

PIONEER INVESTMENTS

UCITS IV Level 2 Implementation – CESR CALL FOR EVIDENCE

Pioneer Investments response to the CESR call for evidence and possible implementing measures concerning the future UCITS Directive

Pioneer Investments is a global asset manager with assets under management of €159 billion as at February 2009 and a presence in 31 countries around the world. The Pioneer Investments group provides a wide range of investments solutions to clients that include institutional corporations and private investors around the world. Currently, Pioneer Investments maintains a number of extensive product ranges in various EU jurisdictions, each of which necessitates the maintenance of a local support infrastructure and which militates against the achievement of increasingly necessary economies of scale.

Pioneer Investments welcomes the urgency with which CESR is treating the development of Level 2 measures and believes that, despite the current systemic pressures on financial services generally, the agenda for UCITS IV continues to be the correct one and its delivery is vital for the continued development of the UCITS product, a gold standard for investing globally.

Pioneer Investments in Europe, like most cross-border promoters, has used the various passports offered by MiFID to provide services such as portfolio management, distribution support, investment advice and receipt and transmission of orders on a branched and non-branched basis throughout the EU for a number of years. This flexibility and ease of operation of our MiFID firms throws into stark relief the constraints that still exist in our ability to structure our UCITS Management Companies and investment funds in the most efficient manner. Current market conditions have enormously increased competitive pressure on the European asset management industry. The need for consolidation and adaptation of our business model is greater than ever, as is the need to remove small and uncompetitive product, to industrialise our processes in preferred centres of excellence, whether in-sourced or out-sourced.

With regard to the development of Level 2 implementation measures, Pioneer Investments is not in favour of any particular prioritisation and considers it important to put in place a programme which ensures transposition of all Level 2 measures at the same time as the Level 1 Directive. Likewise the development and delivery of any necessary Level 3 measures should not inhibit the timely practical implementation of the UCITS IV package into the national law of Member States

Management Company Passport

Organisation

Pioneer considers that in order to avail of the management company passport, the management company should demonstrate to its home regulator compliance with General Organisation Requirements similar to those contained in Directive 2006/73 Art 5 together with like provisions in terms of outsourcing of functions or activities. The imposition of organisation requirements of MiFID would not represent a significant burden to pan-European or global asset management groups and is already a requirement in some Member

States such as Italy. However, the implementing measures should not go beyond the measures specified at MiFID Level 2.

Risk Management

Pioneer believes it is important to provide sufficient definition at Level 2 to ensure as great a degree of harmonisation as is feasible. Should the principles enunciated be set at too high a level, then difficulties of mutual recognition of the management company passport will be inevitable and it would not be acceptable to contemplate failure of the management company passport through a lack of confidence on the part of supervisors in the degree of harmonisation.

It should also be established that outsourcing and delegation of risk management activities by the management company is not inhibited by the risk management guidelines and provisions which are developed in respect of management companies. It is important that delegation to other supervised entities enables reduced resource burdens within management companies. One of the anticipated benefits of UCITS IV is the creation of centres of excellence and the development of an enhanced risk management regime should not cause a dilution of those benefits and lead to reduced use of the passport.

Identification of categories of material risks relevant for UCITS or for a particular UCITS related to each portfolio and their contribution to the overall risk profile of the portfolio should be done in line with principles set by CESR in February 2009 "Risk management principles for UCITS". Investment risk factors are categorized as follows Market Risk (including Credit Risk), Counterparty Risk and Liquidity Risk – The risk stemming from the lack of marketability of an investment that cannot be bought or sold quickly enough to prevent or minimize a loss. Management companies should define how much of the overall risk of a portfolio should come from core and non-core strategies in order to ensure coherence with the risk profile of each fund.

The risk measurement methods should be in line with the principles set by CESR in February 2009 "Risk management principles for UCITS". Moreover, in the same document it is stated that these principles will be defined in a detailed technical and quantitative paper that will provide a great level of detail. It should be encouraged that any Level 3 measures are brought forward at the same time as level 2.

Market risk would be measured by different indicators with the aim of covering the different risk dimensions. Market risk measures may be grouped into the following categories: standard exposure (i.e. equity position vs. cash position, duration relative to benchmark...), sensitivity (e.g. greeks), ex-post (i.e. tracking error volatility, volatility...) and ex-ante risk measures (e.g. Value at Risk, ex-ante tracking error volatility). Counterparty risk could be measured by a mark-to-market together with add-on methodology, as a minimum. Counterparty risk should be mitigated using netting and collateral arrangements.

In terms of the processes to be employed in order to mitigate or otherwise manage and monitor the identified risks, the design of a risk control framework should include the following steps: 1) preliminary phase of identification of relevant risks; 2) set up of adequate systems for risk calculation and forecast (IT infrastructures, software, hardware, etc.); 3) establishment of effective risk governance, including assignment of roles and responsibilities to the relevant functions, delegations of power to decision-making bodies for the purposes of the management of risk, design of policies and procedures providing for the establishment of limit setting and escalation processes; and workflows for the effective management and control of risks; 4) set up of a reporting structure, both for internal use (to investments, top management, etc.) and for Regulatory/Statutory needs, including reports to Board of Directors

of the company, the body ultimately responsible for the management of risks on clients' accounts.

