

ZENTRALER KREDITAUSSCHUSS

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BUNDESVERBAND ÖFFENTLICHER BANKEN DEUTSCHLANDS E.V. BERLIN • DEUTSCHER SPARKASSEN- UND GIROVERBAND E.V. BERLIN-BONN
VERBAND DEUTSCHER PFANDBRIEFBANKEN E.V. BERLIN

Mr Carlo Comporti
Committee of European
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Call for evidence on mutual recognition with non-EU jurisdictions

Ref.: CESR/09-406b

AZ ZKA: 413-CESR

AZ BVR: 413-WP-AUF-CESR

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



Uwe Fröhlich



by proxy

Dr. Diedrich Lange

Enclosure

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Response to the

Call for evidence on mutual recognition with non-EU jurisdictions

Ref.: CESR/09-406b

3 September 2009

General remarks

The Zentrale Kreditausschuss¹ is pleased that CESR has again taken up the issue of recognition of regulatory standards with its call for evidence. Fundamentally, mutual recognition together with the creation of new, uniform supervisory rules appears to be feasible. Rules for exceptions and individual uniform rules could be added as complements.

Mutual recognition should be focused on countries in which such recognition has the greatest potential. The American market, as the most important trading partner, will continue to take a leading position, so that there is a strong interest in significant further development towards barrier-free trade between the United States and the European Union. However, especially in view of the question of whether the United States is still interested in promoting this issue, other potential candidates should also be considered. In our opinion, this applies particularly to the Asian region (Japan, China, India) as well as Canada, Russia and Australia.

In this context we wish to mention that the current regulatory reforms in the wake of the financial market crisis in the United States and Europe could benefit from intensified coordination of the relevant processes. Any further fragmentation in the area of regulatory law due to the current national reform efforts would not only lead to international market distortions and loss of efficiency, but also pose a risk of creating considerable additional obstacles to the future recognition of regulatory standards.

Preferably, there should be no comparison of individual regulatory rules, but rather a generalised comparison of the relevant frameworks with global regulatory standards, e.g. based on the "Objectives and Principles of Securities Regulation" published in 1998 by IOSCO. Such an examination in advance is a prerequisite for opening up the markets.

Due to the partly lacking common understanding of certain terms in conjunction with mutual recognition of regulatory standards, generally applicable definitions should be developed as a supportive measure.

¹ 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.

The implementation of regulatory rules by the relevant national supervisory authorities and a mutual exchange in the case of violations should be ensured. However, here as well the focus should be squarely on the achievement of the regulatory objectives and less on the issue of which mechanisms are available to the countries involved, in order to ensure compliance with the regulatory standards.

In response to the questions:

Q1 Do you believe that other relevant topics should be added in the regulatory areas above? In the affirmative, please explain the reasons why the specific topic deserve attention together with costs and benefits of mutual recognition associated to the area of interest.

Q2 Focusing on the above areas and topics, would you expect benefits of mutual recognition frameworks for your own business (e.g. in terms of cost savings and business opportunities). Please provide any evidence/data/market statistic to support your view and an indicative prioritisation of the major regulatory and market segments.

The level of legislation and supervision involved adds to the complexity of the business environment for market participants and strains the resources of individual organizations. To this extent, international efforts to create a transparent regulatory system of cross-border oversight will be widely appreciated. It can be expected that any monetary benefits will be realised, if at all, only after a considerable period of time. At the moment we are not able to provide any reliable figures and/or statistics to this end.

Q3 What rules and regulations could cause the most severe distortion of competition in the field of cross-border activity with respect to a system of mutual recognition? Are there other potential risks that could result from a system of mutual recognition between Europe and third-countries? Differentiate according to third country, where necessary.

Q4 How could possible risks be mitigated?

Q5 Would the liberalisation of access to securities exchanges (through placement of trading screens) be of relevance to your business? Please provide any evidence/data/market statistics to support your view.

For the time being we do not perceive any direct change or improvement for our business under such circumstances. At present many market participants with comparable business models are accessing these markets via services provided by various specialised vendors (e.g. DMA).

Q6 What are currently the main regulatory obstacles that prevent EU exchanges from setting up trading screens in third countries (differentiate according to countries)? Can these obstacles in the current regulatory environment be overcome (via cooperation arrangements with third country markets etc)?

One reason for the obstacles should be the lack of knowledge due to multiple and complex national laws and regulations.

Q7 Which third countries do you consider to be the most interesting to arrange a mutual recognition on stock exchanges (given your current or future business focus)? Which economic advantages and drawbacks do you foresee?

USA, China, India, Russia, Japan, Canada, Australia.

Q8 What would you consider to be the effects on the market as a whole, in terms of liquidity and integrity, of: a) foreign stock exchanges locating trading screens in EU Member States? b) EU stock exchanges locating trading screens in third countries?

