



INVESTMENT COMPANY INSTITUTE

MARY S. PODESTA
SENIOR COUNSEL

November 24, 2003

VIA EMAIL

Fabrice Demarigny
Secretary General
11-13 avenue de Friedland
Paris 75008
France

Dear Mr. Demarigny:

The Investment Company Institute appreciates the opportunity to comment on the Consultation Paper on the Role of the Committee of European Securities Regulators ("CESR") in the Regulation and Supervision of UCITS and Asset Management Activities in the European Union ("Consultation Paper"). The Institute is the national association of the US investment company industry. Our membership includes 8,672 open-end investment companies ("mutual funds"), 609 closed-end investment companies, 107 exchange-traded funds, and 6 sponsors of unit investment trusts. Our mutual fund members have assets in excess of \$6.9 trillion, accounting for approximately 95% of total industry assets, and over 90.2 million individual shareholders. Many of our members manage assets in Europe, including UCITS funds, and our comments reflect their experiences in Europe.

The Consultation Paper provides the background on the process by which CESR has become involved in the regulation and supervision of the asset management industry, CESR's suggestions on areas of work and related priorities, and an indication of the organization that CESR would like to put in place to address these issues. We have some general comments on these three areas.

Procedural Background for CESR's Regulation and Supervision of Asset Management

We fully support CESR facilitating the convergence of the regulation and supervision of asset management activities across the European Union. We believe that to have a truly pan-European UCITS market and asset management sector, it is important for the EU to implement a harmonized approach to regulation. Moreover, we applaud CESR for beginning work in the area of UCITS and asset management, including providing input to the UCITS Contact Committee, and for preparing to provide support to the European Securities Committee once legal authority has been transferred to the Committee. Finally, although it is not within the purview of CESR to determine in which sectoral committee asset management will be included, we also have several comments on the decision to discuss asset management issues within the securities sectoral committee.

In the Consultation Paper, CESR generally considers the arguments for considering collective portfolio management activity to be part of the securities business and accepts the decision of the Council of the Economic and Finance Ministers (ECOFIN) to incorporate UCITS

in the securities committee. We generally support including UCITS and other asset management in the securities sectoral committee, and we fully agree that securities regulators typically have expertise on asset management issues.

We hope, however, that, in incorporating asset management within a larger committee addressing various securities matters, asset management issues will not be overlooked or overshadowed by other priorities and that there be sufficient focus provided to asset management. In initiatives that affect numerous types of financial institutions, the asset management industry has been concerned that there has not been adequate attention given to issues specific to the asset management sector. We, therefore, were pleased that, with the third consultation on a capital adequacy framework, EU institutions have begun to recognize that the risk profile of asset management firms indicate the need for a modified approach. We hope that this trend of taking into consideration the unique nature of the asset management industry will continue within the securities sectoral committee.

On a related matter, CESR notes that ECOFIN has stated that "sectoral specificities would be best recognized by three separate sector committees each at levels 2 and 3: for banking, insurance, including pensions; and securities, including UCITS." We understand that it is not CESR's decision to include pensions within the insurance sector committee but we take the opportunity to express our concern that pension matters are distinct from insurance matters and believe accordingly that pension issues should be addressed in a separate sector committee or jointly with the securities committee.

Areas of Work by CESR

As an initial matter, the Institute supports CESR's intention to adhere to certain principles in its work on UCITS and other asset management activities in the EU. These principles include: (1) any future work regarding UCITS would be conducted in full coherence with the EU institutional framework; (2) CESR would take a global vision of the "buy side" and not limit its activities to investment funds; and (3) account would be taken of the outcome of work already done by IOSCO. We believe these principles would provide a solid foundation upon which CESR's work could be built.

In particular, we are especially pleased that CESR intends to take a global view of buy-side issues. There are numerous securities and other issues that affect asset management, and we believe it is important for CESR to consider those issues as they relate to the asset management sector. As mentioned above, we recommend that CESR take a broad view of its mission and address in the securities sectoral committee pension issues as they relate to asset management.

CESR also states that it "should not start to work on matters where the UCITS Contact Committee is about to finish its work" and cites the simplified prospectus and derivatives as two such examples. We respectfully submit that even if a *phase* of the work in a particular area has been completed by the UCITS Contact Committee, there may be other issues that have not been resolved by the Committee. For example, in the area of simplified prospectus, there are several complicated issues that the Contact Committee may not fully address and that could

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benefit from the involvement of CESR. We hope that the start of the Contact Committee's work would not preclude the involvement of CESR on important issues.

In the Consultation Paper, CESR sets forth four areas of possible intervention and priorities: (1) areas where supervisory convergence should be achieved; (2) areas where input to ensure the harmonized implementation of the UCITS Directive could be provided to the UCITS Contact committee; (3) areas not harmonized at EU level; and (4) areas where consistency with other EU directives are needed. It is unclear whether CESR has noted these areas in any priority order. We believe that the highest priority should be given to the harmonized implementation of the UCITS Directive. We are concerned that the important work of the EU institutions could be frustrated by the inconsistent implementation or application of the UCITS Directive in the Member States. We believe that there are numerous implementation issues that require immediate attention.

In addition, we recommend that another high priority should be for CESR to develop a common approach with respect to marketing rules for UCITS funds. We are concerned that host country regulation of marketing rules for UCITS funds permits host countries to subject funds to varied and conflicting requirements relating to advertising and disclosure (even with the new simplified prospectus requirement). Investors also could benefit if there were common standards for presenting fund performance so that investors have the ability to compare funds. Moreover, we are of the view that harmonized rules for marketing of UCITS funds are necessary to foster a truly pan-European UCITS market. For harmonization to be possible in the future, CESR must begin to develop a common approach to marketing rules.

Organization of CESR's Work

We generally support the approach proposed by CESR in organizing its work on asset management issues. We seek clarification on the transparency of the work of the Expert Group and the Consultative Working Group. Will recommendations and advice of these groups to CESR be made available to the public? We are of the view that it would be helpful for consultation with the public for interested persons to learn about the work of these groups.

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If we can provide any other information or if you would like to discuss further any issues, please call me at (202) 326-5826 or Jennifer Choi at (202) 326-5810.

Sincerely,



Mary S. Podesta
Senior Counsel

cc: David Wright