



Ukrainian Association of Investment Business
UAIB

The Ukrainian experience – Regulatory, Political and Economic Aspects

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4th CEE Workshop “Challenges of Collective Investment Business in CEE”

7-8 November 2012, Brussels, EFAMA



Agenda

- ▶ **Recent Trends in the Ukrainian Fund Management Industry and the Economy**
- ▶ **Legal Framework Developments in Ukraine**
 1. **The Law of Ukraine On Collective Investment Institutions**
 2. **Other Relevant Laws & Regulations**
- ▶ **Prospects for the Industry**



(I)

Recent Trends

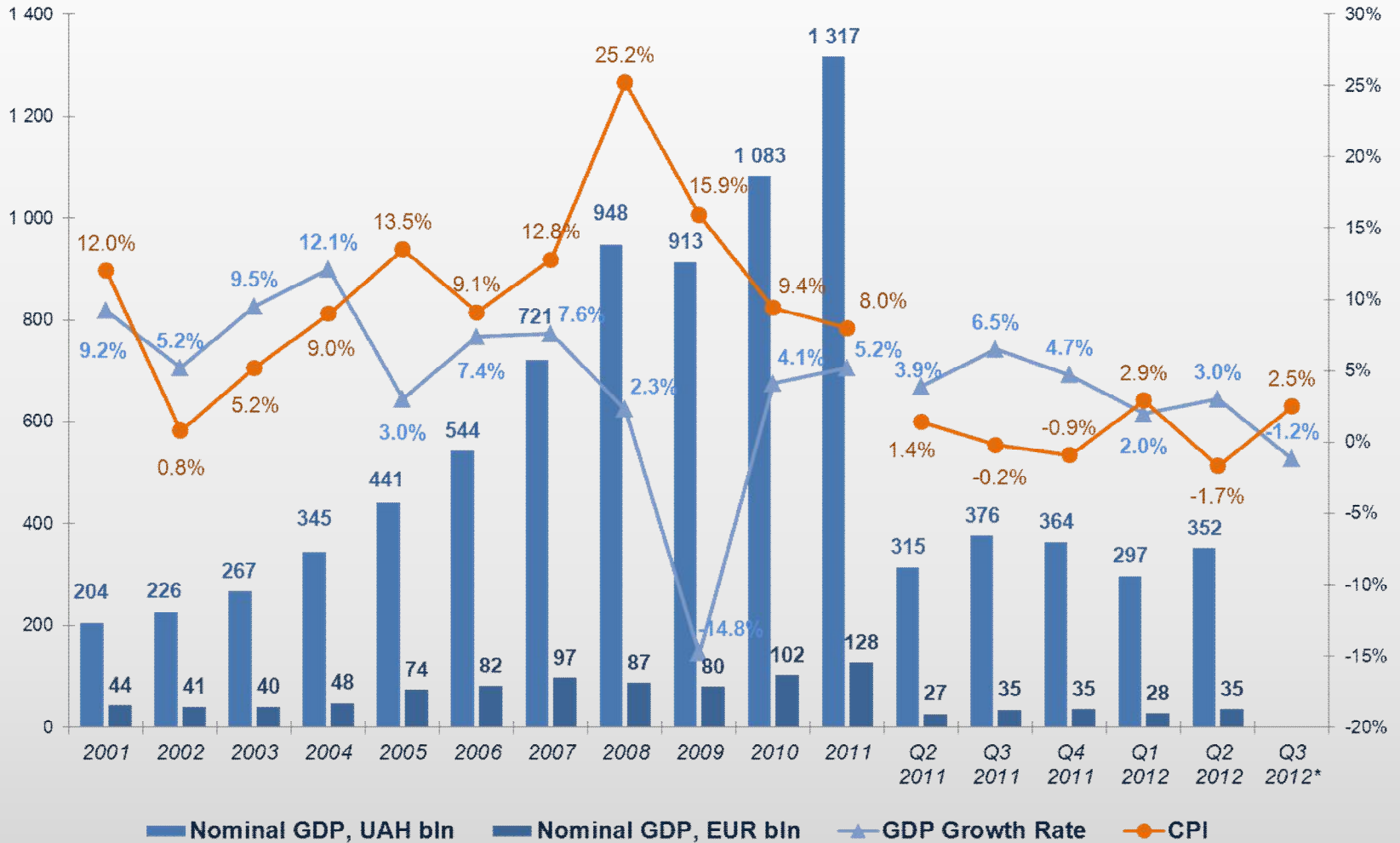
in the Ukrainian Fund Management

Industry

and the Economy



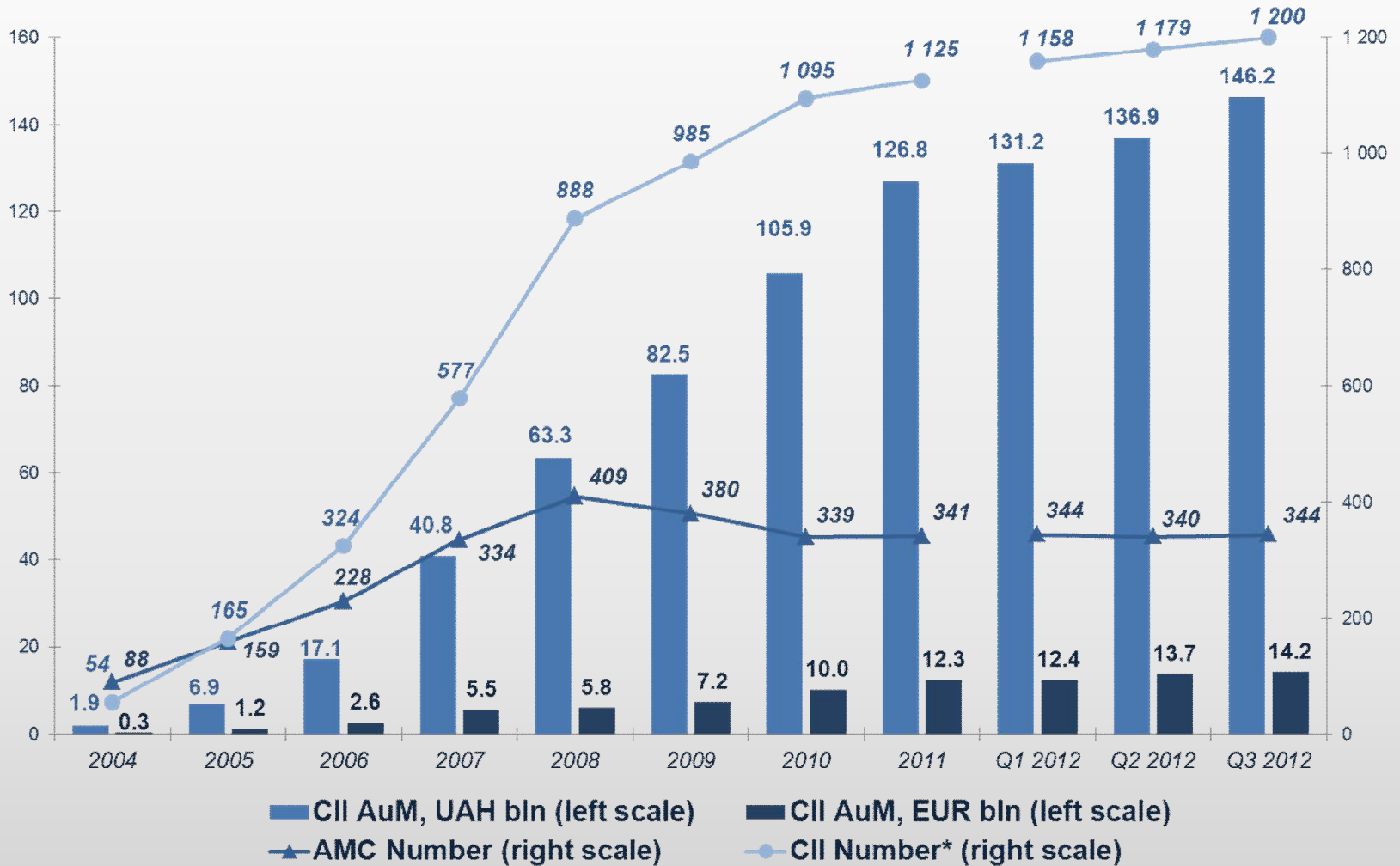
GDP and Inflation (CPI)



