

CESR

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Response to CESR:s consultation paper “CESR Technical advice to the European Commission on the level 2 measures related to the UCITS management company passport,” CESR/09-624

Skandinaviska Enskilda Banken AB:s (SEB) is the mother company in the SEB Group that provides financial and investment services in (mainly) northern Europe. In the SEB Group we have UCITS management companies in Sweden and other EEA-jurisdictions.

This is our response to CESR:s consultation paper.

As an overall comment we support CESR:s approach to align the level 2 measures to the MiFID regime. But, as CESR points out, taking into account the specificities of the collective management business. However – those adjustments to the specificities should be done by adjusting relevant MiFID provisions and not adding on new functions or duties with no correspondence to MiFID, like the parts on “general investment policy”, p. 32 ff, the “due-diligence” requirements p. 65 ff, and details on depositary agreements, p. 90 ff etc. Whilst the alignment with MiFID can help to keep implementation costs down and create a level playing field – the additional requirements will do the opposite. And in our opinion the cons with the additional requirements clearly outweighs the pros.

As concerns questions on costs it is not possible to estimate what costs the different suggestions may impose – only that they will impose costs.

Section I (p 7-56)**1. Do you agree with the general approach proposed by CESR? (p 10)**

Yes – but with the reservation above: adjustments to the specificities of the collective management business should be done by adjusting relevant MiFID provisions and not adding on new functions or duties.

3. In your view, what are the benefits of aligning the organisational requirements for UCITS management companies with the relevant MiFID requirements? (p 13-14)

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With the starting point that it is a question of having level 2 measures that are aligned with MiFID or level 2 measures that are not: For a Group like SEB that have already adjusted to MiFID – it will reduce implementation costs since we can reuse existing solutions. And perhaps more important we can use group wide functions and solutions for compliance, internal audit, complaints handling, personal transactions and record keeping.

4. Do you agree with CESR's proposals on organisational procedures and arrangements for management companies? If not, please suggest alternatives. (p 15-16)

We agree. [Just a copy-paste of MiFID level 2]

5. Do you agree with the above CESR proposal on the responsibility of senior management of management companies? If not, please suggest alternatives. (p 17-18)

We agree. [Just a copy-paste of MiFID level 2. But a question – do we have periodic information from compliance to senior management of the management companies (NB not only to some artificial matrix management group?)]

6. Do you agree with the above CESR proposal on the remuneration policy of management companies? If not, please suggest alternatives. (p 18-19)

We agree as long as it is in line with the Commission recommendation.

7. In your view, should the requirements set out above in relation to senior management be extended to cover all employees of UCITS management companies? (p 18-19)

No – it should reflect the Commission recommendation and not impose additional requirements.

8. Do you agree with the above CESR proposal on the compliance function of management companies? If not, please suggest alternatives. (p. 20-22)

We agree. [just a copy-paste of MiFID]

9. Do you agree with the above CESR proposal on the internal audit of management companies? If not, please suggest alternatives. (p. 23)

We agree. [just a copy-paste of MiFID]

10. Do you agree with the CESR's proposal on complaints handling procedures for management companies? If not, please suggest alternatives. (p. 24)

We agree.

11. Do you agree with CESR's proposals on personal transactions? If not, please suggest (p. 25-26)

We agree.

15. Do you agree with CESR's proposals on investment strategies? If not, please suggest alternatives. (p. 32-33)

No. This appears like very indistinct provisions and we don't really understand what they are meant to achieve. There are existing clear rules on eligible assets and investment restrictions and that the investment policy shall be disclosed and explained to clients and authorities. The present (and proposed rules) regarding risk control, compliance, internal audit etc are sufficient measures to ensure that the UCITS assets are invested in accordance with the prospectus/fund rules. The proposed rules in this section does neither add nor explain anything.

17. Do you agree on the proposed requirements relating to the exercise of voting rights? If not, please suggest alternatives. (p. 34)

No. The duty to act in the interest of the unit holders (also regarding exercise of voting rights) lies already within the existing rules. And as a consequence of the proposed rules on handling conflicts of interests a management company will be required to have appropriate measures to handle also its use of voting rights. The proposed rules in this section do neither add nor explain anything.

19. Do you agree with the proposed approach? Is there any additional adaptation you would suggest? (p. 35)

We agree.

