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Fabrice Demarigny
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1st December 2003

The Role of CESR in the Regulation and Supervision of UCITS and Asset Management Activities in the EU

Dear Mr Demarigny,

Barclays welcomes the opportunity to comment on CESR's views of its role in the regulation and supervision of UCITS and asset management activities in the EU. Through its investment arm, Barclays Global Investors (BGI), Barclays provides products covering all major asset classes including equities, bonds, cash, commodities and currencies to customers across Europe, from offices in London and Amsterdam. Our clients include both defined benefit and defined contribution pension plans, insurance companies, trusts, central banks, charities and foundations, local government entities, private and retail banks, and fund distribution networks, for all of whom we help to ensure a secure financial future.

Our answers to CESR's questions on its involvement in the regulation and supervision of UCITS and asset management activities in the EU are set out below. In addition, we have seen and support the submission of the Investment Management Association to this consultation.

1. Adaptation of the EU Institutional Framework

Do market participants share the views of CESR on the need for its future involvement in the areas of UCITS and asset management?

With UCITS legislation being prescribed as falling under the jurisdiction of securities legislation, it is appropriate that it be covered by the Lamfalussy procedure to enable swift updating of relevant legislation in line with market developments. CESR therefore has a role to play.

Do market participants agree with the proposed role of CESR in facilitating convergence of the regulation and supervision on the “buy side”?

Barclays agrees that European regulators need to look at the buy side as a whole, and not split out separate account management from pooled funds (including UCITS), in order accurately to reflect the way the industry functions.

More importantly, however, buy-side issues need to be separately understood from securities issues as a whole. At the moment, little regulatory distinction is made between asset managers who manage clients' assets on a fiduciary basis and others (mainly investment banks and other securities firms) who trade securities and engage in own-account dealing.

2. Areas of work by CESR in the asset management activities

Do market participants agree with the list of general points and the definition of priorities and possible input by CESR as set out above?

Barclays agrees with CESR's General Principles to guide its work in asset management activities. This work should remain within the EU institutional framework, with its democratic controls through scrutiny of legislative proposals by the European Parliament and the member states in the Council. As stated above, we agree that the “buy side” should be looked at as a whole. With regard to IOSCO and the UCITS Contact Committee, relevant work already agreed by CESR members in other fora, or by those who currently have authority to work in this sphere, should not be duplicated.

We would also be interested in finding out more detail on what CESR refers to in Section 2.2A as “new activities in the UCITS sector (e.g. distribution techniques)”.

In relation to Section 2.2C, Barclays thinks that in addition to those areas already listed, non-hedge/non-UCITS funds should be included in the work stream.

Are there any areas on which CESR should concentrate? Which areas of work do you consider to be a priority?

As a priority issue, Barclays is of the view that enforcement of implementation of the UCITS Directives is very important, in both letter and in spirit. The effectiveness of these Directives so far has been inhibited by (protectionist) additional national measures and therefore that greater convergence through proper implementation and enforcement is necessary. CESR must take care, however, that such supervisory convergence does not lead to a raising of the regulatory bar in line with those member states that have applied additional regulatory measures.

3. Organisation of CESR Work

Do market participants agree with this approach?

It seems sensible for CESR to take the same approach to the regulation and supervision of UCITS and asset management as it does on other issues that fall within its jurisdiction, such as Market Abuse and Prospectuses - namely of having an Expert Group and a corresponding permanent secretariat staff member.

Do market participants agree with the approach to consultation?

CESR's approach to consultation on UCITS and asset management should be in keeping with CESR's Public Statement on Consultation Practices and its transparent and open working methods on other issues.

Do market participants agree to create a specific Consultative Working Group in order to reflect the specificity of the "buy side"?

Barclays agrees that buy-side issues need to be separately understood from securities issues as a whole. It is important to ensure relevant expert input from market practitioners through the creation of Consultative Working Group to CESR Expert Group on UCITS and asset management.

Do market participants see other areas of expertise that the Consultative Working Group should benefit from?

CESR's list of areas of expertise seems to be comprehensive, covering the main aspects of UCITS and asset management activities. Barclays would be happy to provide an expert from within Barclays Global Investors to participate in this Consultative Working Group.

Should you have any further queries on Barclays' responses to CESR's questions, please do not hesitate to contact me or my colleague, Laura Mowbray (laura.mowbray@barclays.co.uk).

Yours sincerely,

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