* Preliminary data as at 31 Oct 2012. Source of data: State Statistics Service of Ukraine, <http://ukrstat.gov.ua>



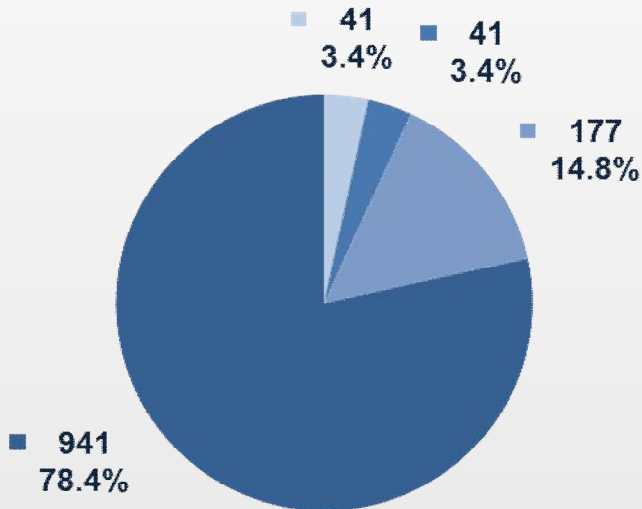
The Fund Industry Dynamics





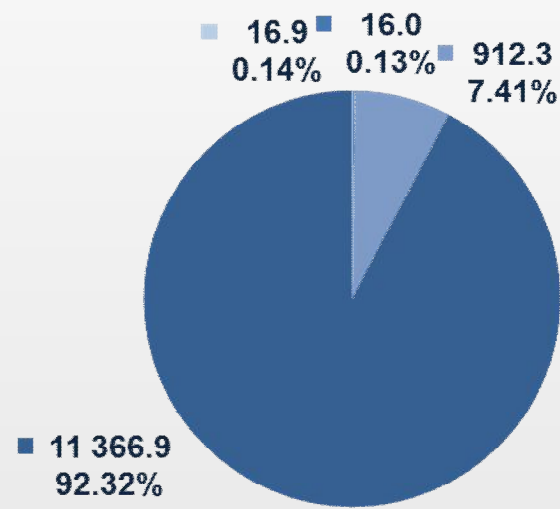
Collective Investment Institutions (CII)

by Number of established funds*



- Open-ended (all diversified)
- Interval (all diversified)
- Closed-end (ex venture)
- Venture

by NAV, EUR mln



- Open-ended (all diversified)
- Interval (all diversified)
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- Venture

