8 February 2007

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

By email

Your ref
Our ref

Dear Sir

CESR's public consultation on the Passport under MiFID

Thank you for giving Threadneedle the opportunity to respond to the above paper. Threadneedle has over £70bn in assets under management (including significant sums through segregated portfolios), markets its services globally, and is a major UCITS cross border player managing over £17bn in UCITS and successfully marketing UK based UCITS into a number of EU jurisdictions. Threadneedle operates cross-border activities, has two ISD branches and operates cross-border into third countries from those branches. The proposals outlined in the paper therefore are of significant importance to Threadneedle given our experiences with cross-border and branch activities in different Member States.

In summary we are very concerned at the proposals that essentially leave it to regulators to agree the best way to supervise arrangements. This has the potential to leave Threadneedle having to comply with a number of differing arrangements, with the ongoing issues that raises around giving advice, providing training, undertaking monitoring, regulatory liaison etc. At an extreme Threadneedle may have a sales consultant marketing segregated services and UCITS to customers in the country of a branch and cross-border through a branch into a third country. Therefore he/she could be subject to three sets of marketing/conduct of business rules depending on which country he/she is operating in and the product/service being offered. Once you add in further branches the implications, and hence costs (including to Compliance resource to oversee), multiply. This cannot possibly make sense when the purpose of MiIFD is to set out a common harmonised conduct of business regime, and creates uncertainty for firms in trying to understand their obligations.

On one reading of the CP it seems it might be possible that different providers offering similar services, through the same branch activity, could be treated differently on a case-by-case basis. We trust this will not be the case.

We are further concerned that the proposed guidelines are voluntary, which could have major implications, and the timetable for putting this into place (particularly if any member States fail to meet the implementation deadline).

We set out some more specific responses to the CP below:

Q1	We agree.
Q2 & 3	The home state regulator should add a note to the confirmation of receipt of a branch application detailing that information is available on the host state regulators website.
Para 30	We do not feel this is workable or in the spirit of MiFID – see also main comments above

Q4	It will be a challenge not only in terms of agreeing the supervision arrangements but also regarding compliance with different sets of rules that require staff to be trained and supervised.
Para 38	The distinction between a) the system and controls environment for a branch and b) the way in which business is conducted may not be a clear one - this statement hits the nail on the head.
Q5	Yes, we agree. Other challenges: 1. What if a branch operates in three countries, e.g. Benelux from one office in the Netherlands? If UCITS COB rules are not brought in line with MiFID rules and UCITS COB still subject to local rules, this would create increased confusion. 2. What happens if some regulators do not follow these voluntary guidelines and what is the timetable for regulators agreeing amongst themselves?
Q6	It will create potentially unnecessary extra burdens in terms of training, additional supervision etc. to ensure compliance on the part of the firm.
Q7	Criteria could be used to measure success, but the most important question will be: is it going to work for firms, benefit customers, streamline firms processes and open the EU single market to them, or are there still barriers, practical implications and additional burdens for their daily business. If there is more than one regulator supervision a branch and more than one set of rules to follow, the answer will possibly be that it doesn't.
Para 49	We see a) as being the most practical. Option b) has many implications in terms of differing approaches of regulators, trying to monitor against another regulators implementation of MiFID, and potentially applying their standards rather than those of the other regulator. Firms may find themselves complying with the relevant regulators rules but having to defend themselves against another regulators interpretation of them or indeed that regulators own rules.
Q8	We are concerned that regulators may not work together and agreeing to make life easier for firms.
Q9	There will be many cases which require different solutions and not a one size fits all. However, if regulators need to negotiate individual cases, the sheer volume of negotiations would make this impracticable.
Para 60	Where a firm is unsure of what standards are going to be applied it may force them to try and comply with both sets of rules to be on the safe side. This could lead to a competitive disadvantage, increased regulatory costs etc. for no apparent benefit of the customers.

We have no specific comments on the rest of the paper and hope these comments are of help and would welcome the opportunity of discussing this with CESR.

Yours faithfully

Peter Grimmett
Head of Distribution Compliance

Cc: Investment Management Association, EFAMA