

The Committee of European Securities Regulators
11-13 avenue de Friedland
75008 Paris
France

28th November 2003

Dear Sirs

Consultation Paper – The Role of CESR in the Regulation and Supervision of UCITS and Asset Management Activities in Europe

Merrill Lynch Investment Managers (MLIM) is a global investment management company with US\$473 billion under management including over US\$100 billion in the EMEA region. As a division of Merrill Lynch & Co., Inc., one of the world's largest financial services firms, MLIM has access to an unrivalled range of world-class products, market intelligence, services and technology resources for the benefit of its clients.

MLIM offers a comprehensive suite of investment management services for both domestic and international clients. We offer a wide range of specialist investment services including global, European, North American and Asia Pacific equities, global, European, North American and Asia Pacific fixed income, cash management, real estate, private equity, passive management, quantitative, hedge funds, transition portfolio management and strategic asset management.

We currently manage assets for 27 of Japan's top 50 corporates, 29 central banks and government institutions across six continents, and over half of the UK FTSE 100 companies. MLIM has over 2,700 employees in 17 countries.

MLIM is a 100% owned subsidiary of Merrill Lynch, a publicly traded company on the New York Stock Exchange with an estimated US\$26.1 billion of total stockholders' equity.

Specific comments on your paper are as follows:

Section 1 - Background

We very much welcome the foresight and contents of this consultation paper. The extension of the 'Lamfalussy procedure' to UCITS provides opportunities for the investment management industry to communicate its views regarding changes to the regulatory environment and presents a formalised process, which is easily understood and accessed. Another positive development is the increased transparency associated with the 'Lamfalussy procedure'. Suitable transparency has been distinctly lacking from the current UCITS III Contact Committee and has been a source of concern for us. We believe that this has created significant uncertainty and confusion, having a negative impact on the industry.

We therefore fully support CESR's plan to start working in the area of UCITS and agree that this work should start as soon as possible to ensure an effective and efficient hand-over of responsibilities from the UCITS Contact Committee.

Section 2 – Areas of work by CESR in the asset management activities

At the highest level we believe that CESR should look to address the fundamental flaws that have originated from the inconsistent way Member States have interpreted and implemented UCITS ever since its introduction, and the fact that these inconsistencies now impair the implementation of UCITS III. Examples are as follows:

1. The barriers preventing the free distribution of UCITS funds across all Member States, which should be enabled through recognition of funds' home state passports. Such distribution has been impaired by certain Member States' requirement to be provided with additional documentation unique to that Member State prior to registration.
2. The significant delays in approving Prospectus documentation which has already been approved in other Member States. We believe that these inefficiencies work against the interests of investors and Member States, who stand to benefit from greater choice, efficiency and accessibility offered by the passporting process.
3. As a connected issue, we are very concerned that Management Company passporting under UCITS III has been rendered impossible by the interpretation that the Management Company must have the same domicile as the funds.
4. Lack of common interpretation within Member States. The introduction of UCITS III has brought about the need to re-create common ground in this area, which had been built up over a number of years round UCITS I. It seems to us that the more significant issues faced by the Contact Committee have been attributable to fundamental differences in interpretation by Member States. Delays in achieving a common understating of the requirement for Simplified Prospectuses are a prime example.

While we would envisage that the activities of CESR should contribute considerably to achieving common standards, we believe that it is essential that there are effective enforcement procedures in place. The current enforcement procedures, and time taken to achieve resolution, acts as both an incentive for Member States to continue with their historic non-compliance and a disincentive for parties looking to initiate proceedings.

3. Organisation of CESR work

As has rightly been recognised in the consultation document, it is crucial that CESR is fully resourced to deal with its new responsibilities and we welcome the allocation of a permanent member of staff to deal with these issues. We would however suggest that CESR may find the workload too much for just one staff member. We also welcome the setting up of both an Expert Group and a Consultative Working Group and would be happy to provide assistance to either of these Groups.

We note that in the Commission's recent press release (IP/03/1507), the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS) has been established in parallel with CESR. Because much of the investment management industry operates both public mutual funds and pension fund products on common platforms, we strongly believe that CESR and CEIOPS must continuously and extensively communicate and co-ordinate to achieve the necessary consistency on asset management issues.

Yours faithfully

Geoffrey Post
Director