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Rome, July 19 2003

Re. 1169/03

Mr. Fabrice Demarigny
Secretary General CESR
11/13 Avenue de Friedland
75008 Paris

Dear Mr. Demarigny,

**Re: CESR's Advice on level 2 implementing measures for the proposed prospectus directive (ref. CESR/03-162).**

Assogestioni welcomes the opportunity to comment on the consultation paper "CESR's Advice on level 2 implementing measures for the proposed prospectus directive".

With reference to the implementing measures and to your questions, as indicated in the consultative paper, given that we agree with all the CESR's proposals on which no comments are made hereinafter, please find our comments on the proposals that in our opinion need further reflections.

III.1 Derivative securities.

*32)Principal activities – annex D, ref. 6.1.1 & 6.1.2*
*34)Principal markets – annex D, ref 6.2*
*36)Trend information – annex D, ref 8.1*
*37) Administrative, management and supervisory bodies conflicts of interest – annex D, ref 10.2*
*39) Major shareholders – annex D, ref 12.1 &12.2*

The disclosure of the information indicated above is also relevant for derivative securities for the following reasons:

- information on the issuer improves the protection of investors;
- information about the issuer's principal activities, the principal markets in which the issuer competes, etc. is necessary to enable investors to make an informed assessment of investment risks related to the issuer (e.g. the counter-party risk);

*61) Information about the investment for wholesale debt securities issued by banks.*

We don't agree on the fact that information about investment should not be required for banks issuing wholesale debt securities because wholesale investors as well need information on the issuer's investments.

*64) Information on issuer's investments for wholesale debt securities.*

This information is very important for the wholesale investors too because information about the issuer's investment is important for a correct assessment of risks of the investment related to the issuer (e.g. the counter-party risk).

*75, 76, 77, 78, 79, 80, 81, 82) Inclusion of examples in the derivatives securities note.*

We support the inclusion of examples of the way the derivative instrument works in the derivative securities note because such an example would provide a practical and understandable view of how the instrument works.

It is then important that CESR stipulates how the examples should be prepared and showed so that they provide a neutral view: they should be realistic, not misleading, they should not contain performances forecast, they should show the break-even point for the investor, if is possible they should compare the behaviour of the instrument with the behaviour of the underlying and they must include the warning that those are only examples.

Concerning examples based on the best and worst case scenario, we consider those kinds of examples more dangerous and misleading than examples of the way the instrument works. That is because it might be very hard to find out how the examples based on the cases scenario must be prepared so that they can provide a neutral view.

*83) Inclusion of examples in the securities note of any other type of securities.*

We support the inclusion of examples in the securities note of any type of securities that have a derivative component.

*89) Disclosure of the past performance of the underlying and its volatility.*

We consider that it is fundamental for the investors assessment of investment risks the disclosure of the past performance and the volatility of the underlying. Both the past performance and the volatility of the underlying should be included in the derivative instrument securities note. However, among the proposed options, we think that CESR should adopt option n. 3, because it is very hard for the investor to recreate the past

performance and the volatility, of the composed underlying (also if the issuer give the indication of where information of each component can be found).

III.2 Base prospectus.

*112) Translation of the summary and the final terms.*

We support the second approach (point 111) because:

- the purposes of the directive is to establish the role of the information as a key factor in investor protection;
- the directive establish that "where the prospectus is drawn up in a language that is customary in the sphere of international finance, the host or home Member State should only be entitled to require a summary in its official language(s)" and only few people understand, as well as need for a correct investor protection, a language different from their own.

Moreover, for a correct disclosure, if any information included in the summary changes (and then the issuer have the obligation to publish the final terms) then this information must be translated so that the investor can know it, even if it does not form part of the approved summary.

*115) Summaries and multiple products in the same prospectus.*

We consider it is necessary a separate summary for each product included in the same prospectus. Because a general summary can be misleading for the investors and it can hardly comply with the purpose of the general requirements of summary content as set out in the directive.

*122) Form of the final terms.*

We support the third view (point 120) because the other solutions might have a great risk of misleading or misunderstanding for the investors.

