



ASSOGESTIONI

associazione del risparmio gestito

Rome, 8th December 2004

Mr. Fabrice Demarigny
Secretary general
CESR – The Committee of
European Securities
Regulators
11/13 Avenue de Friedland
75008 Paris

Re. 1063/04

Dear Mr. Demarigny,

Re: CESR guidelines for supervisors regarding the transitional provisions of the amending UCITS Directives (2001/107/EC and 2001/108/EC)

Reference: CESR/04-434

In response to your invitation for observations and comments, this Association wishes firstly to thank you for the opportunity afforded to it.

Assogestioni is the Italian association for the fund and asset management industry and its members, who manage assets valued at over 900 billion euro, are directly affected by the regulations under consultation.

Assogestioni would like to express its appreciation of the work carried out by CESR. We feel that the proposed guidelines are an effective answer to the need to offer a consistent application of the Directive's provisions in the individual Member States.

On this point and with reference specifically to the questions put in the consultation document, we agree with the proposals for the "Transitional treatment" (sub Sect. C) and "European passports" (sub. Sect. D). In relation to the latter, however, we wish to make a few remarks on the questions included in paragraphs 2, 6 and 8.



With reference to the questions found under paragraph 6, this Association feels that the preferable solution is that of option B (according to which “only a product passport and no management company passport should be required if a management company only wishes to distribute UCITS managed by itself in a host Member State). This solution not only greatly simplifies matters but also lowers the related administration charges, and does not involve any alteration of the minimum safeguards upon which mutual recognition is based. In fact, the information required by the rules concerning the *modus operandi* of a management company in the free provision of services would in any case be given to the relevant Authority as part of the product marketing procedure.

As for the question put under paragraph 6, we agree that it would be fitting for the European Commission to intervene and clarify whether *an open ended investment company* can designate *management companies* that have their registered offices in another Member State.

Not all the Member States agree on this issue, as indeed the consultation document states. The Italian Consolidated Finance Bill (*Legislative Decree 58/98*), for instance, has been modified for the purpose of granting *open ended investment companies* the right to designate *harmonized management companies* authorized in other EU countries. This option, which appears in line with the objectives behind the creation of the European passport represents, in our opinion, the preferred solution. Nevertheless, we feel that the question cannot be left to the CESR but must instead be solved by the relevant institutions of the Community. It is our belief that the European Commission could at the same time take the opportunity to assess the issue of the possibility of a management company setting up investment funds in another Member State.

With reference to the issue raised in paragraph 8 regarding the possibility of considering the distribution of *third party fund* as included in the business object of a *management company*, Assogestioni agrees in full with their analysis and with the motivating factors set out by the CESR in the consultation document. In support of these motivating factors, it could be added that recognizing this option would lead to a more rational exploitation of the economies of scale and organizational synergies that the market offers with positive fallout in terms of cost reduction.

We remain available for any clarification that may be necessary.

With kindest regards,

The Director General