ASSOGESTIONI
associazione del risparmio gestito

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Our ref.: N. 453/09

Comments to the consultation paper "CESR's technical advice to the European Commission on the level 2 measures related to the UCITS management company passport"

Assogestioni[1] welcomes the opportunity to comment on the consultation paper "CESR's technical advice to the European Commission on the level 2 measures related to the UCITS management company passport"; we appreciate the decision to take into account stakeholders' opinions on the implementation of the new UCITS Directive, given the relevance that such measures will have for the asset management industry.

Please find below our considerations on the questions raised by the aforementioned consultation paper.

Section I
CESR's technical advice to the European Commission on the implementing measures on organisational requirements and conflicts of interest for management companies
(Articles 12(3) and 14(2) (a) and (c) of the UCITS Directive)

INTRODUCTION

Q1. Do you agree with the general approach proposed by CESR?

We agree with CESR's general approach, given that we deem very important that UCITS level 2 measures are fully aligned with MiFID level 2 provisions, although it's necessary to take into account the specificities of the collective management business. Such approach pursues the definition of a coherent legislation applicable to management companies, regardless the specific services they provide (i.e.

[1] Assogestioni is the Italian association of the investment fund and asset management industry and represents the interests of over 160 members who currently manage assets whose value exceeds 800 billion euro.

investment services, collective asset management activity and direct sale); at the same time, the described solution avoids undue costs which, otherwise, management companies subject to MiFID and UCITS Directive would have to face.

CHAPTER I – ORGANISATIONAL REQUIREMENTS

Impacts of the proposed approach

Q2. In your view, does aligning the organisational requirements for UCITS management companies with the relevant MiFID requirements in the areas of
- ***general organisational requirements;***
- ***compliance;***
- ***internal audit;***
- ***responsibility of senior management;***
- ***complaints handling;***
- ***personal transactions; and***
- ***electronic data processing and recordkeeping***

impose additional costs on UCITS management companies? If so, please specify which areas are affected. If possible, please provide quantitative cost estimates of the additional costs for UCITS management companies.

Q3. In your view, what are the benefits of aligning the organisational requirements for UCITS management companies with the relevant MiFID requirements?

Italian legislation has already introduced, for management companies, a regulation fully harmonised with MiFID, independently from the fact that such companies provide investment services in addition to the collective management activity. Such regulation includes: (i) general organisational requirements; (ii) compliance; (iii) internal audit; (iv) responsibility of senior management; (v) complaints handling; (vi) personal transactions; and (vii) electronic data processing and recordkeeping.

Therefore, the adoption of UCITS level 2 measures not aligned with MiFID would represent for Italian management companies a relevant and unreasonable burden. Consequently, the lack of such harmonisation would determine high costs and the risk that the same entity should comply with two different legislations potentially conflicting or not fully coordinated.

General organisational procedures and arrangements for management companies (Box 1)

Q4. Do you agree with CESR's proposals on organisational procedures and arrangements for management companies? If not, please suggest alternatives.

We fully agree with the proposed approach; on this regard, we would like to underline that Italian legislation already applies the measures proposed in CESR draft level 2 advice (Box 1) apart from the following provision that, in any case, we consider reasonable and appropriate: *"management companies should comply with the following requirements [...] e) to establish, implement and maintain [...] effective*

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information flows with any third party involved, including the depository, distributors and any other third party which performs activities on behalf of the management company, in such a way that those parties receive all information deemed to be necessary to perform their duties adequately".

Responsibility of senior management (Box 2)

Q5. Do you agree with the above CESR proposal on the responsibility of senior management of management companies? If not, please suggest alternatives.

We fully agree with Box 2 proposed provisions, given that they have already been adopted in Italy, pursuant to the relevant MiFID provisions.

Remuneration policy (Box 3)

Q6. Do you agree with the above CESR proposal on the remuneration policy of management companies? If not, please suggest alternatives.

Q7. In your view, should the requirements set out above in relation to senior management be extended to cover all employees of UCITS management companies?

We agree with the suggested measures concerning the remuneration policy; however, we deem necessary that the scope of such measures includes only the senior management of the management company and not all other employees. In fact, the aim of the measures proposed is not consistent with the functions and activities that such employees may perform, given that the latter do not take part to the decision making process of the management company.

Furthermore, we deem appropriate that paragraph 5 in Box 3 specifies that the remuneration policy should be made available on request to the UCITS only when the latter is an investment company managed by the management company.

