



Date: 21 October 2004

Ref.: CESR/04-541

PRESS RELEASE

CESR launches a consultation on guidelines for supervisors implementing the transitional provisions of the amending UCITS Directives

CESR launches a consultation on guidelines for supervisors (Ref: CESR/04-434) implementing the transitional provisions of the amending UCITS Directives (2001/107/EC and 2001/108/EC, the so-called UCITS III). The original UCITS Directive (85/611/EEC, often referred to as the UCITS I Directive) was amended and published in the Official Journal on 13 February 2002. The amending UCITS Directives contain a number of transitional provisions which apply both to UCITS I funds and to grandfathered management companies respectively, and these have given rise to differing interpretations across Europe regarding how they should be implemented. The draft guidelines, presented today for consultation have therefore been developed to converge the different administrative practices which have arisen in Member States due to the uncertainties introduced by these amending Directives over the transitional arrangements. Once in place, the guidelines should therefore put an end to the uncertainties faced by market participants and should remove the existing single market barriers experienced by UCITS fund providers during this interim period.

The Chairman of CESR Expert Group on Investment Management, Mr Lamberto Cardia noted

‘This consultative paper, prepared by CESR in the first four months since it received this new area of responsibility reflects impressive progress, given in particular, that it represents a solution which has found unanimous support amongst CESR members. We hope this progress will be welcomed by asset managers who have been beset by significant Single Market barriers since 2002, due to uncertainties related to interpretations of the amending Directives. At the request of market participants, CESR has used its capacities under Level 3 (which includes own initiative actions to foster regulatory convergence) to develop tangible and pragmatic solutions which will foster convergence between regulatory practices. The guidelines will also ensure that the level of investor protection is both adequate and consistent EU wide, and this in turn should foster greater investor confidence.’

The first amending UCITS Directive (2001/107/EC) introduced harmonised rules on market access and operating conditions (e.g. capital requirements) as well as prudential safeguards to be respected by the UCITS management companies. This harmonisation allowed a European passport regime for management companies equivalent to that already enjoyed before by other financial operators (banks, investment firms, insurance companies). In addition, the Directive extended the scope of activity of a management company to individual portfolio management in addition to collective portfolio management.

The second amending Directive (2001/108/EC) focused essentially on the "product" (the investment fund). It extended the range of financial assets in which UCITS may invest. As a result, UCITS are now permitted to invest not only in listed shares and bonds as before, but also in bank deposits (cash funds), money market instruments, financial derivatives (i.e. standardised option and futures contracts dealt on regulated exchanges and over-the-counter derivatives) and in units of other collective investment undertakings (often known as "fund of funds"). The new rules also recognised investment management techniques successfully and widely employed such as "tracking" an index (i.e. investment in securities of different issuers provided for in a given index). The Directive also requires management companies to be adequately organized to manage the new risks entailed by the new range of investment products.

The purpose of the CESR guidelines is therefore to ensure that not only a consistent approach to these supervisory issues across Europe is put in place where these amending Directives create ambiguity, but also to ensure that the construction of this new ‘common EU-wide approach’ is developed in consultation with market participants and **investors**

In particular, the guidelines seek to clarify

- Issues related to the marketing of funds and the simplified prospectus (e.g. in case the home Member State regulator has not yet issued detailed guidance on the simplified prospectus);
- Issues related to the scope of permissible activities of grandfathered management companies (e.g. with respect to the launching of “passportable” UCITS III funds);
- Issues related to UCITS launched after February 2002 which benefit from a “grace period” (e.g. smooth convergence to the new UCITS regime, coordinated approach to a transitional treatment by statements of conformity etc.); similar issues related to grandfathered UCITS I umbrella funds which have launched further sub-funds after February 2002;
- Practical questions related to the scope of the European passport and problems resulting from the relationship between the management company’s passport and the fund’s passport.

The guidelines under consultation do not constitute legislation but CESR members will undertake to introduce these guidelines in their day to day regulatory practices on a voluntary basis.

