



Verband der Auslandsbanken
in Deutschland e.V.

Association of Foreign Banks in Germany

INTERESSENVERTRETUNG
AUSLÄNDISCHER BANKEN,
KAPITALANLAGEGESELLSCHAFTEN,
FINANZDIENSTLEISTUNGSPERSONEN
UND REPRÄSENTANZEN

REPRESENTATION OF INTERESTS
OF FOREIGN BANKS,
INVESTMENT MANAGEMENT COMPANIES,
FINANCIAL SERVICES INSTITUTIONS
AND REPRESENTATIVE OFFICES

European Commission
Internal Market and Services DG

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7. April 2009\VA

Directive 1997/9/EC on Investor Compensation Schemes Call for Evidence

Dear Madam or Sir,

The Association of Foreign Banks in Germany is pleased to have the opportunity to comment on your Call for Evidence on the Directive 1997/9/EC on Investor Compensation Schemes.

We represent the German entities – banks, investment management companies and investment firms – of international groups. In Germany, investment firms and investment management companies are included in the scope of the national German investor compensation scheme (the “Entschädigungseinrichtung der Wertpapierhandelsunternehmen” – EdW). A number of our Association members are also members of the EdW.

It is evident that we are following the current problems of the EdW very closely, as some of our members are directly concerned. The EdW is struggling to finance the loss incurred by a huge fraud case, the bankruptcy of Phoenix Kapitaldienst GmbH, in 2004.

As can be derived from publicly available information, the EdW is now facing a damage caused by Phoenix apparently amounting to approximately € 180 million, although it was able to raise only approximately € 3 million of annual contributions from its members. In our view and in particular from this German perspective, it seems obvious that the risks investor compensation schemes have to bear already now overly stress the financing power of its members.

In the light of this, the risks covered by compensation schemes seem already too high. As a general policy, the schemes’ liability should therefore rather be reduced than expanded.

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Besides, with every increase of the scope of investor compensation, the moral hazard problems will inevitably multiply. These schemes should not be designed as a fully comprehensive insurance for investors.

In the light of this, we would like to answer to the following three questions addressed in the consultation paper:

2) Would it be appropriate to include in the scope of the ICSD all investment firms seeking authorisation to the provision of investment services, although their authorisation would not allow holding clients' assets?

3) Would it be appropriate to include in the scope of the ICSD all investment firms seeking authorisation to the provision of investment services, although they provide their services only to non-retail clients?

In our opinion, neither firms within the meaning of question 2, nor firms providing services exclusively to non-retail clients, should be included in the scope of the ICSD. Instead, they should be clearly excluded (as well as MTFs), and respective national options should be deleted.

It is not justifiable in view of the principle of proportionality to create artificial liability of these firms for damages caused by others, insofar as they did not and cannot contribute to the occurrence of damages. In addition to this, said firms do not have any advantage from being covered by an investor compensation scheme. They are not dependent on the retail clients' confidence in their assets to be insured in case of the firm's insolvency, because the firm's insolvency would not affect the retail clients' assets anyway (retail clients would not even bother).

It has been argued that these firms indirectly benefit from the fact that compensation schemes foster the confidence in financial markets. However, this argument should not be followed, as, in our view, it is clear that society in general indirectly benefits from people having confidence in the financial markets. The costs of such benefits for the general public should not be passed on to a minority; this would be disproportionate.

6) Do you agree with the idea that the amount covered by the ICSD should be adapted following the updating of the DGSD?

In order to build up soundly financed investor compensation schemes, it should be a priority not to increase the coverage level. It could be unfair and misleading to the firms' clients and for the taxpayers if it was promised that investor compensation schemes could bear increased coverage levels on their own. Clients and taxpayers would surely end up being disappointed.

In case of any further queries, please do not hesitate to contact us.

Kind regards,

Wolfgang Vahldiek

Sabine Kimmich