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Comments by Carlo Comporti, Deputy to the Secretary General, CESR, at the break-out session for asset management

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I am honoured to speak to such an important and stimulating Conference. I thank the Commission for their kind invitation.

I am very pleased, as representative of the Committee of European Securities Regulators (CESR), to present the views of regulators about the current and future European regulation on asset management. These remarks are structured in three parts: the first on the scope of CESR activities; the second on our programme and the third on how to achieve this programme and finally some thoughts for the future.

1. I will start by saying that CESR recognises indeed the very important role that the European asset management industry plays for Europe's economy and financial markets. Regulators follow closely the developments of this sector, knowing that an appropriate system of regulation and supervision should strike the right balance between the essential needs of investor protection and the necessity to avoid stifling financial innovation.

The report of the Forum Group on Asset Management is a good basis for listing problems and boundaries that still exist in this area hindering the single market to be fully functional, and also discussing the broader ways how to structure future European legislation concerning asset management.

The Group has shown analytical criticism regarding the practical implementation and functioning of the UCITS Directive in Europe. I think we all can concur that the UCITS Directive and the



possibility to market investment funds cross-border has been a great success of the single European financial market, one that has affected significantly also to retail investors in the Member States. However, there is still a lot to do to get the single market fully functional concerning investment funds, and CESR is from its part willing to work hard to achieve this common goal.

In the report of the Forum Group a role is indicated for CESR as an actor concerning almost every single issue raised by the Group. We are of course grateful of this sign of trust towards CESR and its activity.

2. CESR has itself very recently taken an active role in the field of asset management by setting up an Expert Group on Investment Management to deal with the broad area of asset management. This decision went in parallel with the transfer of competences from the previous UCITS Contact Committee to the ESC and CESR. The scope of our work covers both individual and collective investment management, the latter one including both harmonised investment funds (UCITS) and non-harmonised funds. CESR wanted to cover the broad so-called “buy side” and not to concentrate solely on investment funds. In so doing CESR has followed the request from the European Parliament to address issue related to hedge funds: I am referring to the Purvis Report. However our competence is limited, since it doesn’t cover pension funds and life insurance products, which fall under the competence of the Committee of European Insurance and Occupational Pensions Supervisors (CEIOPS). So a fully functional approach to the “buy side” is regrettably not possible at present. Nonetheless, CESR is in close contacts with the other Level 3 Committees (CEBS and CEIOPS) to coordinate initiatives which affect issues of common interest.

The last CESR meeting on 3 and 4 June in Amsterdam adopted a mandate for the Expert Group, so our work on these issues has just started. A Consultative Working Group consisting of market participants has been set up to provide technical support and advise the CESR Expert Group.

3. I have been asked to outline preliminary reactions to the report and I think a good way to do that is to analyse how and to what extent the report coincides with CESR’s own work plans. I am happy to say that CESR has already taken on board in its work-programme many areas raised in the report under discussion today, of course within the limits of the competences granted to CESR.

The Forum Group has raised the question of effective implementation and enforcement of relevant EU rules such as the UCITS Directive. CESR has decided, that the most urgent priorities for its work on investment management are the transitional provisions of the UCITS Directive and clarification of definitions of this Directive. The latter one must be based on a future Level 2 mandate from the European Commission. These issues cause problems for the every-day business of asset managers throughout Europe, and must be addressed immediately with joint efforts by the Commission and the CESR, receiving also input from the industry.



The Forum Group has identified the fund registration process as one of the key barriers to efficient cross border fund distribution, and required simplification. It is indeed true, that the requirements for fund registration (e.g. which documents have to be presented) differ from market to market. Following the work to be done regarding the transitional provisions of the UCITS Directive, which will already affect significantly the registration process, the CESR Expert Group on Investment Management will conduct additional work on this area to develop consistent standards for the registration requirements to streamline the registration process.

The Forum Group has pointed out that a shared European commitment to high levels of investor protection and corporate governance is needed, including issues related to conflicts of interest, internal organisation of service providers, advice, best execution principles etc. CESR is currently preparing the Level 2 advice on the mandate under the FIM Directive for the Commission regarding these and many other issues, and the consultation on this draft advice will continue until Mid-September. Our Expert Group will first contribute to this work under the specific perspective of investment management and then will consider whether it is necessary to develop specific standards at level 3 for collective investment management.