21. In your view, what are the benefits of aligning the requirements for conflicts of interest for UCITS management companies with the relevant MiFID requirements? (p. 35-36)

With the starting point that it is a question of having level 2 measures that are aligned with MiFID or level 2 measures that are not: For a Group like SEB that have already adjusted to MiFID – it will reduce implementation costs since we can reuse existing solutions. And aligned measures will facilitate cross border activities within a group and create a more level playing field also between different products and services.

22. Do you agree with CESR's proposals on the criteria for identifying conflicts? If not, please suggest alternatives (p. 37-38)

We agree.

23. Do you agree with CESR's proposals on the identification and management of conflicts? If not, please suggest alternatives. (p. 39-40)

We agree. But there is no need for a Conflicts of Interest policy per UCITS, one per management company is sufficient.

24. Do you agree with the CESR's proposals on the independence of the persons managing conflicts? If not, please suggest alternatives. (p. 41-42)

We agree.

25. Do you agree with CESR's proposals on records of activities giving rise to conflicts of interest? If not, please suggest alternatives. (p. 43)

We agree.

26. Do you agree with CESR's proposals on management of non-neutralised conflicts? If not, please suggest alternatives.

We agree.

27. Are there any other issues you feel should be considered in addition to those already mentioned in this paper?

No.

Section II (p. 57-84)

1. Do you agree with CESR's proposals on the duty of management companies to act in the best interest of UCITS and their unit holders and on due diligence requirements? If not, please suggest alternatives. (p. 65-66)

We agree with the principle that a management company should ensure a high level of diligence in the selection of investments. But see no need for the proposed detailed rules. The general organisational requirements (see p. 15 in the CP) and the best execution requirements (see p. 72 ff in the CP) are sufficient to provide for a high level of diligence. The proposal does neither add nor clarify anything.

3. Do you agree with this general approach proposed by CESR for conduct of business rules relating to direct selling? If not, please suggest alternatives. (p. 67)

We agree.

4. What are the additional costs of this proposal for management companies? If possible, please quantify your estimate. What are the benefits of this proposal?

With the starting point that it is a question of having level 2 measures that are aligned with MiFID or level 2 measures that are not: For a Group like SEB that have already adjusted to MiFID the implementation costs are marginal. The benefits of the proposal are that it will facilitate cross border activities within a group and create a more level playing field also between different products and services.

5. Do you agree with CESR's proposals on conduct of business rules relating to direct selling? If not, please suggest alternatives. (p.68-70)

We agree.

6. What are the additional costs of this proposal for UCITS management companies? If possible, please quantify your estimate. What are the benefits of this proposal? (p. 68-70)

With the starting point that it is a question of having level 2 measures that are aligned with MiFID or level 2 measures that are not: For a Group like SEB that have already adjusted to MiFID the implementation costs are marginal. The benefits of the proposal are that it will facilitate cross border activities within a group and create a more level playing field also between different products and services.

7. Do you agree with CESR's proposals on direct execution of orders by management companies? If not, please suggest alternatives. (p. 72-73)

We agree.

8. What are the additional costs of this proposal for UCITS management companies? If possible, please quantify your estimate. What are the benefits of this proposal? (p. 72-73)

With the starting point that it is a question of having level 2 measures that are aligned with MiFID or level 2 measures that are not: For a Group like SEB that have already adjusted to MiFID the implementation costs are marginal. The benefits of the proposal are that it will facilitate cross border activities within a group and create a more level playing field also between different products and services.

9. Do you agree with CESR's proposals on the placement of orders with or transmission to other entities for execution? If not, please suggest alternatives. (p. 74-75)

We agree.

10. What are the additional costs of this proposal for UCITS management companies? If possible, please quantify your estimate. What are the benefits of this proposal? (p. 74-75)

With the starting point that it is a question of having level 2 measures that are aligned with MiFID or level 2 measures that are not: For a Group like SEB that have already adjusted to MiFID the implementation costs are marginal. The benefits of the proposal are that it will facilitate cross border activities within a group and create a more level playing field also between different products and services.

11. Do you agree with CESR's proposals on the handling of orders? If not, please suggest alternatives. (p. 76-77)

We agree.

12. What are the additional costs of this proposal for UCITS management companies? If possible, please quantify your estimate. What are the benefits of this proposal? (p. 76-77)

With the starting point that it is a question of having level 2 measures that are aligned with MiFID or level 2 measures that are not: For a Group like SEB that have already adjusted to MiFID the implementation costs are marginal. The benefits of the proposal are that it will facilitate cross border activities within a group and create a more level playing field also between different products and services.