Permanent compliance function (Box 4)

Q8. Do you agree with the above CESR proposal on the compliance function of management companies? If not, please suggest alternatives.

We agree with CESR's proposals concerning the compliance function, given that they are aligned with the relevant MiFID provisions.

Internal audit (Box 5)

Q9. Do you agree with the above CESR proposal on the internal audit of management companies? If not, please suggest alternatives.

We agree with the suggested provisions relating to internal audit, given that they are consistent with the relevant MiFID provisions.

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Complaints handling (Box 6)

Q10. Do you agree with the CESR's proposal on complaints handling procedures for management companies? If not, please suggest alternatives.

We fully agree with the Box 6 of level 2 advice, because it is essentially aligned with art. 10 of MiFID level 2; furthermore, the provisions not included in MiFID level 2 are reasonable and appropriate with the application of the latter rules to the collective asset management business.

Personal transactions (Box 7)

Q11. Do you agree with CESR's proposals on personal transactions? If not, please suggest alternatives.

We agree with CESR proposed measures on personal transactions because they are essentially in line with art. 11 and 12 of MiFID level 2.

Electronic data processing and recordkeeping requirements (Box 8)

Q12. Do you agree with CESR's proposals on electronic data processing and recordkeeping requirements? If not, please suggest alternatives.

We agree with CESR's proposals on electronic data processing and recordkeeping requirements.

UCITS accounting principles (Box 9)

Q13. Do you agree with CESR's proposals on UCITS accounting principles? If not, please suggest alternatives.

Q14. Does this proposal lead to additional costs for UCITS management companies? Please quantify your cost estimate. What are the benefits of this proposal?

We agree with the proposals made by CERS in Box 9. Italian management companies already apply principles defined by CESR in this respect.

Implementation of the general investment policy (Box 10)

Q15. Do you agree with CESR's proposals on investment strategies? If not, please suggest alternatives.

Q16. Does this proposal lead to additional costs for management companies? If possible, please quantify your estimate. What are the benefits of this proposal?

We agree with the provisions set out in Box 10, given that in Italy there is already a regulation that does not substantially differ from such provisions. However, we deem important to specify that the senior management should approve only the *"general investment policy"* of each fund and control that such policy is respected;

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consequently, the *"investment strategy"* of each fund should be defined and enforced by the investment managers of the company or by any relevant committee.

Implementation of strategies for the exercise of voting rights (Box 11)

Q17. Do you agree on the proposed requirements relating to the exercise of voting rights? If not, please suggest alternatives.

Q18. What are the additional costs of this proposal for management companies? If possible, please quantify your estimate. What are the benefits of this proposal?

We agree with CESR on the opportunity to introduce specific level 2 provisions concerning strategies for the exercise of voting rights; however, we deem important to limit the scope of the proposed provisions only to those UCITS for which such strategies may be relevant. As a consequence, for example, UCITS characterised by a passive investment policy (i.e. index funds) should not be obliged to adopt such strategies.

Furthermore, we suggest to delete letter c) of paragraph 2, in Box 11, due to the fact that conflicts of interests arising from the exercise of voting rights should fall within the scope of the general discipline of conflicts of interests, as defined in Boxes 12 to 16 of CESR's consultation paper.

CHAPTER II – CONFLICTS OF INTEREST

Identification of possible relevant MiFID provisions

Q19. Do you agree with the proposed approach? Is there any additional adaptation you would suggest?

We deem correct to take MiFID Level 2 provisions on conflict of interests as a starting point for the level 2 UCITS implementing measures. However, as underlined by CESR, it is necessary to adapt such rules to the peculiarities of the collective portfolio management business.

Impacts of the proposed approach

Q20. In your view, does aligning the requirements for conflicts of interest for UCITS management companies with the relevant MiFID requirements impose additional costs on UCITS management companies?
- ***procedures for conflict identification and management,***
- ***independence of the persons managing conflicts,***
- ***recordkeeping for collective portfolio management activities, and***
- ***management of non-neutralised conflicts.***

If so, please specify which areas are affected. If possible, please provide quantitative cost estimates of the additional costs for UCITS management companies.

Q21. In your view, what are the benefits of aligning the requirements for

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conflicts of interest for UCITS management companies with the relevant MiFID requirements?

