



POLISH FINANCIAL SUPERVISION AUTHORITY

Warsaw, 14th October 2008

DWZ/083/83/1/08

Mr Carlo Comporti
Secretary General
Committee of European Securities Regulators (CESR)
Paris

Dear Carlo,

KNF welcomes the opportunity to comment on the Consultation paper on UCITS Management Company Passport. We appreciate CESR works on shaping up the new regulatory framework for UCITS.

Nonetheless, there are some serious concerns we would like to address with regard to this issue. Please find attached our statement that outlines the details of KNF position.

Bottom line is that, in view of the KNF, adoption of the so-called "full" Management Company Passport (MCP) on a cross-border basis requires much more cost-benefit analysis, since it may have a significant negative impact on i. level of investor protection as well as ii. efficiency of supervision. Implementation of full MCP would create numerous practical problems, particularly for markets that rely on funds of contractual type. Existing proposals do not envisage any realistic measures to ensure that the UCITS competent authority is able to supervise a remote management company with respect to all matters that it should properly take care of.

KNF is afraid that this issue may entail a significant deterioration of the UCITS brand, if not properly addressed. We are certain that CESR advice will not shrug off those objections by merely stating that they may be solved at a later stage in form of level 2 regulations.

Sincerely yours,

Bogusław Budziński
Director
International Cooperation Office

KNF (Polish FSA) position regarding the CESR Consultation paper on UCITS Management Company Passport

The KNF - Polish Financial Supervision Authority would like to use the opportunity to participate in the public consultation on the CESR's document on UCITS management company passport in order to present its opinion regarding the introduction of the passport and explain its concerns.

The UCITS management company passport ("MCP") would enable management companies to establish or to manage UCITS funds in other Member States. The Polish FSA understands that this is an important business possibility for management companies and would support the concept of the MCP provided that new provisions ensure a proper level of investor's protection and enables competent authorities to exercise the effective and efficient supervision concerning UCITS, in particular UCITS of the contractual type. The MCP cannot weaken the global UCITS brand that is widely recognized and enjoys great reputation.

CESR Consultation paper presents rules concerning the MCP that cause serious concerns of the Polish FSA with regard to investor's interests and efficient supervision. The Polish FSA is of the opinion that a final version of the CESR Advice on the MCP should address all present concerns connected with introduction of the MCP otherwise the advice would not be consistent with the European Commission principle that investors in funds that are managed on a cross-border basis should not be exposed to additional legal and operational risks, or lower standards of supervision.

Responses to questions

Do you agree with CESR's proposal in Box 1?

- We agree with the proposed provisions on the domicile and authorisation of the management company. It is reasonable in case of a management company to follow the same approach as envisaged for investment firms in provisions of MiFID with respect to the domicile.

Do you agree with CESR's proposals in Box 2?

- In our view, reference to the Member State in which the management company has applied for authorisation of the UCITS allows for defining the domicile of UCITS. However, this provision can result in establishing "empty letter boxes"; it is abandoning the present principle that the management company's or the investment company's registered office is situated in the UCITS home Member State which have guaranteed so far that the UCITS could not become only a "virtual entry" in a register of investment funds.

Do you consider the additional criteria should be set to define the domicile of contractual funds?

- As far as the domicile of the UCITS of contractual type is concerned, it would be advisable that an additional rule is introduced, according to which a UCITS home Member State is also the State where the administrative functions of the UCITS are carried out, those which are laid down in the Annex II of the UCITS Directive.

Do you agree with CESR's proposal in Box 3? Do you agree that there is an interest for investors and the UCITS competent authority in having the functions indicated in Box 3 performed by an entity located in the same Member State as the UCITS? Do you believe that there is an interest for investors and the UCITS competent authority in having a legal address in the jurisdiction where the UCITS is located? Do you consider that the local point of contact should provide additional functions, and namely the maintenance of the unit-holders register?

- The local point can be very useful for investors as it facilitates investor's communication with the UCITS in case a non-corporate UCITS is managed by a non-resident management company on the basis of passport. This is crucial that investors of UCITS managed on the remote basis should not suffer any additional inconveniences caused by the fact that the fund is operated by an entity from another jurisdiction that does not use investor's local language. The local point of contact is necessary from the point of view of investor's interests, serving as an entity transmitting correspondence, orders etc. between management company and investors. It may help the UCITS competent authority as a legal address, but the local point of contact according to rules in Box 3 cannot be considered as the entity that improves the UCITS competent authority's opportunities for efficient supervision.

In our opinion, UCITS in the contractual form should provide its administrative functions in its home Member State. Maintenance of the unit-holders register is one example but there are other functions that should be conducted in the UCITS home Member State, pursuant to the list of administrative functions laid down in the Annex II of the UCITS Directive. It can be carried out by a branch of the management company established in the UCITS home Member State, or in another form that should be defined in the CESR Technical Advice on the MCP. The best solution is establishing a branch - as this is the most clear and regulated form of providing activity by a management company. Therefore the role of the local point of contact should be included in administrative functions carried out by the management company in the UCITS home Member State in the form of a branch or other indicated in the provisions.

