



December 7, 2004

*Via E-mail and International Airmail*

Mr. Fabrice Demarigny  
Secretary General  
The Committee of European Securities Regulators  
11-13 avenue de Friedland  
Paris 75008  
France

Dear Mr. Demarigny:

The Investment Company Institute<sup>1</sup> is writing in response to the consultation paper issued by the Committee of European Securities Regulators (CESR) on the transitional provisions of the amended UCITS Directive. We applaud CESR for working quickly to help resolve issues regarding the transitional provisions and implementation of the amended UCITS Directive (UCITS III).

We understand that the outcome of CESR's work will be a set of common guidelines that will be introduced by CESR members into their regulatory practices on a voluntary basis. We strongly urge CESR to use its influence to prevent Member States from diverging from the guidelines that are adopted. We believe it is critical that UCITS funds not be subject to conflicting requirements in different Member States if a pan-European UCITS market is to be successful.

We have several specific comments on the consultation paper.

Management Company Passport and Distribution without Branches

CESR requests comment on which option – Option A or Option B – CESR should adopt with respect to a management company that wants to distribute UCITS funds in a host Member State without the establishment of a branch. We urge CESR to adopt Option B and believe that, if a management company only wishes to distribute UCITS funds managed by itself in a host Member State, a product passport (and no management company passport) should be required. In situations where the management company is distributing only its own funds, it seems

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<sup>1</sup> The Investment Company Institute is the national association of the US investment company industry. Its membership includes 8,545 open-end investment companies ("mutual funds"), 630 closed-end investment companies, 135 exchange-traded funds, and 5 sponsors of unit investment trusts. Its mutual fund members have assets of about \$7.468 trillion. These assets account for more than 95% of assets of all U.S. mutual funds. Individual owners represented by ICI member firms number 87.7 million as of mid 2004, representing 51.2 million households.

burdensome and unnecessary to require a separate passport for the management company in addition to the product passport.

#### Designation of Management Companies

We have a significant concern with CESR's interpretation restricting the ability of UCITS funds to designate a management company. CESR takes the view that open-ended investment companies may only designate a management company in the same EU jurisdiction as the UCITS fund. In effect, this interpretation would mean that a management company and its UCITS funds must be located in the same Member State. We question the basis for the management company passport if UCITS funds cannot designate management companies outside their own jurisdiction. If management companies are not able to create UCITS funds in other Member States, the UCITS III amendments will serve only to impose additional requirements on management companies without providing them with more flexibility to do business on a pan-European basis.

#### UCITS I Umbrella Funds

We also seek clarification on an interpretation proposed by CESR. We seek clarification regarding the exact latest date by which a UCITS I umbrella fund may launch UCITS I sub-funds and still benefit from the full grandfathering period up to February 2007 before being required to convert to UCITS III.

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We appreciate the opportunity to provide comments on CESR's draft guidelines on the transitional provisions of the UCITS amendments. If we can provide any other information or if you would like to discuss further any issues, please contact me at [podesta@ici.org](mailto:podesta@ici.org) or at (202) 326-5826 or Jennifer Choi at [jchoi@ici.org](mailto:jchoi@ici.org) or at (202) 326-5810.

Sincerely,

Mary S. Podesta  
Senior Counsel