



Financial Supervision Commission

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BY ELECTRONIC SUBMISSION

CESR
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Contact: Claire Whitelegg
Your Ref: CESR/09-406b
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Dear Sir/Madam

CESR call for evidence on mutual recognition with non-EU jurisdictions

Submission from the Isle of Man Financial Supervision Commission

As a financial services regulator, the Isle of Man Financial Supervision Commission is pleased to offer its support to CESR's consideration of mutual recognition.

We note that the questions in the call for evidence are directed towards market participants, rather than regulators, and therefore instead of responding to the individual questions we would be obliged if you would treat the contents of this letter as representing the FSC's contribution.

Background

The Isle of Man Financial Supervision Commission ("the FSC") regulates financial services businesses operating in or from the Isle of Man. The Island's regulatory regime is in line with international standards of regulation and the FSC is committed to international regulatory cooperation. To this end, the FSC is a signatory of the IOSCO Multi-lateral Memorandum of Understanding ("the IOSCO MMOU") and is a member to the IOSCO MMOU Screening Group which scrutinises applications from securities regulators who wish to become signatories to the IOSCO MMOU.

The Isle of Man has designated territory status from the United Kingdom in relation to its Authorised Collective Investment Schemes and policies of Life Assurance. The equivalence of Authorised Collective Investment Schemes to European UCITs was also recognised in the United Kingdom Statutory Instrument which brought the Island into the scope of the EU Tax on Savings Directive.

The Island also has arrangements in place to allow certain collective investment schemes from third countries (including EU countries) to be marketed directly to the general public in the Isle of Man.

POLICY & LEGAL UNIT

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INVESTORS IN PEOPLE

The Island has recently been the subject of a visit from the International Monetary Fund. The IMF report, which is due to be released very shortly, will give a positive evaluation of the Island as a stable, well-regulated and co-operative jurisdiction.

In the past the Isle of Man has developed useful contact with CESR, in particular through CESR-Pol. This has been helpful in explaining, for example, how the Isle of Man provides full regulatory co-operation to other jurisdictions – for example, in the context of the Market Abuse Directive.

Mutual Recognition

The FSC agrees that in a global market place it is vital that appropriate mechanisms are in place to deal with cross-border transactions. To support a truly international cross border market, regulators must concentrate upon the quality of regulation and how international regulatory standards are achieved as opposed to being nationalistic or protectionist in approach.

To this end the FSC, endorses the CESR suggestion for mutual recognition as a way of facilitating cross-border activities in financial services between EU members and third countries. If implemented properly, mutual recognition can help to achieve market efficiency and reduced costs of participation for functionaries in all jurisdictions. Providing appropriate standards are maintained, this will be mutually beneficial to each jurisdiction and industry functionaries and should provide reduced costs and red tape for individual customers. Under any system for regulatory equivalence it is important that there is a clear statement of the responsibilities of each regulator supported by full, frank and pro-active regulatory cooperation.

In the case of mutual recognition it would be almost impossible to achieve proper coverage and risk management without a standard set of agreed responsibilities for home and third country regulators which would need to be adopted and complied with in each case. Ideally this would be agreed at an international level to ensure that there is true consistency and to avoid unnecessary duplication.

One useful benchmark which could be used to assess a jurisdiction's legal capacity to provide necessary regulatory cooperation and support, could be whether each jurisdiction is a full signatory to the IOSCO MMOU. As CESR is aware, signatories to the MMOU have to go through a robust and detailed assessment process during which their legal capacity to cooperate under the MMOU must be proven. In this context we would hope that recognition could be extended to jurisdictions such as the Isle of Man where they meet the appropriate conditions.

Trading venues

The FSC has no specific comments to make on this subject. We would note that Isle of Man brokers are members of exchanges including the London Stock Exchange.

Intermediaries

In relation to intermediaries, it is important that any person providing investment advice to local individuals, be they EU or third country individuals, does so on the basis of suitable advice and with knowledge of any specific matters relevant in that individuals jurisdiction of residence and/or

domicile. Where the services provided are on a non advisory or execution only basis this is of less concern.

In assessing mutual recognition in the area of intermediaries it is important to be clear about the purpose of the recognition and to separate issues of public protection from protectionism.

Products including collective investment schemes

The FSC believes that mutual recognition of retail and professional collective investment schemes is an important first step in product recognition. However, we would also like to highlight the similarities to other investment related products including pensions and life assurance products. On this basis we would suggest that a similar consideration should be applied to these other products.

Currently, Isle of Man Authorised Schemes are mainly distributed into the United Kingdom; however there are mechanisms in place under Isle of Man law which would allow European Retail Funds to be distributed directly to the general public in the Isle of Man providing they meet the requirements to be Recognised Schemes under Schedule 4 to the Collective Investment Schemes Act 2008.

In relation to non retail schemes the Island has no specific formal agreements in place with EU countries.

If you would like to discuss the details of the FSC's contribution further, please do not hesitate to contact us.

Yours faithfully



Claire Whitelegg
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