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NFU Response to Consultation on legislative changes to the UCITS depository function and to the UCITS managers remuneration

About NFU

Nordic Financial Unions (NFU) is an organisation for co-operation between trade unions that organise employees in the banking, finance and insurance sectors in the five Nordic countries. At present, eight trade unions are affiliated to the NFU; two in Denmark, two in Finland, two in Sweden, and one in each Iceland and Norway. Through these trade unions, NFU represents 160 000 employees in the Nordic financial market.

General remarks

Most of the questions asked by the Commission in the consultation paper are dealing with matters that are largely oriented towards the securities issuers and investors on the market, and hence not for NFU to comment specifically.

In our reply, we have focused on matters that will have an impact on employees in the finance sector now and in the future.

UCITS DEPOSITARIES

NFU agrees with the Commission that the UCITS depository function needs to be updated, due to the fact that the rules relating to depositaries in the Directive have remained mostly unchanged since 1985. Since the investment landscape has changed significantly since then, especially in the wake of the crisis, the development of clearer standards is necessary. The proposed changes to the depository function are in line with other pieces of legislation of similar nature which provides for a more consistent financial market.

NFU has maintained the importance of all financial market players being subject to the same duties and controls. This should naturally be the case when it comes to UCITS as well. NFU supports one regulatory model that will cover any type of actor.

Separate rules for different market actors, and different markets, increases market opacity and make it harder for investors to survey and evaluate different investment choices, as well as for employees to give proper advice and information. This makes especially sense with respect to the existing and ever-expanding interlinkages between different actors on the global financial market, as we have witnessed with regard to the latest financial crisis.

NFU also agrees with the Commission that differences between national supervisors' scope of competencies might lead to an uneven supervisory framework, suggesting that such competences might be better harmonised. NFU fully agrees that this remains a key issue to be addressed in order to fully achieve due levels of harmonisation in practice for the depositary function at the Community level.

NFU would in this context like to stress the importance of looking beyond governmental supervision as the only viable way to go.

From the employee perspective, ensuring sound and efficient “whistle-blowing systems” would be one measure that would be appropriate. Whistle-blowing is, indeed, about ensuring that early warnings from the bottom and up will reach the competent supervisory authority which should have the power, the mandate and resources to follow-up on the warnings and, where necessary, investigate the entire company. NFU is of the firm belief that employees are the first to recognize a systemic failure or a risky business, since it is part of their day-to-day-operations.

Whistle-blowing would not only ensure a fast and efficient “point of entry” for national supervisors, but also provide employees with a way to voice their concerns to an authority that takes them seriously. This could be done in a way where the national supervisor consults with employee representatives in a suitable fashion, be it through anonymous “hot-lines” or scheduled, consultative meetings with trade unions. It is important to stress that for employees to be able to provide this information in an orderly fashion, the national supervisors must be able to create reliable systems for this, which are not filtered by a strong company management or board of directors.

UCITS MANAGERS' REMUNERATION POLICIES

When the CRD III originally was discussed, NFU pointed out to the Commission as well as other European institutions that the issue of the European legislator regulating remuneration is of particular interest to the Nordic countries, since this regulation may impose restrictions on the right to free collective bargaining.

The social partners can, and must be allowed to, assume the responsibility of sound and sustainable remuneration principles. NFU strongly supports the idea of remuneration policies and practices that are consistent with and promote sound and effective risk management, but

believes that remuneration policies should be left to the social partners to decide upon, since pay is, according to art. 153.5 in the Treaty on the Functioning of the European Union (TFEU), not for the EU to deal with.

This has also been acknowledged in Recital 14 in the European Parliament legislative resolution of 7 July 2010 on the proposal for a directive of the European Parliament and of the Council amending Directives 2006/48/EC and 2006/49/EC as regards capital requirements for the trading book and for re-securitisations (see below).

Recital 14: The provisions on remuneration should be without prejudice to the full exercise of fundamental rights guaranteed by the Treaties, in particular to the provisions of Article 153(5) of the Treaty on the Functioning of the European Union (TFEU), general principles of national contract and labour law, applicable legislation regarding shareholders' rights and involvement and the general responsibilities of the administrative and supervisory bodies of the institution concerned, as well as the rights, where applicable, of social partners to conclude and enforce collective agreements, in accordance with national laws and traditions.

As pointed out above, the European Parliament acknowledges that the provisions on remuneration are without prejudice to the social partners' right to conclude collective agreements in accordance with national laws and traditions.

In the consultation document, the Commission suggests that in the case of UCITS managers, remuneration policies should apply to those categories of staff whose professional activities may have a material impact on the risk profile of a managed UCITS, in particular to senior management including a board of directors, persons carrying out supervisory functions or the permanent risk management function, and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management.

NFU has maintained that the circle of persons that might be affected by the CRD provisions is ambiguous and needs to be clarified, and this is also the case in the consultation document. It is very unclear who might be encompassed by the definition "staff whose professional activities have a material impact on the risk profile" of a managed UCITS.

When launching the original CRD revision proposal, the Commission stated that the provisions on remuneration would, for example, not cover "more junior staff". In our opinion, this has not been acknowledged in the consultation document.

The draft ideas regarding remuneration in the consultation document must therefore be revised on these matters, and it must be made clear that any provisions regarding remuneration policies in financial institutions do not apply to remuneration policies and provisions agreed in collective agreements.

In the consultation document, the Commission also suggests that a remuneration committee should be established where it is justified by the size of a UCITS manager and a UCITS it manages, their internal organisation and the nature, scope and the complexity of their



activities. According to the proposal, the role of the remuneration committee would be to exercise an independent judgment on remuneration policies and practices.

NFU agrees with the Commission on this suggestion, and would like to highlight the role of employees in such a committee. NFU is of the opinion that a long-term perspective should prevail in any financial institution, and employee representation in remuneration committees will be a mean to reach that goal, since employee representation ensures a bigger versatility of independence in decision-making or advisory bodies of a company.

NFU generally supports employee share schemes, but when it comes to creating such systems for bonuses and remuneration, the involvement of trade unions and employees is important. Employee share schemes might be an instrument to motivate the employees to do a better job that will result in a better quality of service and advice to the customers, but it must be duly investigated what these schemes entail for the employees in terms of rights and obligations.

Yours faithfully,
Nordic Financial Unions (NFU)

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