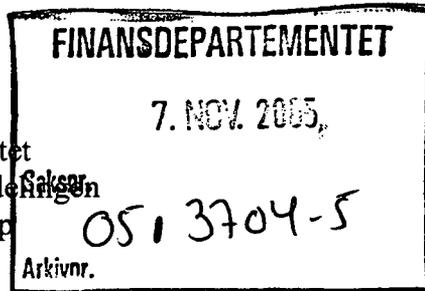




KREDITILSYNET
The Financial Supervisory Authority of Norway



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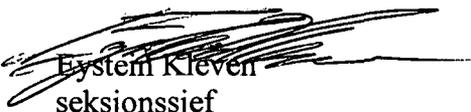
GRØNNBOK FRA KOMMISSJONEN OM EU-RAMMENE FOR INVESTERINGSFOND - HØRINGSUTTALELSE

Kredittilsynet viser til Deres brev datert 19.10.05.

Kredittilsynets bemerkninger til Kommisjonens "Grønnbok om en forbedring av EU-rammene for investeringsfond", dokument (2005) 314, følger vedlagt. Vedlegget er utarbeidet på engelsk.

Høringsuttalelsen vil i tillegg bli oversendt på e-post til karl.rosen@finans.dep.no.

For Kredittilsynet


Eystein Kleven
seksjonssjef


Elisabeth Huse
seniorrådgiver

Vedlegg

Green paper on the enhancement of the EU framework for investment funds (2005) 314

Q. 1-2

We agree that the CCSR guidelines, clarifications of the notification procedure, promoting the two Commission's Recommendations on derivatives and simplified prospectuses and clarifications of asset eligibility, are important initiatives in the implementation of the UCITS-directive.

Q. 3-4

We have no basis for estimating economic advantages through an effective company passport as opposed to delegation arrangements concerning establishing/operating UCITS domiciled in other member states.

From a supervisory point of view, we assume that it is more convenient to organise management of UCITS domiciled in other member states through delegation. Delegation arrangements have the advantage of clear responsibilities of the parties involved as the delegating entity will remain responsible for the management of the UCITS. A more effective management company passport would lead to a split of supervision of the UCITS and the UCITS management company. We assume there might be difficulties in splitting up the supervision. As we see it, an efficient supervision with the UCITS depends on direct and close contact with the management company, for instance as regards fund reports.

Since the directive does not provide for specific measures to address this situation, our opinion is that a passport as suggested needs careful examination in advance.

Q. 5-7

We agree that it is important to pay attention to the distribution process and investors need for advice in this connection. Greater attention to investors needs during the distribution will be important for investor protection. As a part of this it is natural to concentrate on transparency in the distribution process. We will emphasize disclosure of possible relationships between the management company and the distributors, including sales commissions paid by the management company.

Clarification of "conduct of business" rules applying to firms which retail funds to investors may represent an advantage in the distribution especially if the conduct of business includes the need of the individual investor and focus on avoiding conflicts of interest, cf. banks or other selling third-party funds. The investors will obtain the most essential fund information by the simplified prospectus, but in addition it will be important to be aware of greater transparency concerning the distributors' role.

Q. 8

As a first step, we assume that it is more practical to rationalise the products offered at national level rather than carry out cross-border fund mergers. A national process might be even cost-efficient and develop the funds potential.

Q. 9

We assume that the meaning of "fund pooling" is that UCITS may invest more of its assets in other single funds than what is prescribed in the directive today.

It may be some benefits with such an organisation, but we will underline the necessity of providing for information to the investor.

Q. 10

We presume that increased competition will give higher efficiency, with the investors will benefit from. But competition solely is not sufficient.

Q.11

We agree that greater freedom in the choice of the depositary will require further harmonisation of the legislative framework concerning depositary services. As far as we see it, the depositary control obligation is the main ground for requiring the management company and the depositary to be located in the same member state.

On the other hand, we have noticed that the information technological development (IT) in the future might create a need for greater freedom in the choice of the depositary. We will not exclude that greater freedom to some extent might open up for more efficient competition and be cost-efficient.

Whether delegation obviates the need for legislative action on these issues depends on to what extent the depositary's responsibility might be delegated. Today it seems that the directive only allows delegation as regards safe-keeping. The directive seems not to allow delegation as concerns the "control" responsibility.

Q.13

It must be assumed that formal investment limits represent an important factor as regards investor protection since the investment limits attempt to limit investors' exposures to excessive losses caused by a single issuer. Since the limits do not guarantee investors from suffering loss, it is even important to enable investors to understand the risks that pertain to investments in a specific fund.

Q. 14

In our opinion prevailing measures might be sufficient.

Q. 15

The Norwegian fund industry have emphasised the unequal legal conditions between UCITS products and e.g. structured products regarding information on risks and costs. This view is in accordance with our experience and knowledge. The UCITS lose market share because other products are less transparent. The way to solve this problem, is to require higher transparency and disclosure of e.g. structured products, with will make them more comparable with UCITS.

Q. 16-18

About alternative investment, we refer to the law proposal from the Norwegian FSA with the Ministry of Finance now are dealing with.

Q. 19

During the implementation process we have seen a need for clarification on how the directive should be practised. The Recommendations on derivatives and simplified prospectus as well as the ongoing work on eligible assets have been necessary supplements to the Directive. So, this experience might have shown that the product-based prescriptive UCITS law have created some difficulties. On the other hand it is reason to believe that the most relevant questions have found a solution at least on short-time basis. We will not exclude the need for a move toward a more principle-driven regulation on a long-term-basis.