Additionally, we are reluctant to agree that functions as the local point of contact could be performed by the depositary of the UCITS. The depositary has its own obligations and it is obliged to act independently and solely in the interest of the unit-holders thus its activity must be completely separated from the functions of the management company.

Do you agree with CESR's proposals in Box 4? Do you consider that there is an interest for investors in harmonising the possible standard agreements to be used by depositary and management company?

- We agree with the proposals in Box 4. As far as an issue of an agreement between depositary and management company and the possible standard of it we think that it can be useful but not necessary.

Do you agree with CESR's proposals in Box 5? Do you agree that further harmonisation in the areas in Box 5 above will be beneficial for ensuring a level playing field and adequate investor protection in the European market? Do you suggest other areas that would benefit from further harmonisation?

- We agree with the list of functions indicated in para. 2 that should be regulated pursuant to UCITS home Member State rules. We agree also with proposals in paras. 7, 8 and 9.

Our major concern refers to the fact that Box 5 does not envisage any realistic measures to ensure that the UCITS competent authority will be able to supervise the remote management company with respect to the matters listed under paras. 2 and 3 as it is stated in para. 3. To enable the UCITS competent authority to exercise its competence in the area of the UCITS Member State rules applicable to the management company there should be the substance in the UCITS Member State that this authority can supervise. We mean administrative functions listed in the Annex II of the UCITS Directive or listed under para. 2 and 3. These activities should be carried out by the branch established in the UCITS home Member State or in other form if any other form is envisaged in the Box 3 or Box 5. **Unless there are specific measures proposed for providing the activities in the UCITS home Member State by the management company under free provision of services, the UCITS competent authority will be responsible for supervising compliance with the UCITS rules but will not have any real measures available to exercise its supervisory powers.** It is important to emphasize that supervising a non – resident management company will cause serious administrative cost and burden, particularly in every case when the authority will need to stay in contact with the management company to obtain any information or documents or to impose any sanctions or supervisory measures on the management company. This will also make it impossible to take immediate actions towards a management company, although it is a necessary competence of any supervisor. Therefore we cannot agree that Box 5 provides proper solutions regarding the MCP in the case of free provision of services concerning contractual funds.

Additionally, the statement in para. 5 that a UCITS competent authority should be satisfied that the management company's risk management process and conflict of interest procedures are adequate for the UCITS is not clear and in particular it does not explain what should be the impact of these procedures on the authorization of the UCITS and the choice of a management company.

In relation to harmonisation of the scope and content of the fund rules (para. 3) we consider it as the area that will be difficult to achieve compromised rules and it is not necessary.

Do you agree with CESR's proposals in Box 6?

- We agree generally with Box 6 as the establishing the branch is the best solution for the MCP in the case of the contractual funds.

We have same comments to para. 3 as in the Box 5 para. 3 and to para. 5 as in the Box 5 para. 5.

Do you agree with CESR's proposals in Box 7?

- We agree on every principle that can improve co-operation between competent authorities and between other entities.

Do you agree with CESR's proposals in Box 8? Do you agree with the role envisaged for the UCITS competent authority in the areas referred to above?

We generally support the rules proposed in Box 8, yet have strong concerns regarding para. 12. **The refusal is an exclusive competence of a UCITS competent authority, therefore there is no need to consult it with the management company competent authority.** We

understand that the management company competent authority should be informed in this case but there should not be any obligatory consultation. Additionally, the rule that every negative decision should be justified by the authority is envisaged in art. 102 of the recast UCITS Directive (old art. 51) and there is no need to duplicate this rule.

We also consider that there is no justified reason for harmonising the authorisation procedure as it is proposed in para. 15. Every Member State has adapted its own rules and there is another code of administrative proceedings in every jurisdiction. These provisions are applied to the UCITS managed domestically and the same rules should be applied to funds managed on the cross – border basis.

Do you agree with CESR's proposals in Box 9?

- We generally agree with rules proposed in Box 9.

Do you agree with CESR's proposals in Box 10?

- We support the need to ensure smooth information flow between entities indicated in Box 10 but we do not consider it necessary to harmonise detailed information to be exchanged in accordance with para. 1.

Do you agree with CESR's proposals in Box 11?

- We agree with rules proposed in Box 11.

Do you agree with CESR's proposals in Box 12?

- We agree with principles proposed in Box 12 but we have serious concerns whether para. 1 and 3 are possible to exercise in practice as this is an issue of enforcement of decision or measures taken by the authority towards a management company that is located in another jurisdiction.

Do you agree with CESR's proposals in Box 13?

- We generally agree with rules proposed in Box 13.