



Warsaw, 15th September 2006

**Comments by the Polish Securities and Exchange Commission
on the Report of the Expert Group on Investment Fund Market Efficiency and
on the Report of the Alternative Investment Expert Group – Managing, Servicing and
Marketing Hedge Funds in Europe**

The Polish securities regulator welcomes the opportunity to make comments on the Reports of Expert Groups. Having considered recommendations of the Expert Groups proposed in the Reports the Polish SEC has taken into consideration not only the need of the industry to develop by eliminating the existing barriers but also the necessity of ensuring an appropriate level of investors' protection.

The Polish SEC would wish to point out the following issues:

1. The Polish SEC is of the opinion that there is no need for fundamental legislative amendment. The UCITS Directive in the present shape has entered into force quite recently and in many MSs legislative actions have just been finished. It is also worth underlining that the legal stability in the financial market should be ensured. On-going and continuous changes may result in additional burdens for market participants to follow these changing rules. Therefore the Polish SEC welcomes and appreciates every proposal that would not necessarily demand amendments to the UCITS Directive.
2. The proposals of the Expert Group on Investment Fund Market Efficiency regarding amending the UCITS Directive to align its authorisation and notification rules along the Prospectus Directive which means introducing authorisation of funds in maximum 20 business days together with material changes to that authorisation in 10 business days and notification taking a maximum 3 days are not sufficient as far as the investor protection and the authority responsibility are concerned. Both Directives refer to different matters and are addressed to quite different consumers thus examining prospectuses is not conducted in such a detailed way as a scrutiny of new fund documents and prospectuses are addressed to better educated investors than retail investors who buy investment funds units. Thus the responsibility of the authority for its decision is different in the case of granting authorisation for a new fund.
3. The maximum 3 days for notification period is not appropriate since it does not guarantee the host MS competent authority to verify whether the fund meets national requirements regarding marketing arrangements. It needs stressing that the primary objective of the verification of the notification documents is to check whether it complies with the national legislation and not the re-authorisation of the notifying fund. This is essential while

ensuring an appropriate investors protection level in the host MS due to different legal regimes applied to investment funds structures and marketing arrangements in each MS.

4. The proposed approval of the notification documents drawn up in the language of a home MS with the choice of the UCITS operator to make these documents available in the language of the host MS or a language customary in the sphere of international finance would result in a decreased level of investors protection. The entitlement of investors to obtain documents in their mother tongue is one of the paramount rights and also one of the basic protection measures of their interests.
5. The proposed solutions for cross-border fund mergers do not deal at all with the issue concerning the diversity of legal forms envisaged for funds in jurisdiction of different MSs which at this stage unable to merge.
6. The proposed powers of competent authorities in MS taking part in the process of a cross-border merger is not sufficient from the proper supervision point of view. The right of the competent authority of the fund acquiring the fund in another MS to approve this merger is not envisaged in the Report.
7. Due to continuously growing involvement of Polish management companies in MiFID activities the Polish SEC does not share the opinion of the Expert Group to reconsider MiFID activities available to management companies and to re-assess the selection of such activities.
8. The proposed solutions as to the effective management company passport are not adequate since as in the case of fund mergers they do not solve the problem of different legal regimes of investment funds in each MS which unable application of the passport to the extent envisaged in the Report.

Remarks to the Report of the Alternative Investment Expert Group – Managing, Servicing and Marketing Hedge Funds in Europe

On one hand the experts have underlined that these funds do not require any specific legislation at the Community level especially concerning investment restrictions, product regulation, fund administration and transparency requirements and on the other they would like to open the retail investors access to hedge funds market introducing mainly the protection measure consisting in establishment of the minimum amount to be invested by such investors. The protection of retail investors needs more transparency from hedge funds due to information available on their investment policy, obtained financial results, ensuring independent and reliable assets valuation as well as facilitating unexperienced investor with fair investment risk assessment. The Report however does not cover these issues.

One should also take into account the competitiveness towards standard investment funds which in order to ensure proper level of investors protection are subject to various legal requirements. Hedge funds demand to be available for retail investors without meeting similar requirements.