13. Do you agree with CESR's proposals on inducements? If not, please suggest alternatives. (p. 78-79)

We agree.

14. What are the additional costs of this proposal for UCITS management companies? If possible, please quantify your estimate. What are the benefits of this proposal (p. 78-79)

With the starting point that it is a question of having level 2 measures that are aligned with MiFID or level 2 measures that are not: For a Group like SEB that have already adjusted to MiFID the implementation costs are marginal. The benefits of the proposal are that it will facilitate cross border activities within a group and create a more level playing field also between different products and services.

Section III (p. 85-97)

1. Do you agree that no additional requirements should be imposed on a depositary when the management company is situated in another Member State? (p. 89)

We agree.

3. Are the proposed requirements appropriate? (p. 90-94)

No. They are too detailed. CESR should consider that this concerns agreements between professional and normally regulated parties. It would be far more appropriate to define and specify the depositary's duties to monitor the investments and transactions in the UCITS entrusted to it. Specific follow-up and monitoring requirements on the management company and on the depositary will induce both parties to agree on the most efficient terms to be able to meet those requirements.

4. Are the information flows exchanged in relation to the outsourcing of activities by the management company or the depositary relevant? (p. 90-94)

No, see the answer to question 3 above.

5. Is it appropriate to indicate in the written agreement that each party may request from the other information on the criteria used to select delegates? In particular, is it appropriate that the parties may agree that the depositary should provide information on such criteria to the management company? (p. 90-94)

No, see the answer to question 3 above.

6. Is the split between suggestions for level 2 measures and envisaged level 3 guidelines appropriate? (p. 90-94)

No, see the answer to question 3 above.

7. Do you see a need for level 2 measures in this area or are the level 1 provisions sufficiently clear and precise? (p. 90-94)

No there is no need for level 2 measures in this area, see the answer to question 3 above.

8. Do you consider that the proposed standard arrangements and particulars of the agreement are detailed enough? (p. 90-94)

No they are far too detailed, see the answer to question 3 above.

9. What are the benefits of such a standardisation in terms of harmonisation, clarity, legal certainty etc.? (p. 90-94)

There are no benefits – it will impede the development of efficient arrangements to meet the control- and monitoring requirements. Instead of trying to reach the most effective solution the parties will just “tick the boxes”.

11. Do you agree that the agreement between the management company the depositary should be governed by the national law of the UCITS? If not, what alternative would you propose? (p. 95)

We disagree. The parties should be able to freely choose the applicable law.

13. Do you agree that investment companies should not be treated differently from common funds in respect of CESR's proposals? (p. 96)

We agree.

14. In your view, would such an approach impose unnecessary and/or burdensome requirements on investment companies? Would equal treatment improve the level playing field between different types of UCITS? (p. 96)

We believe that equal treatment will improve the level playing field between different types of UCITS.

15. Do you agree with CESR's proposal that equivalent rules should apply to domestic and cross-border situations? In particular, do you agree that depositaries should enter into a written agreement with the management company irrespective of where the latter is situated? (p. 97)

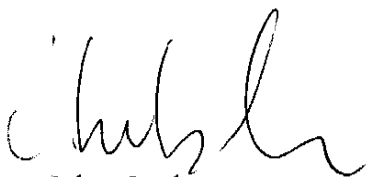
We agree that equivalent rules should apply, but as said above (questions 3-9) the proposed rules are not appropriate.

16. Do you think that such a recommendation would increase the level of protection for UCITS investors? Do you agree that a level playing field between rules applicable to domestic situations and those applicable to cross-border management of UCITS offsets potential costs for the industry? (p. 97)

Equivalent rules on the monitoring and control duties would increase the level of protection, but as said above (questions 3-9) the proposed rules are not appropriate.

17. What would be the benefits of such an extension in terms of harmonisation of rules across Europe? What would be the costs of extending rules designed for cross-border situations to purely domestic situations? In particular, would a provision stating that the management company and the UCITS depositary have to enter into a written agreement irrespective of their location add burdensome requirements to the asset management sector? (p. 97)

Harmonized rules will facilitate cross-border competition, but as said above (questions 3-9) the proposed rules are not appropriate.



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