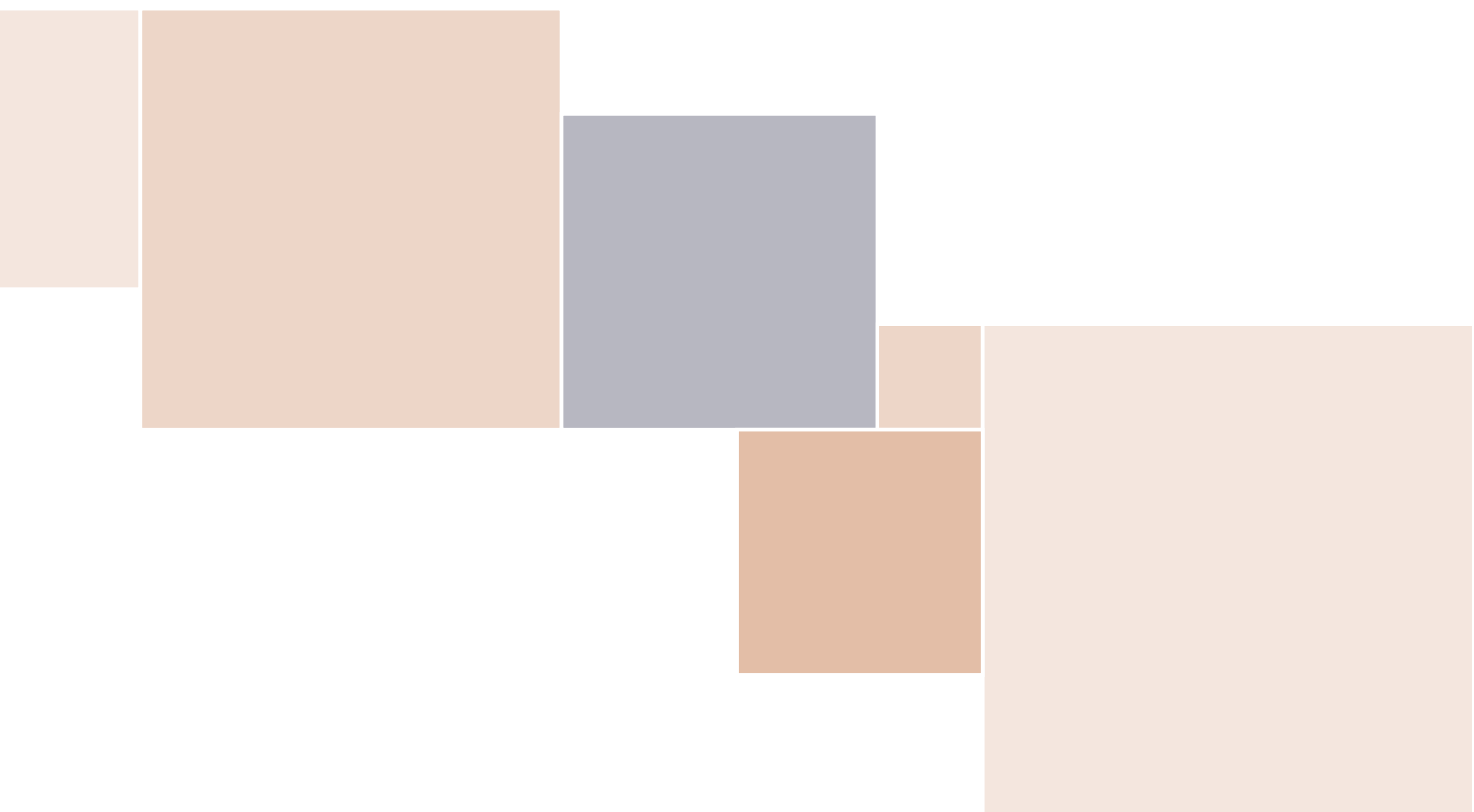
Annual Report

2009



Contents

President's Statement 4

Director General's Statement 6

Activity Report 2009 8

European Investment Fund Developments in 2009 50

EFAMA Membership 60

EFAMA's Secretariat 72

efama

European Fund and Asset Management Association

President's Statement

When I took over EFAMA's presidency in June 2009, our association was set to embark on a new strategic journey. It had been considerably strengthened under the leadership of my predecessors - Wolfgang Mansfeld, Stefan Bichsel and Mathias Bauer - and significant progress had been made on our long-term objective to deepen the Single Market for investment management and increase the industry's competitiveness. UCITS IV had been adopted and the European Commission had taken on board the need to ensure a level playing field between Packaged Retailed Investment Products.

Meanwhile, the global financial crisis had shaken the entire value chain of the financial services industry and millions of the investors we serve were potentially feeling let down. The G20 committed to try and avoid at all cost any future financial crises. This led to several regulatory initiatives in Europe which are still being debated, including notably a new supervisory framework for financial services, the introduction of regulation for non-UCITS products including hedge funds, increased regulation of financial markets (OTC derivatives, credit ratings, short-selling), clarification of the role and responsibilities of depositaries, classification of money market funds, and strengthening of governance and ethics.

Our post-crisis agenda needed to reflect all those initiatives and assess how we could contribute to creating adequate regulation. However and at the same time, the biggest risk we ran was to just respond to regulators' and politicians' agendas. It was therefore vital that we also pro-actively identified and suggested action plans on other issues that we, as an industry, recognised as critical to the business and where resolution is in the best interest of our clients.

With this in mind, a strategic plan was agreed by EFAMA's Board back at the time of my election. It has three major objectives. At a distribution level, we need to focus more sharply on investors to ensure that we meet our collective fiduciary duties. At a product level, EFAMA wishes to enhance the industry proposition and actively contribute to building long-term savings. Finally, the Board believes that our industry's representation in Europe should be strengthened in order to help realise these goals. To help EFAMA achieve its overall aims, it was also decided to continue strengthening EFAMA's governance and resources.

To progress towards meeting those strategic objectives, a number of initiatives were taken in addition to the day to day work of EFAMA's team. Additional working groups were created, such as on financial supervisory architecture, investor education, private placement and fund and corporate governance. In September, EFAMA's Board of Directors agreed to launch a Think Tank Initiative to help EFAMA set its agenda in terms of distribution and long-term savings and to define practical recommendations that would be presented to political authorities and regulators as the industry's agenda. McKinsey & Company was mandated to help us, and the report was published in March 2010 under the title *'Revisiting the landscape of European long-term savings – a call for action from the asset management industry'*.

We also took a number of decisive steps to strengthen our governance. In July 2009, a President's Advisory Council was set up to act as a think tank and help the President keep a long-term perspective in setting EFAMA's strategic focus, and ensure due regard to the visions and ideas of senior industry figures. Also in July, a Chief Investment Officers Forum was founded. In December 2009, two new corporate members were invited to join EFAMA's Board bringing corporate members representation to five.

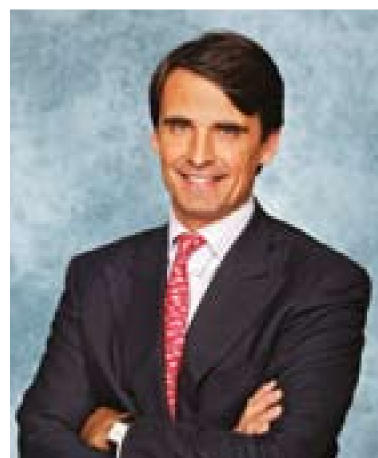
We also spent time revisiting and proposing how to respond to EFAMA's growing need for additional resources and have sought to leverage further the resources of national associations to the benefit of the pan-European industry.

More generally, we have started to seek greater cooperation between EFAMA and other pan-European associations involved in asset management related topics and are engaging in a more systematic dialogue with the European banking and insurance federations. We have also taken to a new level our global coordination efforts (Peter De Proft was elected Chairman of the International Investment Funds Association) and in particular we have continued to strengthen the fruitful trans-Atlantic relationship that we have with our peers in the United States.

The challenges that lie ahead are formidable. We are faced with an extensive agenda, whilst being aware of our significantly resource constrained environment. We will need to continue taking a number of key steps in the year to come to maintain the new momentum that we have established so as to ensure that we carefully manage the risks that we face as an industry and constantly focus on delivering the best possible level of service to our clients.

So, the way is paved. I am looking forward to next year's AGM, to report on all additional progress that we will have made.

Jean-Baptiste de Franssu
President
June 2010



Director General's Statement

Contrary to popular belief and assertions among economists and analysts, financial markets rarely behave in well-defined patterns. Trying to slice down their developments into a single year time frame proves to be even more difficult. Still, with a sigh of relief, and some true satisfaction, we can state that in 2009 UCITS and non-UCITS recovered half of the assets lost in 2008; net inflows into UCITS were positive for the whole of 2009, following eighteen months of net withdrawals. Looking back over the past five years, investment fund assets in Europe have increased by 30%, reminding those who might have forgotten in these turbulent times that the European investment fund industry remains an essential and vital part of the European financial system. And there is much more to asset management than just investment funds: at the end of 2009 about €6.7 trillion were managed through mandates by more than 2,500 management companies providing jobs directly for a workforce of an estimated 73,000.

The European political scene was dominated in 2009 by the elections for the European Parliament and the ratification of the Lisbon Treaty, both events having changed the European landscape dramatically. The Lisbon Treaty, as a catharsis, has strengthened the accountability of MEPs who were elected with a post-crisis trauma inflicted by the tax-payer's money spent.

No better example of this new behaviour can be given than the very active way in which the coordinators of several of the most important political groups in Parliament expressed their discontent with the Council's approach to the new European supervisory structure; trilogues clearly will prove to have a different dimension.

Already heavily loaded with pre-crisis topics, the regulatory agenda for the asset and fund management industry was updated constantly and like a perpetuum mobile all issues became priorities with tight deadlines and time schedules to meet. Neither the outgoing Commission nor the incoming Parliament has shown any signs of slowing down in the pace of regulation and initiatives; combined with the productivity of CESR, the Commission's services and the Swedish Presidency, EFAMA's members and staff faced a sometimes overwhelming amount of consultations and one can but wonder whether quality standards and time for reflection and dialogue are not being stretched to the limit.

Still, as an industry representative, EFAMA cannot only be reactive to the agenda set by the regulators and supervisors. Anticipating our clients' and members' needs, being conscious of our fiduciary duty and restoring investor's confidence are at the top of our strategic agenda.

In light of recent events, some might consider it symbolic that EFAMA's new Presidency, Jean-Baptiste de Franssu as President and Claude Kremer as Vice-President, were elected at the AGM in Athens in June 2009, but in tempore non suspecto our Greek colleagues had kindly invited EFAMA's members to the origin of democracy.

Our views tend to be shaped by recent events and taking a step back to pause and reflect in our Blackberry-driven society simply seems impossible. What is clear though is that anybody who thought the financial crisis ended in 2009, had better think again; we are likely to see more market eruptions and clouds, even without unpredictable volcanic ash. The 'good' news is that in the past two years central bankers, supervisors, regulators and politicians have had plenty of practice in fighting market shock waves.

And EFAMA with its strategic agenda will continue to be an active and reliable partner with legislators, regulators, the European Commission, CESR/ESMA, the ECB and all parties involved.

I very much would like to thank all our members for their support and trust and all the colleagues of the Secretariat for their continuous efforts in this challenging and stressful environment.

Peter De Proft
Director General
June 2010

Activity Report 2009

The European investment management industry in 2009 saw profound changes to its regulatory agenda in the aftermath of the financial crisis. For the industry this meant reconciling itself to the fact that self-regulation alone was not enough and additional regulation was unavoidable.

It also meant having to oppose any 'over-regulation' by the European legislator and encouraging it to address issues in an objective manner, instead of following the *'vox populi'*.

In sometimes difficult conditions, EFAMA achieved significant progress in its overall mission to:

- support a high level of investor protection,
- promote the completion of an effective Single Market for investment management including the creation of a level playing field for competing savings- and investment products, and
- strengthen efficiency and competitiveness of the industry.

The number of files EFAMA handled in 2009 are too numerous to be reviewed at length in this report. Instead we shall focus on the issues which impacted, or were deemed to impact, the industry most.

I. Strengthening Supervision at EU level

Introduction

One of the main lessons to be drawn from the recent financial crisis is the need for a consolidated institutional model of EU supervision. The crisis indeed revealed the shortcomings of the current system in which supervision was essentially organised along national lines, despite the considerable progress made towards an integrated financial market, with a growing number of institutions operating cross-border and global financial markets that have become more inter-connected. It also demonstrated the need for a robust macro-prudential supervisory framework in order to control systemic risks and the threats they create to the stability of the European financial system.

In order to address these issues and to restore investors' confidence in the reliability of the financial system, the European Commission (the *'Commission'*) decided, at the end of 2008, to establish a High-Level Expert Group chaired by Jacques de Larosière with the mandate to examine how supervision of EU financial institutions and markets should best be organised. The Group presented its recommendations on 25 February 2009[1], which were followed by a Communication from the Commission on 4 March, *'Driving European Recovery'*[2], endorsing the proposals made and setting out a road map.

Before setting out its concrete proposals, the Commission also undertook a short public consultation, to which EFAMA replied by expressing its strong support for a harmonised EU supervisory framework and welcoming the de Larosière recommendations.

1 http://ec.europa.eu/internal_market/finances/docs/de_larosiere_report_en.pdf

2 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0114:FIN:EN:PDF

Following the consultation, the Commission adopted in May a Communication '*European Financial Supervision*'[3] describing its plans for implementing the recommendations of the de Larosière report. In September 2009, the Commission presented legislative proposals, largely building on the de Larosière recommendations, and proposed a new 'supervisory package' consisting of a European System of Financial Supervisors (ESFS) and a European Systemic Risk Board (ESRB) [4].

The European System of Financial Supervisors (ESFS)

The ESFS would consist of a network of Member States supervisors (that remain in charge of day-to-day supervision of financial institutions operating in their jurisdiction) working together with three new European Supervisory Authorities (ESAs) created on the basis of the current Level 3 Committees (CEBS, CEIOPS and CESR) with responsibility for banking (EBA), insurance and occupational pensions (EIOPA) and securities markets (ESMA), respectively. Each ESA would be responsible for developing a single rule-book for the application and implementation of EU financial legislation (through the development of technical standards, which become binding after endorsement by the Commission). Compared with the existing Level 3 Committees, the ESAs will also be given other additional tasks, such as to ensure consistent application of EU law, settle disagreements between national supervisors, act in emergency situations, exercise direct supervision over certain entities with Community-wide reach (such as credit rating agencies). ESAs would also be given a more important role in international relations.

The European Systemic Risk Board (ESRB)

The ESRB would be the body in charge of macro-prudential oversight of the EU financial system as a whole, covering all financial institutions, financial markets and financial markets infrastructures. Its main role will be to identify and monitor risks with a systemic dimension and to prevent and mitigate their impact on the EU financial system. To achieve this goal, the ESRB would be given three main tasks:

- develop a European macro-prudential perspective to address the problem of fragmented individual risks at national level;
- enhance the effectiveness of early warning mechanisms (through a better interaction between micro- and macro-prudential analysis);
- allow for risk assessments to be translated into action by the relevant authorities.

The recommendations issued by the ESRB would not be legally binding but would be completed by a 'comply or explain' mechanism.

The ESRB would be composed of governors of EU central banks, representatives of the three ESAs, the Economic and Finance Committee and the European Commission. The draft regulation also gives a specific role to the ECB in the functioning of the ESRB: the ECB President and Vice-President are members of the ESRB Board and the ECB will also provide administrative, logistical and analytical support.

3 http://ec.europa.eu/internal_market/finances/docs/committees/supervision/communication_may2009/C-2009_715_en.pdf

4 http://ec.europa.eu/internal_market/finances/committees/index_en.htm#package

Key messages of EFAMA

In its first position paper on the new financial supervisory architecture, EFAMA fully embraced the Commission's proposals to set up new supervisory authorities, with increased powers, in particular to elaborate binding technical standards and to develop a single rule-book. Indeed, because of the cross-border nature of their activities (UCITS are probably the best example of a truly pan-European retail financial product), EFAMA members have very strong interests in a harmonised European supervisory framework with powerful European authorities liaising closely with national supervisors.

However, concerning the ESRB in particular, EFAMA expressed concerns that the monitoring of systemic risks should not only involve the banking regulators, as systemic risks do not only exist within banks but can be disseminated from banks to markets very rapidly, as experience has unfortunately demonstrated. This may therefore create prejudice to market participants at large, and to the buy-side and their end investors in particular. This should be reflected in the composition of the ESRB through stronger representation of the European Securities and Markets Authority (ESMA).

EFAMA also strongly advocated a better recognition of the increasingly important role of the investment management industry in the management of pension schemes (in particular defined contribution schemes) and, therefore, considered it unjustified that occupational pensions would fall within the exclusive remit of EIOPA. EFAMA firmly believes that ESMA should be given a much stronger role in this matter, through stronger cross-sectoral cooperation between ESMA and EIOPA.

Legislative procedure

The Commission's proposals regarding the ESRB were largely approved by the ECOFIN Council in October 2009.

In December 2009, ECOFIN also agreed on a general approach on the ESFS and gave the Council's Presidency (Council of the European Union, the *'Council'*) a mandate to start negotiating with the European Parliament (the *'Parliament'*). However, very much to EFAMA's disappointment, this political agreement [5] significantly watered down the Commission's initial proposals, clearly limiting the powers of the new ESAs.

The discussions also started in Parliament at the end of the year. During a joint press conference, coordinators of several of the most important political groups in Parliament (EPP, ALDE, S&D and Greens) expressed their discontent with the Council's approach and affirmed their support for the de Larosière approach and the Commission's proposals based on this report.

In terms of calendar, the objective is to find an agreement between the Council and Parliament by the end of June 2010, in order for the new authorities (ESRB and ESAs) to be up and running on 1 January 2011.

5 http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ecofin/111706.pdf

II. Investment Management Regulation

Driving, monitoring and influencing the regulatory development of investment management at European level is EFAMA's core business. This ranges from the UCITS Directive to a number of key issues such as cross-border distribution of non-harmonised funds and depositaries, an issue which was at the centre of a highly political debate in late 2009.

1. UCITS IV adopted: attention turns to implementing measures and tax issues

With the adoption on 13 July 2009 of the new UCITS Directive 2009/65/EC, a recast of Directive 85/611/EEC, a key step was made towards a real Single Market for asset management. This might be the right moment to recall, briefly, the tremendous success story of the European UCITS regulation. When in 1974 following the IOS disaster [6] the Commission started discussing better protection for investors in investment funds whilst creating at the same time a European market, the European fund industry was worth about US$21.5 bn. The three largest markets were Germany, France and Switzerland, Luxembourg ranked sixth at the time. With the exception of Robeco funds, no fund was marketed cross-border. In the same year FEFSI (EFAMA's 'predecessor') was set up by four national associations and three individual companies with the aim of actively following discussions about the elaboration of the new directive. Today, thanks to Directive 85/611/EEC, the European fund industry is worth around €6 trillion, UCITS have their footprint in over fifty countries worldwide and are a unique brand. EFAMA has twenty-six national associations as members and forty-two individual corporate members.

Throughout the past thirty-five years, working on UCITS regulation was FEFSI/EFAMA's core business driven by the strong willingness to increase the already high level of investor protection, and to make Europe a real Single Market for investment funds.

In 2009, the Committee of European Securities Regulators (CESR) held a total of six consultations relating to Level 2 implementing measures: four on the Key Information Document (KID) and Management Company Passport, one on Mergers, Master-Feeder structures and Notification, and one on Risk Measurement. EFAMA replied to all of them[7], and attended the various CESR public hearings.

In spite of this very large workload, CESR was able to publish on 28 October its advice to the European Commission on the format and content of Key Information Document disclosures[8], as well as on the Management Company Passport[9]. Publication of the Level 2 measures on mergers, master-feeder structures and notification followed on 22 December[10], together with some methodology recommendations. The way was thus clear for the Commission to prepare its Level 2 proposals for consultation at the European Securities Committee (ESC), mostly following very closely CESR's advice.

6 IOS: 'Investors Overseas Services' was a Panama-based fund manager with European headquarters in Switzerland chaired by Bernie Cornfeld, which distributed between 1967-1970 so-called 'cascade funds ' (funds of funds of funds) to retail investors in Germany, the Netherlands and Switzerland. When the company went bankrupt hundreds and thousands of household investors lost their money with the consequence that many continental European countries closed their market to foreign funds.

