



STATE STREET

June 10, 2005

M. Fabrice Demarigny
Secretary General
Committee of European Securities Regulators
11-13 Avenue de Friedland
75008 Paris
France

Re: CESR's Advice on Clarification of Definitions Concerning Eligible Assets for Investments of UCITS

Dear Sirs:

Thank you for the opportunity to comment on the draft technical advice CESR proposes to provide the European Commission on possible actions to clarify the definitions concerning eligible assets for investments of UCITS. We are pleased to offer these comments on behalf of State Street Corporation and its entities in Europe.

State Street Corporation is a leading specialist in providing institutional investors with investment servicing, investment management and investment research and trading. With \$9.5 trillion in assets under custody and \$1.4 trillion in assets under management, State Street operates in 25 countries and more than 100 markets worldwide.

State Street is a leading custodian and administrator for UCITS in Luxembourg, Ireland, the United Kingdom, Germany, Italy, and Austria. We provide services to over 1200 UCITS with combined assets of over €200 billion.

State Street supports broadening the definition of eligible investments for UCITS, and is supportive of an approach which will establish flexible, principles-based criteria for determining the eligibility of UCITS investments. We believe such an approach can enhance the competitiveness of UCITS offerings vs. both non-European products and other investment options outside of the UCITS regulatory regime, while at the same time continuing to provide high levels of investor protection and transparency.

We have reviewed the draft advice described in the Consultative Paper, and, while we support the goals of the paper, we believe some aspects of the proposal may be overly prescriptive, and could be addressed in a manner creating less regulatory burden for UCITS. It is important that UCITS be provided increased ability to invest in new and innovative products, both now and in the future, but such a broadening of eligible investments should not be accompanied by an overly cumbersome regulatory regime.

Comments on Box 1

For example, while we appreciate the goals of the regime related to structured financial instruments provided in Box 1 of the Consultative Paper, we are concerned that elements of the proposal will create increased and duplicative compliance burdens for UCITS, their asset managers, their trustees, and their service providers.

In particular, the requirements of Box 1, Point 2 related to **liquidity, information made available to the market**, and **transferability** could be difficult and cumbersome to implement at the individual security level, largely due to the lack of widely available, consistent data across a broad range of investments.

The incremental costs of this increased compliance burden needs to be carefully and critically weighed against the potential incremental benefit that such a regulatory regime would bring to investors.

We believe a more flexible approach, focusing more on the overall portfolio vs. individual securities, could create a more cost-efficient, workable system for protecting the interests of investors.

Comments on Box 2

Similarly, we support the expansion of eligible investments to include listed closed-end funds, as proposed by the draft advice. We suggest, however, that the additional requirements for such investments described in Box 2 of the Consultative Paper may impose unnecessary compliance burdens on UCITS and their service providers.

Since the liquidity of listed closed-end fund UCITS investments derives from its trading value on an exchange, further look-through to its underlying assets is an unnecessary and cumbersome exercise, with little corresponding increase in investor protection. As an alternative, we suggest that listed closed-end funds be treated identically to listed transferable securities.

Overall, State Street suggests CESR carefully balance the incremental benefits to the end-investor of its draft advice beyond the existing prudential and regulatory framework. The existing EC Directive 2001/107/EC already

safeguards the interests of investors, and will continue to do so under an expanded definition of eligible UCITS investments.

In today's dynamic and innovative financial services marketplace, a UCITS regulatory regime based on specific enumeration of eligible investments, accompanied by detailed and prescriptive regulatory requirements for each type of investment, will create competitive disadvantages for UCITS products, and reduce potential returns for investors. As an alternative, we urge CESR and the Commission to adopt a less prescriptive, less cumbersome approach to expanding eligible investments by UCITS.

Thank you for providing State Street an opportunity to comment on this proposal.

Sincerely,

Julian Presber
Senior Vice President
State Street Bank Luxembourg, S.A.

Stefan Gavell
Executive Vice President and Global Head of Regulatory and Industry Affairs
State Street Corporation