Investment Management Association

2 December 2003

M Fabrice Demarigny
Secretary General
Committee of European Securities Regulators
11-13 avenue de Friedland
Paris

BY E-MAIL

Dear Fabrice

The role of CESR in the regulation and supervision of UCITS and Asset Management activities in the EU

We at the Investment Management Association (IMA) in the UK are very appreciative of the open and transparent approach being taken by CESR in considering how it is to take on responsibility for issues relating to UCITS and to asset management activities in Europe. We were pleased to be able to participate in the Open Hearing held on 20 November 2003 which we found both informative and constructive. We look forward to further cooperation both on a formal and an informal basis as thinking develops and as CESR's work in this area begins.

As the representative body of the UK based asset management industry, IMA's members manage authorised investment funds (including UCITS), institutional funds (eg life and pension funds), private client accounts and a wide range of pooled investment vehicles. Their clients are from the UK and throughout Europe and the rest of the world. Authorised investment funds (including UCITS) represent some 10% of the total Euro 3 trillion funds under management for which IMA members are responsible.

We are members of both FEFSI and EAMA, the European representative bodies for investment funds and asset managers and have been actively involved in the preparation of the responses by those two organisations.

65 Kingsway London WC2B 6TD
Tel:+44(0)20 7831 0898 Fax:+44(0)20 7831 9975

www.investmentuk.org

In supporting the submissions by our European Associations, we would like to emphasise a number of points:

Asset and UCITS management in Europe

First, we believe that it is very important for CESR to understand exactly what is understood by the term "asset management" and the particularities of asset management and UCITS management. EAMA in its submission outlines the main activities as being benchmark and portfolio construction, asset allocation, stock selection, dealing and settlement.

These activities underlie a wide range of products and services, with UCITS being of greatest interest within the EU regulatory environment because they are the one financial services product which is defined in EU legislation. The UCITS directive uniquely focus on issues such as oversight and governance of the fund, diversification requirements, information to be provided to the investor, etc. which need particular attention. There are issues, therefore, which are of specific concern to UCITS management which may not be of concern to asset management and vice versa.

Asset management in the context of other financial services

It is important to remember that asset management activities also underlie life assurance and pensions products. It is, therefore, very important for CESR to maintain close contacts with their insurance and pensions counterparts. Such contacts are likely to help identify where the priorities for CESR in relation to asset management may arise (on which see below).

It is not entirely clear at this stage where responsibility for the comitology relating to capital requirements will lie in future. It is vitally important that asset management and the risks involved should be clearly understood by those making the decisions in this area.

Asset managers in CESR generally

It needs to be borne in mind that asset managers are already "investment firms" in the terms of the Investment Services Directive and thus already covered by CESR. As firms to whom, for example, ISD conduct of rules will be applicable it will be important for asset managers to be represented on groups which are established to consider such rules. Similarly, as clients of investment firms and users of markets asset managers will have important contributions to make in considering market structures, information provided by issues, etc.

We, therefore, believe that the priorities for CESR at this stage should focus on matters relating to the UCITS directive and on ensuring that the voice of asset management is heard in other areas such as the completion of mandates under the ISD.

CESR's activities relating to UCITS/fund management

Encouraged by the openness and transparency proposed by CESR, we would urge the Commission to ask CESR to become involved the work of interpreting the UCITS directive as quickly as possible. The Contact Committee has, as yet, not produced guidance on the simplified prospectus and on derivatives which are the top priorities in this area: we would urge CESR and the Commission to consider how these can be resolved as a matter of urgency. Similarly, we believe that the scope of the passport of asset management companies covered by the UCITS directive must be a top priority. For UCITS, consistency with other retail-orientated directives is also vital: we, therefore, believe that it will be important for CESR to focus on the impact of the Distance Marketing Directive and E-commerce Directive, and to have input into any other proposed horizontal directives such directives such as the Unfair Business Terms Directive.

As members of CESR will be aware, we at IMA commissioned research which was published in May 2003, the Heinemann report (see http://www.investmentuk.org/research/default.htm). This outlined the barriers to cross-border marketing of UCITS and we believe that this can provide importance guidance for the future work of CESR. In particular, we believe that CESR should focus on the registration requirements for funds, which impose considerable barriers and costs to cross-border marketing of funds. While a UCITS may have a passport, it can be very expensive and time consuming to gain the necessary visas for marketing in different Member States.

Other areas on which we believe CESR can have an important voice are in the facilitation of cross-border mergers of funds and in allowing pooling techniques to allow managers of both UCITS and institutional funds to achieve optimum economies of scale. IMA is working on all these areas, together with FEFSI and would be very pleased to share that work with CESR.

We similarly believe that if CESR wishes to facilitate the cross-border marketing of non-harmonised funds, they should consider how private placement rules might be aligned throughout Europe.

If CESR is to do anything in the area of distribution we believe that cross border activity would be greatly facilitated if there was more consistency around Europe in relation to quality of advice, adviser training, qualification and monitoring.

A framework for prioritising CESR's activities

More generally, we believe that it is very important for CESR to have a clear framework in which to prioritise its activities and that subsidiarity should apply in the sense that there should only be intervention at a pan-European level when there is a clear need. The main criterion that CESR should use, therefore, in considering whether it should intervene should be whether such intervention would contribute to the single market. Investor protection will clearly always be a major consideration in such a framework but additional vital elements should be the effect on innovation, on competition, on international competitiveness of the EU and on cost.

We believe that the items included within Group A of the consultative paper should be scrutinised carefully within such a framework before CESR embarks on work in the areas proposed.

Organisation of CESR's work

We very much welcome CESR's intention to involve practitioners in advising on its work. It becomes clear from the above analysis that the initial need is for advice on UCITS product issues and for the involvement of asset managers in other groups being established by CESR to consider mandates it is being given under other directives. We support the formation of a Consultative Working Group but we believe that careful consideration need to be given to its remit and that the balance of representation needs to be flexible. While UCITS issues are the main concern of CESR, expertise in this area will clearly be vital. As regards broader asset management issues, we believe that the main role for any Consultative Group will be advising CESR on priorities and ensuring that such priorities are fixed in line with the framework outlined above. In this sense; we believe that the Consultative Group should be feeding into CESR as a whole rather than just into the Expert Group.

Little reference is made to how the Expert Group will be appointed, other than the fact members of CESR will be asked to indicate candidates. We believe that it is very important that this process is open and transparent.

General comments on consultation

Our experience of this consultation has been that four weeks is a very short period in which to coordinate responses to consultations, particularly since there is a need for coordination both at a domestic and at a pan-European level. We would suggest that a minimum period of two months would be more appropriate for CESR consultations.

We thank CESR for its open approach and look forward to working closely with CESR in the future.

If there are any points on which we can elaborate further, we would be very pleased to do so.

Yours sincerely

Sheila A. Nicoll

Sheila A Nicoll
Deputy Chief Executive