7 See various replies at www.efama.org, under 'Position Papers'(2009)

8 http://www.cesr-eu.org/popup2.php?id=6149

9 http://www.cesr-eu.org/popup2.php?id=6150

10 http://www.cesr-eu.org/popup2.php?id=6359

Due to the tight deadline (Level 2 measures must be adopted by 1 July 2010), discussions with the ESC and Parliament will be accelerated. Most of the issues were successfully resolved during the CESR consultation process, and EFAMA continued the dialogue with the Commission on the draft proposals, to achieve further improvements in some matters.

Key Information Document ('KID')

For the KID, the most controversial issues throughout the consultation remained the Risk/Reward Indicator (and its underlying methodology), the possibility to show past performance for funds with less than 12 months' performance, as well as the inclusion of cash costs.

With regard to the most contentious issue -- the Risk/Reward Indicator -- CESR included it among the essential elements of the KID at Level 2. A majority of CESR members is in favour of the adoption of volatility as the underlying methodology and a recommendation was made to the Commission in this regard[11]. However, it is unclear whether the methodology will be included in Level 2 or be left to Level 3 and therefore not be binding for Member States. Of course, technical standards by the European Securities and Markets Authority (ESMA)[12] could be possible at a later point in time, when the new supervisory architecture package is adopted. For structured funds in particular, there is still the need for substantial work in consultation with the industry to define the methodology and the presentation of the performance scenarios.

On the possibility to show past performance for funds with less than 12 months' performance CESR unfortunately did not change its original recommendation (prohibiting the inclusion of performance unless a complete calendar year is available), but it did finally reject the inclusion of cash costs.

Management Company Passport

In line with the industry's recommendations, CESR proposed an approach to a very large extent in line with MiFID for the management company passport measures in UCITS IV. Among the most contentious issues were proposals related to the requirement for the management company to record all subscription and redemption orders, the disclosure at the request of unit-holders of how voting rights were exercised, the management of non-neutralised conflicts of interest, the scope of the agreement between the depositary and the management company, the relationship between the valuation and the risk management function, and the proposed extension of the requirements for the valuation of OTC derivatives to other types of assets.

Mergers

EFAMA disagreed with CESR's proposals for the content of the information to be provided to unit-holders in case of mergers, as they were too broad and duplicative and would thus increase merger costs without providing additional investor protection. On the other hand, CESR acknowledged the difficulties of harmonising the distribution of the information to unit-holders and did not recommend measures to the Commission, leaving the matter to Member States.

11 http://www.cesr-eu.org/popup2.php?id=6361

12 ESMA is to replace CESR in the new supervisory architecture (see above).

Master-Feeder structures

On Master-Feeder structures, CESR's recommendations on the content of the agreement between Master and Feeder UCITS were also too extensive. Regarding the measures proposed in case of liquidation, merger and division of the Master UCITS, they were also quite cumbersome and bound to create problems for the Feeder and its unit-holders.

Notification

EFAMA voiced strong reservations regarding the inclusion in the standard notification letter of Part B with information required by national regulation (in particular, the disclosure of all distributors in the host Member State). EFAMA pointed out that a clear distinction ought to be made between requirements falling within the field governed by the directive and marketing requirements under national regulation, so as to avoid the possibility that a notification could be blocked solely due to missing information in Part B.

The industry also insisted upon the fact that in case of transmission error during the notification process the UCITS should not be penalised by a marketing stop after sales had already started, and that UCITS and their management companies should be able to rely entirely on the information published by Member States regarding marketing rules.

Tax issues

When the discussion about the so-called 'UCITS efficiency package' started in 2003, both the investment management industry and European Commission were well aware of the serious tax issues – in particular regarding cross-border fund mergers – which needed to be resolved in order to make the envisaged legislative measures efficient. However, while the industry always underlined that regarding fund mergers a directive (similar to the Directive on Mergers of Companies[13]) would be the most efficient way, the Commission's services opted for a Communication on Taxation clarifying the applicability of the European Court of Justice case law to cross-border fund mergers[14] and legal measures against discrimination. At the close of 2009 there was still no sign of the publication of the Communication.

In order to address these tax issues and to show that taxation could potentially jeopardise the desired cost savings, EFAMA started together with KPMG a study analysing the tax obstacles linked with the efficiency measures introduced through UCITS IV: fund mergers, cross-border fund management (using the new management company passport) and master-feeder structures. The main aim of the report is to demonstrate to the Commission the areas where action is needed, in particular where the risk of tax discrimination is imminent, and to help fund managers in taking the appropriate decisions.

Also, in order to underline the importance of the issue for fund business, the study will include a survey carried out by KPMG among EFAMA's membership highlighting the industry's perception and anticipated use of the efficiency measures. The study should be presented to the Commission in mid-2010.

13 Directive 2005/19/EC [OJ L58 of 4 March 2005] replacing Directive 90/434/EEC of 23 July 1990

14 See COM White Paper on enhancing the Single Market Framework for Investment Funds of 15 November 2006 [COM(2006) 686 Final]

2. Commission proposal for an AIFM Directive

After showing a marked degree of reluctance (lasting about four years) over the regulation of hedge funds, private equity funds, introducing a pan-European private placement regime and granting a passport to open-ended publicly offered real estate funds (OEREFs), Commissioner McCreevy presented at the end of April a proposal for a *Directive on Alternative Investment Fund Managers* (AIFMD Proposal)[15] aimed to deal with all these issues at the same time.

The AIFMD Proposal seeks to regulate Alternative Investment Fund Managers (referred to as AIFM). AIFM are managers of so-called Alternative Investment Funds (AIF), defined as all funds not falling under the UCITS Directive, regardless of their investment strategy, legal structure or target investor. The policy objectives underlying this proposal were the furthering of the Single Market, appropriate investor protection and the avoidance of systemic risk. The proposal foresees a European passport for managers of AIFs as well as AIFs they manage for distribution to institutional investors as defined under MiFID. However, Member States have the option to allow marketing of AIFs to retail investors under conditions they deem necessary.

Immediately upon its publication, the AIFMD Proposal became one of the most heavily criticised pieces of regulation ever proposed by the Commission's Internal Market Directorate General. Stakeholders including institutional investors, asset managers, banks and insurance companies voiced loud concerns regarding the vast scope of the directive with its one-size-fits-all approach. The regulation proposed seemed to a large extent entirely inappropriate for a majority of the products covered, examples mentioned included the provisions on the depositary, an independent valuator, short selling, leveraging and transparency requirements. The differences between legal fund structures were not taken into account, leaving uncertainty over the question who the AIFM should be for certain structures. The important lack of consistency with other EU regulation and an extensive use of Level 2 legislation without sufficient rules of Level 1 nourished fears of legal uncertainty and regulatory gaps and overlaps. Stakeholders were anxious about increased costs for reorganisation of funds and asset managers. Most controversial were also the rules proposed regarding third countries, including the access of third country funds and managers to the European market but also delegation of tasks to third countries. Strict limitation of delegation of portfolio management and risk management to European AIFM only and prohibition of sub-delegation put a question mark on the possibility of finding the best suited managers and investment opportunities for globally diversified portfolios. Institutional investors predicted a loss of investment opportunities due to the closing of the markets to third country products and prohibition of reverse solicitation.

EFAMA stressed from the beginning the importance of a constructive and open dialogue with Commission, Council and Parliament. The objective was to create a workable general framework for non-UCITS and their managers which

- fits in the existing regulatory architecture;
- does not undermine the UCITS Directive and the UCITS brand;
- preserves the existing high level of retail investor protection not only with respect to UCITS but also with respect to many retail funds regulated only at national level; and
- maintains the competitiveness of the European investment fund industry.

15 SEC(209) 576 of 30. 04. 2009

As early as August, EFAMA was able to issue a first position paper on the AIFMD proposal and followed up shortly afterwards with a second position paper this time including drafting amendment proposals. Crucial issues identified in the position papers were discussed with the Commission, Parliament and the Swedish Presidency in the early autumn. EFAMA members were most concerned about the envisaged scope of the AIFMD, the authorisation requirements, the definition of marketing and the marketing rules, capital requirements for AIFM, the provisions regarding delegation, the requirement of an independent valuator and the regulation foreseen for the depositary. Five key requests identified by EFAMA members were presented in more detail:

- managers and funds subject to national regulation and exclusively distributed at national level should be exempted from the AIFMD;
- national private placement regimes should continue to exist;
- consistency must be achieved between AIFMD, UCITS Directive and MiFID;
- an automatic authorisation shall be granted to UCITS Management Companies to manage AIFs;
- the proposed depositary regulation should take into account the Commission's conclusions from its Consultation on UCITS depositaries as well as the outcome of CESR's mapping (review of the manner in which Member States have implemented the relevant provisions of the directive and evaluation of how responsibilities and liabilities of depositaries are defined).

In order to highlight crucial issues further, EFAMA hosted in late 2009 a breakfast meeting for MEPs, a seminar for MEP assistants and a workshop on depositary regulation enabling representatives from the Commission, Council and Parliament to meet industry representatives.

Between October and December, the Swedish Presidency issued a series of draft compromise proposals regarding the AIFMD Proposal, which addressed an important number of concerns voiced by stakeholders and brought significant improvement to the Commission's draft proposal. It took in particular different fund structures into account and aligned the AIFMD with the UCITS and MiFID Directives. The Swedish Presidency proposal addressed for the first time the issue of remuneration. EFAMA continued its constructive dialogue and proposed drafting amendments to the Swedish proposals in position papers. Apart from a number of technical comments, the issues most emphasised by EFAMA were the questions of scope and level playing field, definition of management services and of the AIFM, delegation, valuation and depositaries. Within the Council (ECOFIN) the debate was most heated on the issue of third country funds and managers, and their access to the European market.

By the end of November, the European Parliament's ECON Committee[16] saw the publication of the draft report by Rapporteur Jean-Paul Gauzès. Preliminary drafting amendments to the report were sent by EFAMA to members of the ECON Committee shortly before the end of the year. Throughout these drafting amendments, EFAMA repeatedly stressed the identified key issues, including the need for consistency between the AIFMD and existing European regulation, the importance of delegation and sub-delegation for global portfolio management, the exclusion of purely national funds from the scope of the AIFMD and the importance of adequate regulation for the depositary.

16 Committee on Economic and Monetary Affairs

At the end of the year, all actors concerned, i.e. the European Commission, Parliament and Council, confirmed their firm intention of adopting the AIFMD in 2010, under the Spanish Presidency or at the latest under the Belgian Presidency. Given the important differences between the initial Commission proposal, the Council compromise proposal and the draft report by the Rapporteur, heated discussions are to be expected. The question of third country funds and managers will certainly continue to be one of the most controversial issues and a potential blocking factor.

A passport for OEREF[17] and other publicly offered non-UCITS retail funds?

Whilst there was general agreement with the declared objective of the Commission's AIFM Proposal that all non-UCITS funds (AIF) should be subject to a comprehensive and effective regulatory and supervisory framework, the regulatory architecture chosen is inconsistent. It sets minimum requirements and gives a cross-border passport only to funds for institutional investors. However, as the discussion continues to focus on hedge funds (even high level Commission representatives speak of the *'hedge fund directive'*), private equity and third countries, the issue of retail funds was never discussed outside of EFAMA, whether at Council level or in the Gauzès Draft Report.

Currently there are five types of investment funds in the Community:

- UCITS which are harmonised funds for cross-border distribution to retail investors;
- other nationally regulated funds for retail investors in general only distributed in the jurisdiction where the fund is set up;
- nationally regulated funds for institutional investors (certain funds in Austria, Germany and Luxembourg) only distributed at national level or across borders under very different national private placement regimes;
- unregulated EU funds, only distributed under very different national private placement regimes to institutional investors;
- third country funds (regulated or not), either distributed under specific national regimes to retail investors or under very different national private placement regimes to institutional investors.

While the legitimacy of the last category might be debatable, there is clearly the need for action with regard to the second category. These products, i.e. OEREFs and other nationally regulated publicly offered non-UCITS retail funds (for example funds of hedge funds), are included for harmonisation not as retail products, but as institutional funds. This approach is not in line with the European harmonisation principles: harmonisation is supposed to be linked with the Treaty benefits. This means a retail product can only be harmonised to obtain a retail passport. Under the AIFM Proposal these funds would be harmonised to a certain extent to have a passport which they in principle do not want. Indeed, distributing a heavily regulated retail product cross-border to institutional clients would be pointless because such a retail fund would have to compete with less regulated and thus cheaper specific institutional products.

In addition, many OEREFs had to suspend redemptions because too many institutional clients were using them as short-term investment vehicle. OEREFs which did not have a significant proportion of institutional investors did not have this problem. This is why there is currently a discussion in Germany[18] to limit/regulate

17 Open-Ended Real Estate Funds which are publicly offered

18 At end 2009: 45 national German publicly offered OEREFs with €87 bn assets under management

more heavily the distribution of OEREFs to institutional investors[19]. With respect to the AIFM Proposal, this would mean that these funds would get a passport they might not even be allowed to use.

This is why EFAMA proposed simply to exclude nationally regulated publicly offered retail funds from the application field of the directive. Any resulting regulatory gap could easily be closed through a specific harmonisation of purely national retail funds (among others, OEREFs and funds of hedge funds). This would not only lead to a more consistent regulatory architecture but would also benefit investors.

It is not that difficult given that the Commission had already made a significant step in this direction when in March 2008 it published the report of an OEREF Expert Group set up in spring 2007[20]. Rarely has approval of a Commission Report been so unanimous.

Based on a comprehensive description of real estate markets and a profound analysis of the 'real estate fund' products, the Experts concluded that OEREFs *'should therefore be seen as a particular form of investment product, suitable for the retail investor, but different from other forms of real estate investment and investment fund products'*. They, therefore, proposed regulation to create a pan-European framework for OEREFs, built on the UCITS model without endangering the UCITS brand which has become over the years the global standard for liquid and well diversified investment funds.

However, in spite of a public hearing in April 2008 and an open consultation in July 2008[21], Brussels remained silent. The report to Council and Parliament on possible action scheduled for October 2008 was never presented and one may be forgiven for thinking that the Commission simply replaced the harmonisation of national retail funds by the AIFM Proposal.

The issue, however, is key as EFAMA's statistics show for end 2009: out of the about 52,000 funds registered in the EU, with €7,040 bn AuM, 16,110 funds with €1,740 bn AuM are non-UCITS funds which would fall under the AIFM Directive[22]. The AIFM Directive must address this issue appropriately, if the EU is not to end up with a non-sustainable regulatory architecture for investment funds which might ultimately lead to far greater problems.

3. The depositary issue

Duties and responsibilities of the UCITS depositary have been on the regulatory agenda for more than fifteen years, resurfacing at each revision of the UCITS Directive. The discussion was buried by the Commission in November 2006, which argued that *a modification of the UCITS Directive regarding depositaries would be useful, but the feasibility 'doubtful'*[23]. In the aftermath of the Madoff fraud and the Lehman default the discussion restarted, culminating in January 2009 in a letter from the French Minister for finance and economy, Chistine Lagarde, to Commissioner McCreevy complaining that Articles 7 and 14 of Directive 85/611/EEC were implemented differently among Member States and arguing that this

19 One could, for example, introduce a 12 month cancellation/redemption period for institutional investors.

20 http://ec.europa.eu/internal_market/investment/docs/other_docs/expert_groups/report_en.pdf

21 Feedback Statement see: http://ec.europa.eu/internal_market/investment/docs/consultations/feedback-expert-group_en.pdf

22 Out of these 15,700 funds, about 740 are publicly offered real estate funds.

23 See impact assessment attached to the Commission's *White Paper on enhancing the Single Market framework for investment funds.* For more details regarding the history of this discussion, see article by Steffen Matthias *'The reappearance of the UCITS depositary on the Commission's agenda'*, EFAMA Fact Book 2009.

could potentially undermine investors' confidence in the UCITS 'label' and that in order to avoid this from happening, further harmonisation would be needed. Following the ECOFIN meeting of 20 January 2009, the Commission announced[24] that it would, along with CESR, review the manner in which Member States had implemented the relevant provisions of the directive and evaluate how responsibilities and liabilities of depositaries were defined. To the extent that this review identifies practices or outcomes that are not consistent with the over-arching principles of the directive, it would take the necessary steps to correct shortcomings. The Commission also underlined that it *'is determined to ensure that national laws and practices transcribing depositary responsibilities and liabilities do not blur the responsibilities and liabilities enshrined in the Directive.'*

This policy announcement was followed by a number of legal initiatives:

- end of April the Commission issued the Proposal for *a Directive on managers of alternative investment funds* (AIFMD)[25] which included rules regarding the depositary, that are much stricter than those included in the UCITS Directive;
- end of May Commissioner McCreevy announced his intention of clarifying and strengthening provisions of the UCITS regime regarding the liability of depositaries, and extending the respective AIFMD Proposals to UCITS;
- beginning of July the Commission launched a Consultation on the UCITS depositary as the starting point to a comprehensive review of requirements applicable to the function of the UCITS depositary with the goal of *'bringing forward any actions needed to codify depositary responsibility'*.

In parallel, the Commission's services continued working on the planned legislation on *Legal Certainty of Securities Holdings*[26], which raises the question about ownership of securities.

In order to deal with the challenging initiatives affecting the key element in the UCITS Directive, i.e. investor protection, EFAMA set up in April 2009 a working group made up of fund managers and depositaries. The initial purpose of the group was to develop clear ideas regarding procedures which would reduce/avoid the risk of investors losing money independent of the liability regime under which the depositary acts; its mandate was later extended to the preparation of EFAMA's comments on the UCITS depositary consultation and the monitoring of the AIFM discussion regarding depositaries.

The Commission Consultation on the UCITS depositary

EFAMA welcomed the *Commission's Consultation on the UCITS Depositary Function* issued on 3 July 2009[27] as a logical step in the Commission's intention to undertake a comprehensive review of requirements applicable to the function of a UCITS depositary. It also expressed its concern about the scope of the consultation as nearly all issues raised in the consultation paper were also relevant to the depositary of alternative investment funds in the meaning of the AIFM Directive Proposal. From EFAMA's point of view it would have been more logical to carry out the consultation before drafting the corresponding AIFM Directive articles and to include the depositary function in respect of AIFs within the scope of the consultation.

24 'Commission sets out steps to clarify the responsibilities of UCITS depositaries' [IP/09/126] of 26 January 2009

25 COM(2009) 207 of 30.04.2009

26 COM Consultation Paper [G2/PP D (2009)]

27 http://ec.europa.eu/internal_market/investment/depositary_en.htm

Regarding the consultation itself, EFAMA pinpointed seven key issues[28]:

- before any further discussion, the Commission's and CESR's mapping findings must be on the table;
- an alignment between UCITS and AIFM rules regarding the depositary is crucial;
- clear and effective asset segregation is crucial for investor protection;
- the basis for any liability regulation is a clear differentiation between the depositary's functions, duties and liabilities:
  - functions can only be clarified by asset classes and should be set out in an annexe to the UCITS Directive,
  - based on these functions, the duties (operational standards) can be described,
  - only then, as a last step, is clarification/ harmonisation of the liability regime possible;
- inversion of the burden of proof is in the interest of the fund manager but clear operational standards are *'conditio sine qua non'*;
- eligible institutes can be credit institutes and MiFID firms provided there are similar rules regarding capital, investor protection and rules regarding conflicts of interest and risk mitigation;
- investors must be aware of the risk they bear.

In November, the Commission published a feedback statement[29] including ten key messages received from the seventy-nine respondents:

- harmonisation of the depositary function is key to restoring investor confidence;
- the only appropriate starting point for any discussion is the UCITS Directive;
- need to clarify and harmonise the depositary function by asset class;
- need to address the risk relating to custody of financial instruments; investors must understand that they are not only exposed to investment risks;
- need for a consistent approach regarding depositaries across the EU regulatory framework;
- asset segregation is key;
- the reference to 'performance' in the definition of liability needs to be clarified/strengthened: liable if negligent in performing its duties;
- need to clarify and strengthen conditions for delegation of custody functions;
- need to clarify and harmonise the status of the UCITS depositary;
- any additional rules should be consistent with existing EU legislation (MiFID).

However, at the end of 2009 stakeholders were still waiting for the Commission's own conclusions regarding the consultation.

28 For more information, see: http://circa.europa.eu/Public/irc/markt/markt_consultations/library?l=/financial_services/investment_funds/registered_organisations/efamapdf/_EN_1.0_&a=d

29 http://ec.europa.eu/internal_market/consultations/docs/2009/ucits/feedback_statement_en.pdf

CESR mapping findings

In September 2009 CESR published a summary of its mapping exercise of duties and liabilities of UCITS depositaries in an annexe to its comments on the Commission's Consultation on the UCITS depositary[30]. By the end of the year, CESR had not published its full report yet[31].

