October 23 2008

Mr. Eddy WYMEERSCH
Chairman
CESR
11-13 avenue de Friedland
75008 Paris
France

Re: Citi considerations on the draft advice on UCITS Management Company Passport and on the consultation paper on risk management principles for UCITS

Dear Mr. Wymeersch,

As part of Citi's Securities and Fund Services (SFS) organisation in the EMEA (Europe, Middle East and Africa) region, Citi EMEA Fiduciary Services (EFS) is the business unit responsible for managing depositary/trustee services provided by Citi to undertakings for collective investments.

Citi legal vehicles currently act as depositary bank or trustee ("fiduciary") for undertakings for collective investments (UCITS and non-UCITS) in a number of jurisdictions including, amongst others, the United Kingdom, Ireland, Luxembourg and Poland.

As a global fund and securities service provider, Citi has a natural interest in ensuring it can run its business in the most efficient manner under shared platforms and infrastructures, and that its shareholders and retail investors can benefit from efficiencies that can be so generated.

As a regional organisation, Citi EFS has an interest in ensuring that the regulatory framework under which collective investment vehicles are established and managed is consistent and capable of ensuring an adequate level of investor protection.

We have therefore decided to provide you with some considerations on some of your recent initiatives, with a specific focus on depositary/trustee services. We hope you will find this document of interest.

Yours faithfully,

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Cc: Mr. Lamberto Cardia, Chairman of the CESR Investment Management Expert Group

Citi considerations on the draft advice on UCITS Management Company Passport and on the consultation paper on risk management principles for UCITS

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A) Citi – overview

Citi is one of the largest financial services company with about 200 million customer accounts in more than 100 countries. Our history dates back to the founding of Citibank in 1812 and although our headquarters are in the United States, Citi has been present in Europe since 1902. We are now present in 21 of the 27 EU Member States, employing approximately 39,000 people.

1. Citi's business

Citi is aligned into four major primary business groups: 1) Global Cards; 2) Consumer Banking; 3) Global Wealth Management and 4) Institutional Client Group (ICG) that incorporates Investment and Corporate Banking, Global Transaction Services (GTS) and Alternative Investments.

Citi's GTS business provides a variety of cash management, securities and fund services as well as trade finance worldwide. We are part of Citi's ICG segment that provides a broad range of financial services to wholesale clients such as investment banking, institutional brokerage, advisory services, foreign exchange, structured products, derivatives and loans.

2. Citi GTS Fund Services in Europe

Citi GTS fund services has a presence in key EU Member States such as the United Kingdom, Ireland, Luxembourg, Poland, Germany, Greece, Czech Republic and Hungary. Our team in Europe of about 1700 employees ensure high quality servicing of our clients covering the full scope of fund administration services.

In August 2007, Citi completed the acquisition of the Fund Services and Alternative Investment Services divisions of Bisys, that now have joined GTS and place Citi among the top five providers worldwide in mutual fund and hedge fund administration.

Citi's GTS Fiduciary Services in Europe (EFS) is the business unit responsible for managing depositary/trustee services provided by Citi to undertakings for collective investments. Citi legal vehicles currently act as depositary bank or trustee ("fiduciary") for undertakings for collective investments (UCITS and non-UCITS). We provide fiduciary services to fulfil regulatory duties such as risk ranking of funds, NAV reviews, breaches reviews, on-site inspections, web-based compliance monitoring and annual trustee reports.

In addition, other business units provide custody, fund accounting and transfer agency services. Our custody offerings include all services regarding the safekeeping and servicing of assets as well as the provision of securities lending. The GTS fund accounting team carries out calculations of NAVs for funds or portfolios including pooling, fair valuation, financial and regulatory reporting and reconciliation. The transfer agency unit provides recordkeeping, runs the call centre and offers shareholder servicing to funds including subscriptions, redemptions, account maintenance and anti-money laundering.