Italian management companies already apply a regulation which is, from a substantial perspective, in line with the relevant MiFID Level 2 provisions even if it takes into due account the specificities of collective asset management activity. Therefore, we deem necessary to introduce such approach also at a European level through UCITS level 2 implementing measures. On the contrary, Italian companies would be burden all costs arising from two potentially incoherent and conflicting legislations (i.e. MiFID Level 2 and UCITS Level 2).

However, we believe that the subjects between which conflict of interests may arise should be clearly defined; furthermore such definition should be directly included in Box 12 (p. 37). In particular, the relevant conflict of interests should be those arising between:

a) the management company and the UCITS;
b) the management company and unit-holders;
c) clients of investment services provided by the management company and the UCITS;
d) one UCITS and another.

Conflicts of interests potentially detrimental to a client of a management company or to an investor (Box 12)

Q22. Do you agree with CESR's proposals on the criteria for identifying conflicts? If not, please suggest alternatives.

We agree with CESR's proposals, given that they are aligned with the MiFID Level 2 relevant provisions and, at the same time, appropriate for management companies and their business.

Conflicts of interest policy (Box 13)

Q23. Do you agree with CESR's proposals on the identification and management of conflicts? If not, please suggest alternatives.

We deem that the proposed provisions concerning conflicts of interest policy are appropriate for management companies because they are aligned with the MiFID Level 2 relevant provisions and, at the same time, appropriate for management companies and their business.

Independence in the conflicts management (Box 14)

Q24. Do you agree with the CESR's proposals on the independence of the persons managing conflicts? If not, please suggest alternatives.

We agree with CESR's level 2 advice concerning the independence of the persons managing conflicts, because it is in line with MiFID provisions already introduced, from a substantial perspective, in Italian legislation.

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Record of collective portfolio management or activities giving rise to detrimental conflicts of interest (Box 15)

Q25. Do you agree with CESR's proposals on records of activities giving rise to conflicts of interest? If not, please suggest alternatives.

We are in favour of CESR's proposal because it is in line with the MiFID Level 2 regulation.

Management of non-neutralised conflicts (Box 16)

26. Do you agree with CESR's proposals on management of non-neutralised conflicts? If not, please suggest alternatives.
27. Are there any other issues you feel should be considered in addition to those already mentioned in this paper?

As regards paragraph 1 of Box 16, we deem preferable to replace the reference to the "best interest" of the UCITS and the relevant unitholders with the "fair treatment" of those entities, according to paragraph 27 of the Explanatory text of the aforementioned Box. In fact, if there is a conflict of interest which the management company is not able to neutralise, it is improbable that the latter is in the condition to pursue the best interest of the UCITS and the relevant unitholders; on the contrary, such company should be able to adopt sufficient measures to guarantee their "fair treatment", which should not be identified with the concept of "best interest".

Furthermore, we deem necessary to delete the requirement of reporting to investors situations in which the management company is not able to neutralise a conflict of interest and that of explaining the decision taken by the management company itself in this respect. In fact, the requirement to guarantee the fair treatment of unitholders in case of non-neutralised conflicts should be considered as a measure that replaces any disclosure requirements provided by MiFID to this respect.

We believe that, according to their nature, the investment services of individual portfolio management and investment advice should be ruled in the same manner irrespective of the subject authorised to provide those services (i.e. a management company or an investment company). Therefore, we don't agree with paragraph 31 of Box 16 and we believe that the rules applicable to conflicts of interest concerning the aforementioned services, even when provided by a management company, should be those established by MiFID and MiFID Level 2.

Section II
CESR's technical advice on possible implementing measures of Article 14(2)(b) of the UCITS Directive (Rules of conduct for management companies)

Duty to act in the best interest of the UCITS and its unitholders and to ensure market integrity and due diligence requirements (Boxes 1 and 2)

Q1. Do you agree with CESR's proposals on the duty of management companies

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to act in the best interest of UCITS and their unitholders and on due diligence requirements? If not, please suggest alternatives.

Q2. What are the additional costs of this proposal for management companies? If possible, please quantify your estimate. What are the benefits of this proposal?

We deem important that management companies apply CESR's proposals on the duty to act in the best interest of the UCITS and its unitholders and ensure market integrity.

Direct sale (Box 3)

Q3. Do you agree with this general approach proposed by CESR for conduct of business rules relating to direct selling? If not, please suggest alternatives.