Nevertheless, the short paper presented in September contained some interesting findings:

- regarding eligible entities, rules differ much across Europe, however, 3/5 of CESR members only allow credit institutions. Capital requirements range from €5 to €100 million;
- regarding the depositary's duties, only eleven CESR members require segregation of assets and only four members allow delegation of the supervisory functions;
- regarding the depositary's liability, five members require the depositary to restore assets held in custody when any loss occurs. In the case of sub-custody the situation is even more confusing: about a third of national regulators impose an obligation of means, another third an obligation of result, a third slightly smaller group does not make any difference between obligation of means and obligation of result and in some jurisdictions the liability may depend on contractual agreements.

This slightly confusing situation led CESR to the following conclusions:

- loss of confidence because of the uneven level of protection offered to UCITS investors regarding the depositary's role and liability;
- in order to restore confidence, it is necessary to:
  - harmonise the depositary status (eligible institutes, capital requirements, prudential and ongoing supervision, etc),
  - clarify the notion of 'safekeeping' and the duties linked with this function in following two principles without diluting them through sub-delegation: overall control of assets must remain with the depositary, segregation of assets,
  - clarify conditions for delegation of custody functions and list the functions that can be delegated to prevent conflicts of interest.

30 CESR/09-781 of 16 September 2009

31 This report was finally published in January 2010.

The discussion about the AIF depositary

As mentioned, the Commission's April 2009 Proposal for an AIFM Directive included in its Articles 17 and 38 much stricter rules regarding the depositary than those included in the UCITS Directive. With Commissioner McCreevy's announcement to extend the AIFM depositary proposals to UCITS, both dossiers were linked.

As discussed in the previous section on the Commission's Proposal for an AIFM Directive, an intensive discussion started immediately after the publication of the proposal with all institutions involved, i.e. Commission, Parliament and Council Presidency. EFAMA's position in the discussions regarding the AIF depositary was based on its opinion expressed in the Consultation on the UCITS depositary. In order to deal with specific issues raised and proposals tabled by the Swedish Presidency and the European Parliament's Rapporteur Jean-Paul Gauzès, the Depositary Working Group was invited to comment. Independent of these specific comments, EFAMA has always tried to table proposals consistent with the existing and well-proven regulation of the UCITS depositary and leading to a consistent regulation of both the UCITS and the non-UCITS depositary whilst taking into account particularities regarding the safekeeping functions for certain AIF asset classes.

The EFAMA Depositary Workshop

To summarise the discussion and explore a number of key issues, EFAMA organised on 9 December a workshop on depositaries with Sonia Cattarinussi from the Commission and Nicoletta Giusto from CESR as guest speakers, together with fund managers and depositary bankers presenting six case studies on custody issues with respect to various asset classes. To complete the picture, Thierry Blondeau from PwC presented the auditors' view.

4. Investor Compensation Schemes

Following the crisis, the European Commission proposed a modification of the Deposit Guarantee Schemes Directives, and opened in 2009 a review of the Investor Compensation Schemes Directive (ICSD). The Commission launched a Call for evidence[32] on the scope of the directive with many questions regarding the extension of the directive's scope, an increase in the compensation amount, harmonised funding, and money market funds.

The Commission for example asked whether:

- all investment firms should fall in scope, even if they are not authorised to hold client assets or if they provide services only to non-retail clients;
- investors (such as UCITS or a UCITS unit-holder) should be able to claim compensation for loss of assets under the ICSD where the UCITS depositary or the institution which has been mandated to safe keep the assets fail to perform its duty;
- money market funds deserve special attention and their investors should be compensated for losses in market value.

32 See: http://ec.europa.eu/internal_market/consultations/docs/2009/investor_compensation/cons-doc_en.pdf

These issues were also addressed at a stakeholder workshop organised by the Commission, which EFAMA attended.

In view of the ongoing work on depositaries, EFAMA encouraged the Commission[33] to await its completion before making any proposals affecting UCITS under the ICSD.

The ICSD review is not yet complete, but the Commission is still working on this subject and is likely to make proposals for a revision.

5. CESR and money market funds

The financial crisis generated increased attention on and concerns about the risks taken by some money market funds. The crisis also led the high-level group on financial supervision in the European Union chaired by Jacques de Larosière to call for a common EU definition of money market funds and a stricter codification of the assets in which they can invest. This prompted EFAMA and the Institutional Money Market Funds Association (IMMFA) to create a joint working group in early 2009 to develop a pan-European definition of money market funds. This work was completed in July 2009 with the publication of a recommendation for a European classification and definition of money market funds[34].

In a nutshell, EFAMA and IMMFA proposed to reserve the money market fund label to funds designed to generate money market like returns while preserving capital and maintaining strong liquidity. The objective of this proposal was to enhance investor information about the exact nature of money market funds, thereby enhancing investor protection and securing the long-term attractiveness of money market funds.

The report defines clear-cut rules to clarify what the 'money market fund' label should include. The classification rests on a revised, more robust single category of money market funds composed of two types – short-term and regular – defined in a way that limit the main risks to which money market funds are exposed, i.e. interest rate risk, credit/credit spread risk and liquidity risk. The Board of Directors of EFAMA and the members of IMMFA unanimously endorsed the proposal, and both associations undertook to seek the support of regulatory authorities and performance measurement agencies to ensure that the definition is used across Europe.

EFAMA and IMMFA also agreed that all existing money market funds falling outside the definition of short-term and regular money market funds should be allowed to keep the money market fund label for a transitional period of three years. During this time, these funds should be grouped in national fund classification systems in a separate category, under the name 'other' money market funds. By 30 June 2012, any funds that continue to fall outside the proposed definition will no longer be classified as money market funds.

In October 2009, CESR proposed in a consultation paper a two-tiered approach for a definition of European money market funds. While CESR's proposal was broadly in line with the recommendation made by EFAMA and IMMFA, there were nevertheless a number of criteria in CESR's proposal that differ from those set out in the EFAMA/IMMFA definition. CESR proposed in particular tighter limits for the weighted average life

33 See EFAMA reply to the Commission Call for Evidence at http://www.efama.org/index2.php?option=com_docman&task=doc_view&gid=951&Itemid=-99

34 See www.efama.org under Publications (Money Market Funds)

for both short-term and regular money market funds, as well as a tighter limit for the weighted average maturity of longer-term regular money market funds.

CESR invited responses to the consultation paper by 31 December 2009. EFAMA and IMMFA prepared a joint response, which has been published on CESR's website together with other responses[35]. It is expected that CESR will agree on a common definition of money market funds before the summer. The definition of MMFs will take the form of Level 3 CESR guidelines.

6. CESR and risk management

After consulting in 2008, CESR published at the end of February 2009 its Risk Management Principles for UCITS[36], containing high-level guidelines for the harmonisation of risk management. EFAMA welcomed CESR's proposals, which reflect principles already implemented throughout the industry.

As a consequence of the inclusion in UCITS IV of the management company passport measures and the resulting need for detailed harmonisation of risk measurement across the Union, CESR temporarily stopped its ongoing work on risk measurement methodology at Level 3, to continue with it later in order to provide advice to the Commission on UCITS IV Level 2 measures. In July 2009 a consultation was published regarding risk measurement for the purposes of the calculation of UCITS' global exposure[37], discussing among others the use of the commitment approach vs. VaR, OTC counterparty risk calculation methodology, treatment of collateral, and the distinction between sophisticated and unsophisticated UCITS.

EFAMA welcomed CESR's pragmatic proposals[38], which largely reflected existing practices, and encouraged CESR to include the principles of risk measurement into Level 2 measures, while leaving the methodological details to Level 3.

In CESR's final Level 2 advice to the Commission regarding the management company passport proposals were included regarding risk management principles, the risk management function, responsibilities of the Board of Directors, procedures for the valuation of OTC derivatives and principles regarding risk measurement and global exposure, counterparty risk/issuer concentration.

To our knowledge, work is still ongoing at CESR on risk measurement methodologies and we expect further consultations.

35 See http://www.cesr-eu.org/index.php?page=responses&id=151

36 See CESR 09-178 (http://www.cesr-eu.org/popup2.php?id=5620)

37 See http://www.cesr-eu.org/popup2.php?id=5774

38 See http://www.efama.org/index2.php?option=com_docman&task=doc_view&gid=1010&Itemid=-99

III. Level Playing Field for Competing Savings and Investment Products

From the 2003 FSAP review to legislative action

In 2003 EFAMA (then FEFSI) launched in the context of the FSAP[39] review process the idea of a level playing field for financial services as a basic principle of a Single Market, giving all financial services and products the possibility to compete equally with each other and to consider in this context *'a consistent and coherent approach encompassing collective and individual portfolio management to a comprehensive asset management framework covering all functions related to asset management – regardless of the product or the service provider.'*[40] Receiving at first very little attention, the idea was finally taken on board in the Commission's Green Paper on UCITS[41] and in the so-called 'Klinz Report', adopted by the European Parliament in April 2006. As a result, EFAMA was able to state in its 2005/2006 Annual Report that it had been successful in obtaining broad recognition of the idea by all European institutions, but that *'the main challenge for the next eighteen months will be to put the idea into practice.'*

As might be expected, more than eighteen months were needed. However, the publication of the Commission's Communication on 'Packaged Retail Investment Products'[42] at the end of April 2009 and the proposal put forward in September to review the Prospectus Directive[43] with the aim of providing retail investors with more adequate information were surely important milestones on the way towards a level playing field between 'substitute' investment products.

1. Packaged Retail Investment Products (PRIPs)

Following the Call for Evidence on 'substitute' retail investment products in 2008[44], the Commission's thinking continued to evolve and matured into the Communication on Packaged Retail Investment Products (PRIPs)[45], where the Commission clearly outlined the problems inherent to the current 'silo' regulatory approach and proposed a new horizontal approach to product disclosures and selling practices. This acknowledgment vindicated EFAMA's long-standing call for a level playing field and equal investor protection, regardless of the wrapper used for a retail product. For the first time, the Commission also formally committed to launching a regulatory initiative to implement the PRIPs initiative and Commissioner McCreevy stated that the Commission's work programme was designed to ensure *'that information about and sales of packaged retail investment products are regulated to high and consistent standards.'*

39 Financial Services Action Plan : COM(99)232 of 11 May 1999.

40 See: *'European Financial Integration: Progress & Prospects'*, Report of the Independent Asset Management Expert Group, published in 2004 by the Internal Market Directorate General

41 Green Paper on the enhancement of the EU framework for investment funds [COM(2005)314 final of 14 July 2005]

42 http://ec.europa.eu/internal_market/finservices-retail/investment_products_en.htm

43 Directive 2003/71/EC

44 http://ec.europa.eu/internal_market/finservices-retail/docs/investment_products/call_en.pdf

45 http://ec.europa.eu/internal_market/finservices-retail/docs/investment_products/29042009_communication_en.pdf

A Technical Workshop with stakeholders was organised by the Commission on 22 October 2009[46] to further discuss details such as the scope of PRIPs, pre-contractual disclosures (in particular, the use of the UCITS KID as a benchmark, need for tailoring for different products, responsibility for pre-contractual disclosures), and selling practices (among others: horizontal approach with MiFID as a benchmark, application of MiFID rules to all PRIPs). Thereafter, on 16 December an 'Update on Commission Work on Packaged Retail Investment Products (PRIPs)' was issued[47], where the Commission confirmed they were working on legislative proposals. Studies to assess cost impacts and to gain a better understanding of consumer behaviour would be commissioned.

The battle is far from won, as the exact scope of PRIPs is still to be defined, and many products (particularly insurance products) might be excluded. Also unclear is the level of 'tailoring' in the disclosure documentation for the various types of products. If excessive, it could lead to a lack of comparability and to a watering down of the entire legislation.

In view of the overlap with PRIPs, it is far from clear how the reviews of MiFID, Prospectus Directive and Insurance Mediation Directive will be brought forward. In spite of the original praise for a 'horizontal approach', it remains unclear whether only one instrument will be used to implement PRIPs and, if so, whether it would be a new one or simply a revision/extension of MiFID. However, there are clear commitments by the Commission to coordinate the review processes, albeit so far with unsatisfactory results (see below on the Prospectus Directive).

EFAMA remains very active on this subject, participated in the October Workshop and contributed written comments, in particular on the PRIPs scope, continuing to make the case for a comprehensive definition, based on an economic approach.

2. Modification of the Prospectus Directive

In January 2009 the European Commission launched a consultation on the review of the Prospectus Directive[48]. EFAMA's reply[49] continued to focus on the level playing field between substitute products in terms of disclosure obligations at the point of sale, taking the UCITS Key Investor Information (KII) as a benchmark. EFAMA suggested that a 'securities KII' should only be mandatory for substitute products and not for the whole range of instruments falling under the Prospectus Directive, insisted on full cost disclosure and on the need for harmonisation of such disclosures. Furthermore, EFAMA recommended to the Commission that disclosure requirements for corporate bonds and Asset Backed Securities (ABS) should also be enhanced in the Prospectus Directive, in order to provide for comprehensive information at issuance and a commitment to post-issuance reporting on an ongoing basis. Such disclosure would help price formation and enable investors to conduct proper due diligence on such products.

In September, the Commission presented to Council and Parliament its proposal for a modification of the Prospectus Directive[50], including provisions on a variety of topics, among them the prospectus summary.

46 http://ec.europa.eu/internal_market/finservices-retail/investment_products_en.htm#wkshop
47 http://ec.europa.eu/internal_market/finservices-retail/docs/investment_products/20091215_prips_en.pdf
48 http://ec.europa.eu/internal_market/consultations/docs/2009/prospectus/review_en.pdf
49 http://www.efama.org/index2.php?option=com_docman&task=doc_view&gid=916&Itemid=-99
50 http://ec.europa.eu/internal_market/securities/docs/prospectus/proposal_240909/proposal_en.pdf

After consultation with its members, EFAMA's lobbying concentrated on the summary provisions. It was disappointed by the very high-level proposals by the Commission, i.e.:

- to remove the maximum length for the summary;
- to introduce the requirement that the summary must provide *'key information in order to enable investors to take informed investment decisions and to compare securities with other investment products.'*

All details were left to Level 2, but since no reference was made to the PRIPs initiative and its timing is uncertain, it could not be excluded that a Key Information Document (KID) for Prospectus Directive products would be developed separately, without coordination. This would have, of course, negated all benefits of PRIPs.

The Council quickly reached a compromise under the Swedish Presidency, which in EFAMA's eyes improved the text, but did not resolve all issues. Council made a clear link to the Commission's PRIPs initiative, but it did not restore a maximum length for the summary and no deadlines were set for a review of the summary content and format. Most importantly, most of the elements required for the 'key information' did not correspond entirely to those identified as key elements in the UCITS KID, and in some cases were irrelevant to retail investors.

EFAMA warned that it was too early to set a definitive list of key elements, and the results of the PRIPs initiative should not be pre-empted, either in the case of the content and form of the summary, or with regard to legislative procedures. In this regard we were concerned by a reference to the role of ESMA in the development of a template for the summary. While EFAMA welcomes the role that ESMA will play in the future with regard to technical standard-setting, the involvement of different supervisory bodies (EIOPA and EBA) might lead to different templates for other products. Coherence across products needs to be ensured also at technical standard level, otherwise comparability for retail investors will not be possible.

The Draft Report by the European Parliament Rapporteur Wolf Klinz clearly introduced a 'key information document' for <u>all</u> products under the Prospectus Directive, sharing many characteristics with the UCITS KID. However, differences in the requirements vis-a-vis those for the UCITS KID remained, as well as lack of clarity on how Level 2 measures for the Prospectus Directive would interact with PRIPs.

Although EFAMA still believes that it would be best to decide the details of the summary when the PRIPs initiative is finalised, it seems likely that the revision of the summary will be maintained in the Level 1 text, and therefore it is essential that the Level 2 measures be only finalised in connection with the PRIPs initiative, or after PRIPs is adopted, if harmonisation and comparability are to be ensured.

IV. Other Regulatory Financial Market Issues

EFAMA continued to work on a number of other files of equally high importance for the European investment management industry. For instance, the discussion surrounding MiFID has become increasingly important with the Commission's focus returning to the distribution of retail financial products; post-trading issues also are receiving more attention from market participants. This tendency might intensify with the new Commissioner for Internal Market & Services, Michel Barnier (France).

1. MiFID

CESR carried out significant work on MiFID in 2009, in anticipation of the review of Level 1 text by the Commission. The most important topics covered were:

- Non-equity transparency
- Data consolidation
- Complex and non-complex financial instruments for the purposes of appropriateness requirements
- Inducements
- Advice

Non-equity transparency

After launching a public consultation in December 2008, CESR recommended to the Commission[51] in July 2009 the introduction of a mandatory trade transparency regime for corporate bond, structured finance product and credit derivatives markets. For corporate bonds the transparency regime should cover bonds for which a prospectus has been published (including all corporate bonds admitted to trading on a regulated market) or which are admitted to trading on an Multilateral Trading Facility (MTF). In the case of asset-backed securities (ABSs) and collateralised debt obligations (CDOs), CESR recommended a phased approach to be gradually applied to all ABSs and CDOs commonly considered as standardised. No action was deemed necessary on Asset Backed Commercial Papers (ABCPs). CESR was of the opinion that all credit default swap (CDS) contracts eligible for clearing by a central counterparty (CCP) should be subject to transparency, including single name CDS.

Within the industry, more transparency is seen as helpful, especially post-trade transparency for portfolio pricing purposes, but there is also a strong concern that more transparency will reduce market-making, and therefore negatively impact liquidity.

On 9 December the European Commission held a meeting on the subject where stakeholders debated the issues, but which did not bring clarity regarding the Commission's intentions.

Data consolidation

Data consolidation (or rather the lack thereof) has emerged as one of the most important issues for industry participants during discussions on the effects of MiFID. Although previously discussed at CESR level, no

51 http://www.cesr-eu.org/popup2.php?id=5798

action was undertaken due to the lack of mandate in MiFID in this respect. In view of the MiFID Review, CESR re-started discussions and organised a Roundtable on 18 November 2009, which EFAMA attended. In January 2009 a stakeholder meeting was also held by the European Commission.

MiFID did not mandate consolidation, in the misguided belief that the market would come up with a solution. It appears, however, that data fragmentation and poor data quality are a very serious issue, which – together with the proliferation of trading venues – is a serious obstacle to price formation, to the search for the best venue, and to achieving and proving best execution.

Not all are convinced that the best solution to the problem would be a consolidated tape – perhaps following the example of Trade Reporting and Compliance Engine (TRACE) in the U.S. - and alternatives to improve the consolidation by data providers exist, but a change in regulation is required.

Complex/ non-complex instruments

CESR consulted on the definition of complex and non-complex instruments under MiFID for the purposes of appropriateness[52], later issuing a Q&A[53]. As far as funds (UCITS and non-UCITS) are concerned, CESR's guidance does not bring any changes, but for the future, CESR made clear that it does not agree with the current definition of UCITS as non-complex instruments. UCITS should rather be subject to the same test as other instruments, although in practice most UCITS would be considered non-complex. In this respect there is a great risk of revision during the upcoming MiFID review.

Inducements

In October CESR launched a consultation on inducements[54], focusing specifically on the implementation of MiFID and reviewing 'good and poor practices'. There is no final outcome yet, but in the paper CESR tightened the previous interpretation of inducements and was highly critical of certain types of payments, such as ongoing commission payments. EFAMA[55] strongly disagreed with the emphasis on one-time commissions, as they could encourage short-term investments or –worse still– churning by advisors. Payment of ongoing commissions/fees, on the contrary, is meant to remunerate ongoing post-sale services to clients, and encourage long-term holdings.

Advice

Also in October, CESR consulted on the definition of advice[56]. As in the case of inducements, no final guidance has been issued, but in the paper CESR introduced quite a strict interpretation of advice, for example stating that it was sufficient for the client to reasonably believe that a personal recommendation is being provided, without any other objective test to be met. The paper also rejected altogether the possibility of using disclaimers (to the effect that advice was not being provided), and did not take into consideration the case of direct distribution by fund producers, who would obviously focus only on their product range.

52 http://www.cesr-eu.org/popup2.php?id=5721

53 http://www.cesr-eu.org/popup2.php?id=6158

54 http://www.cesr-eu.org/popup2.php?id=6146

55 See EFAMA's reply at http://www.efama.org/index2.php?option=com_docman&task=doc_view&gid=1082&Itemid=-99

56 See CESR's Paper at http://www.cesr-eu.org/popup2.php?id=6137 and EFAMA's reply at http://www.efama.org/index2.php?option=com_docman&task=doc_view&gid=1080&Itemi=-99

2. Short Selling

In July 2009 CESR published a consultation paper[57] on a proposal for a pan-European short selling regime. EFAMA welcomed the idea of a harmonised regime[58], as opposed to the un-coordinated patchwork of national bans and restrictions on short selling that were issued starting in 2008.

