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PRESS RELEASE

CESR launches a consultation the possibility for hedge fund indices to be classified as financial indices for the purpose of UCITS

CESR publishes today a consultation paper entitled: "*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?*" (Ref. CESR/07-045).

This consultation paper follows the publication of an issues paper ¹ and elaborates from the views of market participants on questions concerning the ability of hedge fund indices to fall within the definition of "financial indices" contained in the UCITS Directive.

The decision to explore more thoroughly the issues arising from the potential inclusion of hedge fund indices in UCITS, should be seen in the wider context of CESR's final advice to the European Commission on clarification of definitions concerning eligible assets for investments of UCITS (Ref. CESR/06-005) submitted in January 2006, which set out in detail its views on the criteria that should be met by a financial index for derivatives in order for the index to be an eligible investment.

The measures proposed will be adopted by CESR at "level 3". At level 1, the UCITS Directive governs the overall framework for the operation of EU-harmonised collective investment undertakings. A level 2 implementing Directive on eligible assets ² clarifies certain definitions in the UCITS Directive that are related to eligible assets, including financial indices. 'Level 3' measures concern strengthened co-operation between (national) regulators to ensure consistent and equivalent application of 'Level 1' and 'Level 2' legislation.

At this stage, CESR's stance on the eligibility of hedge fund indices comprises some of the following ideas:

- On the issue of hedge fund indices diversification, taking into account that the diversification requirement set out in the UCITS Directive requires the index to have at least five underlyings, CESR considers there is no need for additional level 3 guidelines.
- It is proposed that an hedge fund index will not meet the criterion of "representing an adequate benchmark" if the UCITS does not verify that the index provider: clearly defines and makes publicly available an explanation of what the index is trying to represent, and assesses whether the methodology of the index construction will affect the extent to which it is representative for the market to which it refers.
- It is proposed that the criterion of "publication in an appropriate manner" will not be met unless the UCITS confirms that the index provider makes publicly available the full

¹ CESR/06-530 (October 2006), available at www.cesr.eu.

² The level 2 implementing Directive is expected to be published in March 2007.



methodology of the index and the UCITS verifies that the index will be subject to an independent audit at least annually.

CESR considers that index methodology and standards will probably develop over time. In this respect, CESR proposes to monitor the evolution of the market to consider which measures might be necessary to cope with market developments.

Readers are asked to consider the questions in this consultation paper and send their response via CESR's website (www.cesr.eu) under the section "Consultations". The consultation closes on **16 April 2007**. A public hearing will take place at CESR on **2nd April 2007**. For further information on the timetable, please refer to the diagramme in the 'Notes to Editors' attached to this press release (p4).



Notes for Editors:

1. CESR's final advice to the European Commission on clarification of definitions concerning eligible assets for investments of UCITS (Ref. CESR/06-005) submitted in January 2006 indicated that CESR members had agreed not to authorize setting up new UCITS with hedge fund indices until the conclusion of the review.
2. Preparation of CESR's consultation paper 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).
3. 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.
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. Bulgaria and Romania participate in CESR as observers.
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