Submission via CESR Website

Mr Carlo Comporti
Secretary General
The Committee of European Securities Regulators
11-13 Avenue de Friedland
75008 Paris
France

31st March 2009

Dear Mr Comporti,

Draft content for response to CESR on Call for Evidence on Possible Implementing Measures concerning the future UCITS Directive

International Financial Data Services ("IFDS") provides a range of services to the collective investment scheme and ISA Management industry via three FSA-regulated companies. International Financial Data Services (UK) Limited ("IFDS UK") provides outsourced dealing and, in conjunction with International Financial Data Services Limited, registration services to collective investment products, supporting over 5.8 million accounts across 33 fund management companies (over 40% of the UK market).

IFDS was pleased to see the progress being made towards making UCITS IV a reality for the European funds industry, and is grateful for the opportunity to comment on the Commission's Request for Technical Assistance.

Should you wish to discuss any of our responses further please call me on 01268 444989. Alternatively please call Chris Selden, Head of Regulatory Business Development, on 01268 445725.

Yours sincerely,

Clive Shelton

Risk & Compliance Director

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Part I: Management Company Passport

At this stage we will limit ourselves to offering some fundamental comments. We look forward to being able to offer more detailed comments on the proposed implementing measures, once drafted, drawing on our experience in fund administration and as a fund manager.

Our core comment is to recognise that material produced to implement MiFID represents a significant platform on which Level 2 measures for UCITS IV can be built. As you will be aware, the UK's Financial Services Authority applied many of the MiFID measures across the broad financial services industry – including the collective investment undertakings and pension funds (and their respective managers) that MiFID itself excluded. We have not experienced significant difficulty as a result of this decision; the application of a small number of the rules was unclear in the context of collective investment undertakings, but was readily worked through by firms, trade bodies and the regulator.

As such, we consider that implementing measures on various matters might be little different from those agreed and established for MiFID. It would appear that the various Sections of MiFID (in particular those in Chapter 2 – Operating Conditions) are applicable to UCITS and the parties related to them. This includes market transparency and investor protection material in addition to those addressing the conditions for authorisation. As such, the Level 2 measures under each Directive will be comparable in many respects. CESR will naturally need to ensure that, when drawing MiFID material across to the UCITS regime, it does not create overlap with existing UCITS provision – or make the Level 2 material more substantial than is necessary to enable the management company passport to be operable.

At the same time we recognise that, as MiFID excluded collective investment undertakings and their managers, the detailed discussion of those implementing measures would not have considered the interactions of different parties to a collective fund. Some change to the existing MiFID wording may therefore be necessary, though we would urge CESR to minimise change at Level 2 if the UCITS-specific implications can be met through Level 3.

In the same way that MiFID sought to create a Europe-wide approach to conduct of business, the intention here must be to deliver an environment in which the consumer can have trust that the fund is run in their interests. Clarity and transparency over the collection of fees and any onward payment of fees to other parties (e.g. commission payments) is therefore relevant – particularly given the current economic conditions. The "Trade Confirmation Information" defined under MiFID should be assessed from this perspective. With this foundation of fairness established it should be possible to build the pan-EU framework that will deliver the economies of scale necessary to take the European funds industry to the next level.

Delivering these scale economies requires that firms are able to delegate performance of functions to specialist outsourced service providers. We consider that the MiFID material on outsourcing (Section II of the Level 2 Commission Directive) provides a solid basis for framing delegation and outsourcing measures – including the clear permission to retain service providers located in third countries.

Article 15 of the MiFID Level II Commission Directive enables investment firms to outsource freely to a third country any function other than portfolio management – and specifically enables such delegation of portfolio management provided certain requirements are satisfied.

We leave it to CESR to consider the appropriateness of delegating UCITS investment management to a third country, and to define any additional controls necessary for this purpose.

