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**PRESS RELEASE**

**CESR launches a consultation on simplification of the cross-border notification procedure of UCITS**

CESR publishes today its first consultation paper (Ref. CESR/05-484) on its draft guidelines regarding the cross-border notification procedure of UCITS funds. CESR requests comments and reactions to its proposal and to the specific questions raised in the document by 27 January 2006, from both market participants and from retail investors. A public hearing will also be held in Paris at CESR's premises and information regarding the date and agenda will be made available on CESR's website shortly.

According to the European Commission's Financial Integration Monitor of 2005 (see the note to editors for details) 'Integration in the UCITS fund sector has progressed significantly in recent years as demonstrated by the fact that funds are increasingly offered on a cross-border basis and that the number of cross border notifications has grown by 130 % in the period 1998-2003'. Nevertheless, more remains to be done to further integrate the single market in UCITS funds. In response to the concerns expressed by the European asset management industry regarding the way in which the national authorities apply in practice the requirements of the UCITS Directive, CESR Members are now turning their attention to developing common guidelines to streamline and simplify the notification process to sell a UCITS products cross border.

This first consultation paper therefore presents concrete proposals for a common approach to the administration, by host authorities, of the notification procedures set out in Art. 46 of the UCITS Directive.

As such CESR has agreed on the key principle that the host Member State authority's competences are confined to refusing the marketing of a foreign UCITS on its territory in case the marketing arrangements do not comply with the provisions referred to in Art. 44(1) and Art. 45 of the Directive. This would mean that other reasons, for instance those deriving from divergent interpretations on whether a UCITS complies with the Directive, can not be used as a reason to refuse the marketing.

The proposed arrangements seek to bring greater transparency and certainty to the notification process and aim to avoid uncertainty and prolongation of notification procedures. They do so, in particular by clarifying the way in which host authorities should communicate specific concerns regarding the compliance of UCITS with any applicable host law under Art. 44(1) and Art. 45 of the UCITS Directive. The proposals also enshrine common approaches to the documentation that must be submitted in the context of the notification procedure and to clarify the handling of sub-funds of umbrella funds.

**Background**

The 1985 UCITS Directive (85/611/EEC) introduced a passport for the investment funds harmonised by the Directive. The passport is based on mutual recognition. It foresees that the units of a UCITS authorised in its home Member State be marketed in other Member States subject only to a notification procedure set out in Art. 46 of the Directive.

The UCITS Directive requires the host authority to recognise the UCITS authorisation conferred by the home authorities. The notification procedure set out in Art. 46 does not encompass verification by the host authority of the extent to which the UCITS complies with the provisions governing authorisation as a UCITS. Section VIII of the UCITS Directive does however foresee residual powers for the host authority in verifying marketing arrangements for the UCITS and requires filing of a set of documents with the host



authorities – in a language which is accepted by the host authority. The UCITS may begin to market its units two months after such filing unless the host authority issues a reasoned opinion regarding the inconsistency of the UCITS with those remaining provisions of host country laws, regulations and administrative provisions which may apply.

The UCITS passport is widely used. Over 29'000 cross-border notifications have been filed. Cross-border funds are competing successfully in many host country markets. However, the day-to-day operation of the notification procedure has in some instances been characterized by complication and uncertainty. These uncertainties also give rise to compliance cost and unnecessary delays.

These costs and delays are an important source of friction in a European market. It is therefore important, from a practical and legal perspective to do everything possible to facilitate the smoother functioning of the UCITS passport. This is why CESR members have decided that, following the work done regarding the transitional provisions of the UCITS III which has already contributed significantly to the notification process, the CESR Expert Group on Investment Management would conduct additional work on this area. The objective is to develop consistent standards for the notification requirements foreseen by the UCITS Directive. The importance of progress in this respect has been underlined by the Commission's Green Paper on investment funds last July.

This work takes place against the backdrop of two decades of divergent national practice in the enforcement of provisions of UCITS law – tolerated by ambiguities in the text of the Directive. Some of these differences are hard-coded in national law. In addition, there are areas of national law such as administrative law which influence the notification procedure but which are not subject to harmonization.

### **The CESR proposal**

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#### Notes for Editors:

1. Preparation of CESR's advice on this mandate is being 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 working group composed of 16 market practitioners and consumers has also been 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. To see a copy of the European Commission's Financial Integration Monitor 2005 please use the following link:  
[http://europa.eu.int/comm/internal\\_market/finances/cross-sector/index\\_en.htm#monitor](http://europa.eu.int/comm/internal_market/finances/cross-sector/index_en.htm#monitor)
4. 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.
5. Each Member State of the European Union has one member in 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.
6. For further information please contact:

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## Indicative CESR work plan on the guidelines on the notification procedure of UCITS