* CII that reached compliance with the minimum asset value standard

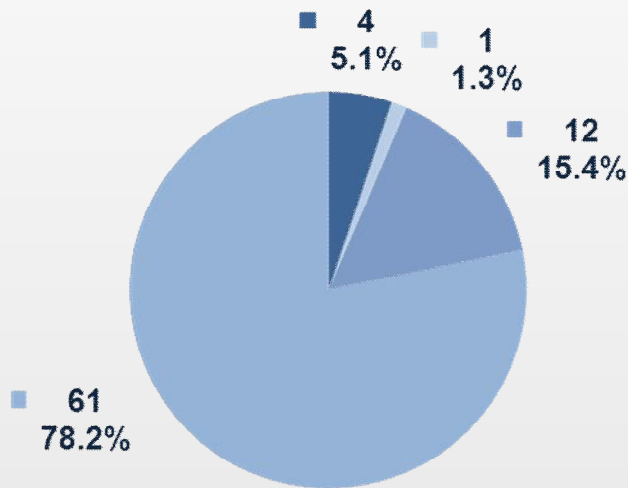
Data as at 31 Oct 2012





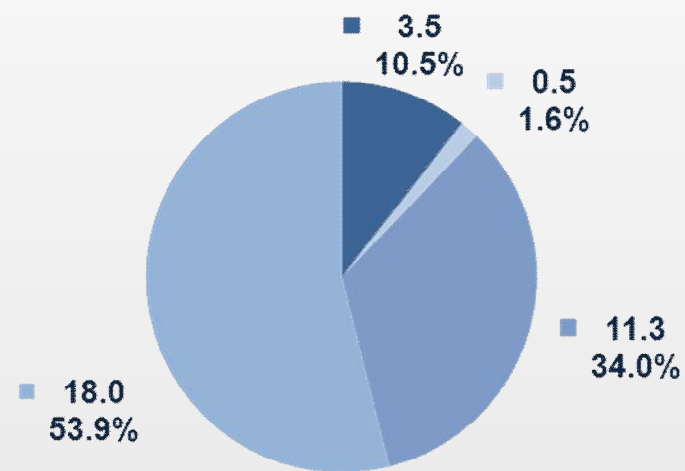
Diversified*, publicly offered CII, by fund class

by Number



- Equity Funds
- Bond Funds
- Mixed (Balanced) Funds
- Other

by NAV, EUR mln



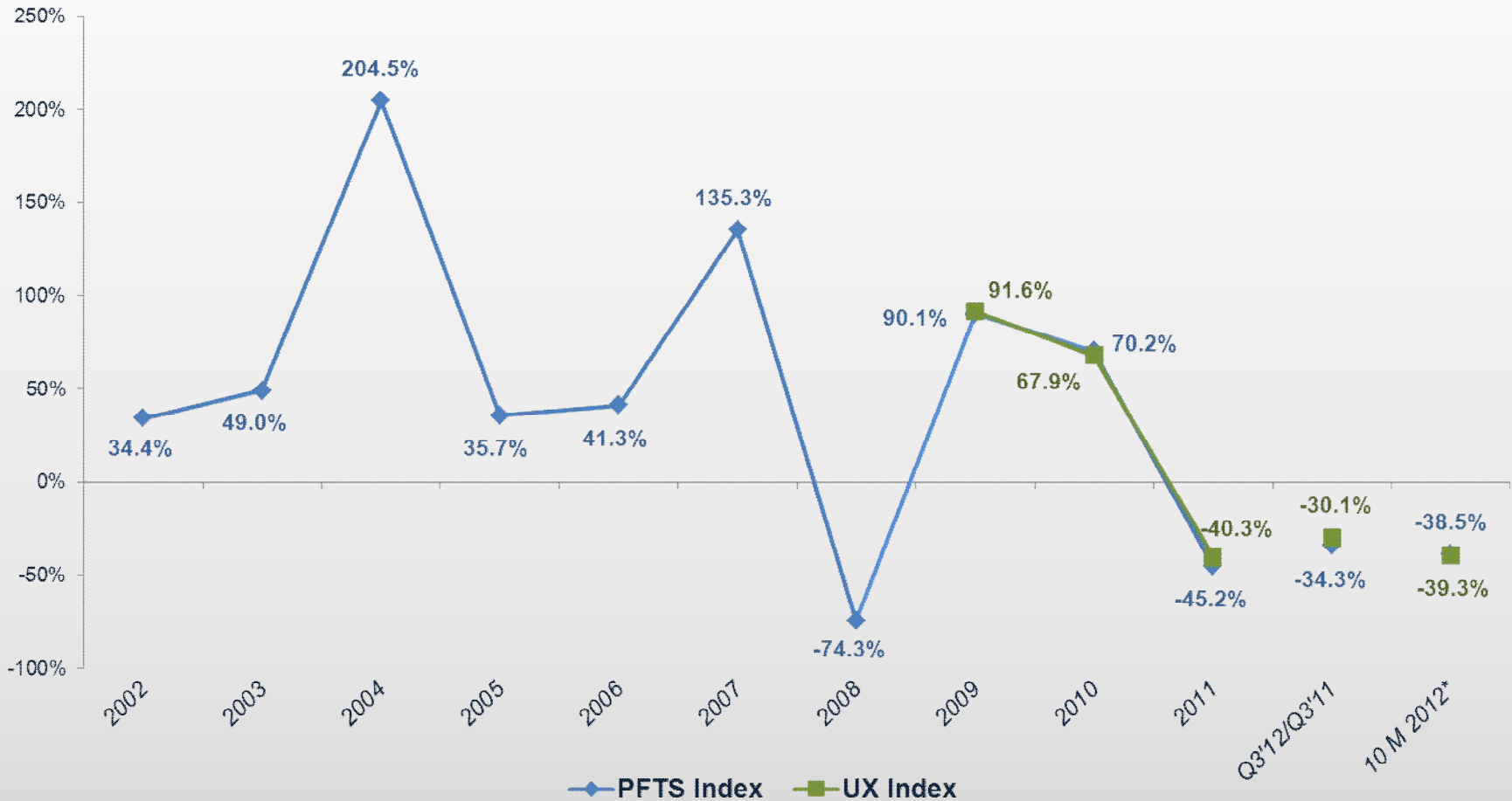
- Equity Funds
- Bond Funds
- Mixed (Balanced) Funds
- Other

