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VIA ELECTRONIC DELIVERY

March 27, 2015

European Securities and Market Authority
103 Rue de Grenelle
75007 Paris
France

Re: Discussion Paper - Share Classes of UCITS

Ladies and Gentlemen:

You will find attached our comments to the discussion paper on share classes of Collective Investment in Transferable Securities ("UCITS").

We represent a number of UCITS fund sponsors, active in many different European jurisdictions, and we would like to thank ESMA for this opportunity to submit our answers and other comments. We hope that you will find them helpful in your continued efforts to craft detailed rules for the application of the UCITS Directive.

Please do not hesitate to contact us - at +41 43 508 4980 or dleone@cp-dl.com - should you have any questions or wish to discuss any matters in connection with our submission.

Very truly yours,

Nicola Rapaccini

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MEMORANDUM

to: European Securities and Market Authority

from: Nicola Rapaccini, Alessandro Cerliani, Paola Marchelli

date: March 27, 2015

Our Comments to the Discussion Paper on Share Classes of UCITS (the "Discussion Paper")

QUESTIONS:

- **Q1: What are the drivers for creating different share classes?**

We believe that the main driver for creating different share classes is the opportunity for fund managers to increase the range of their products through the differentiation of available instruments, so as to reach a number of investors as large as possible, without the need to establish separate investment structures.

In fact, share classes allow fund managers to structure and market bespoken investment opportunities, at the same time avoiding the burden and costs of setting-up a new UCITS (but, even, a sub-fund or a compartment of a UCITS).

Furthermore, providing flexibility and customization with respect to the financial, tax or regulatory treatment of the investors give fund managers an opportunity to meet different needs of their investors and to cater to their different demands.

- **Q2: Why do certain UCITS decide to create share classes instead of setting up a new UCITS?**

From a merely economic point of view, creating separate classes of shares within a UCITS or compartment is less expensive, in both terms of costs and compliance activities, than forming a separate UCITS (or compartment thereof), especially if each class of shares is meant to accommodate the needs of a small number of investors. Our considerations regarding these costs are described under our answer to question no. 3.

In addition to the foregoing, we believe that fund managers may choose to create separate classes of shares as a result of the lack of legal segregation of the assets of the UCITS between different classes. Given that the creation of several classes of shares does not imply any segregation within the assets of the UCITS or the relevant compartment, any liability or underperformance arising in connection with an investment does not impact on a specific "class" of investors (as would be the case in the event of a sub-fund or a compartment) but it is instead shared by all the investors in all classes of the UCITS or compartment: in situations in which this is the intended result, this mechanism is extremely fair and efficient.

- **Q3: What are the costs of creating and operating a new share class compared to the cost of creating and operating a separate UCITS?**

As indicated above under our answer to question no. 2, the establishment of a separate UCITS, as well as of a compartment of a master UCITS, does obviously involve higher administrative and organizational costs, both in terms of forming the investment structure and of managing the fund throughout its term.

On the contrary, the creation of new share classes does not entail a significant increase in the setup and general operational costs of the UCITS.

For example, prospectus and authorization costs, custody and domiciliation expenses, auditing expenses and legal expenses are not duplicated if share classes are created, as they might instead be if new funds or compartments are formed.

- **Q4: What are the different types of share class that currently exist?**

We can confirm that, based on our experience, ESMA has already identified the types of share classes commonly used by UCITS fund managers in order to diversify their offer to the investors.

However, in addition to the list included under paragraph 8 of the Discussion Paper, we would point out that some managers of UCITS also structure different classes based on the type of distribution channels used for their offer to investors (*e.g.* placement through bank branches, financial advisors, internet, etc.), generally by providing for different levels of subscription or management fees.

- **Q5: How would you define a share class?**

As clearly highlighted in the Discussion Paper, it is not easy to define a share class since this is a very general legal category which is from time to time filled with the most diverse content based on the needs of investors and fund managers (such flexibility is certainly one of the reasons why fund managers appreciate this instrument), as well as on the kind of underlying legal structure.

However, we believe that a possible definition of share class could be the following:

"Share classes" may be defined as subgroups of collective asset management products (such as shares, quotas, interests, etc.) created for the purpose of determining different ways of allowing investors to participate in the same investment fund.

