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PRESS RELEASE

CESR launches a Call for Evidence on the Mandate from the European Commission on the Eligible Assets of UCITS

CESR publishes today a mandate from the European Commission for advice on possible modifications to the UCITS Directive in the form of a clarification of definitions concerning eligible assets for investments of UCITS. CESR's advice on this mandate must be submitted to the European Commission by the end of October 2005. To prepare this advice CESR welcomes interested parties to respond to the 'Call for Evidence' (Ref. CESR/04-586) **by 28 November 2004.**

When completed, CESR's advice will assist the European Commission in developing a legal text which will take the form of either a Regulation or a Directive. This legislation will set out what is known under the Lamfalussy legislative process as Level 2 technical implementing measures.

The consistent implementation and interpretation of EU legislation is a crucial dimension of the building up of the single market in financial services. In view of this, the Commission intends to make use of the delegated powers conferred by Art. 53a of the UCITS Directive to the Commission to clarify some of the definitions pertaining to eligible assets which are contained in the UCITS Directive. In its preparation of possible draft comitology instruments, the Commission has therefore requested CESR to prepare technical advice for this purpose.

The mandate requests CESR's advise on:

- the factors to be used in determining whether financial instruments whose underlying involves products of varying degrees of liquidity and/or which may not be directly eligible for investment by a UCITS, meet the formal and qualitative requirements for recognition as a 'transferable security' within the meaning of the UCITS Directive;
- whether and under which conditions shares of closed end funds or different variants of closed end funds fall under the definition of transferable securities as provided for by Art. 1 (8), having regard to Art. 19 (1) (a) to (d) and other relevant considerations contained in the UCITS Directive;
- the factors to be used to determine the eligibility of certain categories of money market instruments dealt in on a regulated market according to Art. 19 (1) (a) to (d), and whether the fact that they are dealt in on a regulated market is sufficient for them to be considered "money market instruments" meeting the general conditions specified at Art. 1 (9);
- whether and under which conditions certain categories of money market instruments fall within the scope of Art. 19 (1) (h) which deals with money market instruments "other than those dealt in on a regulated market";
- the factors to be used to determine whether and under which conditions other investment funds than UCITS fall within the scope of the definition of "other collective investment undertaking";
- the factors to be used to determine whether and under what conditions a derivative financial instrument, especially a credit derivative instrument, falls within the scope of the definition of derivative financial instruments as set out in Art. 19 (1) (g);
- the factors to be used to determine whether, and under what conditions, UCITS can be recognised as falling within the scope of the term of "replicating the composition of a certain index" of Art. 22a(1), having regard to the additional criteria set out in the provision and the elements relating to overall limits in investment in securities issued by any one issuer.



Preparation of CESR's advice on this mandate will be 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 for the Expert Group.

A timetable for CESR's work in this area is attached in the note to editors, and can also be found in the Call for Evidence (Ref. CESR/04-586).

Background:

The original UCITS Directive (85/611/EEC, often referred to as the UCITS I Directive) was amended and the two amending directives (2001/107/EC and 2001/108/EC, the so-called UCITS III) were published in the Official Journal on 13 February 2002.

The amending UCITS 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, 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. The new rules also recognise 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).

Modern financial markets have generated a huge variety of complex financial instruments which are in constant evolution. In the context of the implementation of the UCITS III Directive, the issue has arisen whether or to what extent some instruments could be considered eligible investments (i.e. "eligible assets") for a UCITS in compliance with the relevant provisions of the UCITS Directive, in particular the definitions of "transferable securities" under Art. 1 (8), of "money market instruments" under Art. 1 (9) and the list of authorised investments under Art. 19.

Responses to the call for evidence can be submitted online by 28 November 2004 through CESR's website (www.cesr-eu.org) under the section 'Consultations'.



Notes for Editors:

1. 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, chaired by Baron Alexandre Lamfalussy. The report itself was endorsed by the European Council and the European Parliament. The relevant documents are available on CESR's website.

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.

2. The Consultative Working Group on Investment Management: A consultative group composed of market practitioners and consumers has also been appointed 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.
3. The mandate sent to CESR to assist the Commission when it is preparing possible modifications to the UCITS Directive, forms part of the four level approach to European legislation for financial services. The four level approach was proposed in the report by the working group chaired by Baron Lamfalussy (available on the CESR website). The approach can be summarised very briefly as follows: Level one measures set out the high level objectives that the legislation must achieve. Level two measures set out some of the technical requirements necessary to achieve these objectives. Level three measures are intended to ensure common and uniform implementation by the use (amongst others) of common interpretative guidance and standards agreed amongst regulators in CESR. Level four measures relate to the enforcement of the legislation.
4. For further information please contact:

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Indicative CESR work plan on the clarification of definitions of the UCITS Directive

