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**PRESS RELEASE**

**CESR adopts common supervisory approaches concerning the classification of hedge fund indices as financial indices for the purposes of the UCITS Directive**

CESR publishes today its final Level 3 guidelines on the classification of hedge fund indices as financial indices (Ref. CESR/07-434, with a feedback statement Ref. CESR/07-433). These guidelines are part of the “CESR’s guidelines concerning eligible assets for investment by UCITS” (CESR/07-044, March 2007). These measures address the issue as to whether hedge fund indices could be properly classified as “financial indices” for the purposes of the UCITS Directive.

CESR considers that in order to fall under the classification of a “financial index” as referred to by the UCITS Directive, hedge fund indices must comply with the criteria applicable to common financial indices set out in Article 9 of Directive 2007/16/EC as regards the degree of diversification; the market to which they refer; and the way they are published. In addition, hedge fund indices will also have to fulfill additional requirements as regards to the methodology of the index and information disclosure. The selection of components to be included in the index has to be made on the basis of predetermined rules and objective criteria. Furthermore, it must not be influenced by any payments made to the provider, and the methodology has to ban any “backfilling practice”, (that is to say, any retrospective changes to previously published index values). In addition, the guidelines require the UCITS to perform an additional “due diligence” process before deciding to invest in hedge fund indices. In particular, in assessing the quality of the index, the UCITS must take into account, as outlined in the guidelines, the following factors (as a minimum): the comprehensiveness of the index methodology, the availability of information about the index, and matters relating to the treatment of index components. The UCITS must keep a record of its assessment.

The guidelines have been adopted after an intense consultation of the market. In particular, CESR published in October 2006 an issues paper (CESR/06-530), and in February 2007 the consultation document “Clarification of the definitions concerning eligible assets for investment by UCITS: can hedge fund indices be classified as financial indices for the purpose of UCITS?” (CESR/07-045). CESR also organised a public hearing, held on 2 April 2007.

The guidelines published today complement the Level 2 implementing Directive (Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the co-ordination of Law, Regulations, and administrative provisions relating to UCITS as regards the clarification of certain definitions) (see <http://eur-lex.europa.eu/en/index.htm>) and supplement the Level 3 guidelines already adopted by CESR “CESR’s guidelines concerning eligible assets for investment by UCITS” (CESR/07-044 of March 2007), which is available on our website under the section: Expert groups/Investment management.

## Notes for Editors:

1. CESR is an independent Committee of European Securities Regulators. The role of the Committee is to:
  - a. Improve co-ordination among securities regulators;
  - b. Act as an advisory group to assist the EU Commission, in particular in its preparation of draft implementing measures in the field of securities;
  - c. Work to ensure more consistent and timely day-to-day implementation of community legislation in the Member States;
  - d. The Committee was established under the terms of the European Commission's decision of 6 June 2001 (2001/1501/EC).
2. 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.
3. 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).
4. 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.
5. **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 come up.
6. 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.
7. In view of this, DG Internal Market made 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 providing its technical advice to the Commission CESR responded to a mandate received on 28 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"
8. For further information please contact:

CESR	Fabrice Demarigny	or	Victoria Powell
	Secretary General of CESR		Director for Communications
			Tel: +33 (0)1.58 36 43 21
			Fax: +33 (0)1.58 36 43 30
			Email: <a href="mailto:secretariat@cesr.eu">secretariat@cesr.eu</a>
			Web site: <a href="http://www.cesr.eu">www.cesr.eu</a>