



COMMITTEE OF EUROPEAN SECURITIES REGULATORS
THE CHAIRMAN

Jörgen Holmquist
Chair
European Securities Committee
Rue de la Loi 200
B-1049 Bruxelles, Belgique

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CESR's response to the European Commission's provisional request to CESR for technical advice on possible implementing measures concerning the future UCITS IV Directive

Dear Mr Holmquist,

On 13 February 2009 CESR received the European Commission's provisional request for technical advice on possible implementing measures concerning the future UCITS IV Directive ('the mandate'). The mandate was split into three parts:

- Part I – measures related to the UCITS management company passport
- Part II – measures related to key investor information (KII)
- Part III – measures related to fund mergers, master-feeder structures and the notification procedure

I am pleased to submit to you CESR's final technical advice on Part III of the mandate (Ref. CESR/09-1186) and the remaining elements of Part II, the technical methodologies on risk and reward and charges disclosure (Ref. CESR/09-1026 and 09-1028). These documents, taken together with the advice on Parts I and II submitted to you on 28 October (Ref. CESR/09-963 and 09-952 respectively), constitute the final elements of the package of advice CESR has prepared in response to the mandate. I would like to emphasise that the advice as a whole was approved unanimously by CESR Members.

Part III – measures related to fund mergers, master-feeder structures and the notification procedure

As I set out in my letter to you of 28 October 2009 (Ref. CESR/09-985), CESR began work on its advice on Part III once sufficient progress had been made on Parts I and II. This led to publication of a consultation paper on 17 September 2009 (Ref. CESR/09-785), to which CESR received 21 responses. Feedback was also gathered via an open hearing held in Paris on 6 November. An overview of the three main sections of the advice is set out below.

Fund mergers

CESR's advice focuses on the information to be provided to unitholders of both the merging and receiving UCITS in the case of a merger. The requirements are based on the key principle that the information should be tailored to meet the different needs of the two groups of unitholder.

Master-feeder structures

The second section of CESR's advice under part III of the mandate relates to implementing measures concerning master-feeder structures. The advice covers the content of the written agreements that



should be put in place between the master and feeder UCITS, as well as their respective depositaries and auditors. In this context, CESR recommends that the parties to the agreements be free to choose whether the applicable law be that of the jurisdiction of the feeder or of the master UCITS. CESR also sets out detailed requirements on the steps to be taken in the case of a liquidation, merger or division of a master UCITS in order to satisfy the time constraints set out in the level 1 Directive.

Notification procedure

In line with the mandate, CESR took account of its existing level 3 guidelines on notification in preparing its advice, which covers the information that Member States (MS) should make available in relation to marketing in their jurisdiction of UCITS established in another MS; the content and format of a standard notification letter and attestation; how the competent authorities of the home state should facilitate the host state's access to updated notification documentation; and the procedure for electronic transmission of notification files. Regarding these latter two areas, I would like to highlight the work that CESR will carry out in the coming months with a view to the potential development of a centralised IT system. CESR is ready to provide the appropriate input as this work progresses to ensure that the implementation of the system is not inconsistent with the level 2 measures adopted by July 2010.

Part II – technical methodologies on risk and reward and charges in context of Key Investor Information

As flagged in the letter I sent you in October, CESR continued to work on two items in the context of Part II of the advice, namely the calculation methodologies for the synthetic risk and reward indicator (SRRI) and the ongoing charges figure. CESR received a significant amount of feedback from stakeholders on the two methodologies proposed for consultation. In order to take full account of these comments, it was agreed that work should continue with a view to submitting the final methodologies to the Commission by the end of December 2009. In addition, a technical workshop was organised with external stakeholders in October in order to gather more targeted feedback on the SRRI methodology in particular. Commissioner McCreevy formally endorsed this approach and timetable in the letter he sent me on 1 December.

These two methodologies represent the final elements of CESR's level 2 advice on key investor information (Ref. CESR/09-1026 is the methodology for the synthetic risk and reward indicator, Ref. CESR/09-1028 is the methodology for the ongoing charges figure). In relation to the methodology for the ongoing charges figure, I would like to highlight that CESR sees merit in keeping the requirements under review; in particular, it will be important to monitor developments on transaction costs, as it may become appropriate in future to require inclusion of such costs in the ongoing charges figure. This point was also mentioned in the advice delivered in October.

Should you have any questions on this letter, please do not hesitate to contact either myself, Lamberto Cardia, Chair of the Investment Management Expert Group, or Carlo Comporti, Secretary General of CESR.

I am copying this letter to Commissioner McCreevy and Ms Sharon Bowles.

Yours sincerely,

Eddy Wymeersch