



ASSOGESTIONI

associazione del risparmio gestito

Roma, 3 marzo 2005

Mr Fabrice Demarigny
Secretary General
CESR –The Committee of
European Securities
Regulators

Prot. N. 167/05

Dear Mr. Demarigny,

Re: CESR's Draft Technical Advice on Possible Implementing Measures of the Directive 2004/39/EC on Market in Financial Instruments- Admission of financial instruments to trading on regulated markets (Ref.: CESR/05-023b)

In replying to the invitation contained in your consultation document to produce observations and comments, the undersigned Association wishes first of all to thank you for the opportunity you have accorded us.

Assogestioni is the Italian Association of the Investment Management Industry and our members, who manage assets to a countervalue of over 900 billion euro, are directly concerned by the regulations subject to consultation, both individually and collectively.

The following comments refer exclusively to the subject of *admission to trading of quotas in mutual investment funds*. Before responding to the specific questions raised by the CESR we wish to make the following preliminary observations.

Firstly, we agree with CESR's decision announced during the first consultation to amend the classification of financial instruments in order to bring it into line with the provisions of the MiFID Directive (hereinafter: the Directive).

We also welcome the greater detail afforded to the provisions on the admission to trading of complex financial instruments such as derivatives and "other instruments" set out at letter c) of article 4(18) of the Directive. Unlike other financial



instruments, derivatives and other instruments provided for by Article 4 are not regulated by any Community Directive, or any regulation, at any level, to which reference can be made with regard to the structure rather than the content of relations arising from admission to trading in a regulated market (as is possible with regard to other instruments: for example the Prospectus Directive, the Transparency Directive, the Market Abuse Directive, the various company directives, and more specifically to the industry that we represent, the UCITS).

Secondly, in relation to verification of compliance by issuers of financial instruments admitted to trading in a regulated market of initial, continuous and *ad hoc* notification requirements (Article 40, paragraph 3) we believe it is appropriate for the CESR to expressly require that, in the event of admission without the issuer's consent, adequate communication mechanisms exist between the various markets involved so that no obligation is incumbent on the issuer beyond those already met for the market in which the instruments are traded on its request (Articles 14, paragraph 6 and 40, paragraph 5 of the Directive).

With regard to the admission to trading of units of a mutual funds, we can, at this stage, only limit ourselves to appreciating their inclusion in the draft technical advice. We are in fact convinced that the characteristics of this type of financial instrument require *ad hoc* regulation.

This stated, as we await the specific measures of the CESR Expert Group on Investment Management with respect to the characteristics of each fund type, we wish to stress the desirability of prior consultation with market participants.

Meanwhile, with respect to the contents of the technical advice set out in the consultation document, we have misgivings about the requirement that regulatory provisions must provide, *inter alia*, for sufficiently wide distribution channels in order to ensure a thriving market (cf. paragraph 15, second hyphen, both in relation to open and closed funds). It would seem preferable to include this possibility within the category of mutually interchangeable mechanisms, in which the following are enumerated: operations of a market maker, an adequate number of quotas and methods for their reimbursement provided for by the management company.

We are at your disposal for any further clarification.

With kindest regards.

The Director General