These steps are not meant to be sequential, rather, they must all be part of a set up process involving different units within the company. The risks identified in step 1) feed the design of investment processes and, in turn, the evaluation of adequate IT systems, both on the side of risk monitoring (risk systems, data repository and interface, etc.) and on the front office/back office side. This evaluation should aim at checking whether the systems in place will allow risk exposures to be kept in check and prevent the occurrence of unplanned risks (investment and compliance limits) and allow the relevant units/bodies to have full disclosure (both on an ex-ante and ex-post basis) of the risk variables entering the investment process, with a specific focus on the ability to provide appropriate decomposition of risk along the relevant dimensions. The adoption of a coherent risk policy, setting the extent and the nature of limits on risks and the process to monitor and mitigate such risks (operational risk included), is a necessary requirement for an effective risk control framework.

With regard to the accurate and independent assessment of the value of OTC derivatives as referred to in article 51 (1), Pioneer recommends that detailed rules be dealt with as Level 3 measures. Further, clarification should be given to the framework should be adopted where NAV calculation is fully delegated to a depositary bank. This aspect is not mentioned in principles set by CESR in February 2009 "Risk management principles for UCITS".

With regard to the content and the procedure to be followed by the management company for communicating the information mentioned in Article 51 (1) to the competent authorities of its home Member State. Each management company should provide information, as a minimum, relating to:

- a) Organization of the Risk Management department (number of resources, roles and responsibilities, etc.);
- b) Risk methodologies for computation of all relevant risks; and
- c) Processes and procedures describing main aspects of risk management activities (i.e. risk limits settings, monitoring and escalation process...).

Measures to be taken by Depositaries

The agreement between the management company and the UCITS depositary should not be required to re-define the responsibilities of the parties in respect of compliance with the risk profile of the UCITS and in general should only seek to ensure enhanced responsibility for the provision of information to enable the management company passport to work. Following on from the de Larosière report, it is also important that the Commission delivers its review of EU rules relating to depositary and custodial activities. Nonetheless the results of this review should not impact the delivery schedule of UCITS IV.

Pioneer believes that Level 2 clarification should be made to ensure that the law of the depositary agreement is that of the domicile of the UCITS.

KII

The principal objective should be to agree on a maximum two page document which has to be implemented and used in all Member States. The main focus within the document should be on the presentation of the essential features of fund, the risks, the costs and its past performance. It may be appropriate at Level 2 to seek harmonisation of the manner and extent of and presentation of cost (and fees such as performance fees). It should be determined whether TER data is optional for inclusion. In the event of inclusion of TER data it is recommended that a disclosure is made as to whether or not transaction fees are included in

such data (the inclusion of transaction fees being optional). It should be a matter for the management company to determine whether other documentation relating to the fund in question is referenced in the KII.

With regard to publication of the KII, Pioneer would recommend a harmonised approach to enabling web publication without the need for prior notification of investors.

Fund Mergers and Master/Feeder Structures

A standardised information letter to shareholders informing them of a merger should provide information with regard to the acquiring fund's investment policy and risk profile as well as other material information. It may be appropriate to consider a requirement to annex the acquiring fund KII.

Pioneer recommends that the notification of acquiring fund shareholders be kept to a necessary minimum and indeed recommends that the acquiring fund regulator should have the authority to exempt notification of acquiring fund shareholders in circumstances where in its opinion there is no change to the prospectus of acquiring fund or of the risk profile if the fund and consequently the interests of shareholders in the fund.

In terms of tax treatment of cross-border mergers, the issue by the European Commission of a communication in this regard is important to set pointers and parameters for the guidance of interested parties and bodies.

Notifications

The system of notification should continue to be encouraged to develop in a non-protectionist manner making full use of electronic facilities. A goal of the provisions should be to avoid opportunities for grey zones to develop in terms of the roles and responsibilities the home and host regulators.

In practical terms website facilities would benefit from clear paths to discrete UCITS regulations and information and should provide contact and communication information for market participants.

With regard to host member state access to statutory documents, prospectus, etc. and changes to documents, the storage of documents should be the responsibility of national authorities in view of their direct contact with the managers and providers. National sites established for this purpose should be accessible to all EU authorities.

The process of UCITS product notification should be fully harmonised in documentation terms and the electronic notification process to be recommended upon by CESR should not admit to supplementary national documentation requirements such as filing forms to accompany registration applications or changes to registered funds. One clear objective of the notification process in respect of changes to existing filed documents should be to enable simple and direct notification to be made by funds providers themselves without the cost and administration burden of undue external professional support.

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