European Commission
Directorate General MARKT G4

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EAPB comments on the European Commission's Exposure Draft - Initial orientations on possible adjustments to the UCITS Directive

The European Association of Public Banks (EAPB) represents the interests of 25 public banks, funding agencies and associations of public banks throughout Europe, which together represent some 100 public financial institutions. The latter have a combined balance sheet total of about EUR 3,500 billion and represent about 190,000 employees, i.e. covering a European market share of approximately 15%.

We thank the Commission for the opportunity to comment on the possible adjustments to the UCITS Directive. We wish to outline our positions with respect to the following draft documents:

1. Notification procedure

General remarks on the options:

Within the context of its deliberations on the revision of the notification procedure, the Commission has called for the imposition of stricter time requirements for the procedure. With the measures proposed, the Commission seeks to eliminate the currently existing administrative obstacles to cross-border sales. We welcome this approach.

An effective and simplified notification procedure will result in a significant reduction of costs and time on the supplier side with regard to market launches of products covered by the Directive.

The “regulator-to-regulator” approach which underlies the reform and the resulting intensification of communication between regulatory authorities would appear helpful as well. This will require an effective process of bilateral communication between regulatory authorities in home Member States and those in host Member States, however.

In our view, the two options proposed by the Commission do not fulfil these objectives entirely. Both options pose the risk of information deficits in bilateral communication between authorities, which can result in difficulties for the applying UCITS in the host Member State – either by delaying the start of sales (Option 1) or by requiring subsequent changes (Option 2).

The time and costs involved in the preliminary check of marketing arrangements in the host Member State (Option 1) or in verifying the completeness of notification documents (Option 2) by the regulatory authority in the UCITS home Member State prior to forwarding to the host country authority under the present proposal cannot be calculated for either option.

Despite these reservations, we regard Option 2, which provides for a substantial reduction in the time required for approval in the host country, as a significant improvement over the present law.

<u>Assessment of proposed amendments to Arts. 44 – 48 of the UCITS Directive:</u>

The proposed amendments are based on the whole on the idea that the host Member State may not impose additional requirements on the marketing of UCITS products, as the

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regulatory authority in the home country has already reviewed all necessary documents and verified conformity with the UCITS Directive.

The provisions of Art. 44, Paragraph 1, 45 and 46 of the current UCITS Directive have been and continue to serve as a gateway for unilateral national approaches to the various requirements affecting the marketing of units and the marketing infrastructures to be maintained by foreign UCITS. In this sense, they invest regulatory authorities in host countries with a material review authority.

<u>Deletion of Art. 45:</u>

Therefore, the planned deletion of Art. 45 is welcomed without reservation. We doubt, however, that this change alone will result in the avoidance of all unilateral national regulations. It will probably be necessary to take a critical look at the extent to which national marketing regulations continue to open the way for unilateral approaches by individual Member States.

<u>Art. 46 amended version:</u>

We approve the proposed amendment to Art. 46, Paragraph 2, according to which only the new “key investor information” must be translated into the official language of the home Member State. This can lead to substantial reductions in translation costs.

However, Art 46 amended version contains to reference to the “self-certification” instrument only recently introduced with the CESR’s “Guideline to simplify the notification procedure of UCITS” of June 2006. The self-certification of prospectuses which were originally approved by or submitted to the regulatory authority of the home Member State represents a significant simplification of the process of submitting modified funds documents to the regulatory authorities of the respective host Member State, although it is not yet fully

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accepted as such in all Member States. We would therefore recommend incorporating this provision into the of the UCITS Directive.

Furthermore, elimination of the general requirement for sworn translations as recommended in the "CESR Guideline" would help reduce costs for the industry. We therefore appeal to the Commission to incorporate this change into the new Directive. Otherwise, unilateral national regulations regarding additional formal requirements for translations (e.g. "sworn translations", which are currently required in Spain) are likely to be imposed.

2. Management company passport

In our view, the most important proposed regulation regarding the management company passport is the right of a UCITS to manage funds from other EU Member States.