While recognising the beneficial role played by short selling in price discovery, CESR remains intent in curbing it through public disclosure. CESR's proposal foresees a two-tier system for the disclosure of significant net short positions. Below a certain threshold the disclosure would be made to the regulator of the most liquid market for the share in which the position was held. Beyond a second-tier threshold (0.5%), public disclosure to the market would be required, acting as a deterrent against 'aggressive short selling'.

While supporting disclosure to regulators, EFAMA members are not in favour of individual position disclosures to the market, for various reasons:

- proprietary market strategies could be copied by other market participants, leading to a decrease in research;
- short sellers could be exposed to a 'squeeze' once a large short position was known;
- without full knowledge of all positions, information to the market could be misleading.

If deemed necessary, EFAMA would not be opposed to public disclosure of gross short positions on an aggregate and anonymous basis.

3. Derivatives, OTC derivatives, CCPs, trade repositories

As a consequence of the financial crisis and in particular of the AIG bailout, authorities worldwide became acutely aware of the risks related to OTC derivatives and started planning higher levels of regulation. In the U.S., a move started towards setting up clearinghouses/central counterparties (CCPs) for CDS clearing and settlement, and European authorities felt the need for the establishment of EU-based CCPs. At the end of 2008, therefore, the Commission created a Working Group on Derivatives, to coordinate a move to EU CCPs in the short term, and to provide input on derivatives regulation in the longer term.

After obtaining a commitment from the sell-side, in the first half of 2009 quick-paced negotiations led to several standardisation steps required for CCP clearing of CDSs. Among them, the ISDA so-called 'small bang protocol' was published, and the entire industry had to sign up to it in – regrettably – an extremely short time.

Four CCPs started in the race, but one dropped out early and another became operational only at the end of 2009. In spite of the massive operational issues to be tackled, major dealers and two CCPs (ICE Clear and Eurex Clearing) were able to meet the Commission-imposed deadline and Commissioner McCreevy could announce the successful launch of CCP clearing of CDSs in the EU on 31 July 2009.

57 http://www.cesr-eu.org/index.php?page=consultation_details&id=142

58 http://www.efama.org/index2.php?option=com_docman&task=doc_view&gid=1031&Itemid=-99

The clearing was, however, limited to CDS on indices, excluding single-name products, and to sell-side trades only. A deadline for clearing buy-side trades (which are cleared through a dealer who is a CCP clearing member) was set for 15 December 2009 (on the basis of a commitment made in the U.S. by some buy-side firms in negotiations with the New York Fed), but was deemed by the Commission to be the deadline for the sell-side to offer clearing services, not a date by which the buy-side would necessarily have to start using CCPs.
In fact, even in Q4 2009 little information was available to the buy-side regarding offers by clearing members for CCP clearing, while CCP services for the buy-side were still being defined (particularly regarding client asset segregation). EFAMA warned the Commission the deadline of 15 December was unrealistic, as information was insufficient to do proper due diligence and achieve implementation.

In spite of EFAMA's participation in the Commission Working Group and its efforts to promote users' interests throughout the negotiations, buy-side interests were never at the forefront. For example, as late as end 2009, crucial issues such as segregation of client collateral were still unresolved. In the rush towards implementation, the rules of the game were largely determined by the CCPs together with major dealers (which also own the CCPs), therefore EFAMA believes that future EU regulation should ensure that buy-side interests are better protected. While fully supporting the goal of EU-based CCP clearing for standardised CDSs and – potentially – for other OTC derivatives, it is crucial that the 'rules of the game' be fair for all market participants, and that the involvement of the buy-side in CCP corporate governance be guaranteed.

The Commission launched in July a Consultation on *'Possible initiatives to enhance the resilience of OTC Derivatives Markets'*[59], in which EFAMA participated[60]. A high level conference was held in September, and a Communication issued on 20 October: *'Ensuring efficient, safe and sound derivatives markets: Future policy actions'*[61].

59 http://ec.europa.eu/internal_market/consultations/docs/2009/derivatives/derivatives_consultation.pdf

60 See reply at http://www.efama.org/index2.php?option=com_docman&task=doc_view&gid=1015&Itemid=-99

61 http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2009:0563:FIN:EN:PDF

The Commission proposals are very ambitious and go well beyond mandatory standardisation and clearing of CDSs. They aim at covering all contracts, types of OTC derivatives, all derivatives users, and foresee a move from OTC to trading on regulated markets.

EFAMA welcomes to a large extent the Commission's goals, although many details are still to be refined. For example, it does not seem possible to standardise all contracts, therefore the continued existence of bespoke OTC contracts should be ensured.

In November, CESR held a public consultation on trade repositories in the European Union[62], a topic of great concern to regulators. Given the future important role of trade repositories in information gathering for systemic risk purposes, CESR's interest is justified. It is unclear how many trade repositories will exist globally in the future, and where they will be located. A majority in the industry would prefer global repositories, avoiding fragmentation which might increase complexity and costs, but an efficient legal framework must be agreed for regulators to have access to trade information in other jurisdictions.

Discussions have started between Commission and Member States and the publication of legislative proposals are expected in 2010.

62 See http://www.cesr-eu.org/index.php?page=consultation_details&id=149 for the Consultation and http://www.efama.org/index2.php?option=com_docman&task=doc_view&gid=1063&Itemid=-99 for EFAMA's reply

V. Taxation

In addition to the important study EFAMA launched with KPMG on tax issues related to UCITS IV (see above), work continued on three other longstanding issues: the treatment of investment funds in Double Tax Treaties, VAT on financial services and the Savings Taxation Directive. Late 2009 saw the emergence of a completely different legal initiative, which monopolised the attention of the European investment management industry: a U.S. project on tax legislation, the Foreign Account Tax Compliance Act or 'FATCA'.

1. Double Tax Treaties and investment funds

Driven by the investment fund industry on both sides of the Atlantic, the OECD Committee on Fiscal Affairs (CFA) started with the participation of EFAMA in late autumn 2006 a project on Treaty benefits for collective investment schemes (CIS), aimed to assist fund managers in claiming tax Treaty benefits independent of the legal structure of the fund.

Phase I of this project was concluded in January 2009 with the publication of two reports by an Informal Consultative Group on:

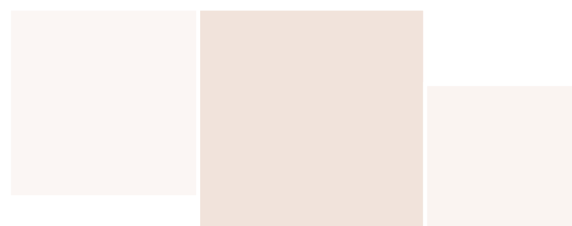
- the *'Granting of Treaty Benefits with Respect to the Income of CIVs'*;
- *'Possible Improvements to Procedures for Tax Treaty Relief for Cross-Border Investors'*.

The first report considers legal issues which are instrumental in granting Treaty entitlement to investment funds and their investors. It contains a comprehensive set of recommendations with reference to the pertaining legal and policy issues, i.e. the conditions under which either investment funds or their investors are entitled to Treaty benefits.

The second report deals with the information flow between Treaty-eligible investors and security issues through existing chains of intermediaries and sets out best practices with respect to the granting of Treaty benefits.

In 2009 work focused on procedural issues and the development of standardised documents and processes, the 'Implementation Package', which was completed in late 2009. It outlines a streamlined system for claiming reduced withholding and contains forms to be used under the system, agreed procedures that so-called 'authorised intermediaries' would follow in implementing the system and, of particular relevance to the industry, the Model Mutual Agreements providing procedures applicable to Collective Investment Vehicles (CIVs).

The Model Mutual Agreements can be used under existing or future Tax Treaties to allow investment funds to claim Treaty Relief. They are designed to implement the recommendations of the ICG announced in its *'Report on the Granting of Treaty Benefits with Respect to the Income of CIVs'*. The Model Mutual Agreements do not provide a uniform treatment for all investment funds. Rather, they provide a variety of treatments that governments may agree to apply to different types of funds.



2. VAT on financial services

In May 2006 the Commission launched an initiative aiming at amending the existing VAT Directive[63] and in November 2007 it presented the corresponding legislative proposal[64].
To allow smaller investors to invest in collective investment schemes without burdening them with VAT, financial services and in particular the management of investment funds as defined by Member States are exempt from VAT. However, from the outset the exact scope of the exemption was unclear and options given to Member States regarding the application of the exemption ended in distortion of competition.

The current discussion should lead on the one hand to an end of such distortion and to the creation of a level playing field (probably by limiting the discretion given to Member States regarding the vehicles falling within the exemption and by clarifying which services fall under 'management'), and on the other, by moving towards the principle of tax neutrality.

The discussion in 2009 under the Czech Presidency focused a great deal on the definition of investment funds and the Czech proposal *'investment in securities ... of capital raised directly or indirectly from the public'* raised doubts as to whether on this basis only publicly distributed funds would continue to be exempt. This would have had the potential of severely restricting the scope of the exemption and thus of heavily impacting the fund industry. Hopes are now placed on the Spanish Presidency, which is expected to start its work on the issue in January 2010.

3. Savings Taxation Directive

Very soon after the entry into force of the Savings Taxation Directive[65] in July 2005, it became clear that the long-time reservations expressed by EFAMA (then FEFSI) in relation to the 'Taxation Package' issued under Commissioner Monti were justified. Indeed, the directive was prohibitively expensive to implement and did not work. Three main areas of concern were identified (they were in fact identical to those raised at the time the draft directive was under discussion): the scope of the directive, the application of the so-called 'home country rule' and the calculation of the taxable income.

The Commission's Paper entitled *'Questions relating to the interpretation and application of Council Directive 2003/48/EC on taxation of savings income in the form of interest payments'*[66] of late 2005 did little towards finding solutions. Member States were quick to react when they first started receiving the (surprisingly) small cheques from the withholding tax countries, and since early 2007 the issue is back on the Commission's agenda.

In September 2008, the Commission published a report on the operation of the directive during the first three years of its application which was followed in November 2008 by a proposal for an amending directive[67].

63 Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonisation of the laws of the Member States relating to turnover taxes – Common system of value added tax: uniform basis of assessment

64 COM(2007) 747 – the Directive – and COM(2007)746 – the Regulation

65 Council Directive 2003/48/EC of 3 June on taxation of savings income in the form of interest payments

66 GT4\051114\doc\EN\en-34-01 of 25 October 2005

67 See: http://ec.europa.eu/taxation_customs/taxation/personal_tax_savings_tax_savings_directive_review/index_en.htm

The Commission's proposal formally integrates structured products and life insurance products in the scope of the directive. EFAMA welcomed this new approach as indeed it had from the start of the discussion on the Savings Directive in the late 1990s. While the inclusion is, in principle, an important step towards a more level playing field in taxation, the proposed definitions of structured, 'innovative' products and certain insurance products require further consideration to achieve the creation of a level playing field.

Although the European Parliament has but limited power in questions related to taxation (it is only a 'consultation procedure' and not as with UCITS, a 'codecision procedure'), a draft report was presented by Rapporteur Benoit Hamon (PSE, France) in January 2009. On 30 March ECON voted on amendments to the draft report and published its final report. Some of the provisions follow EFAMA's proposal for the definition of competing savings products, i.e. certain insurance products, with a view of aiming at a better level playing field.

At Council level discussions focused in the first half of 2009 under the Czech Presidency on the types of competing products to be included. A broader definition, in particular on insurance contracts to be covered, was achieved in late June. However, by the end of 2009 Member States failed to reach an overall agreement, in particular because of divergent opinions regarding the transitional period.

4. FATCA

The U.S. tax legislation of the Foreign Account Tax Compliance Act (FATCA) was originally proposed as stand-alone legislation. It was then included as Title V of the 'Tax Extenders Act of 2009' and as such was passed by the U.S. House of Representatives on 9 December 2009.

While the aim of this initiative, i.e. to clamp down on tax evasion by U.S. citizens, is legitimate, its potential impact on the European fund industry immediately raised concerns.
The proposed legislation not only introduces a new reporting regime for both foreign financial institutions (FFI) and non-financial foreign entities, it also increases the potential penalties for failure to comply with the proposed rules. The scope of application of the new regime will go beyond traditional financial institutions and cover virtually every type of foreign investment entity. The notion of an FFI comprises not only foreign banks and foreign custodial businesses but also any foreign entity engaged primarily in the business of investing or trading in securities, partnership interests, commodities or any derivative interests therein ('a foreign investment entity'). Thus the new set of rules will go beyond the already known Qualified Intermediary (QI) regime.

Under the new regime withholding agents would be required to withhold a 30% tax of all payments to an FFI of (1) U.S. source dividends, interest or other 'FDAP'[68] income, and (2) any gross proceeds from the sale of assets that can produce U.S. source dividends or interest (collectively, 'withholdable payments'), unless the FFI enters into an agreement with the IRS that requires the FFI to follow the new information reporting and withholding rules that apply to payments to U.S. persons.

68 FDAP income = 'Fixed Determinable Annual Periodical' income. This covers a very broad range of income payments, i.e. payments of U.S. –source fixed or determinable annual or periodical gains, profits, or income. FDAP income includes interest and dividends, but generally does not include gross proceeds or gains from sales.

Thus, an FFI may avoid the 30% withholding on a withholdable payment only by entering into an agreement with the IRS requiring it, among others, to obtain information from each account holder, complying with verification and due diligence procedures to be prescribed by the U.S. authorities and report annually certain information related to any U.S. account maintained by such institution.

Normally, the annual reporting will relate e.g. to the name, address and Tax Information Network (TIN) of each account holder that is a specified U.S. person, the account number, the account balance or value and the gross receipts and gross withdrawals or payments from the accounts.

The situation of funds would be particularly difficult with respect to any such reporting requirement due to the little that is known about individual investors at fund level. There are usually several layers of intermediaries between the fund and the investor and information about individual investors is for commercial reasons not passed up these chains of intermediaries. This circumstance makes it effectively impossible for funds to report their U.S. investors.

The new regime would operate as a parallel system and in addition to the existing QI regime. Little of the public comment so far has been about the impact on funds[69]. EFAMA immediately engaged in a dialogue with the U.S. authorities to explain the unintended impact on the European investment management industry and help find solutions.

69 The impact on assets other than securities, and on non-U.S. fund managers whose business model includes direct dealings with U.S. clients, is outside the scope of this short note. Also out of scope is the bill provision imposing U.S. withholding tax on synthetic access to U.S. investments.

VI. Pensions

The role of investment funds in retirement provision has been a strategic priority since the Commission published its Green Paper on Pensions in 1997[70] followed in 1999 by a Communication *'Towards a Single Market for Supplementary Pensions'*[71]. EFAMA's overall aim is to achieve a level playing field between all product/services providers in the second and third pillar pension market and to demonstrate to political decision-makers at European and national level that pensions are not only insurance, but also to a large extent asset management, and this for both the savings and the payout phase. In a first step, EFAMA (then FEFSI) published a book *'Mutual Funds in European Old-Age Provision'*[72]. Later, in May 2005, EFAMA issued a report on a new pan-European pension vehicle – the *'European Personal Pension Account'* (EPPA)[73] aimed to illustrate the kind of pension products that could be developed by investment managers. Indeed, EPPA is a flexible and portable pension vehicle based on personal retirement accounts which individuals and their employers can use to invest in a range of savings instruments, especially investment funds, with or without protecting solutions such as insurance options, guarantees and life-cycle assets allocation.

More recently, and to evaluate the ability of Defined Contribution (DC) schemes to optimise the return of their pension savings and manage longevity risk, EFAMA commisioned two studies:

- one to Oxera on DC schemes to provide a systematic evaluation of the risks and advantages of DC schemes and to highlight, in particular, the ability of investment managers to provide DC schemes;
- another to Professor Maurer from the Goethe University Frankfurt to study the asset management solutions for the payout (decumulation) phase that are proposed under current regulatory requirements, including an assessment of the pros and cons of these solutions compared to annuities.

The Oxera study was published in 2008[74] and Professor Maurer's report was published in February 2009 under the title *'Rethinking Retirement Income Strategies: How Can We Secure Better Outcomes for Future Retirees'*[75]. The report demonstrates that the requirement to convert accumulated pension assets in an annuity at the time of retirement or shortly after is very costly for a pensioner and it shows that individuals can expect to enjoy a substantially higher consumption level if they keep a balanced asset allocation of their pension savings, at least for an extended period after retirement. Moreover, permitting more flexible choice among investment solutions for the payout phase allows to take into account people's preferences, level of risk tolerance, wish to provide relatives with an inheritance, and other sources of wealth to tap into retirement.

To present the report and stimulate a debate on payout solutions, EFAMA held a conference which was attended by participants from the industry, European institutions and the media. In general, all speakers agreed on the need for greater flexibility in the asset allocation of defined contribution schemes, especially in countries where a large part of retirement income is already annuitised. The authorities should guarantee full equal competition in the market for payout solutions, in particular by allowing asset managers to enter

70 See: *'Supplementary Pensions in the Single Market'* – COM(1997)283 final, http://ec.europa.eu/internal_market/pensions/commission-docs_en.htm

71 COM(1999) 134 final

72 Universitäts-Verlagsbuchhandlung Wilhelm Braumüller, Wien

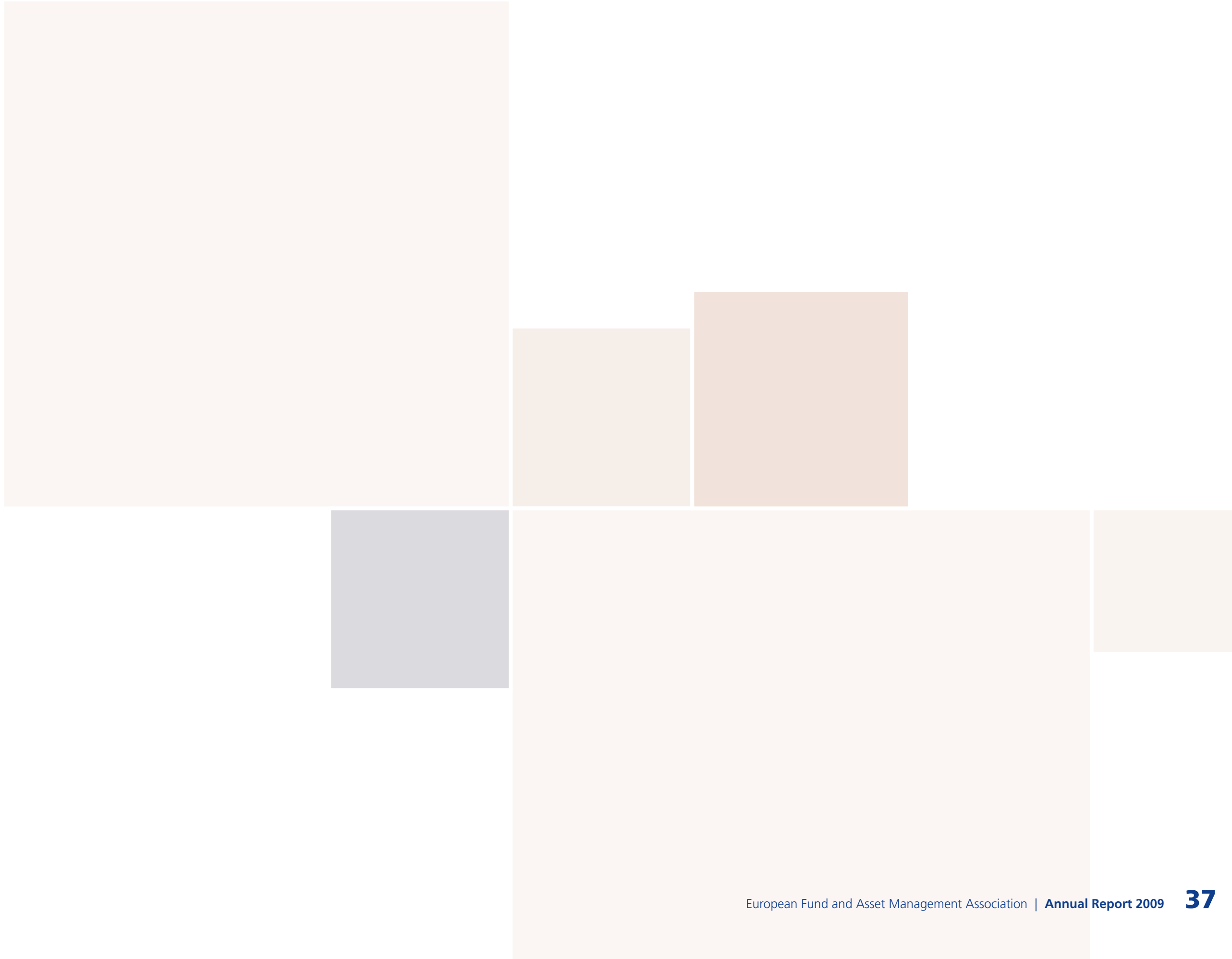
73 See: www.efama.org

74 To know more about OXERA, please visit http://www.oxera.com

75 The report can be downloaded from: http://www.efama.org/index.php?option=com_docman&task=cat_view&gid=261&Itemid=-99

the market. It was also recognised that tax incentives can play a useful role in stimulating the supply of new types of payout solutions as well as households' demand for these products. European and international institutions can also assist Member States in adapting their regulation to enable their citizens to cope with Europe's ageing challenge.

