M&G
INVESTMENTS

The M&G Group
Laurence Pountney Hill
London
EC4R 0HH
Telephone:
020 7626 4588
www.mandg.co.uk

14th June 2007

European Commission
Internal Market and Services DG
Financial Services Policy and Financial Markets
Brussels

Dear Sirs

Initial orientations for discussion on possible adjustments to the UCITS Directive

We welcome the opportunity to respond to the Commission's Exposure Drafts on legislative measures designed to deliver market efficiencies under the UCITS passport.

M&G is the UK and European fund management business of the international retail financial services group Prudential plc. It has over £156 billion of funds under management of which £115 billion relates to Prudential's long-term business. As at the end of December 2006, the combined assets under management in our retail investment funds business were approximately £20 billion, making M&G the fourth largest retail fund manager in the UK. M&G has been looking after savers since 1931 when it launched Britain's first unit trust. We now look after investments on behalf of more than 750,000 investors.

In 2001, M&G launched its international business and is now a major distributor of UK UCITS within the EU and more recently, in Asia. In the year to 31 December 2006 cumulative sales in Europe (ex-UK) amounted to €3.3 billion and assets under management at the end of 2006 stood at €3.9 billion.

In general, we support the submissions made by [EFAMA and] the UK Investment Funds Association, the IMA[1]. The attached response confirms our position but highlights areas we believe need further consideration before the Commission finalises its proposals.

One of our remaining concerns is the lack of clarity over the interaction of MiFID and the UCITS Directive and we look forward to receiving the Commission's assessment of the impacts in this regard.

[1] Investment Management Association of the UK

13651 MAY 05

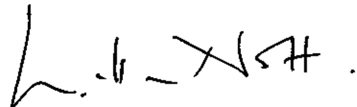
M&G Financial Services Limited and M&G Securities Limited are both authorised and regulated by the Financial Services Authority and provides PEPs, ISAs and other investments. The registered office of both companies is Laurence Pountney Hill, London EC4R 0HH. M&G Financial Services Limited is registered in England No. 923891. M&G Securities Limited is registered in England No. 90776.

We welcome the Commission's initiative on the pan-European private placement debate and the recent call for evidence in this regard. We strongly support urgent action in this area in order to resolve the issues that have created unnecessary obstacles to the promotion of funds to non-retail investors.

We have not responded in detail to the paper on supervisory co-operation but would emphasise that we consider collaboration between regulatory authorities to be of the utmost importance if the amended provisions are to deliver the desired level of harmonisation.

Finally, many of the proposed legislative changes will not achieve what is intended unless the tax environment is right. Despite significant progress in removing tax barriers to the marketing of funds cross-border, tax discrimination in the EU remains one of the single most important obstacles to the creation of a single market for investment funds and we would encourage the Commission to continue the good effort it has already made in this area.

Yours faithfully



William Nott
Chief Executive, M&G Securities Ltd

enc

10977 MAY 05

1. NOTIFICATION

1. **Does the proposed approach represent the most effective basis for achieving the smooth functioning of the passport? How could the proposed approach be improved and what alternative approaches could/should be envisaged?**

   We fully support the proposed approach and believe that it will deliver the streamlined registration process envisaged by the original Directive. However, we consider the three-day 'sitting' period to be non-essential and would prefer some form of confirmation to be issued by the Host State Authority once the ex post checks have been completed.

2. **Do the proposed provisions represent a sound and operational basis for informing host authorities about the marketing of UCITS in their Member States? Are the responsibilities and obligations of the respective competent authorities sufficiently clear?**

   We agree that the proposals represent a sound basis for informing Host Authorities about the marketing of UCITS in their jurisdiction. However, further clarity is needed on the practicalities. We would make the following observations/recommendations:

   - Electronic transmission of documents should be actively encouraged if not prescribed to maximise efficiency and speed

   - If the 3 day turnaround is to be imposed, it should be clear if this refers to business days and how national holidays will be treated

   - Further clarity is required around the fee basis for notification; Since Host States currently charge a fee for reviewing a notification file, it will be important that such fees are not duplicated so as to remove some of the economic benefit available under the proposals

3. **In the event of host country's questions relating to matters not harmonised by the Directive how can these be addressed/resolved without obstructing or delaying the right of the fund to circulate its units in that market?**

   From an investor protection and good business perspective the matters which are not harmonised need to be considered and their implications understood prior to a Manager deciding to market its UCITS in a new market.

