Comments

on the FSB Consultative Document

Strengthening Oversight and Regulation of Shadow Banking (18 November 2012)

VERBAND
GESCHLOSSENE
FONDS

Executive Board
Oliver Porr (Chairman)
Marc Drießen
Michael Kohl
Reiner Seelheim
Dr. Hubert Spechtenhauser
Dr. Torsten Teichert
Gert Waltenbauer

Chief Executive Officer
Eric Romba, Lawyer

VGF
Verband Geschlossene
Fonds e.V.

Association of Non-Tradeable
Closed-End Funds

www.vgf-online.de

Berlin Office
Georgenstraße 24
10117 Berlin
Germany
T +49 (0) 30. 31 80 49 00
F +49 (0) 30. 32 30 19 79
kontakt@vgf-online.de

Brussels Office
47 - 51 rue du Luxembourg
1050 Bruxelles
Belgium
T +32 (0) 2. 550 16 14
F +32 (0) 2. 550 16 17
contact@vgf-online.eu

Association registration number
23527 Nz
Amtsgericht Berlin -
Charlottenburg

Tax reference
27/620/52261

Partner of BSI
Bundesvereinigung
Spitzenverbände der
Immobilienwirtschaft

Member of ZIA
Zentraler Immobilien
Ausschuss e.V.

Brussels 14 January 2013

VGF Verband Geschlossene Fonds e.V.

Association of Non-Tradeable Closed-End Funds

I. General remarks

VGF[1] would like to express its thanks for the opportunity to comment on the FSB's Policy Recommendations on Shadow Banking. Our remarks are not sufficiently covered from the particular questions of the FSB, anyhow we wanted to draw the FSB's attention on some general aspects of major importance for the industry of Non-Tradeable Closed-End Funds. We hope it may help the FSB to find the way to practical, effective, economically feasible solutions.

1. Definition of shadow banks

We understand that the different initiatives on shadow banking of both FSB and the European Commission generally consider "investment funds" as a potential target for shadow banks. In the very first place we ask the FSB to precisely analyse the different business models which can be assembled under the label "investment funds".

In the course of the AIFMD regime Non-Tradeable Closed-End Funds technically become "alternative investment funds" (AIF). As this may allude to an identical or similar business model with other investment funds, the market reality shows the opposite indeed. There are different categories of investment funds, even within the group of AIFs. So their features are much broader than their common name. They differ widely in terms of their assets, their volumes, their lifetimes, their structures, their investors and by all this their macro-prudential and micro-prudential risks.

We strongly support an approach which focusses only on the business activity rather than the entity, the fund structure or even the fund's name. We understand that this was also highlighted by several high-level participants of the Commission's conference on shadow banking in April 2012.

2. Non-Tradeable Closed-End Funds in the scope

As the scope of a future regulation on shadow banks remains unclear, we would like to explain why Non-Tradeable Closed-End Funds should not be considered as shadow banks. **One of the main characteristics of these funds is the lack of redemption rights. Consequently the funds can hardly be susceptible to capital runs and likewise do not face any other associated risks in liquidity through investors who want to get out of the funds.** This important feature contributes to the second one: the investment in real assets. The closed-end elements of the funds allow them to invest predominantly in

[1] VGF Verband Geschlossene Fonds e.V. (Association of Non-Tradeable Closed-End Funds) represents the interests of providers of non-tradeable closed-end funds (NTCEFs) in Germany. Through its 61 members, the association represents some EUR 140 billion (portfolio of assets under management), managed in around 3.300 funds. Related to the total market in Germany with a fund volume of some EUR 199 billion, the association therefore represents about 70 % of the NTCEF market. Further information is available at: www.vgf-online.de.

illiquid assets like real estate, shipping, aviation or renewable energy. The assets are usually predefined and cannot be changed or sold through the management. The funds' lifetimes are typically long, with durations of up to 20 years. Within this period, the funds manage and maintain the asset and receive revenues through the management e.g. through leases. These revenues are paid back to the investors as well as the sales revenue when the asset is sold at the very end of the funds' lifetimes.

3. Use of leverage

We do not believe that the criterion of leverage is sufficient to regard Non-Tradeable Closed-End Funds as shadow banks or not. Many of these funds employ debts as part of their investment strategy. They borrow a specific amount of money through credit loans in addition to the equity the fund collects from investors. With this they finance the asset which the fund wants to purchase and maintain. The funds use leverage mainly through fixed-term credit loans which are taken out at the beginning of the funds' lifetimes and then being paid off with the revenues of the asset in a predefined period of time. We seriously question if this way of employing leverage should be regarded as a shadow banking activity. Non-Tradeable Closed-End only borrow capital, they do not lend capital. Finally the funds' volumes and their potential quota of leverage cannot be considered as relevant in terms of any systemic risk. The average volume of the funds is about 25 Mio. Euro. The average ratio of equity and debts in each fund is about 50%.

4. Policy toolkits

As said above Non-Tradeable Closed-Funds should <u>not</u> be considered as shadow banks. Nonetheless we would like to address the policy toolkits proposed by the FSB. We understand these as possible actions to meet liquidity risks through the redemption of shares. **In cases were these redemption risks do not exist, the proposed limits should not be applied. We need to highlight this at this stage, because some of the proposed actions would seriously question the business model of Non-Tradeable Closed-End Funds for no reason.** Indeed they might use leverage, the assets might be concentrated and they invest in illiquid assets. But in the very end, the closed-end character protects them from liquidity risk which open-end funds might face. We encourage the FSB to take into account this important feature and carefully measure a future regulation in the light of this.

