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2012-10-18

CONSULTATION DOCUMENT

**Undertakings for Collective Investment in Transferable Securities
(UCITS) Product Rules, Liquidity Management, Depositary, Money
Market Funds, Long-term Investments**

Enclosure

Register of Interest Representatives
Identification number in the register: 52646912360-95

Dear Sir or Madam,

The German Banking Industry Committee thanks the European Commission for the invitation to comment on the discussion paper. Please find enclosed the German Banking Industry Committee's response to the Consultation Document 'Undertakings for Collective Investment in Transferable Securities (UCITS) Product Rules, Liquidity Management, Depositary, Money Market Funds, Long-term Investments', chapter 6. Depositary passport.

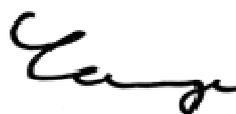
In case of any queries do not hesitate to contact the signatory on the right.

Yours faithfully,
on behalf of the German Banking Industry Committee
National Association of German Cooperative Banks

by proxy



Gerhard Hofmann



Dr. Diedrich Lange

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Response to the

CONSULTATION DOCUMENT

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(UCITS) Product Rules, Liquidity Management, Depositary, Money
Market Funds, Long-term Investments**

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Berlin, 12-10-18

*The **German Banking Industry Committee** 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 finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks. Collectively, they represent more than 2,000 banks.*

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6. DEPOSITARY PASSPORT

Box 5

(1) What advantages and drawbacks would a depositary passport create, in your view, from the perspective of: the depositary (turnover, jobs, organisation, operational complexities, economies of scale ...), the fund (costs, cross border activity, enforcement of its rights ...), the competent authorities (supervisory effectiveness and complexity ...), and the investor (level of investor protection)?

(2) If you are a fund manager or a depositary, do you encounter problems stemming from the regulatory requirement that the depositary and the fund need to be located in the same Member State? If you are a competent authority, would you encounter problems linked to the dispersion of supervisory functions and responsibilities? If yes, please give details and describe the costs (financial and non-financial) associated with these burdens as well as possible issues that a separation of fund and depositary might create in terms of regulatory oversight and supervisory cooperation.

(3) In case a depositary passport were to be introduced, what areas do you think might require further harmonisation (e.g. calculation of NAV, definition of a depositary's tasks and permitted activities, conduct of business rules, supervision, harmonisation or approximation of capital requirements for depositaries...)?

(4) Should the depositary be subject to a fully-fledged authorisation regime specific to depositaries or is reliance on other EU regulatory frameworks (e.g., credit institutions or investment firms) sufficient in case a passport for depositary functions were to be introduced?

(5) Are there specific issues to address for the supervision of a UCITS where the depositary is not located in the same jurisdiction?

Re. 1-5:

On principle, also an EU depositary passport forms part of a fully integrated single market for financial services and products. However, given the existing and envisaged European regulatory framework, at the present point in time the introduction of an EU depositary passport is not without problems. In our view, a *conditio sine qua non* for the introduction of such a passport consists in equivalent prudential supervision requirements with regard to the depositaries across all Member States or, moreover, their properties and tasks. Whilst the present European rules or Proposals (AIFMD, UCITS IV and V, ESMA Technical Advices and implementing provisions on the AIFMD (Level 2)) are geared towards a harmonisation of these issues, in our view they still leave room for discretion during their implementation. This leads to heterogeneous regulations in the respective Member States and hence different levels of prudential supervision. At present, the regulation of the depositaries in the individual Member States is still too heterogeneous.

In our view, a European depositary passport will only be meaningful if there are equivalent requirements with regard to all depositaries. This is the only way of ensuring the EU's underlying objective of enhanced investor protection. We feel that even homogenous prudential supervision rules would still involve the

potential risk of diverging supervisory practices. Hence, there are many details which still feature country-specific idiosyncrasies. From our point of view, if an EU depositary passport was introduced, these idiosyncrasies would create confusion among all stakeholders.

We also doubt that all stakeholders will be capable of detailed compliance with the country specific requirements. After all, they have partly diverging views of their own identity or, moreover, of their respective roles. Apart from this the implementation of the EU depositary passport would also require direct interaction between the foreign depositary and the supervisory authority of the country in which the corresponding funds is domiciled (for instance during the approval process).

Hence, in an initial step it has to be the goal to harmonise existing requirements. This applies both to the regulatory requirements and to the actual supervisory practices. Once this goal has been realised, a further harmonisation can be put onto the agenda. For instance, we are of the opinion that only banks within the meaning of the Banking Directive (2006/48/EC) may assume the tasks of a depositary bank. Further, we particularly advocate in favour of introducing / harmonising the minimum capital adequacy requirements with regard to depositary banks.

However, we are sceptical with regard to the creation of a new (European) supervisory authority which shall exclusively focus on supervision of depositary banks. We are convinced that this would not lend itself towards an adequate reflection of national idiosyncrasies. By virtue of the EBA / ESMA or the national banking authorities, German depositary banks are already subject to comprehensive supervision / regulation. Any additional supervision could therefore lead to double regulation and increased costs.