Our global capabilities enable us to offer fund administration services to alternative funds on-shore in the US and Europe as well as in all major off-shore domiciles and have the ability to handle complex structures for a large range of funds such as UCITS funds (equities, bonds, mixed and financial derivative instruments), non-UCITS funds, professional and institutional funds, fund of funds, funds of hedge funds and segregated funds. Furthermore, we provide middle office solutions to asset managers including trade operations, performance measurement, portfolio accounting, risk analytics and client reporting.

B) Draft advice on UCITS Management Company Passport

1. Definition of domicile

1.1 Box 2: UCITS

We refer to point 1. stating that *"the UCITS home member State for common funds constituted under the law of contract or trust law should be the Member State in which the management company has applied for authorisation of the UCITS and in which the depositary of the UCITS is established"*.

As already mentioned in our response to your call for evidence of July 2008 (CESR/08-572) we believe that the suggested solution to link the domicile of the UCITS to the country of establishment of the depositary is a suboptimal one.

In this respect, we would like you to consider the following:

1. We are concerned that the proposed definition of domicile will prevent for the foreseeable future any discussion in terms of passporting of depositary services. We are also concerned that the current wording may be used to impose additional oversight and organisational burdens on the depositary at national level, with the risk of diverging interpretations.

2. We consider that as a principle, a contract should be legally based in the country where it is signed (in this case, it would be more relevant to refer to the approval process, in line with CESR's suggestions), but also in the country according to which laws the contract is regulated. We are also concerned that linking the domicile of a contract to the domicile of one of its parties may raise legal concerns/issues that require further investigations.

3. Please note that under some circumstances, a management company may be authorised to perform "safekeeping and administration in relation to units of collective investment undertakings"[1]. We therefore believe that under some circumstances national laws may allow for no depositary to be appointed at all. By way of example:

The Netherlands	2. If the units of the investment company are admitted to the official listing on a regulated market, securities exchange or another regulated market which operates regularly and is recognised and open to the public, and will be traded by it exclusively through these regulated markets, securities exchanges or other markets, the investment company is not required to place its assets in custody with a depositary [...]. 3. The investment company shall also not be required to place its assets in custody with a depositary if at least eighty percent of its units are traded on a regulated market, securities exchange or a regulated market which operates regularly and is recognised and open to the public, these being mentioned in the articles of incorporation[...].[2]

4. We query whether referring to the country of "establishment" of a depositary may be misleading in those cases where the depositary is established as a branch. Although Box 6 clarifies the matter, we would welcome a rewording of Box 4 to ensure consistency and the removal of any possible ambiguity. Please note that our concerns as far as the definition of domicile referred to above remain valid.

1.2 Box 3: Local point of contact in case of common funds

Although we acknowledge that the depositary may be requested to perform some additional services, such as for instance the provision of a legal address and the facilitation of informative flows between the management company and the UCITS' regulators, activities related to the issue

[1] Council Directive 85/611/EEC, article 5(3)(b)
[2] Decree of 23 July 2005 containing provisions on the implementation of the act on the supervision of collective investment schemes, Section 17.

and cancellation of UCITS, and in general in the maintenance of relations with unitholders should remain with the management company and/or the UCITS' distributors.

We would therefore suggest to review the current wording of point 2.

1.3 Box 4: Depositary

We suggest more consideration to be given to point 6 of the explanatory text, according to which "a greater degree of harmonisation of the duties of the depositary would smooth the functioning of the management company passport. In our opinion, there is an urgent need to proceed to a Level 2 clarification exercise of the role of the depositary, not only in respect of cross-border management company services.

The current wording of Box 4 does not take into account the multiple and substantial differences that exist between different jurisdictions as far as the role of the depositary is concerned and which raise investor protection concerns already in the current regulatory framework.

Not looking into this matter with sufficient detail will eventually provide for serious regulatory issues not only as far as the management company passport is concerned, but also in terms of risk management process and master-feeder structures.

We therefore suggest the wording of Box 4 to be amended to stress the urgency of this clarification exercise. As already stated in our response to your call for evidence, the European Commission has recognised long ago[3] that:

1) depositaries are defined vaguely and by default (*"the depositary's legal nature is thus left to Member States' discretion"*);
2) depositaries have certain prudential duties, but with vague legal content (*"the Directive does not specify whether the performance of any control duty is subject to an obligation of result, or rather to a (lesser) obligation of means"*);
3) there are a few precise safeguards against conflict of interests in depositaries.

