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## **INVESTMENT FUND MARKET EFFICIENCY**

Comments from the Comissão do Mercado de Valores Mobiliários (CMVM) – Portugal

### **I – Reducing administrative delays in getting investment funds to the market**

Authorization of new funds can be a very quick process, as long as the management company knows exactly all the requirements they must comply with. Authorities should disclose on their websites all the rules and documents necessary to launch a new fund.

Aligning UCITS authorization and notification with the timescales of the Prospectus Directive could be possible. However we must keep in mind that when accepting the fund notification, the host member state authority has to analyze marketing and sales arrangements.

### **II – Enable the rapid and efficient merger of funds**

There is no clear evidence of a commercial or economic benefit in cross-border fund mergers. Portuguese legal framework already allows merging at a national level. However the fund industry does not take advantage of that legal possibility.

Supervisory constraints could arise if the management company is located in a different jurisdiction of the new fund resulting from the merger.

In our opinion the main barrier to mergers is the different tax regimes between jurisdictions.

There is no need to amend the Directive in order to provide mechanisms for merging investment funds. Rules concerning mergers could be considered at the level 2 legislation.

### **III – Allowing pooling techniques**

We believe that pooling could be an alternative. This means that another revision of the Directive could be necessary, considering that it is not up to date with the new investment politics.

We agree with the possibility for depositories to appoint a custodian based in another EU State as long as it is a branch duly authorized and supervised. The outsourcer would continue to be the responsible entity.

Whatever solutions may be adopted, there is the need for a deeper cooperation between supervisory authorities.

### **IV – Making the management company passport work**

While with the current delegation arrangements supervision is more effective, the splitting of supervision between two jurisdictions, one for the management company and other for the fund could compromise the effectiveness of the control and raise risks.



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We believe that we should ensure the coherency and consistency of implementation of the measures already in force before changing them.

#### **V – More freedoms to the depositary**

We agree with the possibility of branches of banks to act as depositary. This is already possible in the Portuguese legal framework.

Further studies should be made concerning the role of the depositary, the responsibility over the conduct of the management company and the role of asset keeping.

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