In another area, EFAMA's Director General outlined the association's position at the public hearing organised by the European Commission on the possible harmonisation of solvency rules applicable to IORPs. In a nutshell, it should be clear that solvency regimes should be adapted to the types of pension products offered by IORPs. In defined-benefit plans, the responsibility to meet a benefit promise requires solvency rules to ensure that the promised pension benefit is actually delivered. On the other hand, in pure defined contribution schemes, as long as the IORP operating DC schemes does not guarantee a given investment performance or a given level of benefits or biometric risk coverage, it should be exempt from solvency rules, regardless of whether the IORP operates within its home country or conducts cross-border business. To guarantee a high degree of security for DC scheme members, the solution is not the application of solvency rules but clear governance rules providing a framework for allocating decision-making and oversight responsibilities between the relevant parties, ensuring asset protection, and promoting transparency and disclosure. Also, IORPs outsourcing guarantees and/or biometric risk coverage to a third party institution that itself is subject to solvency regulation, should be exempt from solvency rules. Avoiding multiple levels of regulatory costs is essential to obtain the highest possible return on pension savings.



VII. Statistics and Economic Research

EFAMA continued strengthening its position as a reference source for investment management market intelligence through a number of initiatives.

1. EFAMA's second Annual Asset Management Report

In April 2009 EFAMA published the second edition of its Annual Asset Management Report[76]. The report focused on the size of the industry, the location of the activity of asset management, the industry's clients and the asset allocation at the end of 2007. A first estimation of the impact of the financial crisis on the assets under management in Europe was also included in the report. Among other things, this year's report highlighted the following statistics:

- at the end of 2007, the assets managed by the European asset management industry amounted to €13.6 trillion, representing more than one third of the assets of the global asset management industry;
- reflecting the size of the domestic savings market, the degree of development of the local financial services sector and the level of financial delegation to asset management companies by institutional investors, the United Kingdom, France and Germany together accounted for 66% of total assets under management in Europe at the end of 2007. Italy and Belgium followed in this ranking;
- investment funds represented 51% of assets managed in Europe, with discretionary mandates accounting for the remaining 49%;
- although there are large differences across countries, on aggregate, the dominant asset classes were bond and equity, with 40% and 37% of total asset under management respectively, at end 2007;
- around 70,000 are estimated to work directly in asset management companies in Europe. Taking related services into account, such as accounting, auditing, custodianship, marketing, research, order processing, as well as distribution, the overall level of direct and indirect employment linked to asset management companies would increase to a significantly higher figure.

2. EFAMA's new Investment Fund Industry Fact Sheet

In October 2009, EFAMA began to publish the *EFAMA Investment Fund Industry Monthly Fact Sheet* to inform the press and the public at large about the latest trends in the industry. The one-page format of the Fact Sheet provides a good snapshot of the essential developments over the last twelve months. Twenty-three associations representing more than 95% of total investment fund assets provide EFAMA with data on time for a publication about 40 days after the end of the reporting month. A wide range of stakeholders, including officials from the European Union, the European Central Bank (ECB) and other institutions, confirmed their appreciation of this move towards greater data transparency on the part of EFAMA.

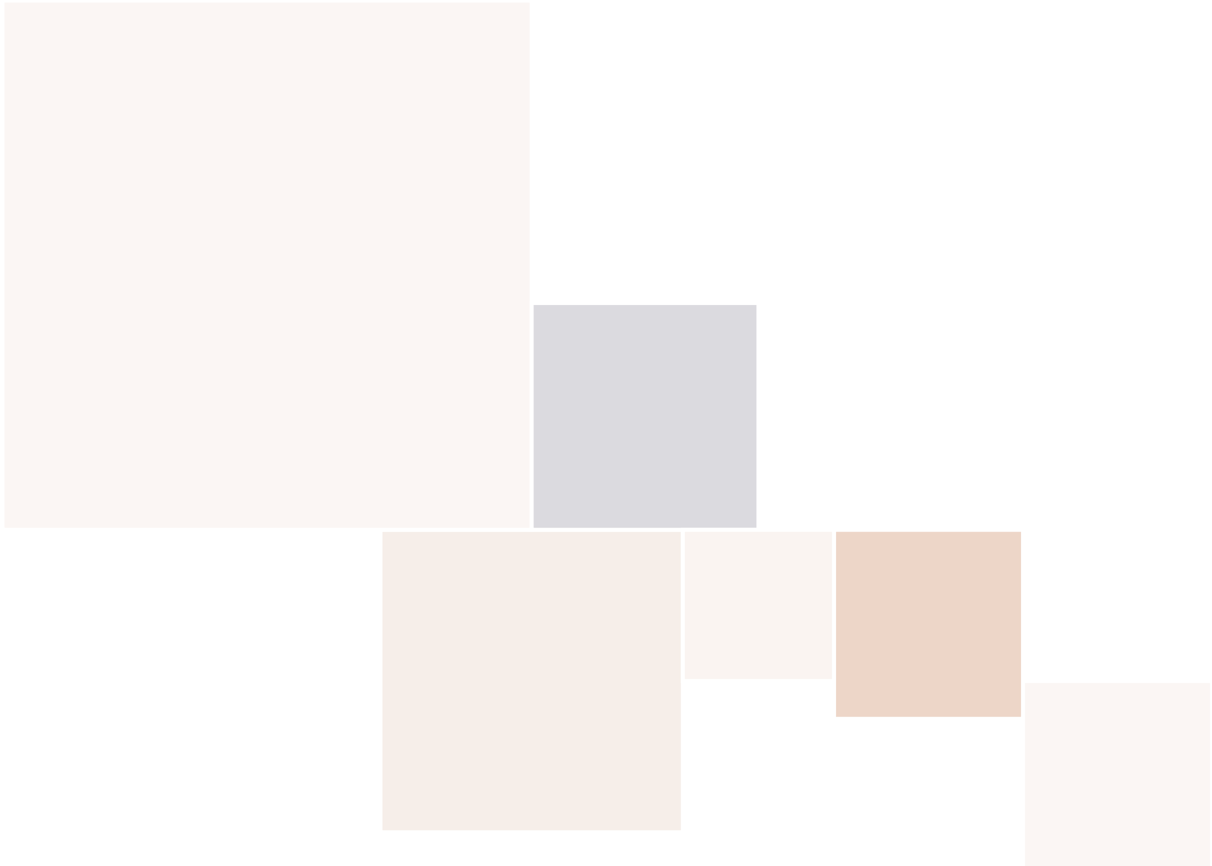
76 The report can be downloaded from: http://www.efama.org/index.php?option=com_docman&task=cat_view&gid=89&Itemid=-99

3. Launch of the International Statistics Review

In 2009, the International Investment Funds Association (IIFA) Statistics Working Committee (ISWC), chaired by Bernard Delbecque (Director of Economics and Research at EFAMA) resumed its work on the current international statistical exchange to examine possible improvements in the exchange. The review has three main objectives:

- to explore the possibility of expanding the international statistical exchange to include new data series;
- to determine whether any definitional and/or measurement issues have arisen since the last review;
- to review the current arrangements for the dissemination of the IIFA statistical releases and revised historical data.

To progress on these objectives, the working group has prepared a questionnaire that was circulated to all IIFA and EFAMA members in late 2009. Based on the responses received, the Committee will make recommendations for the consideration of the IIFA.



VIII. Technical Industry Standards

Increasing the efficiency of the industry has been a priority high on EFAMA's agenda for a number of years. In 2009 work focused on three issues:

- Fund Processing Passport Portal
- Report on progress in fund processing automation & standardisation
- The XML Data Dictionary

1. Fund Processing Passport Portal

Further to the decision taken to create a Portal to promote the distribution of Fund Processing Passports (FPPs), EFAMA launched a tender to select the firm that should develop and manage the Portal. To ensure that the selection process would not expose EFAMA to undue commercial interests and legal responsibilities, an independent consultant was mandated and a selection committee of representatives from member associations and corporate members was set up. The request for proposal was finalised at the end of July following consultations with the existing FPP database providers.

Eight firms participated in the bidding process. The offers were analysed in detail on the basis of a number of selection criteria, including the candidate's expertise in IT resources, their commitment to the aims of the FPP, the costs of the proposed solution, and their willingness to cooperate effectively with the existing FPP providers, e.g. FPP database providers and fund managers engaged in FPP production. At the end of the procedure, the selection committee unanimously opted for Finesti, a Luxembourg-based company, to develop the Portal. Following this choice, EFAMA and Finesti began to negotiate a contract in December 2009 with a view to start the implementation of the Portal in February 2010 and launch it a few months later.

2. Report on progress in fund processing automation & standardisation

In May 2009, EFAMA published a report on recent trends in standardisation and automation rates of fund orders received by transfer agents (TA) in Luxembourg. The report was based on a joint EFAMA-SWIFT survey covering close to 80% of the total Luxembourg order volumes. A mid-year status report was also published in October 2009[77].

The initiative was aimed to inform all institutions involved in fund processing as well as the European Commission, the European Parliament and other interested stakeholders about the industry's progress towards greater standardisation and automation.

The reports show that the total automation rate of orders processed by Luxembourg transfer agents reached 66% in the fourth quarter of 2008, whereas the percentage of automated orders based on the ISO messaging standard reached 41% in volume terms. It also appeared that the total automation rate of

77 The reports are available at http://www.efama.org/index.php?option=com_docman&task=cat_view&gid=88&Itemid=-99

orders from Asia/Pacific is very low (36% in the fourth quarter of 2008). From this perspective, the results show that the attractiveness of UCITS in Asia could be increased further by moving from manual orders to straight-through-processing. EFAMA is committed to identifying possible actions for achieving this goal.

3. The XML Data Dictionary

In the past two years, EFAMA's XML Data Dictionary Working Group, established to seek a remedy for the lack of interoperability between the various data reporting standards existing in Europe and globally, achieved significant progress towards the creation of a dictionary providing concise definitions of data terms and relations for all possible fund-related data.

The dictionary should be used as a device for facilitating (automated) communication in the context of the present different European XML initiatives. Its users will primarily be professional actors in the industry, such as rating agencies, central banks, supervisors, sales agents and fund companies. The initiative focuses at present merely on reference data, which in the future may be extended to include transactional data.

IX. Preserving the Integrity of the Industry

In the wake of the financial crisis, Jean-Baptiste de Franssu, EFAMA's newly elected President (2009 Annual General Meeting, Athens), underlined the need to focus on preserving the integrity of the industry and restoring investor confidence. As an immediate measure two working groups were created, one on investor education (chaired by Charles Muller, ALFI) and another on fund governance (chaired by Stefan Seip, BVI).

1. Improving investor education

When the Commission or European Parliament issues a paper concerning financial services, one of the key messages is that investor education must be improved. While achieving this in a single jurisdiction is a challenge (as shown on many occasions at the level of IIFA[78]), it is greater still in the EU with its twenty-seven Member States and their widely diverging education systems.

It is generally accepted that it is not sufficient to provide household investors with coherent, objective and simple information about savings and investment products, they must also have the necessary background knowledge to understand the information. Not only in Europe but elsewhere in the world this knowledge is very often missing. EFAMA's working group is concentrating its efforts on how to provide this information in a more attractive and interactive manner, targeting adults and teenagers.

Indeed, a tremendous amount of educational material can be found on the web[79] and special educational events are regularly organised in many Member States. One of the key issues for the working group will be to collect this information. A second important task will be to establish contacts and harmonise efforts with policy-makers, sister associations and the various investor associations such as 'Euroshareholders'[80] at European level or - to name the two biggest - DSW[81] in Germany and SARF[82] in Sweden. Finally, a way must be found to bring this information to household investors who normally might not visit EFAMA's website.

2. Strengthening fund and corporate governance

In its ongoing efforts to stress that fund and corporate governance are key in the consolidation of investors' trust, EFAMA issued in early 2006 (in the form of a discussion paper) a Code of Conduct for the European investment management industry. The discussion paper was advanced by a number of Best Practice recommendations[83] issued since 2002. The working group is mandated to look into these 'old' governance standards and advise EFAMA's Board of Directors on how to strengthen them in order to preserve the integrity of the industry and bolster investors' confidence in funds and fund managers.

78 The issue is discussed at nearly all annual meetings and conferences of the IIFA.

79 One of the most entertaining concepts was developed by T.Rowe Price, 'the Great Piggy Bank Adventure', www.thegreatpiggybankadventure.com.

80 www.euroshareholders.org

81 Deutsche Schutzvereinigung für Wertpapierbesitz www.dsw-info.de

82 Sveriges Aktiesparares Riksførbund www.aktiesparana.se

83 On the simplified prospectus, on transparency of fees (TER), on investment fund managers as shareholders, on investment policy principle, on performance and on fund unit trading

The industry best practices include issues which were already topical at the beginning of this century, but which could probably benefit from a review in light of the events of the past two years, such as independent oversight as an instrument to prevent/solve conflicts of interest or the role of fund managers to e.g. prevent bad practices (certain types of bonuses) in listed companies.

Independent oversight

How to deal with the principle that UCITS managers must work in the sole interest of the UCITS investors and how conflicts of interest which necessarily come up in this context can be dealt with most efficiently have been on the fund industry agenda for decades. The 1940 U.S. Investment Company Act tried to solve the problem through independent directors and the 1985 UCITS Directive through the supervisory function of the depositary. These very different approaches of the two regulatory systems led to endless, and often very controversial, discussions about the equivalence in terms of investor protection, which were finally concluded with the publication of two contributions from international bodies:

- in October 2004 the OECD issued a paper on Governance of Collective Investment Schemes stating that an 'independent oversight' is crucial for investor protection[84], and
- in February 2005 IOSCO issued a consultation report underlining that *'in an environment where executive directors in a one-tier structure or directors of a management board in a two-tier structure live and act permanently surrounded by conflicts of interest, there must be an 'independent oversight', that means an oversight, which is independent of the other interests of the manager (regarding its shareholders, service providers or other interested parties) and takes only care that the interest of the investors are taken into account… Such independent oversight can be carried out by various bodies, the independent director being only one alternative. Other such bodies can be the depositary, the auditor or e.g. an independent audit/ compliance committee[85].'*

The principle of independent oversight was then taken on board by the EFAMA 2006 Code of Conduct. In light of the recent financial crisis, it has inspired national legislators to enhance independence in oversight, e.g. in Germany, and remains a valuable basis for further discussion.

Shareholder activism

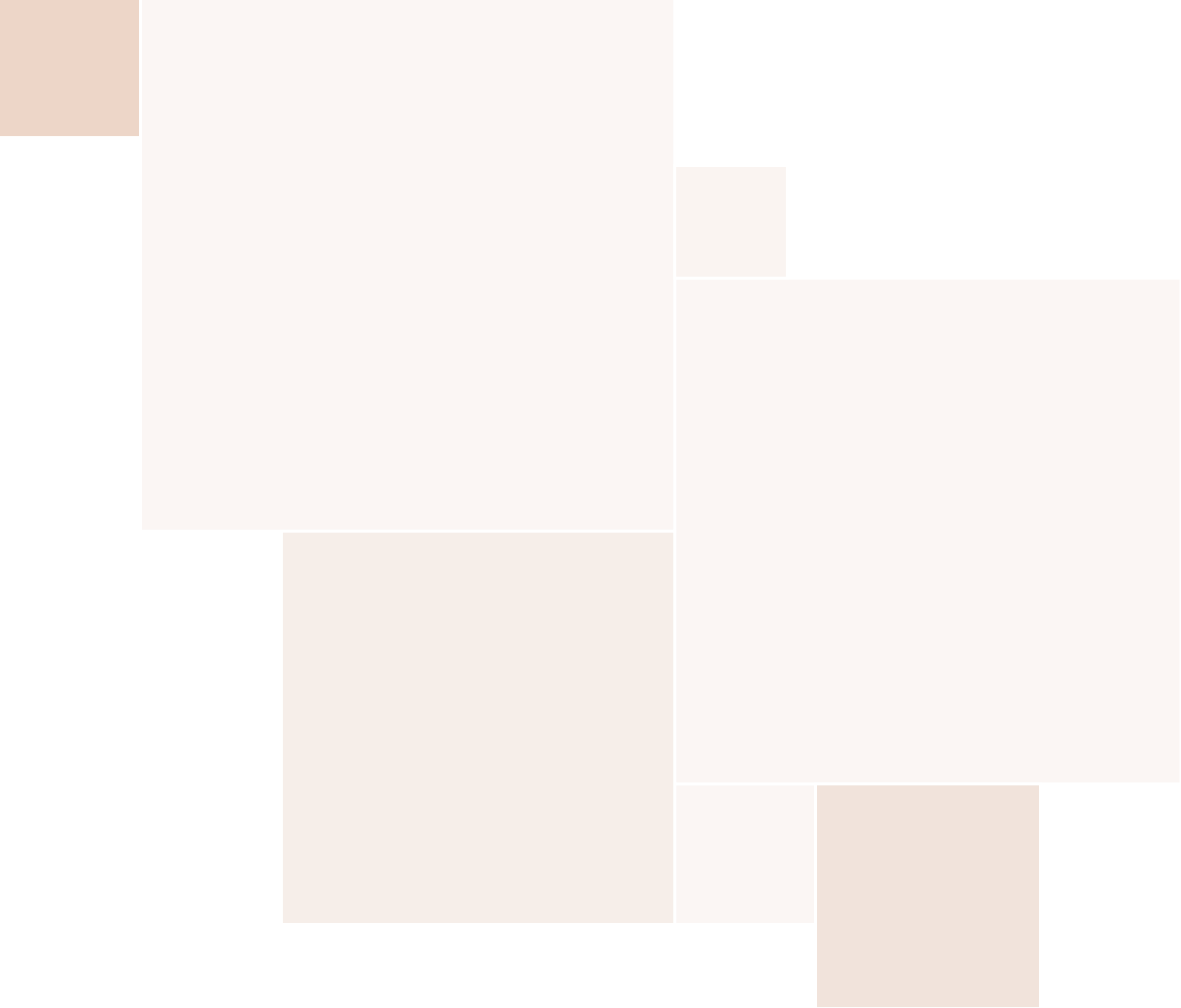
The issue is not new to EFAMA. Its Best Practices published in 2002 for instance underlined the need for fund managers to disclose their policy towards their responsibility as shareholders. This policy should be guided by the principle that a fund manager exercises ownership and creditor rights in the sole financial interest of unit-holders. Acting responsibly as shareholder means, among other things, making considered use of voting rights.

Against the background of the Commission's 2003 Communication on Modernising Company Law and Enhancing Corporate Governance in the EU, FEFSI's 2003 Conference dedicated a full afternoon on the issue. On this occasion Eddy Wymeersch (then the Chairman of the Belgian Banking and Finance Commission CBF) pointed out that a manager who actively manages a fund must – depending on the other circumstances (costs) – take part in General Meetings to exercise shareholder rights with the aim to

84 DAFFE/CMF(2004)21 of 15-oct-2004 issued by the Directorate for financial and enterprise affairs Committee on financial markets

85 See : Technical Committee Consultation Paper 'Examination of Governance for CIS'

maximise fund investors' wealth. However, the question remained open as to whether the industry should go further than defining a voting policy and – for example – define the conditions under which the fund manager must use his voting rights. This issue would now seem to be back on the agenda.



X. EFAMA and its Members

The structural changes within FEFSI/EFAMA in 2005 were designed to include mandate-based asset management in addition to investment funds, and to broaden its membership by including corporate members representing the industry (fund management + mandate-based asset management = investment management). As a direct result, EFAMA's profile has changed significantly over the past four years. Today, EFAMA speaks with a single voice for the whole of the European investment management industry, both at European and global level. This unified industry representation is based on a set of rules representing a fair balance of minority rights and decision-making aptitude between corporations and associations as well as between large and small associations.