Q4. What are the additional costs of this proposal for management companies? If possible, please quantify your estimate. What are the benefits of this proposal?

In terms of general approach, we deem appropriate that direct sale is ruled according to MiFID and MiFID Level 2 discipline.

Furthermore, Box 3 states that also Box 7 and 8, concerning best execution, apply to direct sale. On this regard, we underline that such extension is not appropriate, given that direct sale is not a service with reference to which is reasonable to apply best execution regime. In fact, a management company is, at the same time, the issuer and the distributor of the UCITS and, when it distributes third-party UCITS, the only reference to determine the price of the UCITS is its NAV.

Finally, Box 3 should not make reference to Box 9, given that the application of rules on aggregation and allocation of trading orders to direct sale is not feasible.

Appropriateness test and execution only (Box 4). Handling of subscription and redemption of orders of investors (Box 5). Reporting obligations in respect of execution of subscription and redemption orders (Box 6)

Q5. Do you agree with CESR's proposals on conduct of business rules relating to direct selling? If not, please suggest alternatives.

Q6. What are the additional costs of this proposal for UCITS management companies? If possible, please quantify your estimate. What are the benefits of this proposal?

We share CESR's advice concerning appropriateness test expressed in Box 4. Furthermore, with reference to paragraph 8 of Box 4 relating to execution only, we strongly support the proposal of introducing the execution only regime for the direct sale of UCITS; however, we underline that the legal advice should consider that the authorisation granted by UCITS Directive to a management company does not include the investment service of execution nor that of reception and

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transmission of orders. Therefore, CESR should take into account management companies peculiarities and refer specifically to direct sale when proposing an execution only rule. In light of the above, the aforementioned paragraph 8 could be redrafted as follows: "*8. Management companies can provide direct sale to investors without the need to obtain the information or make the determination provided for in paragraphs 1 and 2 when all of the following conditions are met [...]".*

We agree with the proposed rules set out in Boxes 5 and 6 concerning handling of subscription and redemption of orders of investors and, respectively, reporting obligations in respect of execution of subscription and redemption orders. However, we underline that Box 6 legal advice is not completely aligned with the relevant MiFID Level 2 provisions because it refers generally to investors and not only to retail investors (see paragraph 1, sub-paragraphs 2 and 3). On this respect, even if CESR states, in paragraph 21 of the Explanatory text, that UCITS are considered to be a retail product, it should be taken into account that also professional investors can subscribe such product, therefore the differences established by MiFID should be kept.

Duties of management companies to act in the best interests of the UCITS when executing the decisions to deal on behalf of the managed UCITS in the context of the management of their portfolios (Box 7)

Q7. Do you agree with CESR's proposals on direct execution of orders by management companies? If not, please suggest alternatives.

Q8. What are the additional costs of this proposal for UCITS management companies? If possible, please quantify your estimate. What are the benefits of this proposal?

We agree with the proposal of extending the MiFID best execution regime to the collective portfolio management activity, as already established in Italy. However, we do not deem appropriate to introduce in paragraph 3 of Box 7 the need of obtaining the "prior consent of the UCITS", at least with reference to contractual funds managed by management companies and self-managed investment companies. In fact, in such cases, the management company or the investment company should acquire the prior consent from themselves.

Duties of management companies in the context of the management of UCITS portfolios. To act in the best interests of the UCITS when placing orders to deal on behalf of the UCITS with other entities for execution (Box 8)

Q9. Do you agree with CESR's proposals on the placement of orders with or transmission to other entities for execution? If not, please suggest alternatives.

Q10. What are the additional costs of this proposal for UCITS management companies? If possible, please quantify your estimate. What are the benefits of this proposal?

We deem appropriate that management companies should respect MiFID and MiFID Level 2 rules relating to best execution when they place orders with other entities

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for execution; nevertheless, we suggest to redraft paragraph 6 in Box 8 as follows: *"6. This Box should not apply when the management company only executes the decisions to deal on behalf of the UCITS. In those cases Box 7 applies".* As a consequence, when a management company which executes orders and, at the same time, places orders with other entities should apply both Boxes 7 and 8.

Handling of orders related to the execution of portfolio decisions to deal on behalf of the managed UCITS (Boxes 9 and 10)

Q11. Do you agree with CESR's proposals on the handling of orders? If not, please suggest alternatives.

Q12. What are the additional costs of this proposal for UCITS management companies? If possible, please quantify your estimate. What are the benefits of this proposal?

