



FIN-USE

EXPERT FORUM OF
FINANCIAL SERVICES USERS

Providing expertise for policymakers

RESPONSE TO THE REPORT OF THE EXPERT GROUP ON THE MARKET EFFICIENCY OF INVESTMENT FUNDS

20 September 2006

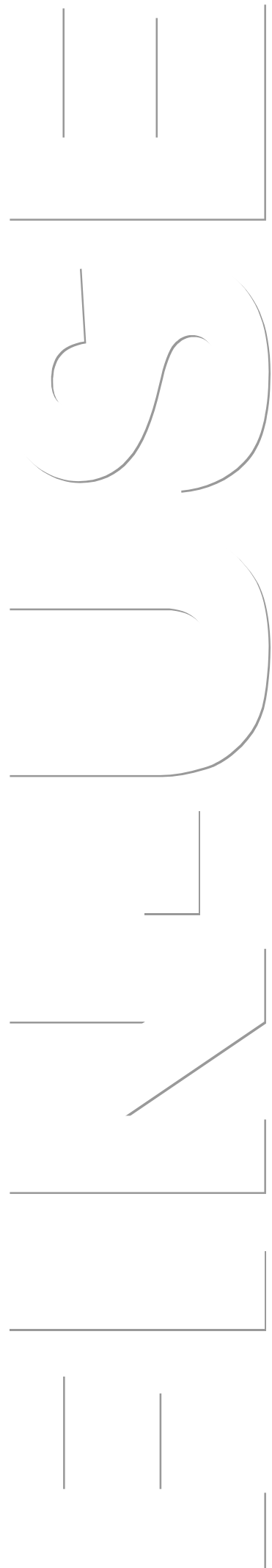
FIN-USE, c/o Commission européenne
BE-1049 Bruxelles / Europese Commissie, BE-1049 Brussel - Belgium.

Office: C107. 01/04

Telephone: (32-2) 299 11 11. Telephone: direct line (32-2) 296 20 35
Fax: (32-2) 295 07 50.

E-mail: FIN-USE@ec.europa.eu

http://ec.europa.eu/internal_market/fin-use_forum/index_en.htm





EXECUTIVE SUMMARY

FIN-USE was set-up by the European Commission in 2004 as an expert forum to help it meet the pressing need to improve policy-making in the field of financial services by including a user perspective. At the request of the Commission, FIN-USE provided an opinion on the reports by the Expert Groups on investment funds (market efficiency and hedge fund groups) which were set up by the European Commission following the Green Paper on the enhancement of the EU framework for investment funds.

FIN-USE welcomes the Commission's initiative to involve industry practitioners to review the existing gaps in efficiency of regulation of investment funds and come up with the proposal for improvement of the regulation. FIN-USE is especially encouraged to see that the composition of Expert Groups included a balanced mix of industry practitioners and representatives of users. We believe that the presence of consumer representative in the role of 'observers' is a clear improvement. However, often the 'observer' function permits limited or no contribution to the discussion within the group, thus potentially leading towards less balanced opinions and proposals by the group. FIN-USE believes that greater consumer involvement in the policy making can help substantially balance interests of providers and users, thus facilitating the process towards the European single market.

Expert Group on Market Efficiency

In general, FIN-USE supports all measures that would ensure retail consumer access to better performing investment products. We believe that many measures proposed by the Experts group on Market Efficiency will permit fund companies to achieve greater economies of scale and streamline their processes that in turn will benefit investors.

- We fully support the idea to streamline the authorization and notification period for investment funds. It is unhealthy for consumers and providers if competing mass market retail products are not regulated in a coherent and proportionate way. FIN-USE agrees that the notification and authorization procedures for the UCITS products should be subject to time limits. Those time limits should allow regulators enough time to carry out their proper functions.
- The proposal on the simplified prospectus is broadly in the right direction. However, investors should be protected from simplified prospectuses which are misleading, inconsistent or inaccurate, whatever is in the full prospectus. The simplified prospectus should be available in the language of the host state in all cases.
- On the proposals for cross-border mergers, taxation and adequate information to investors were identified as clear concerns from the perspective of users.



- Techniques of pooling does not seem to raise investor protection concerns as long as investment limits and rules for diversification in UCITS regulation are not undermined.
- The role of the depositaries is very significant from the point of view of the investor protection and investor confidence and the high requirements to the depositaries' capital adequacy and independence should not be compromised.

1. OPINION ON THE PROPOSAL OF THE EXPERT GROUP ON MARKET EFFICIENCY

1.1 Getting products to the market more quickly

1.1.1 Authorisation and notification

FIN-USE supports the proposal of the expert group to reduce administrative delays in getting investment funds to the market. We fully support the idea to streamline the authorization and notification period for investment funds.

Increased choice for consumers: It will increase the choice for consumers and retail investors in national markets as more providers will offer their products. As was already mentioned in several of FIN-USE reports, the issue of a greater choice and increased competition between investment providers and their products is especially important in the smaller member states.

