Deutsche Börse

Mr. Fabrice Demarigny
Secretary General
Committee of European Securities Regulators
11-13, avenue Friedland
75008 Paris

France

November 21, 2005

Response to CESR/ 05-619;
CESR's draft advice on clarification of definitions concerning eligible assets for investments of UCITS – 2nd consultation paper

Dear Mr. Demarigny,

Thank you for the opportunity to comment on CESR's second consultation paper on clarification of definitions concerning eligible assets for investments of UCITS.

We generally support further development of the European fund industry. Deutsche Börse Group has contributed to this success by offering innovative products on Eurex and developing a cost-efficient custody and settlement service for fund distribution via Clearstream. Furthermore, Deutsche Börse Group operates the leading European platform (XTF) for trading Exchange Traded Funds (ETFs).

We think it is essential to elaborate a well-balanced scope of eligible assets to allow market participants to offer innovative products for further development of the European fund industry.

Yours sincerely

Dr. Stefan Mai	Jens Moericke
Director, Head of Market Policy	Market Policy

Appendix - Specific questions raised in consultation and comments

Clarification of Art. 1 (8) (Definition of Transferable Securities)

> Q 1. Do you agree with the approach as suggested in Box 1?
>
> Please give your view on the possible impacts of the proposed approach to your activity/ more broadly to the UCITS market, based on your experience.

Deutsche Börse Group basically agrees with the approach as suggested in Box 1. In this context, we would like to draw CESR's attention to the special constellation of Euro GC Pooling. Within a Euro GC Pooling transaction a credit institution buys a basket of transferable securities. The seller owes no specific class but a group of classes of transferable securities which are defined within the basket. The single transferable security will be concretised within the settlement. In our view there is no difference if the participant invests in a single transferable security or in a basket of transferable securities. If there is a need for further clarification, we would welcome a consideration within the advice on eligible assets.

The eligibility of derivative instruments on financial indices

> Q 14. Do you agree with the approach as suggested in Box 14?
>
> Please give your view on the possible impacts of the proposed approach to your activity/ more broadly to the UCITS market, based on your experience.

Deutsche Börse Group basically welcomes the UCITS compatibility. We think it is essential that financial indices should fulfill the following criteria to assure transparency and stability:

- Transparent and comprehensible body of rules and regulations
- Monitoring of the indices as well as the body of rules should be restricted to independent entities, e.g. stock exchanges, independent index providers
- The instruments of the index should be visible and tradable

We think the definition should be open ended to guarantee further development of the financial indices, especially with regard to innovative product, e.g. volatility futures.

Index replicating UCITS

Q 17. Do you agree with the approach as suggested in Box 17? Please give your view on the possible impacts of the proposed approach to your activity/ more broadly to the UCITS market, based on your experience.

Deutsche Börse Group is of the opinion that an index tracking fund should replicate an index as accurately as possible. Causes and costs (e.g. management fees, trading fees, costs of financing, liquidity costs, etc.) which could be the reason for a tracking error should be made transparent within the prospectus. Furthermore, we think that index-replicating UCITS should be restricted from taking speculative risks which could endanger their aim to replicate the performance of an index as close as possible.

We generally support the use of derivatives, or any other techniques and instruments as referred to Art. 21 (2).

Q 18. Do you agree with the approach as suggested in Box 18? Please give your view on the possible impacts of the proposed approach to your activity/ more broadly to the UCITS market, based on your experience.

We want to draw CESR's attention to the growing ETF market and its product innovations. In particular, we refer to the problem how a single-issuer index can be replicated in accordance with the UCITS Directive. We think that a risk-based measurement system[1] (market risk, issuer risk) would be a transparent way to promote those innovative products. Therefore, we would support an adjustment of Article 22 a UCITS Directive.

[1] See also Deutsche Börse Group's response to the European Commission's Green Paper on the enhancement of EU framework for investment funds COM (2005) 314