* All open-ended and interval, some closed-end

Data as at 31 Oct 2012



The Stock Market Dynamics



Source of data: the stock exchanges





Securities available at stock exchanges

Oct 2012/Oct 2011 change

PTFS (since 1997) – 1163/952 securities listed:

- ▶ **537/413** equities
- ▶ **356/246** securities in 1st and 2nd lists
- ▶ index basket – **20/20** equities (av. **free float** – **6.6%**, range **from 0.6% to 21.7%**)

UX (since 2009) – 323/301 securities listed:

- ▶ **198/185** equities
- ▶ **86/73** securities in 1st and 2nd lists
- ▶ index basket – **10/15** equities (av. **free float** – **10.8%**, range **from 0.5% to 24%**)



(II)

Legal Framework Developments





(1)

The Law of Ukraine On Collective Investment Institutions

- ▶ Chronology
- ▶ Key new provisions

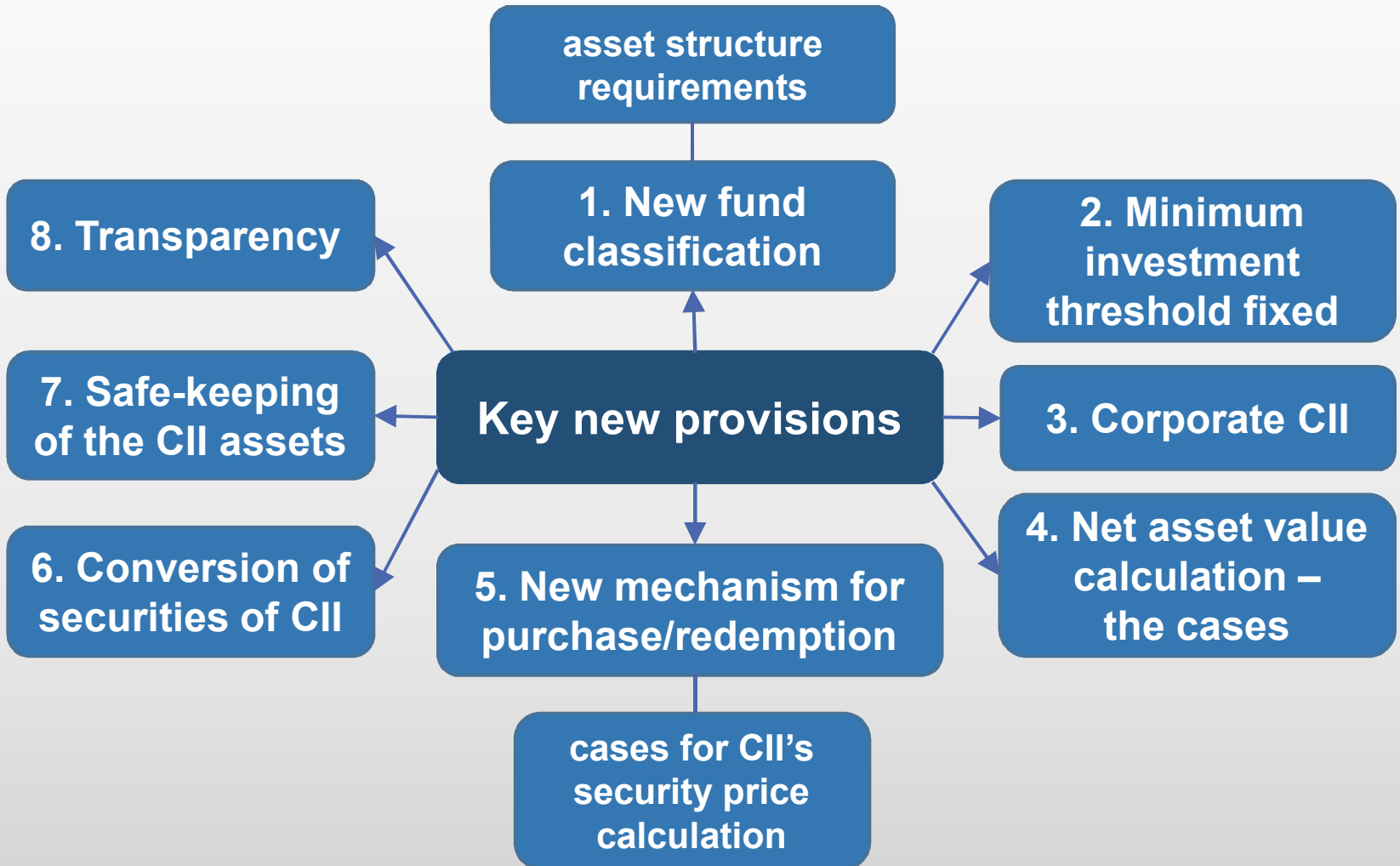


Chronology

- ▶ First text of the Law On CII (Unit and Corporate Investment Funds) №2299-III adopted on **15 Mar 2001**
- ▶ Singificantly amended to a new version №693-VI adopted on **18 Dec 2008**
- ▶ **New text** №5080-VI adopted on 5 Jul 2012 – **enter into force on 1 Jan 2014** (as regards derivatives in portfolios – on 1 Jan 2015)



The Law On Collective Investment Institutions №5080-VI





1. New (enhanced) fund classification

in addition to the **existing categories**: (1) open-ended/interval/closed-end
(2) diversified/non-diversified; (3) terminable/perpetual (4) unit/corporate

there will be:

- ▶ **specialised CII** (money market funds, state securities funds, bond funds, equity funds, index funds, bank metals funds)
- ▶ **qualifying CII** (securities class, real estate class, rental assets class, credit (loan) assets class, exchange-traded commodity assets class etc.)
- ▶ **ETFs:**
 1. open-ended specialised CII (index funds, bank metals funds) only
 2. mandatory listed on a stock exchange
 3. placed/sold/redeemed via underwriter
 4. sold/redeemed for the assets set by the Prospectus and not only for cash



1. (Cont) Asset Allocation and Structure

- ▶ **requirements/limits for new fund categories** (specialised CII)
- ▶ **amended** restrictions for diversified CII which shall be allowed to:
 1. acquire or additionally invest in **banks' liabilities (securities and/or bank metals)** $\leq 20\%$ of total assets (*detailed provision*);
a **single** bank's liabilities $\leq 10\%$ (*in force*)
 2. acquire or additionally invest in **OTC securities** $\leq 20\%$ of total assets (*in force*) BUT such securities **don't need to obtain a rating** (*simplified*)