- **Q6: Do you agree that share classes of the same UCITS should all share the same investment strategy? If not, please justify your position.**

We agree with the proposed approach.

As there is no legal segregation of assets between share classes, we believe that all investors in the same UCITS fund or compartment should be entitled to rely on the performance of the same investment strategy and that, as highlighted by ESMA, fund managers should form separate investment structures if they intend to invest following different investment strategies.

However, we believe that it might be useful for fund managers to segregate certain assets of the UCITS (possibly also through the issuance of different share classes) in the event that the UCITS may be subject to tax or regulatory burdens as a result of a specific investment and/or due to specific characteristics of any investor.

- **Q7: Could you explain how the operational segregation between share classes works in practice?**

The UCITS fund or compartment is managed as a single pool of assets. Depending on the different features of share classes, the results of the performance of the fund or compartment are then allocated between share classes by taking into account these different features.

- **Q8: Do you agree that the types of share classes set out in paragraph 8 are compatible with the principle of having the same investment strategy? In particular do you agree that currency hedging that is described in paragraph 8 complies with that principle? If not, please justify your position.**

We certainly agree that the types of share classes set out in paragraph 8 of the Discussion Paper are compatible with the principle of sharing the same investment strategy and, specifically, that currency hedging arrangements at the level of share class are in line with such fundamental principle.

In fact, those arrangements are expressly structured to ensure that investors receive and share the same results/benefits of the investment strategy, irrespectively of the currency of their investment.

- **Q9: Do you believe that other types of share class that comply with the principle of having the same investment strategy exist (or could exist) and should be allowed? If yes, please give examples.**

We believe that paragraph 8 of the Discussion Paper already includes a quite exhaustive list of general categories of share classes, but we would add share classes that differ according to whether they pay or receive certain performance-based fees.

- **Q10: Do you agree that the types of share class set out in paragraph 10 above do not comply with the principle of having the same investment strategy? If not, please justify your position.**

We very much agree, since those share classes would entail a different impact on investors as a result of the performance of the UCITS.

- **Q11: Please provide information about which existing UCITS do not comply with the criteria laid down in paragraph 6 as well as an indication of the assets under management and the number of investors of these UCITS.**

We have chosen not to respond to this question.

- **Q12: Do you see merit in ESMA clarifying how regulatory ratios such as the counterparty risk limit should be calculated (e.g. at the level of the UCITS or share classes)?**

We very much agree.

Assuming that counterparty risk limits are aimed at restricting the risk exposure to a particular counterparty and reducing the loss that could arise if the counterparty were to default on its obligations, we believe that it would be useful if ESMA clarified how regulatory ratios in this matter ought to be calculated.

In particular, we would suggest addressing regulatory ratios with respect to the counterparty risk limit at the level of the UCITS in order to (*i*) set off any liability or underperformance with the other assets of the UCITS rather than with a specific "class" of investors and (*ii*) respect the principle of the lack of legal segregation between share classes.

In addition to the foregoing, we believe that specific rules on this matter should be balanced by the principle of proportionality, taking always into account the size and complexity of the structure of each specific UCITS.

- **Q13: Do potential and current investors get adequate information about the characteristics, risks and return of different classes in the same UCITS? If not, what else should be provided to them?**

We believe that a periodical disclosure obligation by the managers of the UCITS to current investors with respect to the characteristics, risks and returns of different share classes in the same UCITS would certainly be beneficial in increasing transparency in that respect. Such disclosure would not entail significant costs and would be conductive to building trust between the managers of the UCITS and its current investors.

At the same time, it would be useful to provide potential investors with a summary or a frequently asked questions form (relating to the different classes of shares), so that they may have a better picture of the opportunity to invest in the UCITS.

- **Q14: Do you agree that ESMA should develop a common position on this issue? If not, please justify your position.**

In principle yes, as we believe that the development of a common position on UCITS share classes would provide significant benefits in terms of legal certainty and protection of the investors, although we urge ESMA not to adopt an approach that is too unyielding, in order not to stifle the flexibility of fund managers.

For example, a code of practice or a guideline paper on share classes, setting forth general principles and standards, would be a valuable instrument for all UCITS operators.

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Once again, we hope that you will find our comments helpful in your continued efforts to craft detailed rules for the application of the UCITS Directive.

We are of course available to discuss any of the foregoing matters in further detail.