   Measures need to be taken to ensure Managers have access to clearly set out information on the legal and regulatory requirements in each Host State. This information must be in the public domain and we would urge the Commission to consider proposals that will require Host

States to make such information publicly available and easily accessible without the need to sift through complex rulebooks and legislation to locate the information required. In addition:

- Further clarity is required around communication once the file has been transmitted to the Host State. For example, if ex post issues arise, how and to whom will these be directed: the Manager or the Homes State Authority?

- To increase the certainty with which a Manager can confidently market its funds, the proposed approach could further be improved if the Host State Authority is required to notify the Firm that the ex post checks have been completed.

- There is no detail on the nature of the ex post checks; in particular, it is important that there is clarity around the Host State powers with regard to these checks. What measures or sanctions should a Host State be permitted to take?

- The implications of an ex post check giving rise to an issue with regard to a Manager's ability to continue promoting a fund need to be clarified and harmonised wherever possible. Since active marketing may already have taken place, it will be essential that any issues are resolved quickly.

4. Proposed solutions foresee that obligatory publications are distributed to investors in a host Member State according to its local rules. Is harmonisation of those methods of distribution to investors desirable? Feasible?

We don't consider this necessary.

5. Will new rules on use of languages for obligatory disclosures affect investor protection?

We fully support the proposals with regard to translation only of the key investor information. However, we would go one step further in suggesting that translation of documentation is purely a commercial matter since the target market for a Manager's products – which in M&G's case is predominantly institutional - will dictate whether or not translation is needed at all.

6. Do you agree with the analysis of the expected impacts? Are there any other economic or investor protection implications that should be taken into account?

We agree with the analysis.

7. **What do you expect to be the size of the different savings highlighted in the analysis? Which other costs could be saved thanks to the proposed procedure?**

We agree with the analysis but would re-emphasise that cost savings and/or efficiency gains will only be fully realised if:

- information on the non-harmonised aspects (principally local marketing requirements) is readily and clearly accessible to Managers
- Supervisors reflect the changes in their responsibilities in the level of their fees so that firms do not pay twice for handling the notification process
- Home State authorities undertake the verification of the notification file quickly

Furthermore, in our experience, in countries where we are required to appoint a paying agent we have in the past been asked to provide translated copies of the fund documentation. Clearly, such requests would undermine the potential cost savings arising from the proposal that scheme documentation need not be translated for the purposes of notification.

8. **Do you agree with the following assumptions?**

➢ **The envisaged adjustments should lead to reduction of current notification fees**

Yes, subject to our points in (7) above.

➢ **Electronic communication between the fund promoter and its home MS regulator and between the home regulator and the host regulator is possible**

Yes.

➢ **The envisaged option will facilitate cross-border access for UCITS more than viable alternatives.**

Yes.

➢ **The envisaged option will free resources on the side of host regulators.**

Yes, if the powers and responsibilities are made clear.

- **Implementation of new rules regarding the use of languages and making the UCITS responsible for translations will considerably reduce translation costs.**

  Yes.

2. MANAGEMENT COMPANY PASSPORT

1. Does the proposed approach represent the most effective basis for achieving the stated objective (to give effect to the management company passport)?

No. We believe that implementation of a partial passport would not only represent a significant lost opportunity in achieving the desired objective but would be a step backwards from where we are today.

We strongly urge the Commission to reconsider the full management company passport which, we believe, represents the most effective basis for achieving the stated objective.

- The "cons" of the full passport outlined in the paper are small and are in any case far outweighed by the key benefits which, for the record, include risk mitigation through centralised management and control.

- We believe the supervisory concerns are being overstated. For instance the supervision of other passported activities such as those under the Investment Services Directive, has been possible to date and we are not sure if it is helpful, nor in the interests of the single market, to treat management companies any differently.

In response to the specific concerns outlined in the impact analysis on page 4, we would make the following comments:

<u>Compliance costs</u>

- in industry terms, we would expect the full passport to reduce compliance costs since the burden of reviewing outsourced services would be removed

- we are of the view that the fiduciary duty of the depositary to the fund investors is by far the most significant layer of protection for a UCITS and one that should serve to allay supervisory concerns, particularly bearing in mind the level of supervision of the Management Company's operations in its Home State

<u>Economic benefits</u>

- We would tend to the view that any increase in costs for the depositary are likely to be minor since most supervision can be carried out electronically and the need for on-site visits are correspondingly few

Investor protection

it would be more difficult for...

- *the depositary to fulfil its duties* – in our experience most depositaries have the resource to operate cross border and we do not see any risks or significant costs associated with the separation of operational activities and the fund domicile.

- *the investor to address his/her complaints in the event of a problem* – we believe that the facilities agent or branch structure currently in place under the Directive adequately covers this concern.