2. Fixing of a minimum investment threshold (for retail investors)

Minimum total **par value** of units/shares acquired set as a number of minimum wages fixed by law **as at 1 Jan 2014**:

- ▶ **venture*** CII – 1500 min wages (*UAH 1.7 mln/EUR 165 thsd as at 1 Dec 2012*)
- ▶ **qualifying** CII – 100 min wages (*UAH 113.4 thsd/EUR 11 thsd as at 1 Dec 2012*)

According to the operative Law, the threshold changes along with the minimum wage figure (mostly quarterly)

* **Venture** CII is a non-diversified closed-end unit or corporate fund, which exercises exclusively private placement of its securities among legal entities and individuals





3. Corporate CII

Full description of the activities and corporate governance, complete exclusion from the scope of the Law On Joint-Stock Companies.

Key issues covered:

- ▶ Procedures for **establishing** (Constituent Assembly etc.), **liquidation**
- ▶ Requirements to the content of the **Statute, Standing Orders**
- ▶ **Management bodies** (Supervisory Board, AGM)
- ▶ **AGM:** powers, procedures for convocation and conducting, decision making



4. Net asset value calculation

According to the operative Law, as at:

- (1) end month (2) end quarter, year (for quarterly and annual reports)
- (3) after 6 months from the date of registration of Prospectus/Standing Orders (4) the date prior to the one of purchase/redemption application;
- (5) the date of decision to change AMC (6) the date of decision of CII dissolution (7) the date prior to the beginning of settlements with the unit/share-holders upon liquidation

New cause for NAV calculation (instead of (4)) – in case of:

- ▶ **placement** of securities of the CII – as at the date of *receipt of funds* to the bank account of the CII;
- ▶ **redemption** of securities of the CII – as at the date of *transferring of securities of the CII* to the account of the CII's redeemed securities.



5. New mechanism for purchase/redemption

1. **Purchase** application – the **amount** of purchase;
2. The **number** of the CII's securities purchased = the amount / CII's security price as at the date of receipt of money to the CII's account.

CII's security price calculation:

- ▶ **Operative Law** – as at the date of purchase/redemption application
- ▶ **New Law** – as at the date of settlement (transferring money/securities)

CII's security price = Total NAV / Number of securities in circulation

1. **Redemption** application – the **number** of securities to be redeemed;
2. The **price** of the CII's security – as at the date of transferring of the securities to the CII' account

Payment for securities of a CII by installment is not allowed





6. Conversion of securities of CII

Securities of a CII, by the application of the unit/share-holder, can be **converted into securities of another CII** which is under management of the same asset management company:

- ▶ **Open-ended & interval funds** – if comply with requirements to redemption (frequency)
- ▶ **Closed-end funds** – in course of mandatory redemption in case of prolongation of the fund

+ All types of funds – in case of liquidation

- ▶ Price fixed as at the date of conversion application

Not allowed:

venture CII  any other fund category (and vice versa)



7. Safe-keeping of the CII assets

More strict rules for public (retail) CII, loosened rules for private ones

For CII with **public** placement:

- ▶ **mandatory safe-keeping with a custodian – a bank only** with a special licence for safe-keeping (*in force*)
- ▶ the custodian bank – of an **investment grade rating** (by an authorised national rating agency/a recognized international one) (*new*)

For CII with **private** placement :

- ▶ **no** custodian is required – is voluntary (*new*) BUT
- ▶ in case of a custodian – **any entity licenced by NSSMC** (*in force*)



8. Transparency

Information about the CII (including regular reports)

must be available on the websites of:

1. the NSSMC's Public Information Database on the Securities Market (*detailed; in the operative Law – “publishing in the official editions of the Commission; disclosure by other means”*)
2. the AMC (public placement) (*new*)

▶ **Enhanced requirements to CII (AMC) websites**

must be provided directly to investors (private placement) (*in force*)

must be reported:

1. to NSSMC (*in force*)
2. to UAIB (*in force*)





