



8 December 2004

Committee of European Securities Regulators
11-13 avenue de Friedland
75800 Paris
FRANCE

Dear Sir

CESR guidelines for supervisors regarding the transitional provisions of the amending UCITS Directives (2001/107/EC and 2001/108/EC)

1. Schroders is a global provider of investment services with over €140 billion under management and offices in 30 countries. With regard to the UCITS Directive we have fund ranges in two EU jurisdictions. In Luxembourg we have four UCITS qualifying SICAVs totalling over €19 billion funds under management and of these, our flagship product; the Schroder International Selection Fund (SISF), is registered in 13 EEA jurisdictions and 22 countries world-wide. In the United Kingdom we have a range of UCITS qualifying unit trusts totalling approximately €14 billion funds under management which is marketed to both UK retail and institutional clients.
2. We are currently in the process of converting SISF and our UK range of funds to UCITS III and this should be completed in the first quarter of next year. We are also in the process of creating a Luxembourg management company to ensure our Luxembourg operations are compliant with the Management Directive. We therefore have a great deal of interest in any suggested changes of interpretation to the Directive and welcome the fact that CESR is assisting the Commission in ensuring a uniform interpretation of the Directive's provisions. In addition, we are willing to assist CESR in any way we can during its consultation phase.
3. In general we appreciate that the guidelines are primarily aimed at prompt resolution of matters of interpretation that have been outstanding for many months affecting the industry in general and given the comments contained in the latest set of ESC minutes and the Chairman's introductory remarks to the consultation, the guidelines represent a compromise position. Except for our specific comments below, we accept and support the compromise positions put forward by CESR.

Reconsider the timescales

4. As previously stated, we are transferring our flagship range (SISF) to UCITS III and introducing a management company early next year. In this respect the various time limits are not likely to materially affect our operations. However, we do have three other UCITS fund ranges in Luxembourg and we would be concerned that the setting of the December 2005 deadline for conversion may lead to increased delays in regulatory approval and will clog up the system meaning new fund launches to meet investor demand will be difficult. We suggest CESR seeks to ensure that all its members are committed to ensuring they have enough trained staff to meet the timetable imposed; otherwise we suggest a relaxing of the limit into 2006.

Clarify the Terminology

5. We believe the terminology used in the paper needs clarification. Specifically:
 - (i) What does the term 'passportable' mean? We were under the impression that any fund qualifying as a UCITS is therefore 'passportable'. Is CESR attempting to draw a

distinction between those UCITS using their status to market in other Member States under Section VIII of the Directive, and those that are merely looking to be marketed in their domestic market following authorisation?

- (ii) What does 'launched' mean? A fund might be authorised by its Home State competent authority many months or even years before it is launched (which we interpret as marketed). And it may be authorised and launched (marketed) in its Home State many months or years before it is registered in a Host State. Which scenario is CESR attempting to provide guidance on?

Adopt the proposals as early as possible.

6. Given that this is a compromise between regulators, we would request CESR urge those regulators who are currently taking stricter interpretations to commit to accept these interpretations now, rather than wait until formal CESR approval in the New Year before starting their own legislative process. This will mean the industry can use the flexibility the guidelines provide now. We appreciate regulators might need to change their legislation. However, rules can usually be waived and this can be done quickly where there is a spirit of co-operation between all parties.

Liaise with non-EU regulators

7. Given the global nature of our business we have found that the move to UCITS III has not brought the full benefits that we hoped for. One reason for this is that non-EU regulators are yet to address the improvements in regulation that the new Directive brings. Our SISF product is marketed on a global basis but we have found a 'regulatory lag' which has meant that our move to UCITS III has only been possible on terms that restrict investment policy to the original UCITS Directive. We would ask CESR members to use their membership of IOSCO, as well as bilateral links, to discuss and inform other regulators of the improvements that UCITS III provide both in terms of investment freedom but also in terms of control and management.

Ensure consistency with your mandate.

8. You will, of course, be aware of the report of the Asset Management Expert Group on the implementation of the FSAP and that the investment management expert group's mandate includes work intended to simplify the registration process for UCITS schemes. However, two aspects of your guidelines seem to be diametrically opposed to your mandate.

Additional attestations

9. We find it difficult to understand upon what basis CESR provides its guidelines in relation to C.I.1. and D.II.2. Both interpretations seem to have been made in a way that seems to add additional complexity, or confirm existing (and arguably unjustifiable) practises to the registration process.
10. In terms of C.I.1. we support CESR's view that the Product Directive is separate to the Management Directive and so a UCITS I management or investment company may operate UCITS III funds. But we fail to understand why CESR members need the attestation that a grandfathered UCITS I management company is complying with Article 21 of the Product Directive when marketing a UCITS III fund into a Host State. To get a UCITS III authorised will require 'the management or investment company' to comply with the Home State's rules regarding employment of a risk management process (which would have to meet the Directive's requirements). The absence of any mention of an attestation in the Directive is presumably because the principle underpinning the Directive is one of Host State competent authority relying on the Home State competent authority properly carrying out its duty. If this is not the case, then why not require attestations over each Article of the Product Directive?
11. In relation to D II.2, we support CESR's view that once you have a UCITS passport it is not lost on conversion from UCITS I to UCITS III – since there is no mention of the need to reapply for registration under Article 46 of the Directive, in the transitional arrangements of the Product

Directive, or its recitals. In fact following initial registration there is little ongoing requirements to inform the Host Member State of changes, though we acknowledge the requirements of Article 47.

12. We are concerned that the guidelines suggest documents to be delivered to the Host State, including an additional attestation. On the principle that the UCITS is required to inform its Home State regulator of its conversion because it will need to update its fund rules or instrument of incorporation (Article 4(4)) and the fund's documents (Article 32), we do not see what benefit providing the additional documents to the Host State provides.
13. Indeed it would appear CESR are interpreting Article 46 and 47 of the Directive in such a way as to require the documents sent on initial registration to be provided to the Host State competent authority on an ongoing basis. If CESR considers their interpretation correct, we think this:
 - (i). formalises practises that have been employed by certain Member States that were not foreseen in the original Directive,
 - (ii). shows a lack of trust between regulators resulting in a double checking of the Home State competent authority's authorisation; and
 - (iii). sets a precedent that will make CESR's task of simplifying the procedures in future more difficult.
14. Before confirming these guidelines we therefore suggest an informal view is taken of the Commission's legal services as to the legality of requiring such lodgement of documentation under Section VIII of the Directive¹.

Additional notifications

15. The requirement for additional notifications to be made under Article 6(b) (5) clearly runs against the aim of simplifying the registration process. So we support option (b), but do so on the understanding that we do not support the use of a registration process based on Article 46 in the long term. Ideally we would have supported a third option, requiring notification by the way of Article 6(b) (5) only but note supervisory authorities are unlikely to agree this interpretation without further work from CESR.

Yours faithfully



SIMON VERNON
Associate Director

¹We would suggest Article 46 is relevant only on initial registration. The absence of reference to Article 4 or Article 32 contained in Article 47, which only refers to Article 29 and 30, means the legal basis of the guidelines is suspect. See also Vandamme's commentary on the 1985 UCITS Directive, Section VIII, particularly paragraphs 165 to 171 in relation to the scope of Article 44.