

19 July 2007

Mr. Jörgen Holmquist  
Director General of DG  
Internal Market and Services  
European Commission  
B - 1049 Brussels

Dear Mr. Holmquist,

## **GREEN PAPER ON RETAIL FINANCIAL SERVICES IN THE SINGLE MARKET**

The Commission has raised issues of great importance to the investment management industry in the Green Paper and the Investment Management Association (IMA)<sup>1</sup> is grateful for the opportunity to comment on it. An especially crucial and urgent issue is the need for level playing field between different savings products. In IMA's opinion the key structural issue here is the need for a level playing field for disclosure at the point of sale of different savings products. We welcome the statements by the Commission on this topic in the Green Paper and the plans to launch a cross-sectoral study in 2008. We urge, however, the Commission to speed up measures to reach a true level playing field as soon as possible.

Another key issue is the need to respond to the demographic changes in Europe by enabling a competitive, open and effective market for long-term savings, retirement and pension solutions. We believe that the investment management industry has a crucial role to play here to provide solutions to the need to manage the pension assets better than until now in Europe when many countries are faced with an increasingly ageing population.

In the following we have concentrated our comments on the key areas from the investment management industry's point of view instead of commenting on all the topics raised by the Commission. We are conscious of the fact that our views diverge

---

<sup>1</sup> The IMA represents the UK-based investment management industry. Our members include independent fund managers, the investment arms of retail banks, life insurers and investment banks, and the managers of occupational pension schemes. They are responsible for the management of about £3 trillion of funds based in the UK, Europe and elsewhere, including authorized investment funds, institutional funds (e.g. pensions and life funds), private client accounts and a wide range of pooled investment vehicles. In particular, our Members represent 99% of funds under management in UK-authorized collective investment schemes.

to some extent from those of some other UK trade associations regarding the need for legislative action by the Commission.

### **Level playing field**

The Green Paper refers briefly to the success of UCITS on p. 5 noting that “With the exception of UCITS, cross-border trade is limited” (in retail financial services). We fully agree that the UCITS product passport for harmonized investment funds has been one of the biggest successes of the Single Market in financial services. However, the European investment management industry has for many years asked for improvements to enhance the efficiency of the UCITS framework to keep the European funds market in the “global vanguard” as competition from other fund jurisdictions is starting to build, and as other competing savings products are being developed in the Single Market like structured investment banking products and unit-linked life insurance products.

Reducing UCITS’ time to market by simplifying the cross-border notification mechanism, allowing investment managers to create efficiencies of scale by merging funds and pooling their assets cross-border, as well as allowing management of UCITS cross-border via a real management company passport are all crucially needed improvements to the UCITS framework. The Commission has addressed these issues in the White Paper on Enhancing the Single Market Framework for Investment Funds in November 2006. IMA has responded to the Commission’s recent consultation on the draft amendments to the UCITS framework<sup>2</sup> and we urge the Commission to take these comments into account when the formal Commission proposal is being prepared. Especially we want to stress that the Commission’s initial proposal to go forward with only a partial management company passport is far from satisfactory from the Single Market point of view and we ask the Commission to seriously reconsider its approach, if it wants to achieve real efficiencies and gains for the Single Market.

IMA appreciates that the Commission is now addressing the needs raised by the investment management industry over the years to improve the efficiency of UCITS. This is, however, only the first step towards a real level playing field between the different savings products.

In IMA’s opinion the European regulatory framework has created a lack of level playing field for different savings products. We believe that the market is currently distorted by heavier regulatory and fiscal burdens imposed on UCITS as opposed to other competing products. Whilst we believe it would be a retrograde step to scale back disclosures relating to UCITS, we nevertheless feel that it is very important to ensure that disclosures by products which compete with UCITS are similar to those applicable to UCITS. The Commission and CESR are already working on revising the rules on disclosure of UCITS. It is essential to be remembered in this process that additional disclosures should not be required of UCITS if they are not also to be required of competing products.

