

12 February 2004

IMA RESPONSE TO CESR'S CALL FOR EVIDENCE ON THE ISD MANDATES

The IMA represents the UK-based investment management industry. IMA members include independent fund managers, the asset management arms of banks, life insurers and investment banks, and occupational pension scheme managers and are responsible for the management of over £2 trillion of funds (based in the UK, Europe and elsewhere).

The IMA welcomes the opportunity to respond to CESR's call for evidence with regard to the Commission's Provisional Mandates on the Investment Services Directive. The IMA has a strong interest in CESR's work on the ISD for several reasons:

- Many of our members are ISD investment firms as well as clients of ISD firms;
- Retail products (units in collective investment undertakings) manufactured by IMA members are ISD financial instruments and are often sold by ISD firms (for example, financial advisers and retail brokers); and
- IMA members are important users of the markets and are therefore interested in the regulatory changes affecting the operation of those markets.

We would anticipate becoming involved in a wide range of the mandates as CESR becomes more involved in the detail. At this stage, in response to CESR's call for evidence, we would like to emphasise the following general points:

Need to avoid too much detail and prescription

What is immediately striking about the provisional mandates and the indicative elements is that they are very long and detailed. Our concern is that this may lead CESR to develop very detailed and prescriptive rules. In our view, it is essential that CESR takes particular account of the objective of "striking the right balance between establishing a set of harmonised conditions for the licensing and operation of investment firms and regulated markets and the need to avoid excessive intervention in respect of the management and organisation of the investment firms." We therefore welcome in particular the Commission's statement that "the amount of detail included in the advice should be very carefully calibrated case by case; the advice should ensure clarity and legal certainty but avoid formulations which would lead to overprescriptive, excessively detailed legislation, adding undue burdens and unnecessary costs to the firms and hampering innovation in the field of financial services."

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In our view, it is critical that CESR consider what are appropriate level two measures and what is best covered by level three of the Lamfalussy approach.

Not all investment firms are alike

Though it may seem obvious, it is important to bear in mind that not all investment firms are alike. While asset managers are ISD investment firms, many of the provisions of the ISD were originally drafted with the broker/dealers (sell-side) in mind. In developing its advice, CESR will need, where appropriate, to take into account the specificities of asset management (buy-side).

CESR will also need to bear in mind that the asset management industry is not alike across Europe and is at different stages of development. Asset management is for example very developed in the UK – IMA members which include independent fund managers and the asset management arms of banking, life insurance and investment banking groups are responsible for the management of authorised investment funds including UCITS, institutional funds, private client accounts and a wide range of pooled investment vehicles. While UCITS is the retail face of the investment management industry in the UK, UCITS represents a fraction of the overall assets managed by our members. In contrast, in other EU Member States, asset management is still largely synonymous with UCITS management and remains part of the activity of the large banks which provide in-house brokerage for executing transactions and the major distribution channel for UCITS.

Given the heterogeneity both of the nature of the activities of investment firms within individual Member States and between different member States across the EU, CESR will need to ensure that its advice is broad and flexible enough to accommodate these different business models and market structures.

Initial comments on a couple of key issues

Best execution

As suggested above, the IMA believes that any advice in this area should avoid being overly prescriptive and needs to take into account the specificities of asset management. Unlike broking, asset management is not a transaction service and should not be regulated as such. Asset managers offer investment performance across a pool of assets. The majority of individual transactions undertaken by asset managers are actually for multiple clients. Therefore, regulation designed in the context of a single transaction for a single client would be very inappropriate. In the case of asset management, the criteria for selecting brokers and how best execution is monitored are considerably more relevant than detailed rules requiring access to multiple execution venues.

Conflicts of interest

The IMA supports a principles-based approach to conflicts of interest which focuses on identifying where conflicts exist. Asset management houses produce a single output – asset management – and therefore do not have the same conflicts of interests as sell-side analysts in relation to research, for example. Where an asset manager publishes or distributes research, it is not enough to determine whether

rules apply – there should be a clear conflict which triggers the application of rules intended to ensure firms manage those conflicts appropriately. The distribution or publication of time-expired research, for example, should not trigger the rules since there is no conflict of interest.

We hope these comments are helpful. They are intended as illustrations of the likely issues of concern and look forward to working closely with CESR as it develops its advice. Should you like to discuss any of these points or other issues relating to the mandates, please do not hesitate to contact me.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Ilene Hersher', with a stylized, cursive script.

Ilene Hersher
Adviser, EU Legislation