



COMMITTEE OF EUROPEAN SECURITIES REGULATORS
THE CHAIRMAN

Commissioner Charlie
McCreevy
European Commission
Rue de la Loi 200
B-1049 Bruxelles,
Belgique

Date: 28 October 2009
Ref.: CESR/09-985

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 McCreevy,

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 Parts I (Ref. CESR/09-963) and II (Ref. CESR/09-949) of the mandate. I explain below how CESR has been working in relation to the advice on Part III of the mandate, as well as providing further detail on the timing of submission of the two remaining elements of the advice under Part II.

Part I - measures related to the UCITS management company passport

CESR's advice under Part I of the mandate, which was published for consultation in July 2009 (Ref. CESR/09-624), covers the areas set out below.

i) Organisational requirements and conflicts of interest

The advice follows the clear direction in the Commission's mandate to seek maximum alignment with the MiFID rules in this area, while taking into account the specificities of the UCITS sphere. There was broad support for this approach among respondents to the consultation. The paper sets out CESR's advice on, inter alia, general organisational procedures and arrangements; internal control mechanisms, including responsibility of senior management and the remuneration policy; electronic data processing and record-keeping; and conflicts of interest.

ii) Rules of conduct

In line with the advice on organisational requirements and conflicts of interest, the approach taken on the advice on rules of conduct is to seek maximum alignment with the relevant MiFID provisions. Respondents to the consultation expressed broad support for this approach. The advice includes requirements applying to the direct sale of UCITS by management companies, as well as best execution, order handling and inducements.



iii) Measures to be taken by a depositary of a UCITS managed by a management company situated in another Member State

The mandate sought advice from CESR on additional requirements that should apply to the relationship between the management company and the depositary when these two entities are located in different Member States. CESR's advice places particular focus on the written agreement to be drawn up between the management company and the depositary.

Although the mandate clarified that the implementing measures cover only cross-border situations, the advice proposed to extend their application also to purely domestic arrangements.

iv) Risk management

CESR's advice sets out more detailed requirements on the basis of the principle that a management company shall employ a risk management process which enables it to monitor and measure at any time the risk of different positions and their contribution to the overall risk profile of the portfolio. The advice under this heading incorporates CESR's level 2 advice on risk measurement for the purposes of the calculation of UCITS' global exposure. CESR intends to complement the latter advice via the development of detailed level 3 guidelines, in parallel with the timetable for the adoption of implementing measures by the Commission.

v) Supervisory co-operation

The mandate sought CESR's advice on two key elements of supervisory co-operation: i) on-the-spot verification and investigation; and ii) exchange of information between competent authorities. The advice takes into account the existing legal framework in relation to international co-operation, as well as best practice developed within CESR and IOSCO.

Part II – measures related to key investor information

CESR's advice on key investor information is the culmination of over two years of intensive discussions on investor disclosures for UCITS. The advice sets out detailed recommendations on the format and presentation of the Key Information Document (KID), including that it be limited to two sides of A4 paper (except for particularly complex funds). Other core elements of the advice are summarised below.

Risk and reward

CESR's advice recommends the adoption of a synthetic risk and reward indicator (SRRI) supported by a narrative explanation of the limitations of the indicator and the material risks relevant to the fund which are not fully captured by the methodology for the synthetic indicator. This option was preferred by a majority of respondents to the consultation on the draft advice.

Charges

CESR advises that the KID contain a table setting out clearly the different elements of the charging structure (in percentage terms). The advice also addresses the handling of new funds, material changes to the charging structure and keeping the charges information in the KID updated.

Performance

CESR advises that presentation of past performance be based on use of a bar chart displaying up to ten years' performance, where available. In addition, CESR recommends that a KID can only display performance information where at least one calendar year's data exists. There are also specific requirements on how to calculate the past performance information.



Other issues covered under this part of the advice include the annual revision of the past performance record (CESR recommends a deadline of 35 calendar days for updating the information), handling of material changes and inclusion of a benchmark.

Special cases – how the KID might be adapted for particular fund structures

In the context of its consideration of situations in which a bespoke approach to the content of the KID might be necessary, CESR discussed the content of the KID for structured, capital-protected and other comparable UCITS. The particular challenge of these funds is that the display of past performance information is generally not appropriate, given the limited subscription periods associated with these funds. As an alternative, CESR recommends the inclusion of performance information (in the form of prospective scenarios) in the objectives and investment policy section of the KID. These scenarios are designed to illustrate the potential performance of the fund under a range of market conditions.

As discussed informally with the Commission services in CESR's working groups, CESR intends to continue its work on two items in the context of Part II of the advice, namely the methodologies underlying 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 earlier this year. In order to take full account of these comments, CESR intends to work intensively during the coming weeks with a view to submitting the final methodologies to the Commission by the end of December 2009. CESR will also use this additional time to gather more targeted feedback from industry representatives on the SRRI methodology in particular.

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

Taking into account the provisions on which adoption of implementing measures is obligatory under the new UCITS Directive, the Commission encouraged CESR to focus firstly on the advice on Parts I and II of the mandate and to deliver its advice in those areas by 30 October 2009. For Part III, meanwhile, the Commission is not under a legal obligation to adopt implementing measures; as such, the Commission invited CESR to reflect on the best way to organise its work such that all necessary level 2 measures, including those under Part III of the mandate, are adopted in time to be implemented by Member States within the timeframe imposed by the level 1 Directive.

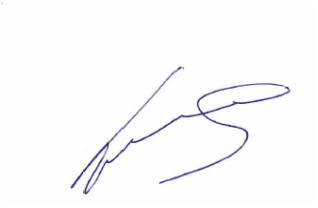
CESR decided at the outset to prioritise the development of its advice on Parts I and II of the mandate. In line with informal discussions with the Commission services in CESR's working groups, CESR started to work on its advice on Part III as soon as sufficient progress had been made on the key elements of the draft advice on Parts I and II. Following further work over the summer, this allowed publication of a consultation paper on 17 September 2009 (Ref. CESR/09-785). Once the consultation has closed, CESR will finalise its advice for submission to the Commission by the end of 2009.

I would be grateful if you could confirm that the approach set out above in relation to the advice on Part III of the mandate, as well as the timing of submission of the methodologies underlying the risk and reward and charges disclosures, are consistent with the Commission's obligations for adoption of implementing measures and with respect to the comitology procedure.

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 Jörgen Holmquist and Ms Sharon Bowles.

Yours sincerely,



Eddy Wymeersch