- *the regulator to supervise* – we do not understand how the regulator's obligation would change significantly against the current position and believe that the Directive (and the proposals) clearly sets out the responsibilities of regulators.

In contrast the "cons" of the partial passport outlined in the paper are significant (i.e. lower savings and less flexibility) and each would seem to completely defeat the aim of harmonisation.

In practice, a management company is often a subsidiary company of a much larger investment house where fund management and operational procedures are centralised in order to support the whole business and, importantly, to manage risk. The requirement to appoint service providers in the domicile in which a fund is established creates unnecessary complexity, higher risk and indefensible costs, which will ultimately be paid by investors.

Moreover, in our experience the expertise available to administer and price certain types of fund or asset types is stronger in some jurisdictions than others and the Manager should not need to compromise the efficient running of the scheme by being forced to accept a less expert level of service in the fund domicile. An obvious example of this is constant NAV funds where Dublin has established a centre of expertise based on the unique requirements of managing this type of scheme.

We believe that tax is a separate consideration which is not appropriate when assessing the "pros" and "cons" of each option.

2. **How could the proposed approach be improved? Should alternative approaches be envisaged? Which provisions are not adapted to realisation of the stated objective?**

   We agree entirely with the IMA's response on this which, we believe, fully addresses the concerns that have been raised in relation to the notion of a full passport. The three key components that support the proposition are: enhanced supervisory co-operation, the contractual arrangements between the Fund and its Management Company on applicable law/regulation and, significantly, the role of the depositary. We agree that by far the most crucial element is the latter and we accept that in order to address the supervisory/investor protection concerns, the depositary should be regulated in the same Member State as the fund.

3. **Are the reasons for defining the fund and management company domiciles well grounded? Are the proposed criteria and tests for defining the respective domiciles, appropriate and operational? Is the distinction between domicile of fund and that of the management company introduced coherently and systematically in all relevant provisions? Does this distinction need to be reflected more fully elsewhere in the Directive (e.g. depositary responsibilities)?**

   No comment – see A1 and A2.

4. **The management company will be able to maintain the shareholder register and assume responsibility for fund valuations for a fund domiciled in another Member State, subject to the provision that these functions be physically performed in the fund domicile (via branching or delegation) and subject to competent authorities of that country. Is this a coherent and operational basis for reconciling the management company passport with the need to ensure sufficient substance in the fund domicile?**

   No comment – see A1 and A2.

5. **Are the responsibilities and obligations of the different actors (including depositaries) and competent authorities sufficiently clear so as to ensure integrated supervision of risks at the level of the fund and the management company? Do the strengthened supervisory cooperation mechanisms (cf chapter 6) provide the basis for effective and timely intervention to correct any cross-border supervisory concerns that might arise from exercise of the management company passport?**

   Enhanced supervisory co-operation is essential and we suggest that work should commence now to clearly identify supervisory needs so that the issues can be addressed.

6. **Do you agree with the analysis of the expected impacts? Are there any other economic or investor protection implications that should be taken into account?**

In general terms we agree, but the beneficial impacts would be much greater if a full management passport were implemented and that opting for implementation of the partial passport proposal will represent a significant missed opportunity.

7. **Is 'close physical presence' necessary for the depositary to fulfil its duties?**

See our response to Q.2 above.

8. **What is the annual cost linked to maintaining the two core functions (i.e. valuation and pricing and the maintenance of the unit-holder register) in the fund's domicile? Can significant savings still be achieved despite the performance of those two functions in the funds' domicile?**

As noted earlier, the partial passport falls very short in delivering the efficiency gains possible under a full passport.

9. **Are there other administrative functions which should stay in the fund's domicile? What would be the estimated additional costs/savings associated to these functions staying in the fund's domicile?**

No. If further activities are to be carried out in the domicile of a fund then the core benefits of the passport will be lost along with the cost savings and efficiencies that would otherwise be achievable.

We also believe that if certain activities are required to be carried out in the domicile of fund this will have knock-on effects to other proposals in this consultation, notably pooling. The Commission should therefore consider carefully the impact of this proposal across the board.

3. MERGERS

1. **Does the proposed approach represent the most effective basis for achieving the stated objective to create an effective framework for fund mergers? How could the proposed approach be improved and what alternative approaches could/should be envisaged?**

Yes, we believe that the proposed approach does represent an effective basis for harmonising cross border UCITS mergers.

2. **Do the proposed definitions and scope of the proposed measures adequately capture the main features and characteristics of fund**

merger activity? Do they take sufficient account of differences between different fund types (corporate, contractual, trust) and legal systems (common law, civil law)?