Two issues are key in this context: the independency of association members and a deep integration of corporate members in EFAMA's working procedures.

1. Independency of association members is key

The discussion initiated more than five years ago by EFAMA on the need for the creation of a level playing field for all saving products demonstrated the importance of the independency of EFAMA's member associations. Without this independency EFAMA would not have been in a position to drive the discussion forward against other very strong competing interests.

This is why EFAMA in 2009 amended its Rules of Procedure to make clear that:

- *National Member Associations should be sufficiently independent to provide EFAMA with opinions reflecting the interest of the national investment management industry, and also when conflicting with the interests of other areas of the national financial industry;*
- *National Association Members should have decision-making bodies mandated to conduct independent budgetary and policy decisions representing the interests of the national investment management industry.*

Only on such a basis is EFAMA strong enough to defend efficiently the interests of the European investment management industry.

2. Corporate Members: a vital part of the association

Corporate members have become increasingly involved in the work of EFAMA since it first admitted direct corporate membership back in 2005. Today EFAMA's working groups benefit greatly from a significant participation of corporate members. The contribution of their practical knowledge is an asset and helps to take the pulse of the industry. From the association's point of view, one of its main goals has been reached: without the often highly technical input of its corporate members, EFAMA would not be in a position to deal as efficiently with the tremendous number of complex files the industry has to tackle.

Also, the close cooperation between EFAMA members broadens the industry's understanding of pan-European issues and intricate European regulatory procedures. In the past five years, EFAMA corporate

members have gained a better understanding of the key role they play in the opinion-building exercise within EFAMA through:

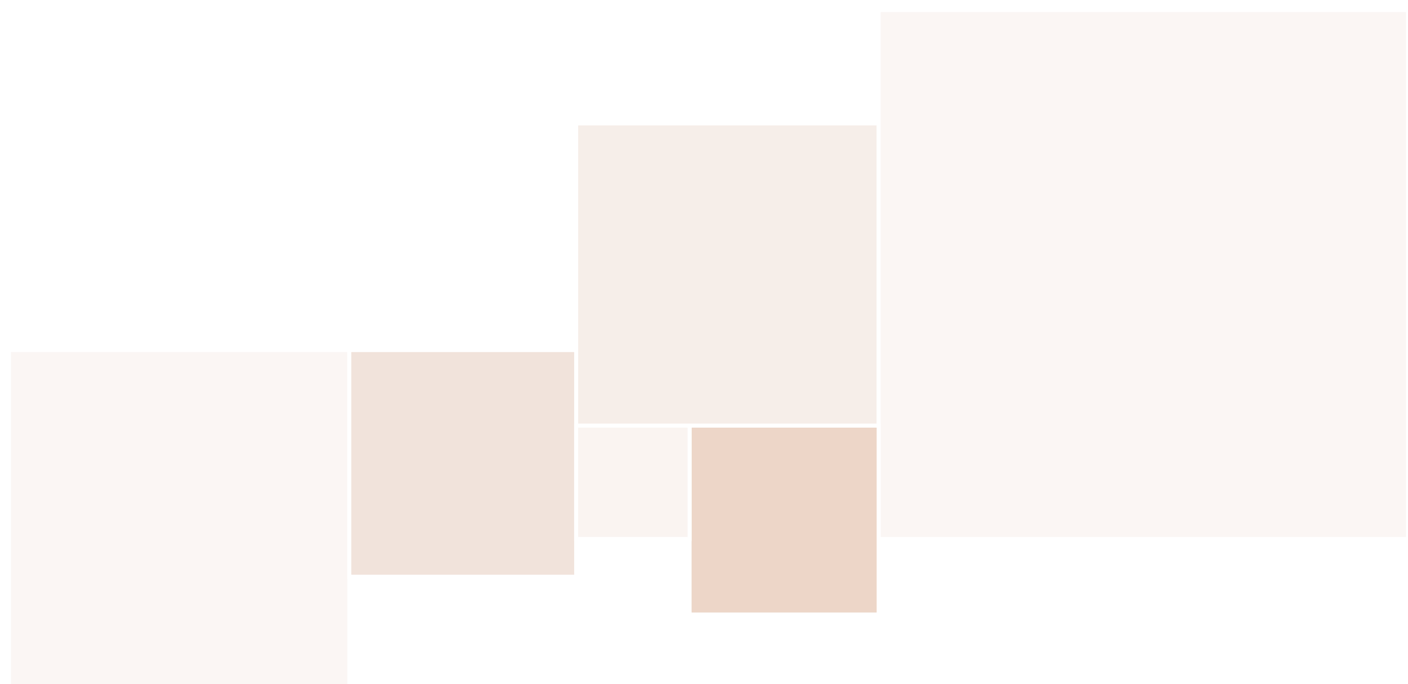
- participation in all working groups and consultations;
- three meetings a year held specifically for Corporate Members;
- regular conference calls and additional updates if needed;
- representation in EFAMA's institutional bodies, i.e. AGM, Board of Directors and Management Committee.

Finally, a survey of EFAMA's corporate members carried out in 2009 revealed that they were satisfied with the services offered and that EFAMA fully met their expectations.

Working on the further integration of its corporate members in the work of the association will continue to be at the top of EFAMA's agenda.

3. The EFAMA Investment Management Forum 2009

The 15th EFAMA Investment Management Forum took place on 1–2 October 2009 in Brussels and brought together about one hundred eighty investment managers, supervisors and consultants from twenty-five countries, including Hong Kong and the U.S. Under the general title 'Winning in a Changing Savings World', Day 1 of the conference focused on the future of asset management in Europe. Particular attention was paid to unit-linked life insurance, the aftermath of the financial crisis for asset management and the question whether distribution today really serves investors' needs. Day 2 went farther afield to discuss and compare asset management trends in Asia and the U.S., with an insight into the role played by Islamic funds and an analysis of U.S. asset management strategies regarding long-term savings through mutual funds.



XI. EFAMA on the global scene

The global dimension of the UCITS brand makes EFAMA's presence on the global scene a must

For over three decades, the global market share of European UCITS has remained stable at 35% and the UCITS brand has developed over the same period to become the only and unique global retail fund brand. Today its footprint can be found in around fifty jurisdictions worldwide with a presence in Hong Kong, Singapore and in South American pension schemes. Correspondingly, EFAMA's presence on the global scene increased and was manifest through road shows in 2007 and 2008 in Hong Kong, Singapore, Taipei and Shenzhen; through a deeper collaboration with the U.S. Investment Company Institute (ICI)[86]; through intensive collaboration with the International Investment Funds Association (IIFA); by opening up its events in Europe to global issues and speakers from non-EU countries; and through specific studies such as the study carried out together with Lipper FMI in 2008 on the global brand status of UCITS.

1. Annual joint meeting with the ICI's International Committee

The joint meeting of EFAMA members and the ICI International Committee takes place in Washington, D.C. once a year, right before the ICI's General Membership Meeting in May. The aim is to intensify contacts between the European and the U.S. investment fund industries and to identify issues of mutual interest.

Over the past decade the meeting has developed from a forum serving to exchange views to an efficient instrument for analysing regulatory trends and sharing experiences.

The 2009 meeting was co-chaired by David Oestreicher from T.Rowe Price and EFAMA's Director General Peter De Proft and the agenda included a number of key issues, e.g.:

- impact of the financial crisis on investment funds in Europe and the U.S.;
- the fallout from the Madoff fraud;
- money market funds and their future;
- reform of financial regulatory systems; and
- rethinking retirement savings.

2. The 24th International Investment Funds Conference

The International Investment Funds Association (IIFA)[87] gathers thirty-five investment fund associations from across the world. Its 2009 Annual Meeting was hosted by the Korean Financial Investment Association and took place in mid-October in Seoul, South Korea.

86 The Investment Company Institute is the U.S. counterpart of EFAMA

87 For more information see: www.iifa.ca

Chaired by Peter De Proft who took over the IIFA Chair in the early summer of 2009, the conference focused on the fund industry in the various jurisdictions represented in the IIFA and how they were managing the aftermath of the crisis. Conference delegates discussed for instance:

- the changing landscape of financial products and business models;
- how to boost market transparency and restore investor confidence;
- whether self-regulation still has a future; and
- how countries like South Africa, Canada, Malaysia and China deal with investor education[88].

The IIFA General Meeting which took place during the conference re-elected Peter De Proft as IIFA Chairman which can be interpreted as a sign that the worldwide investment fund industry is confident that EFAMA not only speaks for the European investment fund industry and acts as 'guardian of the global UCITS brand' but – as global player – feels responsible for the global industry.

Participants felt that the globalisation of the financial markets and the G20's reaction to the financial crisis had strongly increased the pace of convergence of the problems the individual IIFA members were having to face. IIFA could act as a forum for analysis and exchange of views, leading to a more common approach towards international supervisors such as IOSCO, going beyond the original, narrow role as a sole conference organiser.

3. The Wilton Park Conference

For the past four years EFAMA, together with the *European Financial Forum*, the *Deutsches Aktieninstitut* and *Paris Europlace*, co-sponsors the prestigious Wilton Park Financial Market Conference traditionally held in the autumn in Wiston House outside of London[89]. Wilton Park conferences are governed by the Chatham House Rule[90] and are known for providing an excellent environment for leading opinion formers to discuss topical issues in a unique atmosphere.

For EFAMA the Wilton Park Conference is an ideal platform for developing in two new directions. Firstly, across sectors as the conference is not focused on one sector but deals mainly with markets/exchanges and the banking sector. Asset management, in particular fund management, entered the scene only when EFAMA joined the group of sponsors. Secondly, Wilton Park opens the international dimension. Originally conceived to promote the transatlantic dialogue, the conference has developed into a global discussion forum with participants from all over the world.

The 2009 Conference, the 12th in an annual series, was chaired by Hans Hoogervorst, Chair of the Dutch Financial Markets Authority. Jacques de Larosière, Chair of the EU High Level Group on Financial Services Regulation introduced the theme: *'Building a new Balanced Global System of Financial Market Regulation'*.

88 For more information, see: www.iifakorea2009.com

89 For the full description of Wilton Park Conferences please see www.wiltonpark.org.uk

90 'When a meeting, or part thereof, is held under the Chatham House Rule, participants are free to use the information received, but neither the identity nor the affiliation of the speaker(s), nor that of any other participant, may be revealed'.

Speakers assessed future prospects, EU and trans-Atlantic issues and the underlying principles behind financial services regulatory reforms[91].

4. The EFAMA-ICI Senior Industry Roundtable

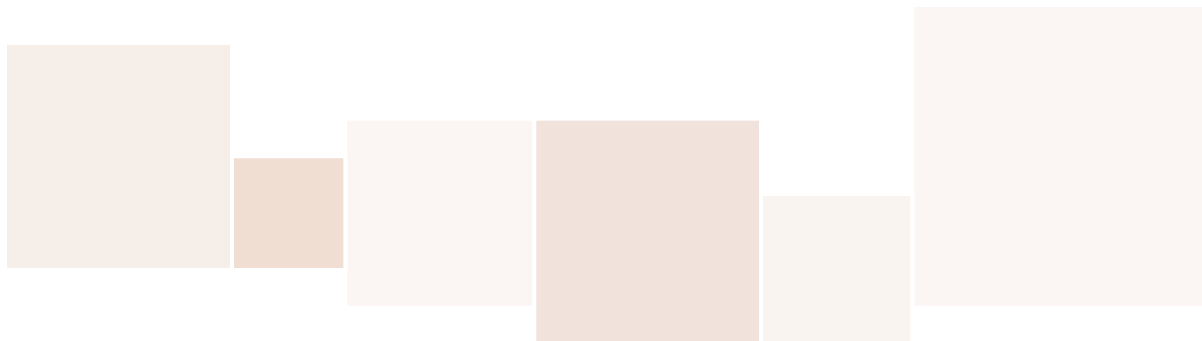
With a view of intensifying relations with the ICI and raising the understanding of issues of mutual interest, EFAMA's Director General and the ICI's President and CEO, Paul Schott Stevens, agreed to complement the EFAMA-ICI joint spring meeting by a second meeting in the autumn in Brussels. This new initiative was launched on 18 November 2009 with a workshop on *'Transatlantic Perspectives on Financial Regulatory Reform and Funds'*.

A very high level panel of speakers, including Emil Paulis (European Commission), Nicoletta Giusto (CESR), Dan Waters (FSA) and Michel Stubbe (ECB), discussed how the European and U.S. financial regulatory approaches compare, the reform of money market funds in Europe and the U.S., the role of depositaries, and the impact of the Commission's AIFM Proposal on third countries, in particular the U.S. and Switzerland.

5. The IOSCO agenda

The impressive wave of new regulatory initiatives launched at international level through IOSCO continued into 2009. As in the past, EFAMA contributed to IOSCO's work. IOSCO for instance conducted consultations in 2009 on point of sale disclosure for CIS and transparency of structured finance products. Based on the consultations from previous years, IOSCO issued:

- Regulatory standards for funds of hedge funds;
- Due diligence good practices for investment managers;
- Principles for hedge fund regulation;
- Principles for effective regulation of short selling;
- Interim recommendations on unregulated financial markets and products;
- Hedge funds oversight recommendations.



91 For more information, please see: http://www.wiltonpark.org.uk/documents/conferences/WP1005/pdfs/WP1005.pdf?633970904032343750

European Investment Fund Developments in 2009

Introduction

The European investment fund industry bounced back to positive asset growth and net sales in 2009, as equity markets rebounded, capital markets reopened and investor confidence returned. The recovery from the financial crisis, which started in April 2009 and benefited all categories of long-term funds, is the result of the following factors:

- Low short-term interest rates convinced investors to seek alternative investments to bank deposits to secure higher returns.
- Low stock prices plus the confidence generated by the wide-ranging policy actions by governments and central banks gradually strengthened investor appetite for equity funds.
- High concentration of financial wealth in liquid investments encouraged investors moving towards more balanced asset allocation.
- UCITS' status as a global brand continued to boost net sales of cross-border funds outside Europe, especially in Asia.

Thanks to these factors, European investment fund assets saw their assets increase by 15.7% in 2009 to €7,042bn. In parallel, total investment fund assets rose to 55% of the GDP, compared to 45% at end 2008. This indicator highlights the important role played by investment fund managers in the European economy: they act as managers of long-term savings, investors in the European financial markets, shareholders in European companies, providers of short-term funding for many European corporations and important sources of employment.

The fund asset recovery was also reflected in the amount of investment funds per inhabitant, which increased from €10,600 at end 2008 to €12,200 at end 2009.

Chart 1. Net Assets of European Investment Funds
(EUR billions)

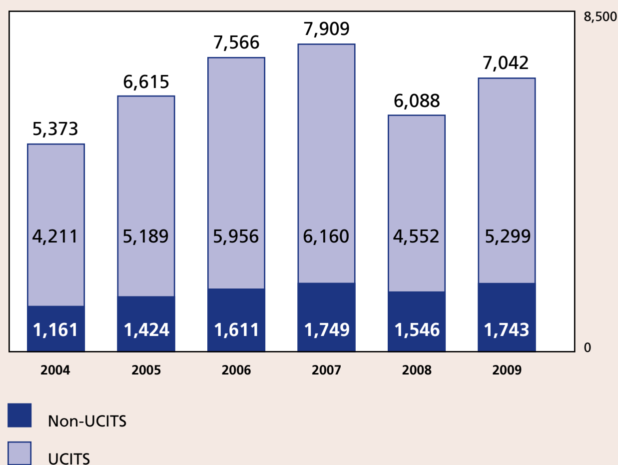
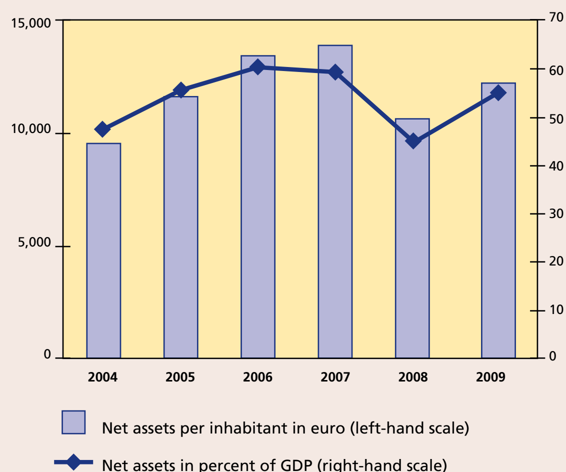


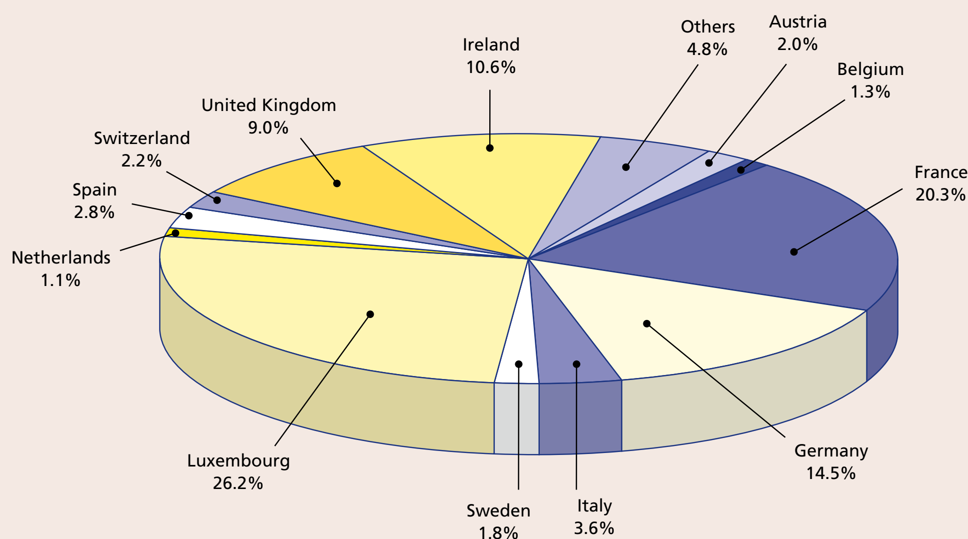
Chart 2. Trends in Investment Funds in Europe



Source[1] : EFAMA, European Commission

Three countries – Luxembourg, France and Germany – held a cumulative share of 61% of the industry's assets at end 2009. Ireland, the United Kingdom and Italy followed in this ranking (Chart 3).

Chart 3. The European Investment Fund Market
(Breakdown of nationally domiciled funds at end 2009)

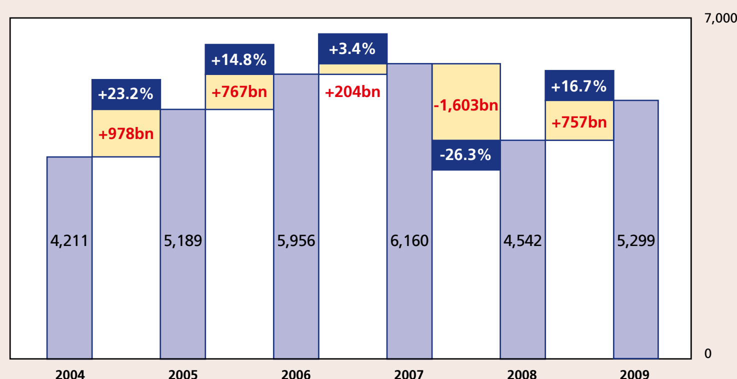


1 Except noted otherwise, EFAMA is the source of data.

Trends in the UCITS Industry

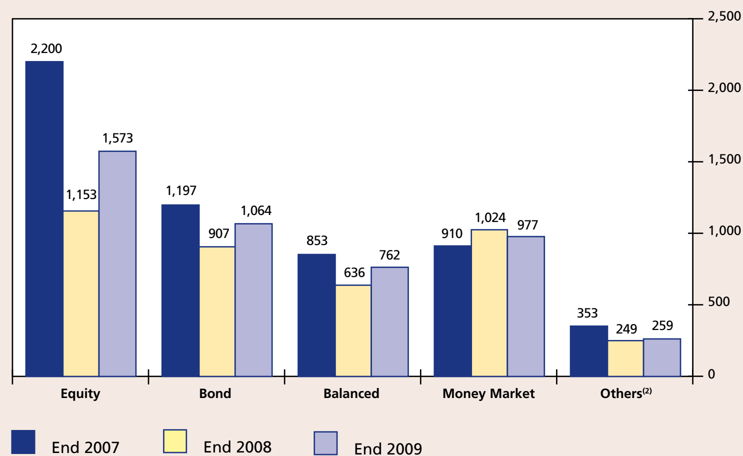
Total assets in the UCITS[2] market rose to €5,299bn at end 2009. Compared with end 2008, total net assets increased by 16.7%, or €757bn (Chart 4).