The differences in regulation cause more and more problems in Europe for the distribution of UCITS, where in some major markets investors are withdrawing their

---

<sup>2</sup> <http://www.investmentuk.org/press/2007/20070619-01.pdf>

money from investment funds and are moving to less transparent products. We understand that the recent growth in sales of certificates in Germany and unit-linked contracts in Italy has been driven, at least in part, by such regulatory arbitrage. We believe that further attention needs to be given to whether the disclosure requirements of UCITS have tilted the regulatory balance in favour of competing products. Regarding the detailed comparison on differences in regulation of UCITS, unit-linked life insurance and structured products we refer to the annex of the response by the European Fund and Asset Management Association to the Commission consultation on the Green Paper on the enhancement of the EU framework for investment funds.<sup>3</sup>

The implementation of MiFID has raised a number of serious concerns for the investment management industry. It seems to impose significant new requirements on UCITS, although they are already very cost-transparent products. For instance, regarding inducements, both the Commission and CESR have focused mainly on UCITS, leaving out the fact that UCITS are not the only savings product for retail investors. They, together with other nationally regulated investment funds, are experiencing increased competition from other less regulated financial products – some of them not even subject to MiFID.

The distribution of products such as structured notes and certificates is regulated under MiFID, but their product and cost disclosure is regulated by the Prospectus Directive and therefore does not reach the level of disclosure of UCITS. Regarding structured notes and certificates the immediate priority in our opinion is getting MiFID rules applied evenly across investment products since MiFID now has set the European standard for the distribution of financial products.

Other investment products such as unit-linked insurance products are not covered by the strict requirements of either the MiFID or the UCITS Directives, but are regulated by the [consolidated] Life Insurance Directive and regarding distribution by the Insurance Mediation Directive, which only includes rather general rules regarding distribution and advice.

Instead of concentrating on the already highly regulated and transparent investment funds, the Commission and CESR should focus on closing the gap separating them from less transparent savings products, bringing the latter up to similar high standards.

Against this background, IMA very much welcomes the invitation to the Commission by the 8 May ECOFIN Council “to review the consistency of EU legislation regarding the different types of retail investment products (such as unit-linked life insurance, investment funds, certain structured notes and certificates), so as to ensure a coherent approach to investor protection and to avoid any misselling possibilities”.

In IMA's view there are often justified reasons for a differentiated approach at the level of product/ production regulation (e.g. the assets of a bank-issued certificate are held on the balance sheet of the bank while for a UCITS the assets are held by a depositary independently of the management company). We therefore believe that

---

3

<http://www.efama.org/55PositionPapers/2005/efamacommentsgreenpaperinvestmentfunds/documentfile>

the focus needs to be on ensuring a level playing field at the point of sale, in particular in relation to the disclosure of costs and the description of risks of the product.

In this context we very much welcome the Commission's plans regarding the review of the Insurance Mediation Directive (IMD). We have doubts however that the best way is to proceed only on the basis of the work of CEIOPS. The review should take account of existing rules on competing savings products, especially MiFID, which has set the modern regulatory standard for investor protection in the distribution of investment services. From the customer's point of view taking a life-insurance policy with a strong investment element has the same basic economic implications as any other investment service, so current significant differences in disclosure regimes are not justified. The work of insurance regulators only cannot be the basis of an objective and balanced review of the provisions of the IMD.

In summary, we propose the following urgent measures to achieve a true level playing field between different savings products:

1. The Commission and CESR to ensure that the ongoing work on UCITS disclosure results in a meaningful disclosure regime both from the investors' and the industry's point of view, and which does not lead to further additional regulation of UCITS as compared to other savings products.
2. The Commission and CESR to ensure that the MiFID rules are applied evenly across all the products/ services it covers and not only focusing to further regulation of investment funds.
3. For insurance products the aim should be updating the disclosure rules of insurance products with a savings/ investment element to the level of MiFID and UCITS in the context of the review of the Insurance Mediation Directive and the Solvency II proposal.
4. For other competing products such as structured banking products with a savings/ investment element attached but which fall outside the definition of MiFID on 'financial instruments', the Commission's aim should be to develop equivalent set of disclosure rules.