5. Existing supervisory legislation

The activities of the funds' managers are already supervised through the AIFMD regime which will be applicable from 22 July 2013. So regardless of the question whether Non-Tradeable Closed-End Funds are in the scope of further shadow banking initiatives, we think that the AIFMD regime is already in force to address the business model precisely. The FSB should take into account the huge effort that was made during the AIFMD legislative process. We think that the Directive finally found sufficient rules in this sector. From our perspective policymakers should give this regime an adequate period of probation and after this head on for an evaluation what can be done better before inventing new rules at this stage.

6. Conclusion

Non-Tradeable Closed-End Funds play an important role in the financial market. They directly invest in the real economy mainly in the EU and therefore support economic growth. We think that the business model shall be regarded and analysed carefully when it comes to new regulatory regimes. Legislative proposals should address all the relevant specifies in order to find appropriate and proportionate solutions.

Brussels, 14 January 2013

Eric Romba
Chief Executive Officer

Gero Gosslar
Head of Brussels Office

VGF Verband Geschlossene Fonds e.V.
Association of Non-Tradeable Closed-End Funds
www.vgf-online.de

Berlin Office:
Georgenstraße 24
10117 Berlin
Germany
T +49 (0) 30. 31 80 49 00
F +49 (0) 30. 32 30 19 79
kontakt@vgf-online.de

Brussels Office:
47 – 51 rue du Luxembourg
1050 Bruxelles
Belgium
T +32 (0) 2. 550 16 14
F +32 (0) 2. 550 16 17
contact@vgf-online.eu

VGF Verband Geschlossene Fonds e.V.:
VGF Verband Geschlossene Fonds e.V. (Association of Non-Tradeable Closed-End Funds) represents the interests of providers of non-tradeable closed-end funds (NTCEFs) in Germany. Through its 61 members, the association represents some EUR 140 billion (portfolio of assets under management), managed in around 3.300 funds. Related to the total market in Germany with a fund volume of some EUR 199 billion, the association therefore represents about 70 % of the NTCEF market. Further information is available at: www.vgf-online.de.

VGF members:
Aquila Capital, Bouwfonds, Buss Capital, BVT Holding, Commerz Real CFB-Fonds, DCM Deutsche Capital Management, DFH Deutsche Fonds Holding, Doric Asset Finance, Dr. Peters, DWS Finanz-Service, FLEX Fonds, GEBAB, Hahn Gruppe, Hamburg Trust, Hannover Leasing, Hansa Treuhand, HCI Capital, Hesse Newman Capital, HGA Capital, HIH Hamburgische Immobilien Handlung, ILG Fonds, IVG Private Funds, Jamestown, KGAL, LHI Leasing, Lloyd Fonds, MPC Münchmeyer Petersen Capital, Next Generation Funds, Nordcapital, One Capital Emissionshaus, OwnerShip, Paribus Capital, Real IS, SachsenFonds, Signa Property Funds, US Treuhand, WealthCap - Wealth Management Capital Holding, White Owl, Wölbern Invest

Supporting members of VGF:
Aktiva Rechtsanwaltsgesellschaft Steinhauer & Kollegen, Börsen AG Hamburg-Hannover, Caceis Bank Deutschland, Clifford Chance, Cordes + Partner, Deloitte & Touche, Ernst & Young, EPM Fondsmanagement Düsseldorf, GGV Grützmacher/Gravert/Viegener, Heuking Kühn Lüer Wojtek, Heussen Rechtsanwaltsgesellschaft, Integra Treuhandgesellschaft, King & Spalding LLP, Klumpe, Schroeder + Partner Rechtsanwälte, lindenpartners, optegra:hhkl, Riedel & Cie. Consulting, Rödl & Partner, RP Asset Finance Treuhand, Sal. Oppenheim jr. & Cie., TPW Todt & Partner, Watson, Farley & Williams

Executive Board:
Oliver Porr (Chairman), Marc Drießen, Michael Kohl, Reiner Seelheim, Dr. Hubert Spechtenhauser, Dr. Torsten Teichert, Gert Waltenbauer | Chief Executive Officer / Spokesperson for the Association: Eric Romba (Lawyer)

VGF Verband Geschlossene Fonds e.V. / Association of Non-Tradeable Closed-End Funds | www.vgf-online.de | Berlin: Georgenstraße 24 | 10117 Berlin | Germany | T +49 (0) 30. 31 80 49 00 | F +49 (0) 30. 32 30 19 79 | kontakt@vgf-online.de | Brussels: 47 - 51 rue du Luxembourg | 1050 Brussels | Belgium | T +32 (0) 2. 550 16 14 | F +32 (0) 2. 550 16 17 | contact@vgf-online.eu | VGF online: www.vgf-online.de | www.vgf-branchenzahlen.de | www.leistungsbilanzportal.de | www.vgf-summit.de

Association registration number 23527 Nz Amtsgericht Berlin Charlottenburg | Tax reference 27/620/52261 | Partner of the BSI - Bundesvereinigung Spitzenverbände der Immobilienwirtschaft | Member of the ZIA - Zentraler Immobilien Ausschuss e.V.