Level playing field with substitute products: The Green Paper on the framework for investment funds as well as the Expert group on Market efficiency raised the issue of how conventional substitute products such as unit linked insurance or certificates are regulated compared with UCITS. Where the substitute product is listed, the Prospectus Directive allows the product to be sold throughout the Union and their time-to-market is significantly simplified and faster compared to UCITS products.. It is unhealthy for consumers and providers if competing mass market retail products are not regulated in a coherent and proportionate way. FIN-USE agrees that the notification and authorisation procedures for the UCITS products should be subject to time limits. Those time limits should allow regulators enough time to carry out their proper functions

1.1.2 Simplified prospectus

FIN-USE supports the proposal of the Expert Group on Market Efficiency that suggests the usage of a simplified prospectus as an ultimate document (i.e. summary prospectus) for product disclosure to the end consumer as well as for the notification process. However, investors should be protected from misleading, inconsistent or inaccurate content whatever is contained in the full prospectus. The Prospectus Directive is not an appropriate precedent to follow for UCITS. FIN-USE believes that it would be a retrograde step for investors if UCITS disclosures were scaled back as a result of regulatory competition. Furthermore, Fin-use sees a clear need for a short



standardised document with clear information for consumers. It believes that the workshops held on the simplified prospectus by the Commission provide a better basis for taking this work forward.

1.1.3 Language

FIN-USE believes that the proposals by the Expert Group on language does not go far enough. The simplified prospectus should always be available in the language of the host state. However, we have concern about misleading or wrong translations of the simplified prospectus that are not pre-checked by the host Regulator. FIN-USE suggests that a clear framework should be designed that defines the role of the Host Regulator in developing the guidelines for translation requirements as well as the consequences to the provider for misleading translations.

1.2 Facilitating UCITS mergers

FIN-USE supports the proposal of the Expert Group to facilitate cross-border mergers of UCITS funds as long as the investor rights are sufficiently protected.

Access to better performing products: We believe that the simplification of cross-border mergers will improve efficiency of many investment funds, permitting them to achieve greater economies of scale. This in turn will permit retail investors to get access to better performing investment vehicles.

Investor protection framework: The investor protection approach for the case of cross-border mergers of funds that was proposed by the Expert Group covers the main areas of investor rights and in general FIN-USE supports this proposal. We especially support the right of the investor to exit the fund without charges. However, the definition of 'information to investors' prior to fund merger should be more clearly defined. This needs further careful study. As just one example, the simplified prospectus of the receiving fund should be not only 'offered to be provided to investor' but it should be send to the investors without any explicit request on their side.

Taxation: we would be very alarmed if cross border mergers could trigger adverse tax consequences for consumers. So, if there is to be legislation to facilitate mergers, it should be accompanied by a taxation directive protecting consumers from adverse consequences.

1.3 Allowing pooling techniques

FIN-USE does not object to the proposal of pooling techniques as long as the adequate protection of investors is ensured. The pooling techniques seem to be another way forward towards improving efficiency and economies of scale of individual investment funds, which is a positive development for investors that



could profit from access to better performing products. However, it is important to ensure that the UCITS investment limits and diversification requirements are not compromised when applying pooling arrangements.

1.4 Making the management company passport work

FIN-USE does not object to the overall direction of the Expert Groups thinking. FIN-USE supports measures that would lead to greater efficiency and access to better performing products. However, investors in host states will need to be able to contact a representative of the management company in the host state to deal with questions and problems that arise.

1.5 More freedom for the depositaries

As was mentioned by the Expert Group, the role of the depositaries is very significant from the point of view of the investor protection and investor confidence. Its main function from the perspective of investors is to oversee the activities of fund managers and to prevent improper behaviour with the assets of investors. In order to ensure that the depositaries continue playing such role, certain requirements on depositaries' high capital adequacy and independence are of vital importance and can not be sacrificed to the need of the European market harmonization. However, FIN-USE does not object to the proposal of the Expert Group to move in the direction of harmonizing the roles and responsibilities of depositaries as long as the investor interests and their reliance on the depositary functions being properly performed are not compromised. Any harmonisation should be at the highest possible level.

2. | CONCLUSION

Overall, FIN-USE welcomes the work of the European Commission on the number of issues related to the investment funds as well as the report by the Expert Groups. It is especially encouraging to observe that the composition of Expert Groups included a certain number of 'observers' representing users and consumer interests. We believe that the presence of consumer representative in the role of 'observes' is a clear improvement. However, often the 'observer' function permits limited on no contribution to the discussion within the group, thus leading towards less balanced opinions and proposals by the group.

The reports by Expert Groups managed to balance the interests of industry and consumers and came up with new and concrete proposals on investor protection. However, several aspects were not adequately addressed.

FIN-USE believes that greater consumer involvement in the policy making can help substantially balance interests of providers and users, thus facilitating the process towards the European single market.