### **Advising consumers**

The Green Paper raises the question on whether informing consumers is sufficient, or whether advice should be made compulsory.

We believe that a distinction can be drawn between certain different products. UCITS, for example, enjoy the benefit of significant product regulation, and are specifically designed for the mass retail market. The simplified prospectus and its successor document are designed to provide the salient information that an average consumer will need in order to make an informed decision. There is no reason for these products to be only sold with advice. Few other products (if any) have the same transparency about costs, charges, risks and rewards, but where they do, and where they are recognised by the public and by competent authorities as 'ordinary' retail products, then these too should be able to be sold without advice.

Other products, perhaps coming under the MiFID definition of complex products, where the charging structure is more opaque, and/or where the potential investment downside is significant (e.g. leveraged funds, precipice bonds, structured products),

then it might be more reasonable to see some kind of suitability or appropriateness assessment made.

As regards what information should be provided, we welcome the work being undertaken on the Simplified Prospectus of UCITS, and look forward to a concise and clear key investor information that actually assists the consumer. This could then be the model for other retail products, but an overly prescriptive approach to the UCITS key investor information will start to disintegrate when applied to a wider range of products. In these circumstances, comparability is preferable and achievable, precise similarity will be unhelpful.

### **Long-term savings, retirement and pension solutions**

The pension landscape in Europe is currently characterised by a general (albeit uneven) move towards encouraging greater individual provision for retirement. This is taking a number of different forms, but with a common theme: the increasing emergence of defined contribution schemes alongside (or even within) the traditional state-provided first pillar.

While long-term saving products for the accumulation phase (as opposed to annuities in the decumulation phase) do not inherently have anything to do with insurance, pension products have often been seen as more the domain of the life industry than the investment management industry. Historically, there have been a range of tax and regulatory reasons why this has been the case. However, for the investment management industry, the 'level playing field' referred to above also means the facility to offer products in the pensions arena on both a bundled and an unbundled basis, using fund vehicles which can provide the consumer with a high degree of transparency, accountability and security.

The IMA would welcome continued Commission action to help ensure that fund products are not at a disadvantage. We believe that the investment management industry's commitment to continued innovation can allow the development of a wide range of pension savings vehicles, which can help to address the complex challenges arising in this area.

With respect to the question of a 28th regime for 3rd pillar pension products, the idea of a pan-European regime would certainly be attractive in principle. However, it would have to complement moves elsewhere to ensure a level playing field for investment management products, and would need to be crafted in such a way as to ensure simplicity from a regulatory compliance point of view.

### **Providing legal certainty for consumers - Rome I regulation**

Our members enter into contracts as both principal (e.g. with clients to whom they provide fund management services) and as agent (e.g. with brokers and counterparties with whom they carry out transactions on behalf of clients). The nature of the contractual obligations which our members undertake are increasingly international in their nature, and clients and counterparties are based anywhere in the world, and not just confined to the EU. It is therefore vitally important to our members that the law governing their contractual rights and obligations, both in their own right and on behalf of clients, is clear from the outset.

We welcome the aim of the Rome I Regulation: to lay down uniform rules on the law applicable to contractual obligations to make judicial decisions more easily foreseeable. However, we are very concerned that certain provisions of the Regulation as drafted do not achieve this and will have serious consequences for cross border business both within the EU and between firms based in the EU and third country jurisdictions. As these concerns exist at a European level, they will remain whether or not the Regulation is adopted by the UK. We have recently sent a letter to the relevant Commission services to express our concerns more in detail.

We stand willing and able to support the Commission in their work so please do not hesitate to contact us with any queries you may have on our submission or points you would like to follow up.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jarkko Syyrilä', written in a cursive style.

Jarkko Syyrilä  
Head of International Affairs