

CESR
11-13, avenue de Friedland
75008 PARIS

9th June, 2005

Ref: Clarification of definitions concerning Eligible Assets for Investments of UCITS

Sirs,

On behalf of **AFIC**, the French Private Equity Association, I am writing to submit our comments on your consultation paper for the ***Clarification of Definitions concerning Eligible Assets for Investments of UCITS***.

Given that this consultation paper does not specifically address the question of the eligibility of Private Equity funds for inclusion within the category of Co-ordinated UCITS, we consider that the question is raised incidentally.

For this reason, AFIC, as the professional association uniting and representing almost all of the Private Equity structures in France, would like to take this opportunity to inform you of its position on this subject.

Indeed, our position is conditioned by the fact that the current directives governing co-ordinated UCITS do not apply to the Private Equity activity nor do they provide for FCPRs (French Private Equity funds) to be considered as UCITS.

In order to ensure a clear understanding of our position it is necessary to consider our activities in the context of the current directives.

I. Co-ordinated UCITS do not apply to the Private Equity activity

Activities of Private Equity may be briefly described as follows:

- Investors subscribe to funds:
 - o Investors may be retail or professionals according to the definition provided in annex II of the MiFiD. If they are retail investors, general rules of collective security investment institutions ("OPCVM") only are applicable and not those for co-ordinated UCITS.

- o These funds can include various forms of organizations according to each Member State, such as purely contractual limited partnerships in Anglo-Saxon countries or FCPR, assimilated to collective security investment institutions (“OPCVM”) in France.
- The amounts collected by these funds are deposited with a depositary and managed by a portfolio company. Investors, depositary and portfolio companies are independent of each other. The portfolio company invests these funds in unlisted companies, as stated above.
- The funds, which have been subscribed, are called up as required: disinvestments and profits are immediately distributed to the investors and the fund’s life-span is limited.

These particular features clearly illustrate how Private Equity is very different from UCITS and supports AFIC’s position: **that Private Equity activity cannot be included within the category of co-ordinated UCITS**

II. Co-ordinated UCITS do not provide for FCPRs to be considered as UCITS

There are many reasons for excluding Private Equity assets from the category of co-ordinated UCITS:

- by their very nature: the Private Equity activity is, as its name indicates, a private activity in the sense that it addresses professional investors and those persons considered knowledgeable as defined by the regulations. Therefore, they are totally different in nature from UCITS that address the general public and their savings.
- the purpose of the UCITS directives is to implement a regime to protect the individual saver or retail customer. Whereas Private Equity is aimed essentially at experienced professionals and knowledgeable investors for whom their needs in terms of information and protection distinctly different to those of the retail client. For this reason, we consider that widening the scope of the UCITS directives to Private Equity will necessarily lead to rules and regulations governing investments, risk sharing and stockholding ratios, which are not adapted to the funds traditionally used in this activity.
- hedge funds do sometimes have recourse to Private Equity activity. The activity is founded on the behaviour of managers and the choices of investors in the funds. It cannot be considered as a usual mode of our activity and therefore, a fortiori, as a natural evolution of our activity. On the other hand, retail funds that are already constituted in some countries under the UCITS structure have already invested in Private Equity. Such activities must be maintained and, it should even be opportune to enable them to be better co-ordinated and sold throughout Europe.

The regime applicable to Private Equity under the current regulations is satisfactory and should be maintained. It is imperative to ensure that Private Equity assets are excluded from the category of co-ordinated UCITS in order to avoid any negative impact current operations that could lead to the disorganisation of the activity and its eventual disappearance.

Yours sincerely,

A handwritten signature in dark ink, consisting of a stylized 'J' and 'D' intertwined, with a horizontal line extending to the right.

Jean-Yves DEMEUNYNCK
Managing Director of AFIC