Although we fully understand CESR's need to focus on the issue of the management company passport, we see the absence of a strong statement on the need to harmonise the role of the depositary as a major weakness of the draft advice and not looking into this matter will be regarded in the long term as a missed opportunity.

2. Applicable law and allocation of supervisory responsibilities

2.1 Box 5: Applicable law and allocation of responsibilities in the case of free provision of services

The list of activities identified in point 2 seems excessively detailed in our view. Even more so, in the case of a corporate UCITS, due to the fact that the regulated entity is the investment company, rather than the management company. A principled-based approach could provide for better regulation in this case. The simple reference to "constitution" and "functioning" of the UCITS should suffice.

As far as point 7 is concerned, requiring management companies that passport their services to comply with the UCITS Home State rules as regards delegation arrangements, conflict of interest and conduct of business rules in the interim, until Level 2 harmonisation is achieved, would be unnecessary and expensive. Please consider that delegation arrangements are strategic decisions.

[3] Communication from the Commission to the Council and to the European Parliament, COM(2004) 207 of 30 March 2004

We agree on that UCITS Home State risk management principles should be applied, but only in respect of technical and quantitative aspects of risk management.

As a general comment, we suggest that a clearer distinction should be made between what relates directly to the UCITS and its distribution (portfolio management, including relevant limits and risk management; distribution; NAV calculation and NAV error correction procedures) and what relates to the internal organisation of service providers. The former should be managed in accordance with the UCITS regulator guidelines, the latter should be managed in accordance to the service provider's regulator guidelines. In this case again, we suggest a principle-based approach is more effective.

3. Authorisation procedures for UCITS fund whose management company is established in another Member State

3.1 Box 8: UCITS authorisation

We suggest Box 8 to provide for an indication of the maximum timeframe for the UCITS regulator to grant or refuse approval to a foreign management company to provide its services on a cross-border basis.

On the basis of our experience, we recommend the regulatory permissions of a management company (as of any fund service provider) to remain distinct from the UCITS regulatory approval process. The approval and implementation of a fund servicing platform is a long-term and expensive process that cannot be dealt within at the same time of a UCITS approval process.

In our view, any management company authorised in any EU Member State should be allowed to provide services to UCITS on a cross-border basis unless the UCITS regulator believes that additional information is required due to the particular characteristics of the UCITS – therefore, by way of example, no information should be required by the UCITS regulator in terms of internal delegation arrangements or arrangements to deal with conflicts of interest.

4. On-going supervision of the management of the fund

4.1 Box 9: Information flow to competent authorities

We welcome suggestions to establish of a common set of reporting rules as per point 3. Regulatory reporting requirements have different scope and contents in different jurisdictions and are very often a source of undue cost and complexities.

As regards to point 5, we do not share the view that the costs for conducting verifications/investigations should necessarily be charged to the management company, with the possible exceptions of verifications/investigations required due to identified cases of non-compliance by the Management Company. Surely it would seem unfair to charge those costs to the management company for verifications/investigations that are conducted as part of business as usual monitoring.

4.2 Box 10: Information flow between management company, UCITS and depositary

Although we appreciate that implementing measures may be established at a later stage, we suggest Box 10 to be amended to make specific reference to need of the depositary to receive any information it considers necessary for the purpose of ensuring safekeeping of the assets.

We consider that implementing measures aiming at regulating information flows between parties are not required, for the following reasons:

1. The lack of harmonisation in the roles and responsibilities of different parties may prevent the establishment of standard templates;

2. Regulations are not as flexible as contractual arrangements. We consider that principles identified in point 1. are sufficient, but that they should be complemented with an overarching principle, according to which the liability of a party (which includes investment companies) may not be affected by the fact of having delegated some of its functions to a third party. This is a general comment that applies throughout the draft advice, as far as contractual agreements are concerned.