Chart 4. Total Net Assets of UCITS
(EUR billions)



All UCITS categories grew in 2009, except money market funds (Chart 5). Equity funds experienced the strongest increase (37% or €421bn). Balanced and bond funds followed with an asset increase of 20% and 17%, respectively. Other UCITS, which include funds of funds, funds of hedge funds and all funds whose strategy falls outside the four main UCITS categories, saw their assets increase by 4%. On the other hand, money market funds recorded an asset decline of 5%, reflecting net outflows (see below).

Chart 5. Net Assets by Type of UCITS(1)
(EUR billions)



(1) Excluding Ireland and the Netherlands for which no asset breakdown by type of funds is available.

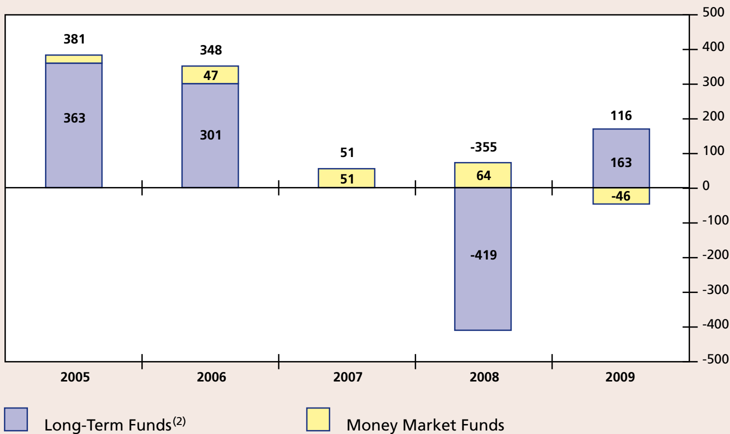
(2) Including funds of funds.

2 UCITS is defined in this section as publicly offered open-ended funds investing in transferable securities and money market funds.

In 2009, UCITS enjoyed a sharp turnaround in net inflows to €116bn, from net outflows of €355bn in 2008.

Long-term funds, i.e. UCITS excluding money market funds, registered net inflows of €163bn in 2009, while money market funds suffered outflows for €46bn in the same period. The strength of the rebound is shown by the fact that positive inflows into long-term UCITS only started when financial markets recovered from their lows of March 2009. In the period from April to December 2009, long-term UCITS enjoyed net inflows of €196bn.

Chart 6. Net Inflows into UCITS[1]
(EUR billions)



(1) Excluding Ireland.

(2) All UCITS excluding money market funds.

Bond funds enjoyed the strongest inflows in 2009 (€72bn). Equity and balanced funds followed with net inflows of €64bn and €44bn, respectively. Concomitantly, investors withdrew €46bn from money market funds in 2009, down substantially from the €64bn they invested on net in 2008. The retreat accelerated in September 2009 as the liquidity and functioning of fixed-income markets continued to improve in an environment of extremely low short-term interest rates.

Chart 7a. Net Inflows to UCITS
(EUR billions)

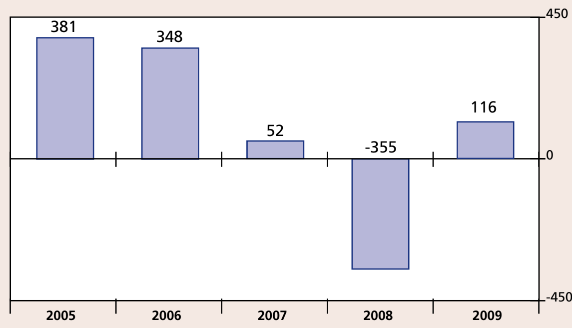


Chart 7b. Net Inflows into Equity Funds
(EUR billions)

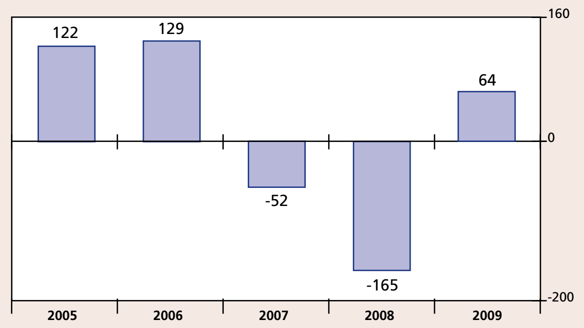


Chart 7c. Net Inflows into Balanced Funds
(EUR billions)

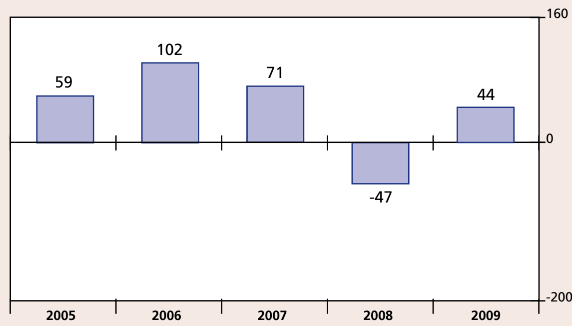


Chart 7d. Net Inflows into Bond Funds
(EUR billions)

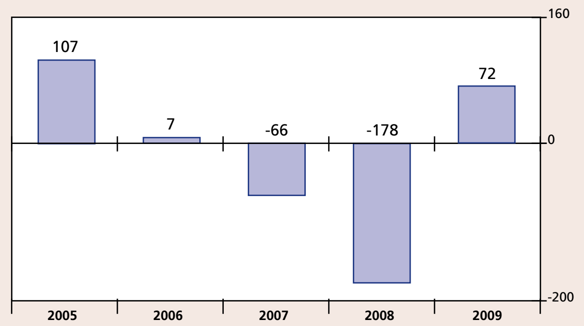


Chart 7e. Net Inflows into Money Market Funds
(EUR billions)

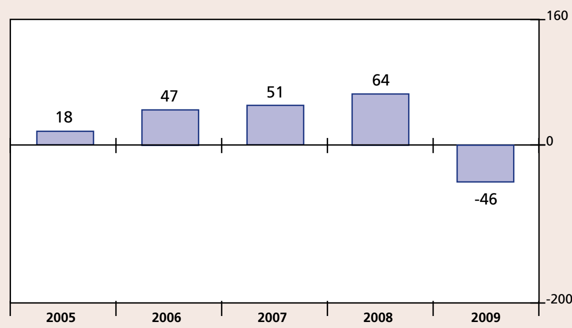
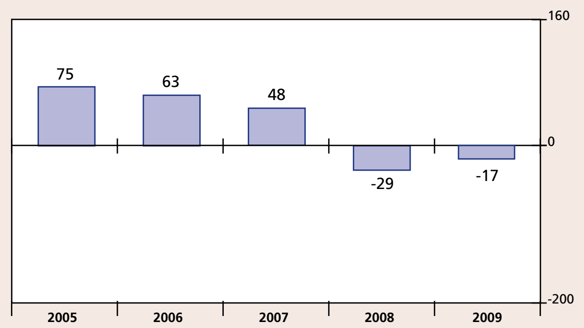
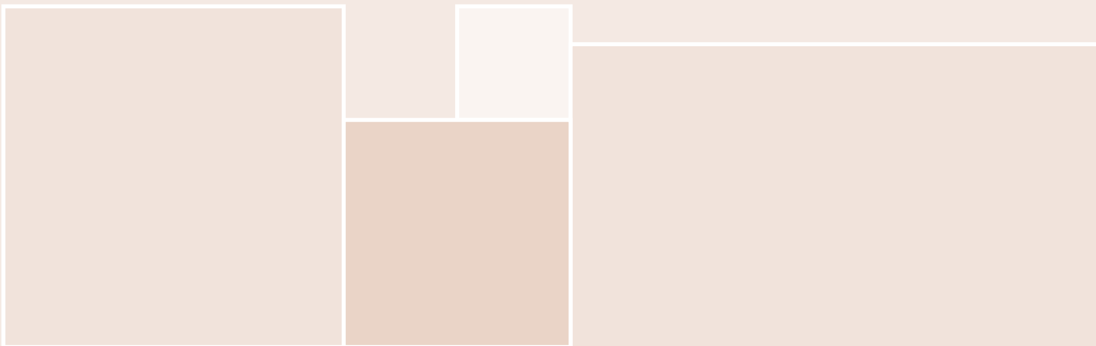


Chart 7f. Net Inflows into Other Funds
(EUR billions)



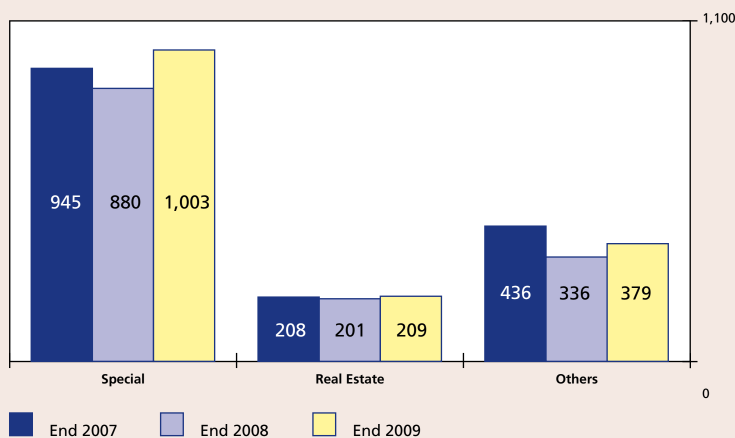


Trends in the Non-UCITS Industry

Total assets in non-UCITS increased by 12.7% to reach €1,743bn at end 2009. Special funds for institutional investors enjoyed the strongest growth (14%) thanks to net inflows and market appreciation. Overall special funds collected €50bn in new money in 2009, compared to €47bn in 2008. Inflows were concentrated in funds domiciled in Luxembourg and Germany.

Assets in real estate funds increased by 4% in 2009, whereas "other" non-UCITS assets rose by 12%.

Chart 8. Net Assets by Type of Non-UCITS(1)
(EUR billions)



(1) Excluding Ireland for which no asset breakdown by type of funds is available.

Trends across Europe

Looking at net flows in the leading countries, UCITS domiciled in Luxembourg and the United Kingdom accounted for 85% of the EUR 116bn of net inflows to UCITS in Europe in 2009, with a share of 57% and 28%, respectively. UCITS domiciled in Germany and France followed with a share of 7% each. In Southern Europe, Italy and Spain continued to suffer net outflows in 2009. In relation to UCITS assets at end 2008, net inflows totaled 8.7% in the United Kingdom, 4.9% in Luxembourg, 4.6% in Germany and 0.7% in France. Spain and Italy continued to suffer from net outflows, albeit considerably less than in 2008.

Elsewhere, inflows were particularly important in Romania (238%), Liechtenstein (23%), Norway (16%), Turkey (15%), Finland (10%) and Sweden (10%). On the other hand, Austria, Belgium, the Czech Republic, Greece and Slovakia also suffered outflows in 2009.

Net inflows to UCITS in 2009			
Country	**Net inflows** (in EUR bn)	**Country**	**Net inflows** (in % of end 2008 assets)
Luxembourg	66.0	Romania	227.6
U.K.	33.2	Liechtenstein	23.4
Germany	8.4	Norway	16.2
Sweden	8.3	Turkey	14.8
France	8.2	Finland	11.0
Switzerland	5.7	Sweden	9.9
Norway	4.8	U.K.	8.7
Finland	3.9	Hungary	6.1
Liechtenstein	3.7	Switzerland	5.8
Denmark	1.9	Portugal	5.2
Turkey	1.7	Luxembourg	4.9
Poland	0.6	Germany	4.6
Portugal	0.5	Poland	4.5
Romania	0.5	Denmark	4.1
Hungary	0.4	Bulgaria	2.8
Slovenia	0.0	**EUROPE**	2.7
Bulgaria	0.0	Slovenia	1.2
Slovakia	0.0	France	0.7
Czech. Rep.	-0.3	Slovakia	-0.8
Greece	-0.9	Italy	-4.4
Austria	-4.2	Austria	-5.2
Belgium	-6.2	Spain	-6.0
Italy	-8.2	Belgium	-7.1
Spain	-11.7	Czech Rep.	-7.2
EUROPE	116.3	Greece	-9.7

(1) Net Sales for Q1-Q3 only.

Among the fund industry leading countries, all countries experienced asset growth except Spain and Italy. The United Kingdom enjoyed the strongest asset growth (43%), followed by Luxembourg (18%), Ireland (16%), Germany (12%) and France (10%).

2009 was also a very good year in the Nordic countries, which enjoyed an average asset growth of 41%. Norway enjoyed the strongest increase (67%), driven by net sales representing 16% of UCITS assets at end 2008. Asset growth was also significantly higher than the European average in Sweden (46%) and Finland (31%), also thanks to strong net inflows.

In Central Europe, UCITS asset growth was also above average in Romania (52%), Poland (25%) and Slovenia (17%).

Net Assets of Nationally Domiciled UCITS and Non-UCITS
(EUR billions, at end 2009)

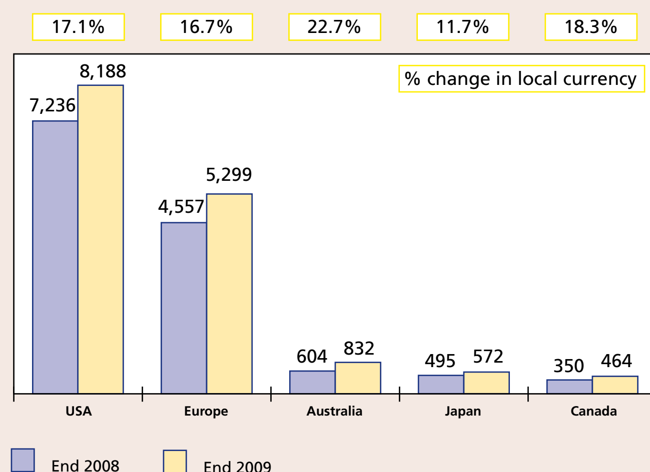
Members	Total Assets	%chg[1]	UCITS Assets	%chg[1]
Luxembourg	1,841.0	18.0%	1,592.4	19.1%
France	1,426.4	10.2%	1,253.4	9.6%
Germany	1,017.4	12.4%	220.4	19.2%
Ireland	748.6	15.7%	597.3	15.4%
United Kingdom	631.0	42.7%	533.5	40.2%
Italy	250.0	-1.0%	194.0	2.4%
Spain	194.5	-4.4%	187.2	-3.9%
Switzerland	157.2	16.7%	116.8	18.8%
Austria	138.6	8.5%	82.5	3.5%
Sweden	126.4	46.0%	123.5	45.9%
Denmark	109.6	12.0%	58.0	23.8%
Belgium	92.5	0.7%	86.7	-0.6%
Netherlands	79.0	17.0%	66.3	16.3%
Finland	54.3	31.2%	45.9	31.0%
Norway	49.4	67.4%	49.4	67.4%
Portugal	28.5	13.6%	11.6	10.7%
Liechtenstein	24.7	38.8%	22.4	41.4%
Poland	22.3	25.1%	16.0	53.2%
Turkey	15.9	17.5%	13.5	20.2%
Hungary	11.1	16.3%	8.4	15.9%
Greece	10.3	-0.8%	9.2	-1.4%
Czech Republic	4.4	-1.4%	4.4	-1.0%
Slovakia	3.4	2.7%	3.3	4.8%
Romania	2.6	52.0%	0.8	238.0%
Slovenia	2.2	16.7%	1.8	21.7%
Bulgaria	0.2	10.9%	0.2	9.5%
TOTAL	**7,041.6**	15.7%	**5,298.8**	16.7%

(1) End 2009 compared to end 2008.

Trends in Worldwide Investment Fund Assets

Worldwide investment fund[3] assets under management increased by 18% in 2009 to €16,932bn. Measured in U.S. dollar terms, fund assets increased by 22% to $24,328. Measured in local currency and taking into account funds of funds, U.S. mutual fund assets rose by 17.1% (Chart 9). The other markets in the world also showed positive growth with a 23% increase in Australia, reflecting a significant exposure in equity funds and other funds assets.

Chart 9. Trends in Worldwide Investment Fund Assets
(EUR billions)



Source: EFAMA, ICI

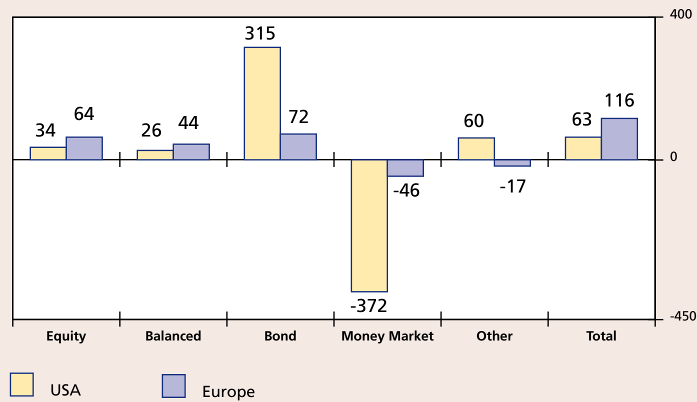
Worldwide net inflows into investment funds reached €279bn in 2009, compared to net inflows of €236bn in 2008. The composition of flows was considerably different. Long-term funds had net inflows of €727 billion in 2009, compared to net outflows of €401 billion in 2008. Money market funds had net outflows of €447 billion in 2009, compared to net inflows of €636 billion in 2008.

Net flows into UCITS totaled €116bn in 2009, compared to €63bn in the United States. European equity funds collected more than half of total worldwide net flows into equity funds (€64bn), whereas net inflows into U.S. equity funds reached €34bn. Flows into European and U.S. balanced funds accounted for 81% of the total, amounting to €44bn and €26bn, respectively.

Flows to U.S. bond funds represented 72% of the total (€315bn), whereas European bond funds collected €72bn in 2009. U.S. money market funds suffered €372bn of outflows, whereas outflows in Europe remained limited at €46bn.

3 In the sense of publicly offered open-ended funds, i.e. UCITS in Europe and mutual funds in the United States, including funds of funds.

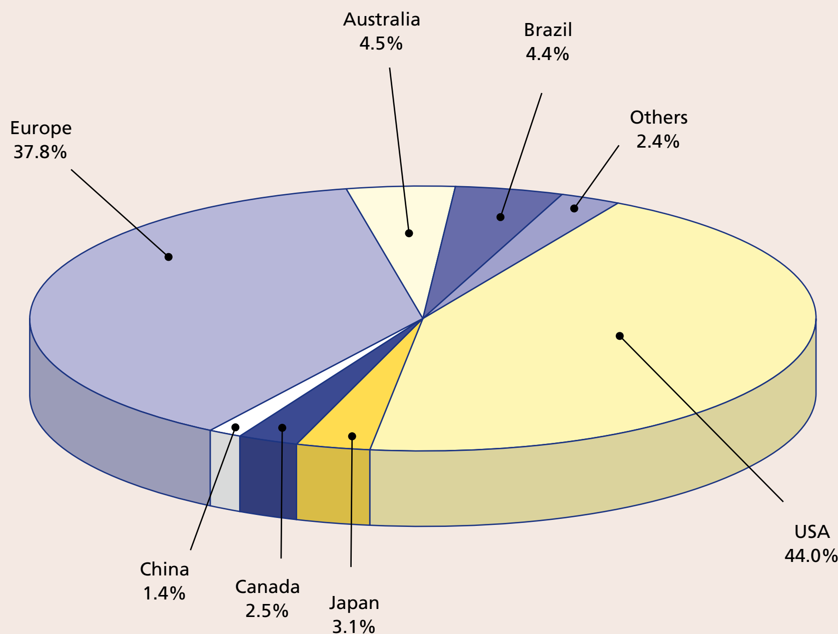
Chart 10. Net Cash inflows to Investment Funds in 2009
(EUR billions)



Source: EFAMA, ICI

Looking at the worldwide distribution of investment fund assets, the United States and Europe held the largest share in the world market, with 48.1% and 31.4% respectively at the end of 2009. Australia, Brazil, Japan, Canada and China followed in this ranking. Taking into account non-UCITS assets, the market share of Europe reached 37.8%, compared to 44.0% for the United States (Chart 11).

Chart 11. Worldwide Investment Fund Assets[(1)]
(Market share at end of fourth quarter)



(1) Taking into account non-UCITS.