*125, 127) Method of publication of the final terms.*

We consider that the method of publication of the final terms should be a method as set out in the article 14 of the directive for the base prospectus because:

- the method of publication used for the base prospectus and for the final terms must guaranty the same level of disclosure;
- different methods might made a risk of misleading for the investors.

*131, 132) Content of the prospectus to be used for offering programmes.*

We support additional disclosure requirements in relation to base prospectus.

*136, 137) Types of securities that can be issued under the same base prospectus.*

We support:

- the principle that, in the multi-product base prospectus, the information given on different products should not be mixed up;
- types of securities that can be issued under the same base prospectus.

III.4 Closed ended investment funds.

*151) Disclosure obligations set out in Annex G.*

We think that the general approach should be revised in the light of our following comments.

1. We consider that the peculiarities of closed-ended investment funds should be preserved: with reference to the proposed "Preamble", we judge it inappropriate to distinguish between *passive* and *non-passive* investors (and the consequent obligation for the latter to be subject to the requirements of the "Minimum Disclosure Requirements for the Equity, Debt or Derivative RD" should be repealed). Our opinion is that, although *non-passive*, the fund cannot be properly compared with an issuer because of the different approach towards its investment: the Fund seeks to hold control of a company only if it is functional to the best interest of its customers and it is necessary to properly implement its fiduciary duties, while an issuer makes an investment decision on a purely financial basis.
We do not consider, anyway, the fact of taking, or seeking to take, control of an issuer as irrelevant, but it is in our view preferable that such event might be disclosed by means of a more detailed description in the "Investment Objective & Policy" section (block 1.0) rather than using a RD originally conceived to fit a different legal entity.

2. The given definition of "Fund of Fund" appears to need further clarification: it is not clear, in fact, how a Fund that invests more than 40% of its gross assets in another collective investment undertaking can be defined, as the proposed definition states only that a Fund of Fund may invest from 20% to 40% of its gross assets (please consider also that, on the other hand, the possibility to invest more than 40% in another fund's units is granted by block 2.5).

3. We suggest to more precisely specify every potential or effective conflict of interests which may affect managers, directors or services providers for the Fund. The

proposed rule for disclosure (block 3.5) seems to be too narrow to encompass all relevant conflicts of interests. We propose to adopt provisions that clearly and fully addresses, for example, the issues of (i) management and directors' conflicts of interests, (ii) agreements with major shareholders, customer, suppliers or experts and counsellors, (iii) related party transactions.

*154, 155) Distinction between entities which invest exclusively, on passive basis, in real property assets for capital gain, and those which engage primarily in short term rental, development, refurbishment and other similar income generating activities relating to their property assets.*

We do not consider it appropriate to draw a distinction between funds investing in real property assets for capital gains and funds with "active" real property investments (as stated in paragraph 153).

In particular, we do not support the proposal to include the "active" funds in the category of "trading companies" because we feel that trading operations in equities or debt instruments executed by a company are quite different (in quality and quantity) from the "trading" activity connected with the normal business of a real property investment fund, which is made just to exploit the full potential of the investment made.

We also point out that those two activities might well exist at the same time in the same fund, which may split its assets in "passive" and "active" management, so creating a barrier might cause problems in their business and hamper the efficient allocation of the fund's resources (and every consequent profit).

IV Format of the prospectus.

*172) How the information in prospectuses should be ordered*

We support the option number 1, because it ensure a full and easy comparability of prospectuses.

176) How the SN and RD information should be presented in a single document.

We support the first option, because:

- in the prospectuses the information must have the same order, that to ensure a full and easy comparability of prospectuses;

- the order indicated in the option n° 1 (summary, SN, RD) is the logical line that the investors must follow to understand the information explained in the prospectus.

*182) Ways to supplement the summary.*

We support the first option, because the summary might be the only document published in investors' language and then it must be as clear as possible. Otherwise the investor have to read the original summary together with the supplement in order to have a full picture. That can be dangerous for a correct disclosure especially in cases of a long gap between the first publication of the prospectus and the publication of the supplement of the summary, because it is possible that the investors have not got the original prospectus anymore.

We are available for any clarification you might need on the above.

Best regards.

General Secretary

Fabio Galli