In relation to two key issues CESR draft guidelines propose that:

- **A UCITS I umbrella fund**, where the question has been whether an existing ‘grandfathered’ and passported UCITS I umbrella fund can subsequently launch new UCITS I sub-funds, i.e. sub-funds applying the rules of the UCITS Directive 85/611/EEC prior to its amendments by the Directive 2001/108/EC:

CESR proposes that existing grandfathered UCITS umbrella funds can launch sub-funds under the previous UCITS regime only until December 31, 2005 at the latest. This time limit will urge such UCITS I umbrella funds to adapt to the amended UCITS Directive within a realistic time frame. The Member State authorities (CESR members) will treat these requests for approval as a first priority. However, following this deadline the new rules adopted in February 2002 will apply. This would apply whether the umbrella fund was itself authorised before 13th February 2002 or between 13th February 2002 and 13th February 2004.

- **Simplified prospectus requirements** which were introduced by the amending UCITS legislation, but resulted in different interpretations as to whether those funds which received a passport under the obligations of the UCITS I, have to implement the new simplified prospectus or will otherwise lose their registration:

CESR proposes that UCITS I funds (launched before 13th February 2004) should have a simplified prospectus available as soon as possible *and no later than 30th September 2005*. After this deadline, the guidelines propose that host Member States will not be obliged to accept the UCITS I funds and can require a simplified prospectus. In situations where the host State has existing legislation in place which requires the simplified prospectus and the home state has not yet required this, CESR recommends UCITS to provide additional interim information based directly on the Directive requirements on simplified prospectus.

CESR will host a hearing at CESR’s offices in Paris on 18 November for all interested parties wishing to express their views on the guidelines in person. To register for the open hearing please visit the CESR website (www.cesr-eu.org) and book a place under the heading “hearings”. Comments on the guidelines are also welcomed and can be submitted online via CESR’s website under the heading “consultations”.

Notes for Editors:

1. Preparation of these guidelines has been undertaken by the CESR Expert Group on Investment Management, which is chaired by Mr Lamberto Cardia, Chairman of the Italian securities regulator, the Commissione nazionale per le società e la Borsa (CONSOB). A permanent member of the CESR Secretariat, Mr Jarkko Syyrilä assists the Chairman and acts as rapporteur of the Expert Group.
2. Furthermore, a consultative group composed of 16 market practitioners and consumers was also formed to provide technical advice to the Expert Group on Investment Management. The market participants are experts in different fields of investment management drawn from across the European markets. They are not intended to represent national or a specific firms' interest and do not replace the important process of full consultation with all market participants. For a full list of the individuals, please visit the page dedicated to Investment Management on the CESR website.
3. CESR is an independent Committee of European Securities Regulators. The role of the Committee is to:
 - Improve co-ordination among securities regulators;
 - Act as an advisory group to assist the EU Commission, in particular in its preparation of draft implementing measures in the field of securities;
 - Work to ensure more consistent and timely day to day implementation of community legislation in the member states.
 - The Committee was established under the terms of the European Commission's decision of 6 June 2001 (2001/1501/EC). It is one of the two committees envisaged in the Final Report of the group of Wise Men on the regulation of European securities markets. Baron Alexandre Lamfalussy chaired this group. The report itself was endorsed by the European Council and the European Parliament. The relevant documents are available on the CESR website.
4. Each Member State of the European Union has one member on the Committee. The members are nominated by the Member States and are the Heads of the national public authorities competent in the field of securities. The European Commission has nominated the Director General of the DG Market, as its representative. Furthermore, the securities authorities of Norway and Iceland are also represented at a senior level.
5. For further information please contact:

CESR

Fabrice Demarigny
Secretary General of CESR

Or Victoria Powell
Communications Officer

Tel : +33 (0)1.58 36 43 21
Fax: +33 (0)1.58 36 43 30
Email: secretariat@cesr-eu.org
Web site: www.cesr-eu.org