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PRESS RELEASE

CESR publishes its final advice to the European Commission on the eligible assets of UCITS

Having listened to the comments from market participants during two rounds of consultations and following careful consideration, CESR publishes today its final advice (Ref. CESR/06-005, with a feedback statement Ref. CESR/06-013) to the European Commission regarding clarification of definitions concerning eligible assets for investments of UCITS.

CESR has worked to develop the draft advice further, on the basis of the results of the second consultation (Ref. CESR/05-490b, see also the press release Ref. CESR/05-619), on which CESR received almost 50 responses, mostly from asset managers and their associations. The following three key issues were raised in the second consultation and the progress made is highlighted below:

- **The negotiability of transferable securities:** A substantial number of respondents to the second consultation queried the suggested requirement that "the security must be freely negotiable on the capital markets". They pointed out that this requirement appeared to preclude investment in e.g. private placements. CESR has reflected on this, and has deleted the reference to "freely" and to "on the capital markets". In addition, it has been clarified that where a security is listed, a presumption of negotiability applies, but as with the presumption of liquidity, it is not guaranteed.
- **The eligibility of money market instruments:** Some respondents to the second consultation raised a concern that the wording of CESR's advice could rule out certain types of money market instruments e.g. certificates of deposit, which would not be able to fulfill the draft requirements in Box 6. The final advice makes a distinction between different types of issuers, and the information requirements have been relaxed for certain types of issuers/ issues, e.g. when the issuer is an establishment subject to prudential supervision.
- **The eligibility of derivative instruments on financial indices:** The asset management industry, through the comments received to the consultations, expressed a strong interest in allowing derivatives on financial indices based on non-eligible assets. In CESR's view, in addition to indices based on financial derivatives on commodities, as suggested in the 2nd consultation, indices on property may be eligible, provided they comply with the criteria developed, e.g. that the index is sufficiently diversified and represents an adequate benchmark for the market to which it refers. Given the complexities of hedge fund indices and the fact that they are still developing, CESR cannot recommend, at this stage, allowing hedge fund indices to be considered as financial indices for the eligibility of UCITS. CESR is monitoring the issue and is willing to reconsider its position by October 2006, after gaining sufficient experience. CESR members agree not to authorize setting up new UCITS with such investment policies during this period.

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

'I am pleased that CESR members were able to put forward solutions during the second consultation which appeared to have resonated very well with market participants. I believe CESR's final approach published today, strikes a good balance between the need to deliver an approach which provides significant flexibility for product innovation to continue amongst UCITS whilst at the same time, ensuring that the level of investor protection is both adequate and consistent across the EU. 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 UCITS Directives. Clarification of the eligible assets of UCITS is one on the four priority actions the European Commission has indicated in its Green Paper on investment funds last July. I am very satisfied CESR has now delivered its part in this process and hope that investors will now be able to benefit from the increased choice of products which will become available as a result whilst knowing that adequate safeguards are also in place.’

Notes for Editors:

1. Preparation of CESR's advice on this mandate 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 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. **Background on eligible assets:** In the context of the implementation of the so-called UCITS III Directive (Directive 85/611/EEC as amended by Directives 2001/107/EC and 2001/108/EC), the issue of whether, or to what extent, some financial instruments could be considered eligible investments (i.e. "eligible assets") for a UCITS to invest in has arisen. 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 has caused some difficulties of interpretation.
4. Ensuring consistent implementation and interpretation of EU legislation across the Member States is a crucial dimension of the building up of the internal market in financial services. The European Commission has therefore identified the need to clarify certain definitions of eligible assets of the UCITS Directive as short term priority for the implementation of the amendments made by Directive 2001/108/EC of 21 January 2002 to the UCITS Directive. This approach was endorsed at the European Securities Committee meeting of 5th July 2004.
5. In view of this, DG Internal Market indicated that it 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 requested technical advice of CESR by publishing a mandate to CESR on 28th October 2004: "The Formal Mandate to CESR for Advice on Possible Modifications to the UCITS Directive in the Form of Clarification of Definitions concerning Eligible Assets for Investments of UCITS".
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