

ZENTRALER KREDITAUSSCHUSS

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VERBAND DEUTSCHER PFANDBRIEFBANKEN E.V. BERLIN

Mr Carlo Comporti
Committee of European
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CESR's technical advice to the European Commission on level 2 measures relating to mergers of UCITS, master-feeder UCITS structures and crossborder notification of UCITS

AZ ZKA: EG-INV-RE

AZ BVR: EG-INV-RE

Dear Mr Comporti,

We are grateful for the opportunity to comment on CESR's Call for Evidence. Please find enclosed our comments to the CESR's consultation paper. Please feel free to contact Mr Diedrich Lange in case of any queries.

Yours sincerely,

on behalf of the Zentraler Kreditausschuss
Bundesverband der Deutschen
Volksbanken und Raiffeisenbanken e.V. BVR
National Association of German Cooperative Banks



Gerhard Hofmann

by proxy

Dr. Diedrich Lange



Enclosure

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November 2009

* The ZKA is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks financial group, and the Verband deutscher Pfandbriefbanken (vdp), for the mortgage banks. Collectively, they represent more than 2,200 banks.

General

The Zentraler Kreditausschuss (ZKA) welcomes CESR's invitation to respond to the Consultation paper on CESR's technical advice to the European Commission on level 2 measures relating to mergers of UCITS, master-feeder UCITS structures and cross-border notification of UCITS. The ZKA will restrict its response to the obligations for depositaries in the context of master-feeder-structures. Therefore we concentrate our comment on the questions 21 to 27.

As a preliminary remark, the ZKA shares the opinion that the details and practicalities of the interaction between master as well as feeder fund and their respective depositary/ies should be left to the service-level-agreements of the involved parties. As it is well known, the relationship between depositaries and investment funds is currently at stake in various debates (AIFMD, Consultation of the Commission on depositaries). In addition, CESR decided to enter the arena nevertheless. However, even if the scope is narrowed as mentioned, the resulting advice covers the obligations of depositaries *in general* and is insofar partially relevant for a generic description of the functions and obligations of depositaries. This is done in contradiction to the fact that the obligations of depositaries are not yet harmonized on European level.

Response to questions 21- 27

21. Do you agree with CESR's proposals for defining the content of the depositaries' agreement?

Basically we agree with CESR's proposals for defining the content of the depositaries's agreement provided that the national rules and mandatory duties of the respective depositary are not violated.

22. Does Box 7 cover the right issues? Should other issues be addressed?

We think that box 7 partly covers the right issues. However, the NAV calculation as mentioned in Box 7 paragraph 3 (a) is not performed by the depositary but by the fund administrator in a number of Member States. Therefore information concerning the procedure of the NAV calculation should in these cases be provided by the entity that carries out this activity.

As we are not aware of the existence of any depositary's report to the unitholders we think that the respective reference to the depositary's report to unitholders in Box 7 paragraph 4 should be deleted.

23. Which option do you prefer in relation to the national law and jurisdiction applicable to crossborder agreements? Would you prefer the law of the master depositary's home State to be applicable in every case?

Regarding the law and jurisdiction applicable to cross-border-agreements we prefer option 8 (a). We think that the law of the Member State identified as the applicable law in the agreement between the master and the feeder shall also be applicable to the agreement between the depositaries. Thus we do not prefer the law of the master depositary's home state to be applicable in every case because the applicability of different national laws within one master-feeder-construction might lead to contradictions and conflicts.

24. What would be the additional costs of the proposals in Box 7? Please quantify your estimate of one-off and ongoing costs. What would be the benefits of these proposals, compared to no prescription at level 2 on this issue?

Costs

Auditing costs, compliance costs, costs for legal advice, costs of data transmission (including the corresponding software and hardware).

Benefits

The benefits of the proposal would be standardisation, the establishment of equal requirements for all unitholders, UCITS and management companies in the EC and legal certainty.

25. Do you agree with CESR's proposals in relation to the irregularities to be reported by the depositary?

We agree that the differing duties of depositaries in each Member State make it impractical to specify exhaustively what irregularities should be reported. Nevertheless we think that the term "irregularity" should be accurately defined and specified in the respective agreements between the master UCITS and feeder UCITS and the depositaries.

We embrace CESR's point that a depositary can be expected to report only on what it is required to oversee in accordance with its national law and regulations. According to German

investment law, for example, the depositaries are not obliged to report breaches of the respective fund objectives, policies and strategies, as proposed in Number 2 (d) of box 8. Therefore it is reasonable that the matters referred to in Number 1 of Box 8 may include but are not limited to the enumerated points.

Number 3 of box 8 prescribes that the master depositary shall inform the feeder depositary within a reasonable time span after the information of the feeder UCITS and its depositary about an irregularity how the master UCITS has resolved or proposes to resolve the irregularity. We think that it is necessary to fix a period to inform the feeder depositary. It is conceivable to fix an appropriate time-limit for the master depositary to inform the feeder depositary how the master UCITS proposes to resolve the irregularity. This proposal should enclose at least a planned deadline within the irregularity has to be resolved by the master UCITS.

Apart from the mentioned points we agree with CESR's proposal in relation to the irregularities to be reported by the depositary.

26. Do you agree that the interests of other unitholders in a master UCITS will be adequately protected under national laws if these proposals are implemented?

The interests of other unitholders in a master UCITS will only be adequately protected under national laws if the same level of information will be reached. Since we are not aware of the existence of any depositary's report to the unit holders we think that the necessary information should be provided by the master feeder fund administration.

27. What would be the additional costs of the proposals in Box 8? Please quantify your estimate of one-off and ongoing costs. What would be the benefits of these proposals, compared to no prescription at level 2 on this issue?

Costs

Auditing costs, compliance costs, costs of data transmission (including the corresponding software and hardware).

Benefits

Standardisation, legal certainty, clarity, EU harmonisation.