Yes.

The Commission needs to clearly define what it considers to be a merger, since we believe that the definition of this term differs between member states. Some principles should be developed to assist firms in determining when a vote is required and when it is not (for example, would investor approval be required in the event of a transfer of assets between two clone funds?).

We feel the proposals are not clear for mergers between different legal entities in different jurisdictions, for example, it's not clear that a merger of a UK umbrella OEIC with a Luxembourg FCP would be possible.

It is not clear what is meant by a "negative impact" for investors in a continuing fund (page 14). For instance, would dilution, the increase in the risk of contagion or the merger with a fund with a different risk profile constitute negative impacts? We believe that some examples would add value here.

3. **Are the interests of unit-holders in the merging/dissolving and receiving fund sufficiently safeguarded by the proposed arrangements? In particular, is the reliance on information provision coupled with the right to redeem free of charge a suitable basis for protecting investor interests?**

We see the voting process as the single biggest obstacle to fund mergers.

The approval requirement should not be greater than 75% of the votes cast, not eligible. Importantly, the majority must commit the whole fund and not just those who have approved the merger proposal.

4. **Does the proposed minimum content of the common draft terms of merger correspond with current practice? Should any other items be added to it? Do you consider it preferable to grant implementing powers to the Commission to further define the content thereof?**

In the UK, common practice is to send a circular to the merging investors only and not to investors in the continuing fund. We would not therefore provide detail in the circular regarding the impact of the merger for investors in the continuing fund and consider the proposal to be too bureaucratic for no investor benefit.

Investors of the merging fund are provided with a copy of the simplified prospectus/key features document of the new fund, not the full

prospectus or instrument of incorporation (although these documents are of course available on request). In addition, the circular typically contains a comparison table setting out the similarities and differences between the merging fund and the continuing fund. We do not see any value in sending the instrument and full prospectus and in fact take the view that it is more helpful for investors to filter the information that is relevant to them.

We would typically include the following additional information in a circular:

- Description of the merger scheme/scheme of arrangement setting out logistics (e.g. suspension of dealing, issue of new shares, effective date of merger etc)

- Tax consequences of merger, redemption, switching etc and the fact the HMRC has agreed to such tax consequences.

It will be important for the content of the merger documentation to be harmonised to avoid the creation of barriers for mergers of funds across different Member States and we believe the Commission should therefore seek the implementing powers required to achieve this.

5. **Do you agree with the analysis of the expected impacts? Are there any other economic or investor protection implications that should be taken into account?**

We agree that harmonisation of the cross border merger process will potentially increase the number of cross-border mergers.

6. **Is the assumption regarding the number of potential cross-border mergers right (i.e. the fact that option 3 would encourage a considerable lower number of mergers than option 1)? Will the envisaged solutions be more effective in facilitating fund mergers that other approaches considered?**

We agree that Option 1 is the most appropriate option.

7. **Which additional possibilities could be considered in order to reduce the regulators' and industry's administrative burden and other compliance costs further?**

None immediately identifiable, other than the careful consideration of the impact of these proposals against the others made in this consultation.

8. **Have countries with a history of domestic mergers, observed identifiable positive or negative impacts for investors?**

The UK has a well established merger regime and we consider the activity to be essential to the efficient management of our funds and generally in the interests of our investors.

4. ASSET POOLING

1. Do you agree/disagree with the intention to harmonise only master-feeder structures? Why?

Yes, we very much support the proposal to create a harmonised master feeder structure for UCITS but strongly urge the Commission to revisit the recommendation with a view to allowing feeders to invest in multiple master funds. Given where we are in the evolution of UCITS, it would be unfortunate if we were to miss this opportunity to make the changes as flexbile as possible.

In summary, we believe that under UCITS there should be three harmonised pooling structures:

- Fund of funds structure (up to 20% exposure to one collective) – already permitted under UCITS
- Entity pooling structure (between 20% and 100% exposure to one collective) – not promoted in Paper (option 1)
- Master fund structure (up to 100% exposure to one collective) – promoted in Paper (option 2)

2. Does the proposed approach represent the most effective basis for achieving the stated objective (to create an effective framework for master-feeder structures)? How could the proposed approach be improved and what alternative approaches could/should be envisaged?

Yes, but, as noted in (1) above, we think the provision should be sufficiently flexible to allow a single feeder to invest in a number of master funds. Since the underlying funds must all be UCITS there will be adequate protection for investors and, for example, there should be no concerns regarding unacceptable risk profiles or liquidity issues.

