IMA RESPONSE TO CESR'S CONSULTATION ON THE MANDATE FOR THE EXPERT GROUP ON INVESTMENT MANAGEMENT

IMA represents the UK-based investment management industry. Our members include independent fund managers, the asset management arms of banks, life insurers and investment banks, and occupational pension scheme managers and are responsible for the management of over £2 trillion of funds (based in the UK, Europe and elsewhere). We therefore welcome the establishment by CESR of an Expert Group on Investment Management and CESR's clear recognition of the importance of understanding the specificities of the investment management industry.

IMA appreciates CESR's openness in consulting on the work programme and the priorities for future work in the area of investment management. Broadly speaking we agree with the priorities outlined in the consultation. However, we would like to make the following specific points:

Areas of work with urgent priority

We fully agree with CESR that the transitional provisions and the definitions of the UCITS directives are the first priority. And while we appreciate CESR's recognition of the urgency of many of these issues and of the need to prepare guidance before March 2005 where possible, the practical reality is that March 2005 will be too late and every effort needs to be made to get guidance out earlier.

One of the "transitional" issues which needs urgent attention is the treatment of UCITS1 umbrella funds which have launched sub-funds after February 2002. We understand that certain Member States, principally France, Belgium and Spain, now require new sub-funds seeking authorisation after 13 February 2004 to be UCITS3. This means that the entire umbrella fund would have to be converted to UCITS3 since a single umbrella cannot contain both UCITS1 and UCITS3 sub-funds.

We fear that this issue is being looked at from a legalistic point of view and does not take into account the intention of the legislation or the commercial implications and is without any investor protection justification. The ability to launch new sub-funds in response to demand or changes in market conditions is an integral part of normal business operations. The above interpretation will force firms to alter their timetable for conversion to UCITS3, in many cases at considerable cost. Given all the sub-funds are either compliant with the existing rules or with the new ones, there are no investor protection issues raised. Conversion from UCITS1 to UCITS3 is an administrative rather than an investor protection issue. In fact, operators of single entity funds can keep their UCITS1 funds to convert at their convenience while launching new and separate UCITS3 funds alongside as the need arises. This therefore effectively serves to discriminate against operators of umbrella funds without any regulatory justification.

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Another major issue is the simplified prospectus and how different Member States are approaching this issue. While certain Member States including the UK have for understandable reasons not produced any rules, this raises a question mark over where that leaves managers who are likely to be required to produce a simplified prospectus for export purposes.

In addition to the transitional issues, we believe that work on simplifying registration requirements is a priority and should be brought forward as early as possible. The registration process can be extremely expensive and time consuming. A member firm of IMA recently reported having to spend in excess of €100,000 to register its umbrella UCITS in one particular Member State. The registration process was intended to satisfy the legitimate interest of regulators in understanding the marketing plans of the investment managers, on the assumption that investment managers would make *direct* sales of UCITS to the general public. However, in actual fact direct sales are highly uncommon – investment managers predominantly sell UCITS *indirectly* through third party distribution networks, such as banking, insurance and IFA networks, and funds of funds platforms. Since those third party distributors are primarily responsible for marketing the UCITS and subject to local marketing rules, it is hard to understand the market failure that the registration process is supposed to correct, and therefore hard to justify the expense. As the Commission's Expert Group on Asset Management acknowledged, the registration process is a key barrier to cross-border fund distribution and should be replaced by a simple notification procedure.

Areas of work by the end of 2005

We suggest that areas of work to be completed by the end of 2005 not be initiated until CESR's advice on the urgent priority areas identified above is resolved.

In terms of common approach to non-harmonised funds, rather than preparing the ground for common view of certain issues such as prudential rules, we would suggest CESR focus on standardising the private placement rules which would widen the scope for cross-border distribution of a range of products – including both some harmonised and non-harmonised products. We believe certainly in the short to medium term that this is a more appropriate approach than a product-focused approach to non-harmonised funds. The Commission Expert Group on Asset Management also recognised the harmonisation of private placement rules as a potential means of broadening cross-border sales.

We also agree and appreciate that to be useful work on conduct of business rules and outsourcing has to be fit with the timetable for MiFID.

On outsourcing we need to ensure that regulatory intervention is limited to that which is required to ensure integrity/investor protection.

Areas of work by early 2006

Although fund mergers and pooling techniques are mentioned in the introduction to the consultation paper (paragraph 1.2) as areas that the Expert Group should consider, there is no reference to them in the proposed work programme. These are major issues – identified in both the Heinemann work and the report of the Commission's Asset Management Expert Group and potentially of considerable benefit to investors in terms of competitiveness and value for money of European funds. Pooling and fund mergers are two different ways of curbing the proliferation

of funds to allow investment managers to achieve cost efficiencies and increase economies of scale.

Pooling allows multiple fund ranges to be managed as though they were one. While pooling is permitted within certain Member States, the absence of a suitable regulatory framework makes it difficult to pool the assets of European investment or pension funds on a cross-border basis.

Mergers would allow investment managers to reduce the number of investment funds in their portfolio. The absence of a legislative framework for merging investment funds and re-domiciliations on a cross-border basis has effectively prevented fund rationalisation. Regulatory barriers, discriminatory tax treatment or merely the excessive costs of achieving a merger continue to prevent mergers on a cross-border basis.

While work in these areas is not solely within CESR's gift, certain aspects might be addressed by CESR. For example, certain IT-based pooling techniques are permissible under the existing UCITS Directive, and can be used to pool the assets of sub-funds within an umbrella fund. CESR might provide a forum for regulators who authorise the use such pooling techniques to share their experience with others. We believe that this work should be undertaken ahead of any work on the convergence of supervisory systems.

We hope these comments are helpful. We are of course very keen to work closely with CESR as it carries forward its work in the field of investment management.

Yours sincerely,

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