions in which the UCITS Funds it serves might be domiciled. This is essentially Principles-based regulation, and the Regulator's existing ability to act against the Firm remain unaffected by this model of Management Company Passport: fines, removal of registration, increased inspection / oversight, etc. – all remain available.

The Fund's Regulator meanwhile is responsible for ensuring that the Fund domiciled in its jurisdiction is operating in line with UCITS. This is outcomes-based, and the Regulator would at all times have the ability to remove its authorisation from the Fund. Such an ultimate sanction is useful, especially as the Fund is the only regulated entity within this jurisdiction (ignoring the Trustee / Depositary function for the reasons noted above). In such a case the Fund's Regulator might consider itself unable to adequately enforce compliance or to ensure proper reparation to investors (wherever domiciled) in the event of loss.



Two issues must be addressed: compensation to investors for loss; and the Regulator's ability to impose a penalty / fine. Professional Insurance can clearly play a part in addressing compensation issues, and it may be that the Local Liaison should be required to hold evidence that the Recognised UCITS Operator holds appropriate insurance relevant to its activities in that jurisdiction.

Regulatory penalties cannot however be insured, and so an alternative approach must be identified. It must be made clear that the Fund itself will not be expected or permitted to meet any regulatory penalty from the assets of the Fund. Such an outcome would be prejudicial for investors and would immediately undermine the merits of funds established under the Management Company Passport.

For the purposes of discussion we note here five possible mechanisms that could be incorporated into the Model in order that the Fund's Regulator might be able to fully satisfy its oversight responsibilities:

1. Require the Fund to have Regulatory Capital
While regulatory capital is not generally required to satisfy regulatory penalties it could be made a requirement for authorisation of a UCITS Fund (or, if preferred, of a "Harmonised UCITS Fund") that a certain sum of regulatory capital be maintained within the Fund's jurisdiction – and that the UCITS Operator concerned would be required under the terms of its own authorisation to ensure this level remained intact. The Fund's Regulator would impose regulatory penalties against this regulatory capital, such that the UCITS Operator would be obliged to settle the debt. Failure to do so would lead to the UCITS Operator's own regulator needing to take action on the matter. Compensation to investors could potentially follow a similar process.
2. Require the "Local Liaison" to have regulatory capital
To clarify that fines would not be issued against "the Fund", this approach could be used. The actions would be the same as point 1 above, but against the "Local Liaison". However, this approach suggests that the "Local Liaison" itself would be a regulated firm, which removes some of the value of the model.
3. Require the Fund, by authorisation, to impose regulatory penalties onto the Firm
This approach does not require regulatory capital to be held in the Fund's jurisdiction (on the basis that the relevant regulatory capital should already be held by the Firm in its own jurisdiction, based on the activity it performs).
4. The Fund's Regulator notifies the Firm's Regulator, who investigates and takes action
This approach relies upon the Firm's Regulator to apply sanctions in order to bring about rectification on behalf of the Fund's jurisdiction (e.g. imposing a penalty that could be forwarded to the Fund's Regulator, etc.). The Fund's Regulator would not be involved in the investigation, having provided relevant information from its own review of the Fund (using the "Local Liaison" to provide evidence). Memoranda of Understanding between Regulators could usefully support such an approach.
5. The Fund's Regulator notifies the Firm's Regulator, and the two Regulators investigate the matter jointly
This approach places the highest burden on the Regulators, as both must be engaged in the investigation and enforcement process. If this approach were taken it would seem reasonable to reflect this potential for increased resource in the regulatory fees charged by each Regulator – i.e. a higher fee imposed on Funds and Firms operating under the Management Company Passport.

Combinations of the above would also seem appropriate for discussion. Also, as previously noted, we do not explore the position of the Trustee / Depositary in detail. Further variations of these approaches might be developed with the assistance of Trustee / Depositary organisations.

Figure 3 (overleaf) shows how the model appears once these various considerations have been added.