We believe that such a structure would assist in the centralisation of cross border funds and provide a more versatile managed fund proposition for investors without compromising on the safeguards inherent in UCITS. The multiple feeder structure would offer further opportunities for Managers to improve economies of scale and facilitate the sale of funds across Europe.

If TERs are calculated accurately, we do not believe that double charging should be an issue and cannot see why a multiple fund structure should present a confusing picture to investors who are, after all, quite familiar with fund of fund structures.

We presume that the proposals apply to both pooling in the UK and pooling outside the UK.

3. **Are the responsibilities and obligations of the competent authorities sufficiently clear? Does the proposed authorisation and supervision mechanism ensure an efficient supervision, particularly in cross-border-structures?**

We feel that the responsibilities are clear but that, overall, the draft is far too detailed to make master feeders a viable proposition and would urge the Commission to apply a more outcomes focused approach to the proposal.

To give a practical example, in the event of a suspension of dealing in a master UCITS, it is proposed that the competent authority of the master UCITS would be obliged to inform the competent authority of the feeder UCITS which in turn would inform the feeder UCITS. This seems to be an unnecessarily laborious and time consuming process (which can only be to the detriment of investors), which could be improved by allowing the master UCITS to inform all feeder UCITS directly.

We would make the following observations:

- We fail to see why a master UCITS should have at least two feeders. We view the master in the same way as any other UCITS, i.e. generally open to the public.

- we do not believe the proposals will work effectively without a full management company passport and the Commission should give careful consideration to the interrelation between the proposals

- M&G operates a range of feeder funds in Guernsey which invest in our UK domiciled funds. In Guernsey law there is no obligation for agreements external to the fund prospectuses since the feeder simply reflects the objective and terms of the master fund. We therefore fail to see the benefit of an additional agreement between the feeder and master funds; the parties involved should be able to rely on the UCITS Directive and constitution of the respective entities involved.

- We do not see a need for an information sharing agreement between the depositaries of the funds since the oversight responsibility should be no different from any other fund holding; for the same reason, we do not see the need for the feeder to actively supervise the activities of the master any more than it would the issuer of listed security

4. **Do the proposed definitions and scope of the proposed measures adequately capture the main features and characteristics of master-feeder structures?**

   See our response to (1) and (2) above

5. **Is the proposed threshold for assets invested in the master by the feeder (i.e. 85%) an appropriate cut-off point? Apart for the (15%) holdings listed as permitted which other instruments/ investments should a feeder be allowed to invest in?**

   See our response to the questions above.

6. **Are the interests of unit-holders in the feeder UCITS sufficiently safeguarded by the proposed arrangements? Are additional safeguards needed in certain scenarios (e.g. conversion of existing UCITS to feeder UCITS; should master and feeder not be entitled to have the same depositary and/or auditor?)**

   Yes, we believe that since the structure will take place within the UCITS Directive framework, investor protection is intact.

7. **For an investor considering investment in a feeder fund, which are the main elements an investor should be informed about so as to enable her/him to take an informed decision? The resulting investment policy? The resulting level of fees/charges? Others?**

   We see the disclosures as being consistent with those applicable to any UCITS.

8. **Do you agree with the analysis of the expected impacts? Are there any other economic or investor protection implications that should be taken into account?**

   We agree with the expectation that the harmonisation of master UCITS will reduce costs and administration and believe the most pertinent economic and investor protection implications have been covered.

   The impact on any international tax treaties should be considered. For example, if a master UCITS qualified for a favourable tax treatment, will the feeder also be able to benefit from this treatment? If it cannot then the pooling proposal may not work

9. **Would the proposed UCITS master-feeder regime have an impact on the number of these pooling structures?**

   ☐ Yes, an important surge on the use of master-feeder structures is to be expected.

Yes, we believe this is possible subject to a review of the proposals as set out in our response..

☐ **No, the main change will be that existing structures become UCITS-compliant.**

☐ **No, main pooling advantages are already exploited through national structures.**

10. Which possibilities could be considered in order to reduce the regulators' and industry's administrative burden and other compliance costs linked to the proposed provisions?

See our responses to the questions above

5. SIMPLIFIED PROSPECTUS

We welcome the Commission's review of the simplified prospectus. A considerable amount of work has gone into ways in which the failings of the existing document can be addressed and we do not intend to repeat those arguments here. We are fully supportive of the IMA's response to the Commission's proposals and consider the key objectives to be:

- Agreement on the key information
- Flexibility on mode of delivery to recognise the various ways in which UCITS are sold
- An obligation on the intermediary to provide the KII
- For the document not be regarded as marketing material
- To allow for electronic delivery with facility for the customer to obtain a printed copy