We agree with CESR's proposals set out in Boxes 9 and 10.

Inducements (Box 11)

Q13. Do you agree with CESR's proposals on inducements? If not, please suggest alternatives.

Q14. What are the additional costs of this proposal for UCITS management companies? If possible, please quantify your estimate. What are the benefits of this proposal?

We share CESR's view of extending to both collective portfolio management activity and direct sale the MiFID Level 2 inducements regulation. However, in order to pursue an effective extension it is necessary to refer paragraph 1, first sentence, of Box 11 to UCITS and investors, without any limitation; as a consequence, in such sentence the reference to direct sale should be deleted in order to extend the reference to the category of investors also to the collective portfolio management activity.

Furthermore, we deem important that CESR clarifies the reason why, in paragraph 1, letter b), point (i), the advice provides a disclosure also to *"the UCITS"*. In fact, this reference would imply that management companies should provide such disclosure to the same entity they manage and on behalf of which they take decisions (i.e. finally, to themselves); similarly, investment companies would provide such disclosure to themselves. Therefore, we deem preferable to delete the aforementioned reference or, otherwise, to limit it to investment companies managed by a management company.

We also underline that paragraph 49 of the Explanatory text is unclear, given that it refers, on the one hand, to the ex-*ante* disclosure requirement and to paragraph 1, letter b) of Box 11 and, on the other hand, to the type of inducements set out in letter a) of the same paragraph 1. Therefore, we deem appropriate that CESR clarifies such paragraph or, otherwise, deletes it.

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Finally, we disagree with paragraph 50 of the Explanatory text – which should be deleted – where it is stated that the management company should provide an *ex-post* disclosure towards current unit-holders on a periodic basis, concerning arrangements involving inducements set up after the initial offering of the fund. In fact, such disclosure goes beyond MiFID Level 2 relevant provisions.

Section III
CESR's technical advice to the European Commission on measures to be taken by a depositary in order to fulfil its duties regarding a UCITS managed by a management company situated in another Member State, including the particulars that need to be included in the standard agreements to be used by the depositary and the management company (Articles 22 and 23 of the UCITS Directive)

Specific conditions that a depositary must meet to fulfil its duties regarding a UCITS managed by a management company situated in another country (Box 1)

Q1. Do you agree that no additional requirements should be imposed on a depositary when the management company is situated in another Member State?

Q2. What will be the costs of imposing such a requirement for the industry? What would be the implementation difficulties for regulators?

We agree with CESR's proposal because we don't deem necessary a different regime depending on the use of the management company passport. In fact, such situation doesn't imply any peculiarity which could justify additional requirements on the depositary.

The standard arrangements between the depositary and management company and identification of the particulars of the agreement between them as required under Articles 23(6) and 33(6) and the regulation of the flow of information deemed necessary to allow the depositary to discharge its duties (Box 2)

Q3. Are the proposed requirements appropriate?

Q4. Are the information flows exchanged in relation to the outsourcing of activities by the management company or the depositary relevant?

We share CESR's view on the need of information flows between the depositary and the management company in relation with the outsourcing of the activities; nevertheless, paragraph 8, point b) should specify that the information communicated by the management company to the depositary should be limited only the outsourcing of functions directly linked to or relevant for the management activity.

Q5. Is it appropriate to indicate in the written agreement that each party may request from the other information on the criteria used to select delegates? In

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particular, is it appropriate that the parties may agree that the depositary should provide information on such criteria to the management company?

We agree with CESR's proposal.

Q6. Is the split between suggestions for level 2 measures and envisaged level 3 guidelines appropriate?

Q7. Do you see a need for level 2 measures in this area or are the level 1 provisions sufficiently clear and precise?

We share CESR's suggestion to rule, through level 2 measures, a set of general requirements on the content of the agreement between the management company and the depositary and, through level 3 measures, the recommendations to implement the aforementioned level 2 measures. However, such recommendations should be subject to a specific consultation process in order to give all stakeholders the opportunity to express any relevant comment.

Q8. Do you consider that the proposed standard arrangements and particulars of the agreement are detailed enough?

CESR's legal advice is sufficiently clear and detailed.

Q9. What are the benefits of such a standardisation in terms of harmonisation, clarity, legal certainty etc.?

Q10. What are the costs for depositaries and management companies associated with the proposed provisions?