(2)

**Other Relevant Laws & Regulations:
higher standards or threats to the
industry?**





New/Draft Laws & Regulations

- 1. Prudential Supervision, Risk Management**
- 2. Tax Code**
- 3. The Law On Joint-Stock Companies**
- 4. Regulations on Foreign Securities Transactions in Ukraine**
- 5. The Law On the Depository System**
- 6. The Law On the Rating System**





1. Prudential Supervision, Risk Management

The Law On Amendments to Some Legislative Acts of Ukraine Concerning the Improvement of the Legislation on Securities

№5042 adopted on 4 Jul 2012 (in force as from 1 Jan 2013)

- ▶ **Prudential Supervision by NSSMC over AMC and CII**

(Commision's Draft Regulation published on 9 Oct 2012)

- **heightened requirements and increased control over AMC:**

inspecting the owners with substantial holdings

- ▶ **Risk Management and Internal Audit in AMC**

- **internal rules to introduce Risk Management System shall be adopted by 1 Jan 2013**



2. Tax Code

Attempts of the State Tax Authority of Ukraine to **increase tax pressure on securities transactions:**

1. **partial inclusion (25%) of the financial loss** from securities transactions in 2011 into the **taxable income calculation in 2012**
2. **new transaction tax** for:
 - ▶ OTC transactions with:
 1. listed securities (**0.1%**)
 2. derivatives (**5 tax-free incomes = UAH 85 / EUR 8.3**)
 - ▶ transactions with OTC securities (**3%**)

STA tried to impose the new tax untimely (post factum)

UAIB has defended the industry against these innovations



3. The Law On Joint-Stock Companies

The Draft Law:

enables **the owners of 95%** and more shares of a JSC to **claim a buy-out of the remaining holdings of shares**

- redistribution of capital using administrative tools

investors are interested in the full ownership mostly



4. Regulations on Foreign Securities Transactions in Ukraine

NSSMC Resolution – Regulation On the Admission of Securities of Foreign Issuers in Ukraine (of 6 Jul 2012)

(1) conditions for admission; (2) list of documents; (3) procedure of adoption the decision on admission by the Commission

▶ **Draft NSSMC Resolution (Regulation) On Settlement of Servicing Operations with Foreign Securities in the National Depository System of Ukraine (of 28 Aug 2012)**

- requirements for transactions with securities of foreign issuers

BUT

Currency legislation must be amended to enable the transactions



5. The Law On the Depository System of Ukraine

№5178-VI adopted on 6 Jul 2012 (enter into force on 11 Oct 2013)

- ▶ **Central Depository** – a public joint stock company operating under the Law of Ukraine On JSC with the special features
 - **possible shareholders**: the state and the NBU (min 25% + 1 share), foreign and international depository/clearing/financial organizations (max 25%); the stock market participants; **each shareholder – max 5%**;
 - **minimum capital** – UAH 100 mln (EUR 9.7 mln).
- ▶ **Central Clearing House** – the only organisation for settlement and clearing in Ukraine;
 - under control of NBU; – license to carry out certain banking transactions;
 - general currency license; – agent for currency control etc.



6. The Law On the Rating System

- ▶ **NSSMC Resolution № 1138 of 14 Aug 2012:**

The Concept of the Draft Law of Ukraine On the Rating System

- rating of securities and issuers, including **investment funds**



(III) Prospects for the Industry



- ▶ **Political environment**: Parliamentary elections of 28 Oct 2012 – balance of forces between the ruling party and the opposition?
- ▶ **Business environment**:
 1. **Economic downturn** in Ukraine and slowdown in Europe undermine growth prospects for the fund industry, esp. public (retail) funds
 2. **Redistribution of capital in progress**, the stock market is not the main mechanism to attract and redistribute funds
 3. **Venture funds** – increasingly used for servicing the flow of funds of corporations and for project financing
 4. **Regulatory framework** under the new Law on CII – to be adopted until 2014 – new categories of funds to be in demand





Thank you for your attention!

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