As regards any other collective portfolio management function (Annex II) we consider that UCITS and their management companies should be able to delegate operational performance to a third country. Such delegation to third countries might therefore include any or all administration functions – including (but not limited to) unit issues and redemptions, maintenance of the unitholder register, contract settlements, and distribution of income.

Part II: Key Investor Information

We recognise that further consultation will be held on this topic, but offer some comments on KII.

In creating KII it is important to retain a focus on the purpose of the document: to deliver clear, readily comparable information to prospective investors on a small number of key points. We understand KII to be a comparative tool for the consumer rather than a marketing tool of the firm. Therefore, while IFDS generally favours a regulatory framework that enables flexibility rather than prescribing a set approach, we consider that for KII to be successful in meeting its objective will require a high level of harmonisation.

This goal of comparability suggests that standardised responses to pre-determined questions might be considered, enabling an investor to readily identify the differences between two similar products. However, we recognise the scale of such a task. Committing to such a level of harmonisation might represent an inefficient use of CESR's resources – given the need to maintain the schedule for implementing other UCITS IV requirements. We therefore make the following comments on the basis that KII will be harmonised in approach and content areas rather than in specific comparable wording.

In this context we consider "signposting" within the KII (per page 19 of the Commission's Provisional Request). We believe that signposts represent a valuable tool for focussing the KII. Questions and responses can be kept brief, with the investor informed where related information might be found in other scheme documentation (such as the Scheme Particulars or Key Features Document). However, it will be important to prevent KII becoming an abbreviated version of such existing documentation. Determining the correct set of key information areas is the first and largest task – and if these are not correctly defined the merit of KII could be undermined. The second task is to ensure that the responses provided by firms according to those definitions enable investors (potentially from any EU Member State) to readily compare the comments recorded by firms in respect of those key items.

As regards Article 78 ("The essential elements shall be understandable by investor without any reference to other documents") we consider that this should not prevent signposting. We believe it should be possible to frame question topics that can be answered in clear language to give investors sufficient information to answer the question. Signposting is then a means by which the investor can look beyond the KII in order to understand more fully the behaviour of a given fund.

KII must not be looked upon as providing all information of which an investor should be aware; slipping into such an approach will increase the length of KII and repeat various outcomes of the Simplified Prospectus. Rather, KII addresses only certain topics – those determined to constitute Key information. We see KII assisting investors to down-select possible investment options. However, we do not see KII as being material to making their final investment decision, as we do not consider the document could hold sufficient information to satisfy the requirements of other Directives (e.g. the Distance Marketing Directive).

Given this situation we are sure that KII should be deliverable by a range of e-media, and consider that requiring paper-based delivery would be a poor outcome for the industry. Given that KII is a comparative tool we would further question whether it is necessary to require the "durable medium" approach for delivery. Management companies would still produce paper copies of KII for those investors who required such delivery.

In our view the Management Company should be able to make the KII available via its website for the investor to download or view, without the firm being required to maintain a detailed record of investor access. At most, a tick-box on application forms (whether paper-based or electronic) should be sufficient, enabling the investor to confirm that they had read the KII.

Part III: Fund Mergers, Master-Feeder Structure, and Notification Procedure

Our focus on these matters is ensuring there is clarity for firms to schedule, plan, and implement the administrative processes necessary to implement these events. We would urge CESR to uphold the intention of the Level 1 Directive that the interaction between Regulators is not able to result in unexpected delays, or protracted delays without due engagement and dialogue to bring about resolution.

The need for firms to maintain investor confidence when recommending and proposing mergers, and the alignment of marketing campaigns etc. when preparing to market cross-border, requires that the necessary steps on the processes be clear about the expectations of the relevant Regulators, and their powers / obligations in respect of approving or denying the action.

Defining the time periods for each phase of the approval / notification processes is important to efficient implementation. Given CESR's work to date to bring these measures into reality, it is important that the Level 2 (and any subsequent Level 3) measures deliver a means by which firms can efficiently and effectively employ these new processes.