The present proposals empower UCITS to designate management companies in other Member States. This is subject to the requirement that the UCITS in question must maintain certain administrative functions in the respective Member State, namely verification of valuation and pricing und maintenance, where applicable, of unit holder/shareholder registers. However, we feel that it may be very difficult in the age of IT to determine precisely "where" verification of pricing actually takes place. We therefore recommend adopting a provision oriented toward the solution contained in 4 (1) and (2) of the "Convention on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary" ("Hague Securities Convention"). Art. 4 (1) contains a list of factors applicable to the definition of sufficient business substance; Art. 4 (2) specifies factors which are not sufficient in themselves.

With regard to proof of sufficient management substance, we further propose – in the spirit of Art. 4 (1) of the Hague Securities Convention – that regular involvement of a branch,

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subsidiary, etc. in the pricing or publication as well as the management, administration and/or coordination of the unit-holder register should be regarded as sufficient.

In any event, it should not be regarded as sufficient for a "core administration" simply to designate a representative who has no practical influence on pricing or register administration or to establish an e-mail or telephone routing function which effectively routes all administrative functions to an office in another Member State.

3. Mergers

We are in favour of the principle of harmonizing funds mergers (including cross-border mergers). It should be ensured however, that harmonization can be accomplished without impact on investor taxation.

1.2 Option description:

The exposure draft proposes several different approval requirements for one or more regulatory authorities with regard to funds mergers in the three options cited.

We would recommend that such merger options be regulated exclusively on a contractual basis in the "General and Specific Terms of Contract" without requiring additional regulatory approval. Investor protection is already ensured by the planned requirement of approval by both depository banks and an auditor.

1.6 Costs:

According to the exposure draft, the costs of funds mergers are to be covered by the management company. In this regard we would welcome a provision that would allow such costs to be passed on to the fund or funds in question. In essence, these are a specific type

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of transaction costs which for which the corresponding fund or funds can indisputably be debited.

Draft terms of merger:

The proposal calls for justification of funds mergers. We regard this as a virtually useless requirement, as it is highly likely that stereotypical justifications will be offered in most cases (funds volume and performance).

Furthermore, the draft requires that the anticipated impacts on the absorbing UCITS must be stated. Clarification is necessary here to the extent that this provision does not require the disclosure of all details, as this would result in unreasonably long and complicated explanations.

Independent auditor report:

With regard to the proposal that a report be obtained from an independent auditor, it should be clearly stated – in the interest of keeping costs as low as possible – that this person can be the auditor who draws up the annual accounts for the UCITS in question.

Information of unit-holders:

The remarks regarding the draft terms of merger (see above) also apply to the proposed obligation to provide the absorbing UCITS with all necessary and appropriate information relating to possible negative impacts. The Directive should at least clearly state that it is not necessary to describe all details.

4. Simplified Prospectus

We welcome the Commission's proposal to revise the provisions relating to the simplified prospectus and to address the points discussed in previous rounds of consultation and

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expert hearings. In the interest of ensuring the most viable and sustainable basis possible, we wish to express our preference for the proposed Option 1.

Harmonization of the form and content of the simplified prospectus will be difficult to achieve with Option 2. While the many regulatory measures applicable to the issuance of implementation regulations reserved to the Commission at Level 2 offer the advantage of greater flexibility in adaptation, they also provide for a minimum degree of continuity with respect to the details of form and content.

Art. 27 – 35:

We welcome the Commission's proposal to delete the references to the simplified prospectus and to replace the term "full" prospectus with the word "prospectus". We also favour the proposal to permit the electronic preparation of prospectuses as an option. This would contribute to simplification and cost reduction on the industry side.

Addition of Section C – Key investor information (KII):

"Key investor information" is to be defined in Section C, which will also describe minimum information requirements, minimum standards for the disclosure of information and the purpose of the KII, where by Paragraph 5 will provide for the Commission's authority to issue detailed implementation regulations (Level 2) in order to establish procedures for specific contents at Level 2.

This proviso suggests that different format requirements for KII could – and probably should – emerge at Level 2, depending upon the specific type of fund in question. This distinction is not likely to help reduce costs and document management workloads for the industry nor to offer the investor improved orientation through corresponding standardization of form and content of the information provided and thus to facilitate the process of comparing products.

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We are pleased, however, that the Commission has defined the issue of liability with respect to the legal function of KII in accordance with the industry's wishes and proposes an orientation toward the liability standards of Prospectus Directive 2003/71/EC in the exposure draft.

If you have any questions please do not hesitate to contact us.

With best regards,

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