Re a) We expect effects in two directions: 1) The move will be welcomed by a small but important group of very large and internationally present market participants as well as by small but highly specialised investment banks and brokers. Both groups have an active economic interest in further de-monopolising the trading venues. Local presence of technical trading possibilities for different markets and their systems as well as product lines will lead to higher competition and result in further efficiency improvements and overall cost declines. 2) The majority of full-service EU domestic market participants will not perceive the necessary economies of scale in the short run that would permit them to change their approach (see Q5).
Re b) See answer above. In our opinion, if anything, there will be an advantage of non EU stock exchanges (especially US exchanges) compared to EU exchanges.

Q9 What are the main factors, if any, making “remote membership” different from direct electronic access? To what extent are such differences affected by: a) amount of fees paid; b) post-trading services

Re a) The direct costs for trading fees should be substantially lower vs. DMA. They have to be weighed precisely against up-front and maintenance investments for technology and qualification as well as ongoing costs for (additional) trading staff.

Re b) The quality of post-trading services is difficult to measure. It could improve due to specialisation but a negative impact is expected from investment in additional systems and staff.

Q10 What are in your view the main competitive risks posed by: a) foreign stock exchanges locating trading screens in EU member States? b) EU stock exchanges locating trading screens in third countries?

Re a) Short-term: further market fragmentation. Medium-term: further consolidation of domestic markets, i.e. disappearance of regional 'floor-trading' exchanges. Concentration on a few markets and MTFs by dragging liquidity into new trading models. Long-term: formation of monopolies that dictate technical prerequisites and prices.

Re b) Short- and medium-term: No evident influence on existing domestic venues seen, due to investor faithfulness to local markets and established models. Long-term: establishment of specialized parallel markets.

Q11 Which third country's financial market is of interest to your business? What benefits/ costs would you expect for your business from the market opening to specific third countries? Please provide any evidence/data/market statistic to support your view)

USA, Canada, Japan, Australia.

Q12 What are currently the main regulatory obstacles that EU banks/investment firms face when providing financial services to clients located in third countries (differentiate according to countries). Can these obstacles in the current regulatory environment be overcome (via cooperation arrangements with third country firms)?

USA: Complex entry criteria regarding regulatory and business setup, education and qualification of personnel, etc.

Q13 How important is the provision of cross border financial services provided to third countries (in terms of volume, generated profit) for your business? Please differentiate according to third countries and provide evidence/data if possible. How would you expect the development of this business after the implementation of a Mutual Recognition Arrangement?

Data not available.

Q14 What would you consider to be the effects, in terms of costs and benefits, on: a) EU intermediaries, if non-EU brokers are allowed to do business with EU professional investors regarding listed securities of the country of the non-EU broker? b) non-EU intermediaries, if EU brokers are allowed to do business with non-EU professional investors regarding listed securities of the EU? c) EU investors if non-EU brokers are allowed to do business with EU professional investors regarding listed securities of the country of the non-EU broker.

Re a) There is healthy competition of that sort already taking place within the EU. A substantial number of intermediaries with non-EU backgrounds (mainly from the USA and Japan) has been present in these markets for many years. Entry of additional non-EU brokers / intermediaries should not have a further major negative impact on EU intermediaries. Fees may slightly decrease, yet seem to be bottoming out.

Re b) Limited impact on non-EU intermediaries. Traditionally, sales of EU-denominated equity products are limited to a small group of institutional investors. Given the background and implications of the current financial crisis, it is to be expected that the majority of EU brokers will concentrate on their EU-wide clients in the near future.

Re c) EU investors will enjoy a measure of additional legal security due to extended mutual recognition of securities laws and regulations.

Q15 Do you consider that a mutual recognition arrangement could reduce the fees in cross border investment services (due to increased cross border competition)? Would the reduction of cost make up the reduction of fees? Would the volume increase enough to match any differences?

Q16 Do you consider the topic of collective investment schemes to be of primary relevance? Do you believe that other relevant topics should be considered and analysed first in the “products” regulatory area? Please provide reasons.

Q17 In what third countries do European asset management companies distribute shares in collective investment schemes? Please provide information on the (estimated) volume of distributed shares in collective investment schemes, distinguishing between different types of collective investment schemes (UCITS, non-harmonized investment funds) as well as different types of investors (wholesale, retail).

Q18 What are the most significant obstacles for the European asset management industry in respect to efficient cross-border marketing of collective investment schemes in third countries? What are the (estimated) costs caused by these obstacles? Please distinguish between countries.

Q19 What kind of products (UCITS, non-harmonized investment funds) should be covered by a mutual recognition agreement between EU and third countries? In terms of non-harmonized investment funds, please describe what kind of funds should be included in respective considerations (regarding investment policy, degree of regulation/supervision, right of redemption). Please distinguish between countries.

Q20 What decisive benefits and effective gains would a mutual recognition agreement between EU and third countries bring for the EU asset management industry? Please distinguish between countries.

Q21 What kind of asset management companies would benefit from a mutual recognition agreement between EU and third countries (small and medium sized companies, bigger companies)? What size is the share of those asset management companies in the European asset management market? Please distinguish between countries.

Beneficiaries: very large international asset management companies. Highly specialised investment boutiques.

Q22 Are there other potential risks that could result from a system of mutual recognition between EU and third countries? How could possible risks be mitigated? Please distinguish between countries.