

CESR
11-13 Avenue de Friedland
75008 Paris
France

17 December, 2004

Dear Sir

A response to the Second Consultation paper on the first set of mandates regarding possible implementing measures for the Market in Financial Instruments Directive.

Introduction

Morley Fund Management is a wholly owned, independently managed UK institutional asset management business of Aviva plc, which is one of the world's largest financial services groups with over £240bn of assets managed worldwide

General Points

We congratulate CESR on its open consultation on this issue.

We deplore the absence, albeit necessitated by lack of time, of any attempt at meaningful Cost Benefit Analysis.

We feel that the Level 1 Directive contained more detail than is ideal under the Lamfalussy process. We are of the opinion that European-wide directives should retain as much flexibility as possible by sticking to principles wherever possible and avoiding too much prescriptive detail. Such detail should be left to the national implementation stage, with regulator liaison, to ensure sufficient international consistency.

Specific Points

The independence of compliance

We support CESR's second option, giving firms the option of keeping compliance in-house with suitable controls as opposed to the enforced outsourcing of compliance.

Record keeping and burden of proof

CESR should make it clear that there is no reversal of the burden of proof, and that all this section is doing is imposing a requirement to keep adequate records.

Outsourcing

The requirement that delegation may only be made to non-EEA firms if a formal arrangement is in place between the regulators, allowing the exchange of information. There is currently no Memorandum of Understanding between the UK FSA and the SEC in the USA or the Japanese FSA. It is hoped that this will not hinder outsourcing of investment management to these countries. We would thus support option c) as being the most flexible.

Yours sincerely

Bindesh Savjani
Head of Compliance and Business Risk