

# ZENTRALER KREDITAUSSCHUSS

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VERBAND DEUTSCHER PFANDBRIEFBANKEN E.V. BERLIN

Mr Carlo Comporti  
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Dr. La / sk

**CESR's technical advice to the European Commission on the level 2 measures  
related to the UCITS management company passport**

CESR/09-624

**AZ ZKA: EG-INV-RE**

**AZ BVR: EG-INV-RE**

Dear Mr Comporti,

We are grateful for the opportunity to comment on CESR's consultation paper "CESR's technical advice to the European Commission on the level 2 measures related to the UCITS management company passport". Please find enclosed our comments to the 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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## **Comments on CESR's technical advice to the European Commission on the level 2 measures related to the UCITS management company passport**

CESR/09-624

Ref. ZKA: EG-INV-RE

Ref. BVR: EG-INV-RE

September 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.

### **Section III**

**CESR's technical advice to the European Commission on measures to be taken by a depositary in order to fulfil its duties regarding a UCITS managed by a management company situated in another Member State, including the particulars that need to be included in the standard agreements to be used by the depositary and the management company (Articles 22 and 23 of the UCITS Directive**

#### **Questions for the consultation**

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

ZKA agrees with CESR that no additional requirements should be imposed on a depositary. This is a point which we have already made in our "Response to CESR's Call for Evidence on possible Implementing Measures concerning the Future UCITS Directive" dated March 2009. We do not see any problem with regard to CESR's additional requirement of a written agreement for domestic business. After all, corresponding covenants already exist within the framework of service level agreements.

2. What will be the costs of imposing such a requirement for the industry? What would be the implementation difficulties for regulators?

n/a

3. Are the proposed requirements appropriate?

We welcome CESR's endorsement that the management company shall have to provide each and any necessary information to the depositary so that the depositary will be able to perform its statutory tasks (cf. also Section I, indent 57). We also feel that it is correct that CESR does not prescribe any detailed service level agreements (SLA) but, instead, only describes them in general terms. After all, corresponding SLAs are already in use and need to reflect market specific circumstances. To the extent that credit institutions are involved on both sides of the SLA, however, we feel that mutual transparency concerning organisational measures which are already

required under MiFID are superfluous. In view of the costs associated with these information obligations, we suggest a corresponding waiver under which EU-regulated credit institutions shall be exempt from corresponding disclosures. The same applies to the proof of combating money-laundering.

4. Are the information flows exchanged in relation to the outsourcing of activities by the management company or the depositary relevant?

Like all questions in the present Consultation Paper, we should like to respond to this question from the point of view of depositary banks. For depositaries, the information flows exchanged in relation to the actions of the management company affecting the functions of the depositary bank is vital. One example would be, for instance, the selection of a subcustodian for safekeeping of the fund assets outside of the depositary bank's sphere of influence and information range.

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?

Should such an obligation be introduced for the purposes of increased transparency in the custody chains, then this must be a mutual obligation so as to ensure that also the management company will be covered by these requirements.

6. Is the split between suggestions for level 2 measures and envisaged level 3 guidelines appropriate?

From our point of view, it is correct to differentiate between both levels in terms of the provisions' level of detail. However, in view of the highly technical character of the SLAs, we do not see any general need for regulatory action at level 3.

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

From our point of view, the level 1 provisions are sufficiently clear and precise. However, as has been pointed out above under item 4), we welcome the obligation incumbent upon the management company to provide sufficient information so that

the depositary banks can meet their tasks.

8. Do you consider that the proposed standard arrangements and particulars of the agreement are detailed enough?

Please cf. our answer under question number 6.

9. What are the benefits of such a standardisation in terms of harmonisation, clarity, legal certainty etc.?

As has been pointed out above, we only see limited benefit in harmonisation because corresponding SLAs already exist.

10. What are the costs for depositaries and management companies associated with the proposed provisions?

The comprehensive information costs which are envisaged at this juncture can incur considerable information effort on the part of depositary banks.

11. Do you agree that the agreement between the management company and the depositary should be governed by the national law of the UCITS? If not, what alternative approach would you suggest?

We agree.

12. What are the benefits of such a proposal? Do you see costs associated with such a provision? In particular, is this requirement burdensome for the UCITS management company that will be subject to the law of another Member State regarding the agreement with the depositary?

n/a

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

n/a

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?

n/a

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?

We do not see any problem with regard to CESR's additional requirement of a written agreement for domestic business. After all, corresponding covenants already exist within the framework of service level agreements.

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?

n/a

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?

Since the SLAs constitute standard market practice already today, we assume that there would be serious additional costs only with regard to the aforementioned transparency obligation which the Commission in terms of the mutual disclosure of the MiFID obligations concerning internal organisational means takes into consideration, i.e. a proposal where we have already filed an objection as far as credit institutions are concerned (cf. answer under question number 3).