

**COMMENTS TO THE COMMITTEE OF EUROPEAN SECURITIES  
REGULATORS ON THE MANDATES FROM THE COMMISSION, DATED 25  
JUNE 2004**

**RESPONSE BY THE UK ASSOCIATION OF INDEPENDENT FINANCIAL  
ADVISERS (AIFA)**

AIFA is pleased to offer the following comments to CESR in response to its call for evidence, dated 29 June 2004.

Many members of the Association are active in advising on collective investments and are accordingly capable of falling within the scope of the Directive. But the giving of investment advice will be alongside the giving of advice about a variety of other financial instruments, many of which will fall outside the scope of this directive. We repeat our strong conviction that this Directive should be implemented in a way which is compatible with other directives (especially the Insurance Mediation Directive) and which does not introduce additional bureaucratic obstacles to the giving of advice.

We also record our concern at the scale of the implementation project and the tightness of the timetable. If detailed regulation is to be introduced via the CESR processes, then firms need a good lead-in time to adapt to new requirements, imposed through national regulators. This seems incompatible with the present timetable for implementation. We understand the problems with extending the implementation timescales; we hope that CESR will instead focus on the production of principles for regulation and will avoid over-engineering the detail.

We also believe that the work-load can only be kept manageable if CESR avoid covering old ground, already settled in the negotiation of the Directive. If the sector feels that CESR can be used to restage previous disagreements, there is a risk both that the process will both fall into disrepute and that no progress will be made toward implementation.

Definition of Investment Advice

This is a difficult area. Advice must be given by way of business and with a view to the person acting on any advice given. We believe that work being undertaken by the Financial Services Authority on the definition of generic advice will be helpful to CESR, in delineating the boundaries of the directive. It should be possible for national regulators to determine different degrees of regulatory intervention for different types of advice. It will be virtually impossible to co-ordinate an EU-wide definition which is appropriate for all the different approaches in national markets and which does not impede the proper course of business. We suggest that the most constructive approach may be to indicate what types of advice are excluded from regulation such as advice about

investments in general, rather than a particular investment; information about investments which does not identify particular investment products etc.

### Suitability Test

As suitability tests already form the basis of much national legislation, it would be unfortunate if CESR deliberations led to their complete overhaul. We would suggest that CESR follow as closely as possible accepted best practice in national markets.

### Non-Advised Sales

Provided that the consumer understands and accepts that no advice is being given, we would expect that the information collected could be supplied by the consumer and not subject to further verification. Thus, if a consumer states that equity risk is understood, then the investment firm should be able to take that statement at face value.

As an Association representing advisers, we do not wish to comment on market issues.

**AIFA  
UK**

**28 July 2004**