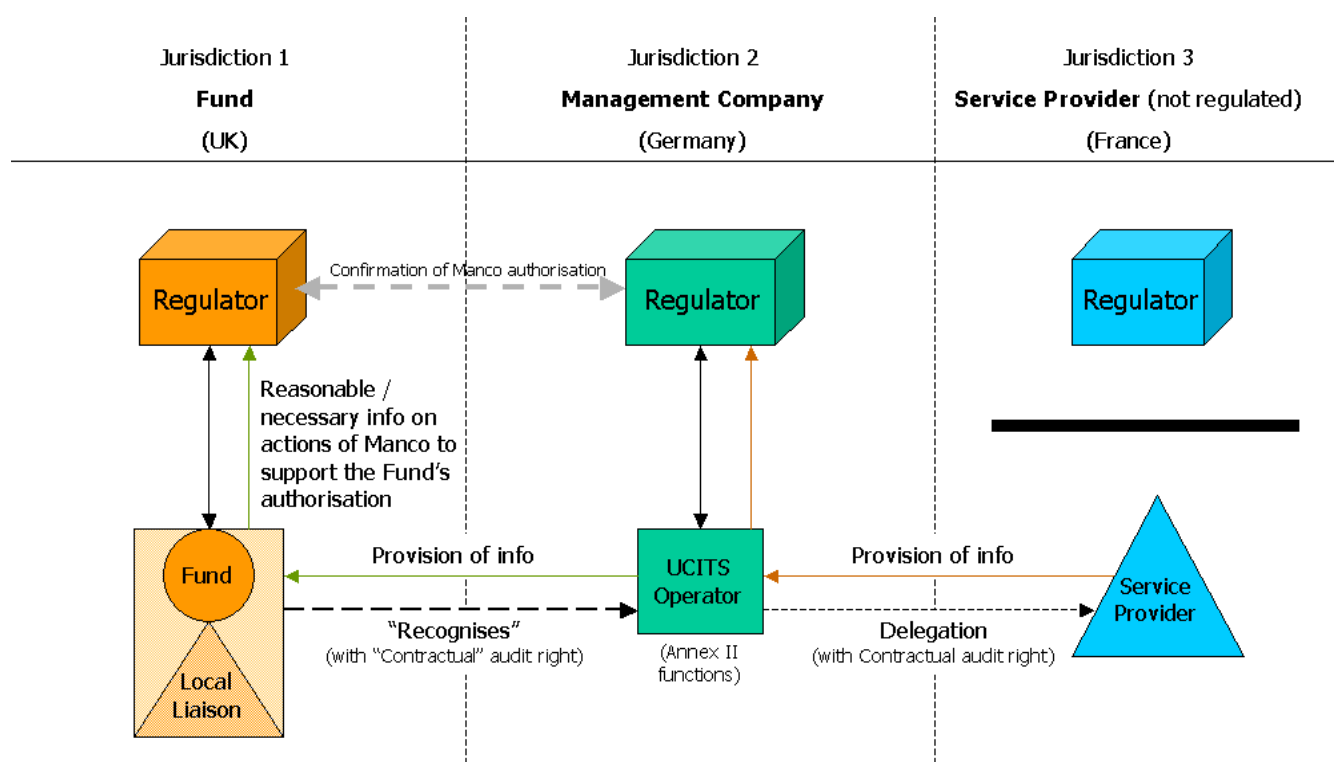


Figure 3

Regulatory Fees & Levies:

As noted above, Regulators will need to ensure that they collect the fees / levy payments appropriate to the effort required in overseeing funds operating under this model.

We suggest that this should not be complex; the Operator Firm and the Fund would each pay their fees solely to their own Regulator. The Firm's fee would be calculated on all funds Operated in all jurisdictions (aggregating the risk applying to their operation). There is a question whether a Firm or Fund operating under the Management Company Passport model described here should pay a higher fee than is applied to funds/firms active only within a single jurisdiction. There is equally a question whether funds that have sufficient substance to act on their own behalf (rather than retaining a "local liaison") should pay a higher or lower fee (though as such matters largely arise due to domicile this question can probably be left for each Regulator to reach its own conclusion).

Items where Greater Harmonisation may be beneficial:

Discussion within CESR would be beneficial in clarifying how the appropriateness of marketing material should be overseen, given the potential for funds to be operated within a single jurisdiction, marketed across border into a non-domiciled jurisdiction, or (under the Management Company Passport) domiciled in a different jurisdiction from its Operator.

There might also be value in CESR considering further harmonisation of responsibility for Custody of fund assets, as we understand that different structures have evolved in different jurisdictions.

Investors should be able to readily understand whether the structure of a given UCITS in a given jurisdiction impacts upon their own position. Therefore, discussion over the application of and disclosure pertaining to consumer protection measures would seem valuable at this stage. Currently, investment in UK UCITS gains protection as the Financial Ombudsman Service and Financial Services Compensation Scheme are applicable to UCITS schemes regulated by the FSA. It must be determined whether such mechanisms would apply based on the Fund's domicile or that of the UCITS Operator, and a standardised approach to disclosure of such matters would be beneficial to investor understanding.

**Appendix 1: Potential Breakdown of Regulatory Oversight by Function**

Fund's Regulator(s) to Review	Firm's Regulator(s) to Review
That the Firm is suitably authorised by the Firm's regulator (by list, licence, etc.)	The Firm's Risk Management Processes / Controls – appropriateness for authorisation
Investment & Borrowing Powers (outcomes) of the Fund – though not the underlying investment management process	Investment management – though not considering specific IBP outcomes for funds in other jurisdictions
Marketing for this Fund	All marketing “issued” by the Firm (principles)
Breaches relative to Fund (outcomes)	Breaches relative to Firm (process / principles)
Valuation and pricing outcomes (as local rules must be applied)	Overall corporate controls – not the specific valuation and pricing of funds in other jurisdictions
Distribution tax / paperwork / presentation	Overall risk management, controls, etc. re distribution processes (incl. outsource)
Fund's tax arrangements	Firm's tax arrangements
Issues & redemptions processing – if the responsibility of the “Fund”	Issues & redemptions processing – if the responsibility of the “Firm”
Deal documentation (e.g. contract notes / statements) against local requirements	
Client money, etc. settlement (for jurisdictions where the investor contracts with the Fund). However, any cash transactions between investor and Firm would be outside scope	Client money, etc. settlements (where the investor contracts with the Firm) – though not reviewing any cash transactions between Fund and investor
The Register – in jurisdictions where it is the responsibility of the Fund	The Register – where it is the responsibility of the Firm
Creations / Cancellation – outcomes	Creations / Cancellations process, policy, and controls