The standardisation proposed by CESR will create a level playing field across European Union in the contractual relationships between management companies and depositaries, regardless the applicable law.

Level 2 measures on the law applicable to the agreement between the management company and the depositary (Box 3)

Q11. Do you agree that the agreement between the management company the depositary should be governed by the national law of the UCITS? If not, what alternative would you propose?

Q12. What are the benefits of such a proposal? Do you see costs associated with such a provision? In particular, is this requirement burdensome for the UCITS management company that will be subject to the law of another Member State regarding the agreement with the depositary?

We agree with the applicable law chosen by CESR and indicated in Box 3.

Need for different provisions in relation to investment companies (Box 4)

Q13. Do you agree that investment companies should not be treated differently

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from common funds in respect of CESR's proposals?

Q14. In your view, would such an approach impose unnecessary and/or burdensome requirements on investment companies? Would equal treatment improve the level playing field between different types of UCITS?

We agree with CESR's proposal.

Possibility to advise the European Commission to extend these requirements to domestic structures (depositary and management company / UCITS domiciled in the same Member State) (Box 5)

Q15. Do you agree with CESR's proposal that equivalent rules should apply to domestic and crossborder situations? In particular, do you agree that depositaries should enter into a written agreement with the management company irrespective of where the latter is situated?

Q16. Do you think that such a recommendation would increase the level of protection for UCITS investors? Do you agree that a level playing field between rules applicable to domestic situations and those applicable to cross-border management of UCITS offsets potential costs for the industry?

Q17. What would be the benefits of such an extension in terms of harmonisation of rules across Europe? What would be the costs of extending rules designed for cross-border situations to purely domestic situations? In particular, would a provision stating that the management company and the UCITS depositary have to enter into a written agreement irrespective of their location add burdensome requirements to the asset management sector?

We consider that the provision of a written agreement between management companies and depositaries even in purely domestic situation is important to create an effective level playing field and increase investor protection.

In Italy, such requirement already exist and, therefore, Italian asset management industry should not suffer any additional costs linked to an extension, at national level, of CESR's proposed rules.

Section IV
CESR's technical advice to the European Commission on the implementing measures on risk management (Article 51(4)(a) of the UCITS Directive)

General approach

1. Do the proposals related to risk measurement for the purposes of the calculation of UCITS' global exposure (as set out in document Ref. CESR/09-489) lead to additional costs for management companies and self-managed investment companies? Please quantify your cost estimate. What are the benefits of this proposal?

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Identification of risks and risk management policy (Box 1)

Q2. Do you agree with CESR's proposal on the scope and objectives of the risk management policy that should be adopted by the management companies? If not, please suggest alternatives.

Q3. Do the proposals related to identification of risks and risk management policy lead to additional costs for management companies and self-managed investment companies? Please quantify your cost estimate. What are the benefits of this proposal?

We agree with CESR's proposal concerning the scope and objectives of the risk management policy because measures defined in Box 1 are coherent with the aim that the risk management policy should pursue.

Risk management function (Box 2)

Q4. Do you agree with CESR's proposal on the organisational requirements which should apply to the risk management function? If not, please suggest alternatives.

Q5. Do the proposals related to the risk management function lead to additional costs for management companies and self-managed investment companies? Please quantify your cost estimate. What are the benefits of this proposal?

We agree with CESR's advice on level 2 measures relating to the risk management function. However, we deem important to better clarify that – in line with MiFID L2 – a management company may not have a risk management function, if it is proportionate to the nature, scale and complexity of the management company's business and of the UCITS it manages. If the management company adopts this solution, it should anyway guarantee adequate risk management processes, as stated in Box 2, paragraph 5.

Risk management activities performed by third parties (Box 3)

Q6. Do you agree with CESR's proposals on the organisational requirements and safeguards which should apply to the risk management function in case of arrangements with third parties? If not, please suggest alternatives.

Q7. Do the proposals related to performance of risk management functions by third parties lead to additional costs for management companies and self-managed investment companies? Please quantify your cost estimate. What are the benefits of this proposal?

Measures proposed by CESR in Box 3 are substantially in line with dome MiFID L2 principles on outsourcing of critical and important operational functions and, therefore, we deem that they could be efficiently applied by management companies which appoint a third party in order to perform the risk management function. Moreover, such approach would guarantee to a management company which

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provide at the same time investment services and collective portfolio management the application of a fully coherent legislation.

