



FEDERATION BANCAIRE DE L'UNION EUROPEENNE

Le Secrétaire Général

N°1067
COK

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Mr. Fabrice DEMARIGNY,
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Committee of European Securities Regulators,
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Brussels, 1 December 2003

Subject: The role of CESR in the regulation and supervision of UCITS and Asset Management activities in Europe

Dear Mr. Demarigny,

Thank you for the opportunity to comment on CESR's future role in the regulation and supervision of UCITS and asset management activities in the EU and for inviting the FBE to attend the public hearing in Paris on 20 November.

We broadly welcome the proposed treatment of UCITS and asset management within the framework of CESR's work as set out in the consultation paper. We are particularly pleased that CESR will work in parallel with the UCITS Contact Committee during the interim period before the extension of the Lamfalussy process is complete. CESR's commitment to open consultation with industry will allow market participants to play a more active role in this area than has previously been the case. For this reason we hope that the Directive to extend the Lamfalussy process will be adopted without delay.

Following on from the hearing on 20 November, there are a number of key points which are of concern to the European banking industry on which we would like some clarification. These relate both to the proposed areas of work set out in the consultation paper and to the organisation of CESR's work.

Areas of work

The FBE agrees that all the issues raised in Paragraph 2.2 of the Consultation Paper will be important elements of CESR's work on UCITS and asset management. In particular we support the commitment to supervisory convergence, harmonised implementation of the UCITS Directive and consistency with other Directives. However, we feel that it is perhaps too early to prioritise these points without examining the wider objectives of CESR's role.

A clear distinction must be made between the treatment of collective investment portfolios and of individual asset management. While the FBE supports consistency of regulation, we do not believe that this should lead to any attempt to put in place a uniform approach for individual asset management and collective investments. In fact, taking into account the specificities of individual asset management, a uniform approach would not be possible. The FBE fully supports CESR's proposal to work on both areas, however, for the above reasons, we believe that individual asset management and collective investments should be treated separately.

Furthermore, as long as Level 1 of the ISD is still in the finalisation phase and no mandate has yet been given to CESR for advice on Level 2 implementing measures, it is questionable whether there is a role for CESR in regulating individual asset management. Once a mandate has been issued to CESR on the ISD, the FBE feels that the work should begin with a fresh examination of the paper on Conduct of Business Rules prepared by FESCO and completed by the CESR Group led by Jacob Kaptein in 2002. While industry appreciated the consultation on this paper and welcomed many elements of the work, it is important that it be re-evaluated in the context of the new ISD.

Organisation of CESR's work

We welcome the proposal to establish an Expert Group and a Consultative Working Group of Market Participants to manage the work on UCITS and asset management. We are concerned that it is not entirely clear how experts will be appointed to the Consultative Working Group. In particular, as banks are active in both individual portfolio management and distribution of investment funds, we believe that their specific skills and expertise in these areas would provide a valuable contribution to CESR's work and that they should, therefore, be represented on the Consultative Working Group. In this respect, and taking into account the wide pool of expertise which it represents, the FBE would be pleased to provide you with the names of suitable experts.

The FBE fully supports the extension of the Lamfalussy process and the opportunity it will provide for more consistent and flexible financial services legislation in Europe. For this reason we welcome CESR's commitment to cooperate with, and ensure regular interaction between the three Level 3 committees as soon as they are in place. We also support CESR's commitment to

feed the work of the new Expert Group and Consultative Working Group into the UCITS Contact Committee during the interim period.

The FBE looks forward to following developments in this area and to providing input on future work. Should you have any queries please do not hesitate to contact me or Ms. Caitríona O'Kelly (c.okelly@fbe.be).

Yours sincerely,

Nikolaus BÖMCKE