The Asset Management Forum Group has pointed out that the fragmented national legislation on non-harmonised funds prevents these funds from taking advantage of single EU-wide marketplace. CESR has decided that it will make an inventory on the non-harmonised collective investment schemes which are marketed throughout Europe. On the basis of the inventory, which will prepare the ground for a common view of certain issues such as prudential rules or rules on adequate disclosure, CESR will draft a common approach to non-harmonized funds (hedge funds, real estate funds, private equity funds, also in relation to the specificities of closed-end funds) by the end of 2005.

The Group has pointed out a need to resolve inconsistencies between different directives, particularly regarding the relationship between sector-related directives and horizontal or cross-sector directives. CESR will indeed work on the clarification of the interaction between the several relevant EU Directives (UCITS, FIM, E-Commerce, Distance marketing) and will prepare draft guidelines for supervisors by early 2006.

The Asset Management Expert Group has also emphasised the need for arrangements for ongoing and efficient cooperation between supervisors, to enable national supervisors to work together to develop common approaches to implementation. CESR has decided to work on the convergence of supervisory systems to achieve more efficient and effective communication between regulators and also to ensure a more consistent regulatory response to issues that may arise.

So all in all you can see that several issues raised by the Group are now in CESR's working programme. For the remaining issues in the report I can say, that they include many good projects,



but everything can't be done at the same time, also CESR has to prioritise between issues. Many of the issues mentioned are also out of CESR's competence, including questions related to taxation, or require new European legislation and fall for that reason to the European Commission and its right of initiative. It will be very interesting to see the new Commission's legislative agenda later on this year.

All these initiatives will require efforts, energies and time. Some of our activities, directly or indirectly, involve EU Institutions, such as the short term priorities where some work will be based on Level 2 mandates by the Commission and the medium term priorities where the Parliament asked for interventions in the field of hedge funds. All activities involve market participants, with whom we will conduct extensive dialogue and consultations. Some of the long terms priorities, and in particular the convergence of supervisory systems, will be a typical level 3 exercise where all functionalities of the network shall be explored. On this area we just started compiling the results of the various investigations conducted to detect eventual mispractices in the collective investment activity.

4. Coming to the end of these brief remarks, I would like to look at the future.

The Forum Group discussed the different possibilities to structure future European regulation concerning asset management, whether to base on the existing legal framework or to develop a stand-alone asset management pillar in EU legislation.

From CESR's point of view I can agree with the analysis of the report stating that whatever the approach or scope of the new legislation will be, it should be based on the Lamfalussy approach. This is the model that should be applied systematically to all European securities legislation, including UCITS.

The current UCITS Directive as it stands after the latest amendments is not a real Lamfalussy Directive. Level one, the Directive itself, is full of details with numerous investment limits and the scope of comitology in the Directive is very limited. This makes it difficult to adjust the legislation to new product innovations and the developments of the markets. I think we all can agree on the need to review in some timeframe the structure of the UCITS Directive.

From the positive experience of the adoption of the implementing measures under the first two directives following the Lamfalussy process, and from our initial activities in the field of investment management, we believe that the sector of asset management would sensibly benefit from adjusting the UCITS Directive to the Lamfalussy process. This will allow the regulatory system to exploit the full flexibilities offered by the process to address, in particular, the requirements of financial innovation and market changes. The revision of the UCITS Directive should also ensure full consistency with the rules applicable to the provision of investment services.



In connection to that a big question arises on whether the future regulation in this field should still be based on product regulation or should we move to regulation based on the services – so a functional approach. Even if the latter, at first sight, seems to better respond to the needs of avoiding regulatory arbitrages across sectors ensuring that the same functions are treated in the same manner irrespective of the entity performing these functions, any future regulation could not neglect the regulation of products, and particularly the response to be given innovation. Also the question of consistency between different directives on same business and functions must be addressed in the review. One example is, of course, outsourcing. These are big challenges, but in my view with good co-operation between the Commission and the other European institutions, CESR and the market participants, they can be met successfully.

Thank you!