Source: EFAMA, ICI

Efama Membership

National Associations

AUSTRIA

VÖIG
Vereinigung Österreichischer Investmentgesellschaften
Austrian Association of Investment Fund Management Companies
President: Mag. Heinz Bednar
Secretary General: Mag. Dietmar Rupar
International Representative: Dr. Armin Kammel, LL.M. (London)
Address: Schubertring 9-11/2/33, A-1010 WIEN
Tel.: +43 1 7188333
Fax: +43 1 7188333 ext. 8
E-mail: voeig@voeig.at
Web site: http://www.voeig.at

BELGIUM

BEAMA
Belgische Vereniging van Asset Managers
Association Belge des Asset Managers
Belgian Asset Managers Association
Chairman: Erwin Schoeters
Vice-Chairman: Dirk Van den Broeck
Secretary General: Josette Leenders
Address: c/o Febelfin, Aarlenstraat/rue d'Arlon 82,
B-1040 Bruxelles / Brussel
Tel.: +32 2 5076870
Fax: +32 2 5076979
E-mail: info@beama.be
Web site: http://www.beama.be

BULGARIA

BAAMC
Bulgarian Association of Asset Management Companies
Chairman: Stoian Toshev
Chief Secretary: Evgeny Jichev
Chairman of the International Relations Committee: Daniel Ganev
Address: 7 Sveta Sofia Street, 6th floor, 1000 SOFIA, Bulgaria
Tel.: +359 2 9863466, +359 2 935 06 27
Fax: +359 2 935 06 17
E-mail: office@baud.bg
Web site: www.baud.bg

CZECH REPUBLIC

AKAT ČR

Asociace pro kapitálový trh České republiky

Czech Capital Market Association

Chairman: Josef Benes

Vice-Chairman: Jan D. Kabelka

Executive Director: Jana Michalíková

Address: Štěpánská 16/612, CZ-110 00 PRAHA 1

Tel.: +420 2 24919114

Fax: +420 2 24919115

E-mail: info@akatcr.cz

Web site: http://www.akatcr.cz

DENMARK

IFR

InvesteringsForeningsRådet

The Federation of Danish Investment Associations

President: Tage Fabrin-Brasted

Managing Director: Jens Jørgen Holm Møller

International Representative: Jens Jørgen Holm Møller

Address: Amaliegade 31, DK-1256 KØBENHAVN K

Tel.: +45 33 322981

E-mail: info@ifr.dk

Web site: http://www.ifr.dk

FINLAND

Finanssialan Keskusliitto ry (FK)

Federation of Finnish Financial Services (FFFS)

Managing Director: Piia-Noora Kauppi

Chairman of Fund Management Executive Committee: Jari Kivihuhta

Head of Investment Funds & Asset Management: Markku Savikko

Address: Bulevardi, 28, FI-00120 HELSINKI

Tel.: +358 20 793 4209

Fax: +358 20 793 4202

E-mail: markku.savikko@fkl.fi

Web site: http://www.fkl.fi

FRANCE

AFG

Association Française de la Gestion financière

French Asset Management Association

Chairman: Paul-Henri de La Porte du Theil
Vice-Chairpersons : Francis Ailhaud, Muriel Faure
Chair of the International Affairs Commission : François Delooz
Director General: Pierre Bollon
Director of International Affairs: Stéphane Janin
Deputy Head of International Affairs Division: Carine Delfrayssi
Address: 31, rue de Miromesnil, F-75008 PARIS
Tel.: +33 1 44949400
Fax: +33 1 42651631
E-mail: p.bollon@afg.asso.fr / s.janin@afg.asso.fr / c.delfrayssi@afg.asso.fr
Web site: http://www.afg.asso.fr

GERMANY

BVI

BVI Bundesverband Investment und Asset Management e.V.

German Association of Investment and Asset Management Companies

Chairman: Thomas Neiße
Director General: Stefan Seip
Managing Director: Rudolf Siebel
Visitors Address: Eschenheimer Anlage 28, D-60318 FRANKFURT
Mail: P.O. Box 10 04 37, D-60004 FRANKFURT
Tel.: +49 69 154090-0
Fax: +49 69 5971406
E-mail: info@bvi.de
Web site: http://www.bvi.de

GREECE

A.G.I.I.

ΕΝΩΣΗ ΘΕΣΜΙΚΩΝ ΕΠΕΝΔΥΤΩΝ

Association of Greek Institutional Investors

President: Aris Xenofos
General Manager: Marina Vassilicos
Address: 15, Homirou Street, GR-10672 ATHENS
Tel.: +30 210 3392730 - 3392740
Fax: +30 210 3616968
E-mail: info@agii.gr
Web site: http://www.agii.gr

HUNGARY

BAMOSZ
Befektetési Alapkezelők és Vagyonkezelők Magyarországi Szövetsége
Association of Hungarian Investment Fund and Asset Management Companies

President: Sándor Szalai
Secretary General: András Temmel
Visitors Address: H-1055 BUDAPEST Honvéd tér 10. III/2
Mail: H-1363 BUDAPEST Pf. 110
Tel.: +36 1 3740756
Fax: +36 1 3541737
E-mail: info@bamosz.hu
Web site: http://www.bamosz.hu

IRELAND

IFIA
Irish Funds Industry Association

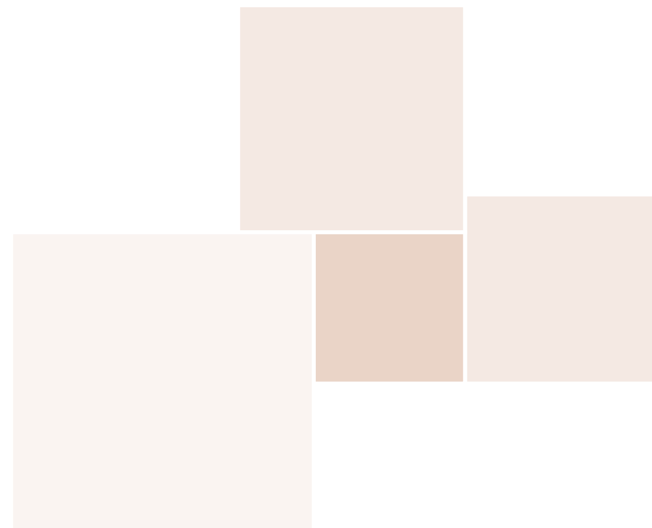
Chairperson: Carin Bryans
Chief Executive: Gary Palmer
Address: 1 Gandon House, Mayor Street, IFSC, IRL-DUBLIN 1
Tel.: +353 1 6701077
Fax: +353 1 6701092
E-mail: info@irishfunds.ie
Web site: http://www.irishfunds.ie

ITALY

ASSOGESTIONI
associazione del risparmio gestito

ASSOGESTIONI
Associazione Italiana del Risparmio Gestito
Italian Association of Investment Management

President: Domenico Siniscalco
Director General: Fabio Galli
Director of International Relations: Manuela Mazzoleni
Head Office:
Address: Via Andegari 18, I-20121 MILANO
Tel.: +39 02 361651.1
Fax: +39 02 361651.63
Rome Office:
Address: Via in Lucina 17, I-00186 ROMA
Tel.: +39 06 6840591
Fax: +39 06 6893262
E-mail: info@assogestioni.it
Web site: http://www.assogestioni.it



LIECHTENSTEIN

LIECHTENSTEIN
LAFV
Liechtensteinischer Anlagefondsverband
Liechtenstein Investment Fund Association

President: Matthias Voigt
Chief Executive: Annette von Osten
Visitors Address: Fürst-Franz-Josef-Strasse, 13, FL-9490 VADUZ
Mail: Postfach 1507
Tel.: +423 230 07 70
Fax: +423 230 07 69
E-mail: info@lafv.li
Web site: http://www.lafv.li

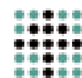
LUXEMBOURG

ALFI
Association Luxembourgeoise des Fonds d'Investissement
Association of the Luxembourg Fund Industry

President: Claude Kremer
Director General: Camille Thommes
Deputy Director General: Charles Muller
Visitors Address: 59, boulevard Royal, L-2449 LUXEMBOURG
Mail: BP 206, L-2012 LUXEMBOURG
Tel.: +352 223026-1
Fax: +352 223093
E-mail: info@alfi.lu
Web site: http://www.alfi.lu

NETHERLANDS

dutch fund and asset
MANAGEMENT ASSOCIATION



DUFAS
Dutch Fund and Asset Management Association

Chairman: Paul Gerla
Vice Chairman: Erik van Houwelingen
General Director: Hans H.M. Janssen Daalen
Address: Bordewijklaan 8, NL-2591XR DEN HAAG
Tel.: +31 70 3338779
Fax: +31 70 3338858
E-mail: hjd@dufas.nl
Web site: http://www.dutchfundassociation.com

NORWAY

VFF
Verdipapirfondenes Forening
Norwegian Mutual Fund Association
Chairman: Harald Espedal
Managing Director: Lasse Ruud
Visitors Address: Hansteensgate 2, N-0253 OSLO
Mail: PO Box 2524 Solli, N-0202 OSLO
Tel.: +47 23 284550
Fax: +47 23 284559
E-mail: vff@vff.no / efama@vff.no
Web site: http://www.vff.no

POLAND

IZFiA
Izba Zarzadzajacych Funduszami i Aktywami
Chamber of Fund and Asset Management
President: Marcin Dyl
Address: Ul. Nowy Świat 6/12 , PL-00-400 WARSZAWA
Tel.: +48 22 5838600
Fax: +48 22 5838601
E-mail: poczta@izfa.pl
Web site: http://www.izfa.pl

PORTUGAL

APFIPP
Associação Portuguesa de Fundos de Investimento, Pensões e Patrimónios
Portuguese Association of Investment Funds, Pension Funds and Asset Management
Chairman: José Veiga Sarmento
Secretary General: Marta Maldonado Passanha
Address: Rua Castilho, N° 44 - 2°, PT - 1250-071 LISBOA
Tel.: +351 21 7994840
Fax: +351 21 7994842
E-mail: info@apfipp.pt
Web site: http://www.apfipp.pt

ROMANIA

AAF

Romanian Association of Asset Managers

Chairman: Petre Pavel Szel
Managing Director: Adrian Tudose
Address: 16 Splaiul Unirii blvd cam 403, RO-BUCHAREST Sect 4, code 040035
Tel.: +40 21 3129743
Fax: +40 21 3139744
E-mail: office@aaf.ro
Web site: www.aaf.ro

SLOVAKIA

SASS

Slovenská asociácia správcovských spoločností

Slovak Association of Asset Management Companies

Chairman of the Board: Roman Vlček
Managing Director: Ivan Znášik
Address: Drieňová 3, SK-821 01 BRATISLAVA
Tel.: +421 2 44456591
Fax: +421 2 44632542
E-mail: sass@sass-sk.sk
Web site: http://www.sass-sk.sk

SLOVENIA

ZDU-GIZ

Slovenian Investment Fund Association

Chairman: Stanislav Valant
Managing Director: Karmen Rejc
Visitors Address: Čufarjeva 5, SI-1000 LJUBLJANA
Tel.: +386 1 4304918
Fax: + 386 1 4304919
E-mail: zdugiz@zdu-giz.si
Web site: http://www.zdu-giz.si

SPAIN

INVERCO
Asociación de Instituciones de Inversión Colectiva y
Fondos de Pensiones
Spanish Association of Investment and Pension Funds
President: Mariano Rabadan
Director General: Angel Martínez-Aldama
Vice-Secretary General: José Manuel Pomarón
Address: Príncipe de Vergara, 43 –2, E-28001 MADRID
Tel.: +34 91 4314735
Fax: +34 91 5781469
E-mail: inverco@inverco.es / mmacias@inverco.es
Web site: http://www.inverco.es

SWEDEN

Fondbolagens Förening
The Swedish Investment Fund Association, SIFA
President: Erik Feldt
Managing Director: Pia Nilsson
International Representative: Eva Broms
Address: Stureplan 6, 4 tr, S-114 35 STOCKHOLM
Tel.: +46 8 50698800
Fax: +46 8 6625339
E-mail: info@fondbolagen.se
Web site: http://www.fondbolagen.se

SWITZERLAND

SWISS FUNDS ASSOCIATION **SFA**
Association for Funds & Asset Management

SFA
Swiss Funds Association SFA
Chairman: Martin Thommen
Director General: Dr. Matthäus Den Otter
Address: Dufourstrasse 49, Postfach, CH-4002 BASEL
Tel.: +41 61 2789800
Fax: +41 61 2789808
E-mail: office@sfa.ch
Web site: http://www.sfa.ch

TURKEY

TKYD

Türkiye Kurumsal Yatirimci Yöneticileri Derneği

Turkish Institutional Investment Managers' Association

Chairman: Gür Çağdaş

Vice Chairman: Didem Gordon

General Secretary: M. Tayfun Oral

Address: İş Kuleleri Kule 2, Kat:8, 4.Levent, TR-ISTANBUL 34330

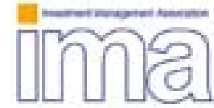
Tel.: +90 212 2790399

Fax: +90 212 2790744

E-mail: info@tkyd.org.tr

Web site: http://www.tkyd.org.tr

UNITED KINGDOM



IMA

Investment Management Association

Chairman: Douglas Ferrans

Chief Executive: Richard Saunders

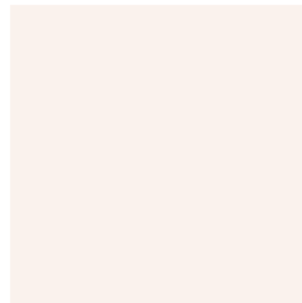
Address: 65 Kingsway, GB-LONDON WC2B 6TD

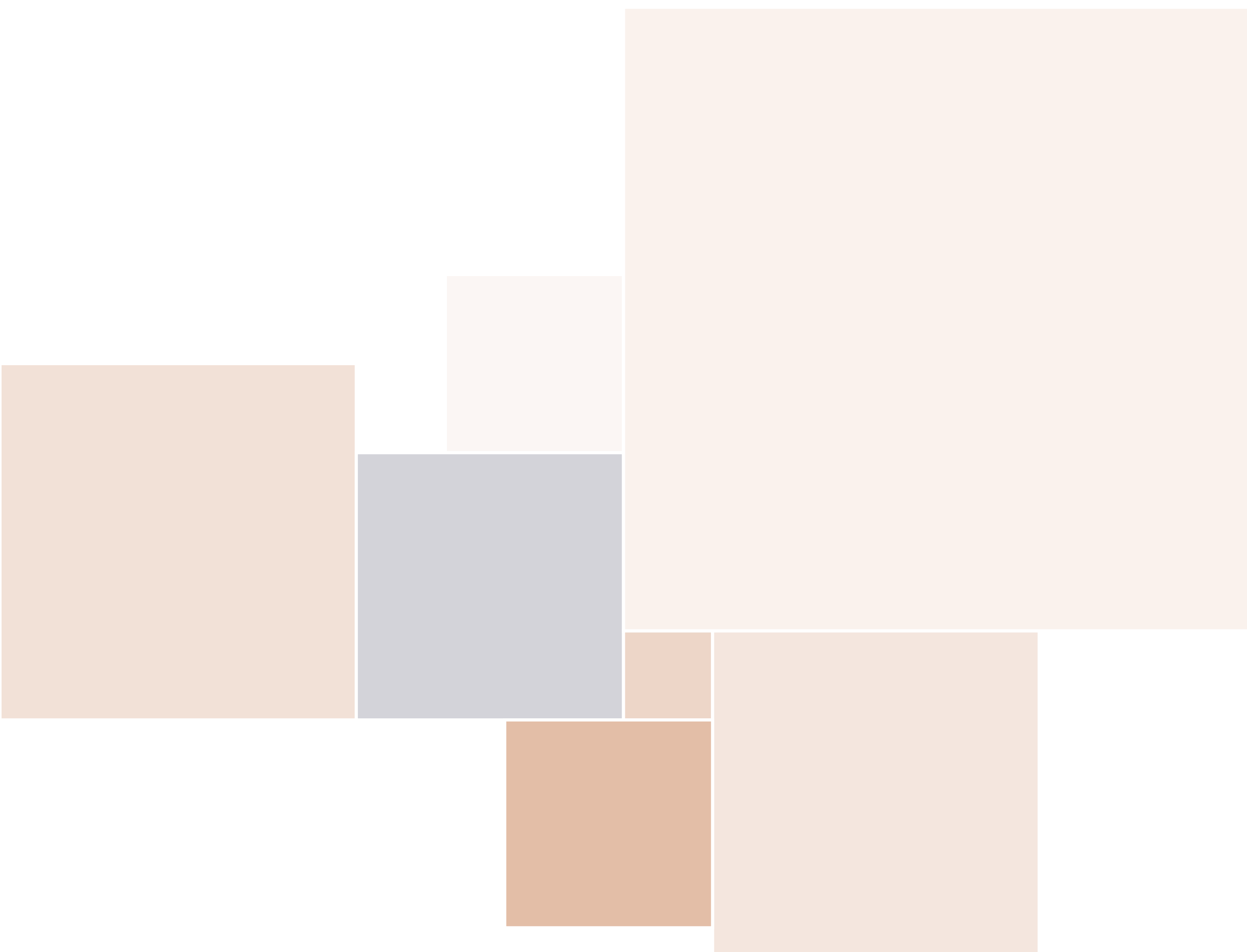
Tel.: +44 20 78310898

Fax: +44 20 78319975

E-mail: ima@investmentuk.org

Web site: http://www.investmentuk.org





Corporate Members

Allianz Global Investors AG
www.allianzglobalinvestors.com

Amundi
www.amundi.com

Aviva Investors
www.avivainvestors.com

AXA Investment Managers
www.axa-im.com

Banque Cantonale Vaudoise
Asset Management
www.bcv.ch/am

BBVA Asset Management, S.A. S.G.I.I.C
www.bbvafondos.com

BlackRock
www.blackrock.com

BNP PARIBAS Investment Partners
www.bnpparibas-ip.com

BNY MELLON
ASSET SERVICING

BNY Mellon Asset Servicing
www.bnymellon.com

Capital International
www.capitalinternationalfunds.com

Carmignac Gestion
www.carmignac-gestion.com

Credit Suisse AG
www.credit-suisse.com

DekaBank Deutsche Girozentrale
www.dekabank.de

Asset Management

Dexia Asset Management
www.dexia-am.com

DWS Investment GmbH
www.dws.de

Eurizon Capital SGR S.p.A.
www.eurizoncapital.com

Fidelity International
www.fidelity-international.com

FRANKLIN TEMPLETON
INVESTMENTS

Franklin Templeton Investments
www.franklintempleton.lu

Asset
Management

Goldman Sachs Asset Management International
www.gs.com

Global Asset Management

www.assetmanagement.hsbc.com

INVESTMENT MANAGEMENT

ING Investment Management
www.ingim.com

Invesco
www.invesco.com

IS Asset Management
www.isasset.com

J.P. Morgan Asset Management
www.jpmorgan.com

KBC Asset Management N.V.
www.kbcassetmanagement.com

Lombard Odier Funds (Europe) SA
www.lombardodier.com

Lyxor Asset Management
www.lyxor.com

M&G Investments
www.mandg-investments.com

Natixis Asset Management
www.am.natixis.fr

Nordea Investment Funds
www.nordea.com

Pictet & Cie
www.pictet.com

Pioneer Investments
www.pioneerinvestments.com

Raiffeisen Capital Management
www.rcm.at

Robeco
www.robeco.com

Santander Asset Management
www.santanderga.es

Schroders
www.schroders.com

SKAGEN Funds / Skagen AS
www.skagenfunds.com

State Street Global Advisors
www.ssga.com

Swiss & Global Asset Management
www.swissglobal-am.com

Threadneedle Asset Management Limited
www.threadneedle.com

UBS AG
Global Asset Management
www.ubs.com

Union Asset Management Holding AG
www.union-investment.de

Efama's Secretariat

Graziella Marras,
Senior Policy Advisor

Vincent Ingham,
Regulatory Policy Advisor

Yvonne Lenoir,
Regulatory Policy Advisor

Rafael Moll de Alba,
Tax Advisor,
April-September 2010

Bernard Delbecque,
Director for Economics
and Research

Mar Matilla,
Senior Research Advisor

Francesco Natalini Raponi,
Economist

Miriam Brunson,
Administration and
Communications Officer

Isabelle Van Acker,
Executive Secretary

Kevin Carlot,
Junior Office Assistant

Peter De Proft,
Director General

Steffen Matthias,
Senior Advisor

Larissa Fiedler,
Regulatory Policy Advisor,
until August 2009

Annette von Osten,
Policy Advisor,
until March 2010

EFAMA
European Fund and Asset Management Association
Address: 18 Square de Meeûs, B-1050 Brussels
T. +32 2 513 39 69 - F. +32 2 513 26 43
E. info@efama.org - www.efama.org