3. We consider an analogy should be drawn with custody delegation arrangements, that are not regulated under the directive.

4.3 Box 11: Auditors

With reference to point 7, we have similar concerns as those expressed in relation to Box 9, point 5. We consider any charges should be applied on the basis of legal and accounting principles and that no specific statements should be made as part of this exercise against the background that one of the main objectives of the management company passport is also cost efficiency. A UCITS will benefit in terms of lower costs so it would not seem unreasonable to charge them for some of the expenses related to the operational complexity of cross-border supervision.

5. Dealing with breaches of rules governing the management of the fund

5.1 Box 12 and Box 13: (no title)

In those cases where dual supervision is exercised, the risk that regulatory or technical decisions are challenged is higher than in those cases where all the UCITS service providers are established in the UCITS home Member State.

By way of example, discussions about the nature of an investment restriction breach and compensation due to the UCITS may be delayed or prolonged, also because of diverging regulatory interpretations, with possible impact upon the investors.

You may want to consider allowing the UCITS regulator to suspend any payment out of the UCITS to the (passporting) management company in respect to the services it provides, in those cases where it considers that the UCITS may have been impacted and no agreement has been reached between the parties as far as: actual qualification of the event as a breach/error, responsibility, and amount of compensation due.

C) Consultation paper on risk management principles for UCITS

As a general comment, we would suggest reviewing the application of some of the definitions used within the document. In particular, we consider that terms such as "Company" and "Board of Directors" should be better defined at the outset of the document to improve clarity.

I. Supervision

We query whether this section of the document should be referenced to your draft/final advice on the Management Company Passport, in particular as far as supervision is concerned.

II. Governance and organisation of the risk management process

2.1 Box 2: Definition of roles and responsibilities

Box 2 does not make any reference to the role of the depositary or of the fund's auditors. National regulators have introduced diverging regulatory practices in this respect, which should be analysed and harmonised as much as possible. By way of example, while in the UK the depositary is required to review the appropriateness of the RMP, in Luxembourg this obligation falls upon the fund's auditor, as part of its "long form report":

Luxembourg:	The long form report must indicate whether the control system put into place within those entities covers at least the risks inherent to the policy and the investment risks of the UCI concerned, such as: - credit/counterparty risk - market risk - settlement risk - foreign exchange risk If appropriate: - interest rate risk - liquidity risk - risk on derivative instruments The long form report must provide an analysis and an assessment of the systems put in place by the UCI to control and manage the different risks to which the UCI is exposed when it carries out its activities[4].
United Kingdom	The depositary should take reasonable care to review the appropriateness of the risk management process in line with its duties under COLL 6.6.4 R (General duties of the depositary) and COLL 6.6.14 R (Duties of the depositary and authorised fund manager: investment and borrowing powers), as appropriate[5].

We consider that any harmonisation process such as this should also make sure that the roles and responsibilities of all service providers to the UCITS are clarified and made consistent.

III. Identification and measurement of risks relevant to the UCITS

3.1 Box 6: Risk management techniques

With reference to recital 29, we query whether the reference to multiple risk components for structured products should imply full transparency, and up to which level. Is this requirement in contradiction with any of the Eligible Assets Directive[6] provisions? We consider that a clear definition of "structured product" should be provided for.

[4] CSSF Circular 2002/8: Guidelines concerning the task of auditors of undertakings for collective investment
[5] FSA COLL Handbook, 5.2.25 G
[6] Commission Directive 2007/16/EC of 19 March 2007

With reference to recital 31, we appreciate the need to assess and measure all risks, but we would welcome further clarifications in terms of operational risk. In most cases a UCITS does not perform any operational process. Operational risks are typically faced by service providers such as the management company, the depositary, the administrator, the transfer agent and the distributor.

Any losses incurred into as a result of processes identified in recital 31 (technical features of trading, settlement and valuation procedure), would normally not impact the UCITS (with the possible exception of self-managed investment companies – surely not for contractual UCITS).

