

## Feedback on public consultation on the UCITS V

The European Commission has held a public consultation to review the current framework applicable to the UCITS depositaries and to introduce provisions on remuneration for UCITS managers

The objective of the consultation was to gather evidence-based views, particularly on any foreseen costs and benefits relating to the main changes that the Commission services may envisage. It is important to highlight that the responses to the consultation revealed a very wide support on the Commission's initiatives described in the consultation document. These initiatives are perceived as significant and positive steps forward in order to improve investor protection, notably through a more harmonised EU regulatory framework, and to enhance fair competition between all UCITS fund providers.

The responses to the consultation highlighted in particular the following conclusions:

- With respect to UCITS depositary functions, the clarification of the UCITS depositary duties and liability regimes is perceived as a key policy priority given that UCITS depositaries are key actors to the European investment safety. More specifically:
  - Alignment with AIFMD: the so-called 'UCITS V' review initiative should be conducted in accordance with the respective requirements under the AIFM Directive, to enhance consistency in the regulatory framework applicable to the depositary function; Stakeholders encourage the use of similar and consistent terminology between the AIFM and the UCITS provisions. However a pure alignment of the AIFM Directive is not considered appropriate, in particular as UCITS investors addressed through fund passporting are mostly retail investors. In this context, the depositary's role to ensure that investors' interests are protected is crucial;
  - Liability regime: the two most controversial aspects relate to (i) the reference to 'force majeure', to allow a liability discharge of the UCITS depositary, and (ii) the obligation to return 'lost' assets "with no delay" (where according to the AIFMD standards, AIF depositaries must return 'lost' assets 'without any undue delay'). In this context nevertheless, a majority of stakeholders have highlighted the fact that the key outstanding question is rather to know when an asset can be considered "lost".
  - Ucits Holders' rights: The UCITS unit holders' and shareholders' rights should be clarified and aligned, regardless of the legal form of the UCITS fund. Some stakeholders even suggest that the Commission introduce UCITS class actions to ensure that the retail investors can benefit from all existing legal tools to ensure that their interests are duly protected.
  - Supervision: This has been highlighted as an essential 'single market' issue in the responses to the consultation. The majority of stakeholders believe that the competencies of supervisors should be further harmonised and that competent national authorities should be allowed to enforce EU rules in an effective and harmonised manner.

- On the managers' remuneration policy: The majority of the contributions that stresses that remuneration rules should be adjusted to the UCITS model. For instance, some stakeholders have highlighted that the rule relating to the fact that a substantial portion of variable remuneration should consist of units or shares of the fund or a company concerned is not suitable in a UCITS environment.

These views will now feed into the impact assessment study that will be produced by the Commission's services when publishing its proposal for amendments to the UCITS Directive next July.

The consultation is now closed. On the 31<sup>st</sup> January 2011, **sixty one responses** have been received in all from investors, asset managers, the depositary industry, other financial institutions and public authorities. Individual contributions are published, except where respondents requested confidentiality. This list of contributions will be updated with eventual additional inputs submitted within a reasonable time after the expiry of the consultation deadline.

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