



INVESTMENT COMPANY INSTITUTE

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SENIOR COUNSEL

July 2, 2004

Via E-mail and International Airmail

Mr. Fabrice Demarigny
Secretary General
The Committee of European Securities Regulators
11-13 avenue de Friedland
Paris 75008
France

Dear Mr. Demarigny:

The Investment Company Institute¹ appreciates the opportunity to comment on the Mandate for the Expert Group on Investment Management published by the Committee of European Securities Regulators (CESR). CESR's paper establishes the work program for the expert group.

As a general matter, we believe that CESR's priorities for investment management are appropriate, and we would support the expert group working on the issues identified by CESR. In addition, we agree with CESR that the highest priority for the expert group should be the application of the transitional provisions of the amended UCITS Directive. We strongly believe that the transition issues discussed in CESR's paper must be addressed as soon as possible. We also are of the view that questions related to a management company's passport and a fund's passport must be clarified. We further hope that guidelines for supervisors could be adopted by CESR before March 2005 – which is more than a year after the date on which funds had to comply with the new UCITS Directive.

We also have specific comments on two other matters discussed in the paper. First, in the consultation paper, CESR notes that the conduct of business rules are one of the areas of work for the expert group to be completed by the end of 2005. We support, as part of its work, the expert group's consideration of the existing CESR Standards for Investor Protection and the work done on the Level 2 mandate under the Directive on Markets in Financial Instruments to determine whether it is necessary to develop certain

¹ The Institute is the national association of the US investment company industry. Our membership includes 8,633 open-end investment companies ("mutual funds"), 622 closed-end investment companies, 126 exchange-traded funds, and 5 sponsors of unit investment trusts. Our mutual fund members have assets in excess of \$7.3 trillion, accounting for approximately 95% of total industry assets. Individual owners represented by ICI member firms number 86.6 million as of mid 2003, representing 50.6 million households. Many of our members also manage assets in Europe, including UCITS and pension funds, and our comments reflect their experiences in Europe.

specific rules on Level 3 for collective investment management. With respect to rules on soft commissions, we believe that soft commissions should be reviewed. Given that regulatory approaches are continuing to develop and to evolve on this matter, we hope the expert group and CESR will undertake a thoughtful and thorough review of the issues related to soft commissions before adopting new rules or harmonizing rules.

Second, CESR anticipates that the expert group will take an inventory of the non-harmonized collective investment schemes that are marketed throughout Europe and prepare the ground for a common view on certain issues, such as prudential rules or rules on adequate disclosure. CESR expects the expert group to draft a common approach to non-harmonized funds. We agree that a review of non-harmonized funds by the expert group may be useful and recommend that the expert group consider harmonizing the private placement rules of the Member States as a possible approach to non-harmonized funds.

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We appreciate the opportunity to comment on CESR's views on the work program of the expert group on investment management. If we can provide any other information or if you would like to discuss further any issues, please contact me at podesta@ici.org or at (202) 326-5826 or Jennifer Choi at jchoi@ici.org or at (202) 326-5810.

Sincerely,

A handwritten signature in black ink, reading "Mary S. Podesta". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Mary S. Podesta
Senior Counsel