Risk measurement and management (Box 4)

Q8. Do you agree with CESR's proposals on the procedural and methodological requirements that should apply to the risk management process adopted by the management companies? If not, please suggest alternatives.
Q9. Do the proposals related to the measurement and management of risks, including liquidity risks, lead to additional costs for management companies and self-managed investment companies? Please quantify your cost estimate. What are the benefits of this proposal?

We agree with the proposals.

Responsibility of the board of directors and internal reporting (Box 5)

Q10. Do you agree with CESR's proposals on the requirements concerning the responsibility and governance of the risk management process? If not, please suggest alternatives.

Q11. Do the proposals related to the responsibility of the board of directors and internal reporting lead to additional costs for management companies and self-managed investment companies? Please quantify your cost estimate. What are the benefits of this proposal?

We agree with the principles defined in Box 5.

Procedures for the valuation of the over-the-counter (OTC) derivatives (Box 6)

Q12. Do you agree with CESR's proposals on the link between the risk management policy and the valuation of OTC derivatives? If not, please suggest alternatives.

Q13. Do you agree with CESR's proposal to extend the application of the requirements set out in Box 3 (concerning the risk management activities performed by third parties) to the valuation arrangements and procedures concerning OTC derivatives (regarding both the valuation and the assessment of the valuation) which involve the performance of certain activities by third parties?

Q14. Do you agree with CESR's proposal to extend the application of the requirements set out in Box 6 to the valuation of other financial instruments which expose the UCITS to valuation risks equivalent to those of OTC derivatives? If not, please explain and suggest alternatives.

Q15. In cases where financial instruments embed OTC derivatives, do you consider it
appropriate to apply the requirements referred to in Box 6 to the valuation of the embedded derivative element of the financial instrument? Should these

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requirements apply to the valuation of all such instruments? Please explain your answer and, where appropriate, suggest alternatives.

Q16. Do the proposals related to the valuation of OTC derivatives in the context of risk management lead to additional costs for management companies and self-managed investment companies? Please quantify your cost estimate. What are the benefits of this proposal?

With reference to the link between the risk management policy and the valuation of OTC derivatives and other types of financial instruments which expose the UCITS to valuation risks equivalent to those of OTC derivatives, it is important to underline that the risk management function has tasks different from those of the function in charge to valuate the portfolio of the fund. Even though these functions should cooperate, the risk management function can not impose its own models and assumptions to the function in charge to valuate the portfolio of the fund, in order to ensure that the fair value of the financial instruments is subject to adequate, accurate and independent assessment. Therefore, we suggest to delete the following sentence *"the risk management function should be appointed with specific duties and responsibilities for this purpose"*.

Supervision (Box 7)

Q17. Do you agree with CESR's proposals on the supervisory framework that should apply to the risk management process adopted by the management companies? If not, please suggest alternatives.

Q18. Do the proposals related to authorisation processes and the supervisory approach of competent authorities lead to additional costs for management companies and self-managed investment companies? Please quantify your cost estimate. What are the benefits of this proposal?

We agree with CESR's proposal on supervision of the risk management process given that the valuation of such process as a part of the authorisation procedure represents a guarantee, especially in terms of investor protection.

With reference to authorisation process, we suggest to substitute the words *"competent authorities"* with *"home competent authorities"*, in order to avoid legal uncertainty and, at the same time, guarantee that the management company applies only one law irrespective of the Member States where UCITS are located.

With reference to the supervision of the competent authorities, we suggest to clarify relationships and duties between host and home competent authorities, in order to avoid duplications of controls or uncertainties on the respective tasks concerning the valuation of the risk management process when licensing UCITS. We deem essential that the authorities in charge to authorise a new UCITS **rely** on (not "***may take into account***") the appraisal carried out by the home competent authorities of the management company's risk management process.

With reference to paragraph 3 of Box 6, we deem appropriate that it is specified that the management company shall notify material changes to the risk management

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process to the competent authorities only on a yearly basis given that, in any case, management companies are adequately supervised on an ongoing basis by competent authorities.

Investment companies

Q19. Do you agree with CESR's proposals on the application to investment companies of the risk management requirements set out in this document? If not, please explain your position.

We share CESR's opinion to extend to investment companies all measures defined in Boxes 1 to 7 on risk management.

We remain at your disposal for any clarification or request on the comments made in this response.

The Director General

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