3.2 Box 8: The link between risk measurement and asset valuation

Although we are conscious that this consultation paper relates to risk management principles only, we believe that the "asset valuation" issue should be deal with in more detail. We are concerned in particular about the following:

1. Risk of conflicts: the risk of conflict of interests is, we believe, a more material and contentious one than pure operational risk, however it is not put under adequate consideration. Considering that article 21 of the UCITS Directive refers to the risk management process as well as to accurate and independent assessment of the value of OTC derivative instruments, we believe that a solid framework should be established to ensure appropriate governance of the process.

2. Role of the depositary: we think more clarity is required as far as the role of the depositary is concerned as some regulators have imposed additional requirements. We consider this will have also material implications in the case of master-feeder structures that require the feeder UCITS' depositary oversight of the activities of the master UCITS' management company (or investment company, as appropriate). By way of example, we refer to the following:

Ireland:	**Over-the-counter derivative contracts**[7]*:* • Where a CIS will value an OTC derivative using an alternative valuation: - the Financial Regulator expects that the CIS will follow international best practice and adhere to the principles on valuation of OTC instruments established by bodies such as IOSCO and AIMA; - the alternative valuation is that provided by a competent person appointed by the manager, directors or general partner *and approved for the purpose by the trustee, or a valuation by any other means provided that the value is approved by the trustee*; and - the alternative valuation must be reconciled to the counterparty valuation on a monthly basis. Where significant differences arise these must be promptly investigated and explained. • Where a CIS will value an OTC derivative using the counterparty valuation: - the valuation must be approved or verified by a party *who is approved for the purpose by the trustee* and who is independent of the counterparty; - the independent verification must be carried out at least weekly in the case of UCITS and at least monthly in the case of non-UCITS.

3. Valuation and verification: we would welcome clarification in respect of the "verification of valuation" issue, as defined under article 8(4)(b) of the Eligible Assets Directive, in particular as far as the independent third party confirmation is concerned. The independent third party may have to rely itself on data provided by the counterparty of the OTC derivative instrument.

IV. Management of risks relevant to the UCITS

4.1 Box 11: Effectiveness of the risk management process

[7] Irish Financial Regulator: Guidance Note 01/00: valuation of the assets of collective investment schemes

We suggest guidelines to be provided in terms of definition of breaches and relevant corrective actions. While there is ample and established business and regulatory practice as far as investment breaches are concerned, very little is available in terms of risk limits breaches.

Clarification is required in particular in terms of breaches definition (does the concept of active/advertent or passive/inadvertent breach apply?), their correction (would any compensation be due to the fund or investors, and under which circumstances?), identification (has the depositary any responsibility to monitor risk limits, and under which terms?) and reporting (is any reporting due for breaches to the depositary, the manager, the regulator, and under which circumstances?).

D) Additional considerations and separate matters

Some of our remarks in respect of the Management Company Passport and the Risk Management Process may be more easily understood if put in a global context.

We believe that recurring issues are identified whenever the attempt is made to establish, and regulate, cross-border structures. This is mainly due to the diverging national interpretations in the role and responsibilities of the different parties. We are convinced that such divergences will prevent the success of any cross-border arrangement, in particular with reference to the Management Company Passport and to Master-Feeder structures.

In both cases we have identified at least the following recurring themes:

- Multiplication of contractual arrangements;
- Absence of mutual recognition principles;
- Multiplication of oversight and control functions;
- Increasing complexity with unclear or undefined cost;
- Unresolved tax efficiency and tax domiciliation concerns.

It is unlikely, in our view, that any cross-border structure impacting 27 potentially diverging jurisdictions can be adequately regulated with the current approach. Although we recognise the need to accelerate the process for the definition of the UCITS IV reform, we believe both CESR and the EC should be taking a clear and net position and continue to drive the harmonisation process. Recent market events have further exacerbated this need and CESR could play a prominent role in promoting the harmonisation process, via the EC's request for advice on the Management Company Passport.

We would be glad to discuss the above matters with you and provide practical examples of areas/processes whose harmonisation would bring material benefits from an investor protection, cost saving and clarity point of view.