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A legal update from Dechert's Financial Services Group

## CESR Releases Guidelines for Implementation of EU Management and Product Directives

On 3 February 2005, the Committee of European Securities Regulators ("CESR") released guidelines ("Guidelines") for European Union securities regulators ("Regulators") regarding implementation of the transitional provisions of the European Union Management and Product Directives. As the Guidelines are voluntary, it remains to be seen which EU securities regulators will implement them in their current form. That said, the foreword to the Guidelines indicates that the CESR members have agreed to implement them. Most Regulators, including the CSSF in Luxembourg, are expected to follow the Guidelines as published.

The practical effect of the Guidelines is to shorten, significantly in certain instances, the transitional compliance periods. These new deadlines are summarized below.

### Simplified Prospectus Requirements

The Guidelines require all UCITS funds, whether or not established prior to 13 February 2002, to have a simplified prospectus approved by the securities regulator in their home jurisdiction ("Home Regulator") and ready to distribute to new investors beginning **no later than 30 September 2005**. Thus, EU member states ("Member States") will not be required to permit UCITS to continue marketing in their jurisdiction if they do not have an approved simplified prospectus available for use.

### Ability to Launch New UCITS I Sub-Funds

UCITS umbrella funds established prior to 13 February 2002 that are currently relying on the

"grandfathering" provisions of the European Union product directive (2001/108/EC) ("Product Directive") will not be permitted to launch UCITS I compliant sub-funds after **31 December 2005**. This deadline will not affect the ability to launch additional share classes within such sub-funds or liquidate the sub-funds after 31 December 2005. Following that date, however, such UCITS umbrella funds will only be permitted to launch new sub-funds if the UCITS umbrella fund complies with the Product Directive.

If a UCITS umbrella fund established prior to 13 February 2002 has launched additional sub-funds after that date it must comply with the Product Directive no later than **31 December 2005**.

In both instances, if the umbrella fund is organized in corporate (as opposed to contractual) form, it must also comply with the European Union management directive (2001/107/EC) ("Management Directive") by that date.

UCITS umbrella funds established prior to 13 February 2002 that do not launch any new sub-funds between that date and 13 February 2007 will have until 13 February 2007 to comply with both the Management and Product Directives.

### Ability of UCITS I Management Companies to Launch "Passportable" UCITS III Funds

The Guidelines further clarify that grandfathered UCITS I management companies (i.e. authorized prior to 13 February 2004) will be permitted to launch new funds that comply with the Product

Directive, but only until **30 April 2006**. By that date, management companies must generally have come into full compliance with the Management Directive, and must have been approved by their EU home state securities regulator, if they launched a UCITS III fund prior to 30 April 2006.<sup>1</sup>

A grandfathered UCITS I management company that launches a UCITS III fund before the 30 April 2006 deadline must implement a risk management process that complies with Article 21 of UCITS Directive (85/611/EEC), as amended by the Management Directive. Such implementation must be confirmed to the EU Member State in which the management company wishes to market the new fund. This is accomplished by an attestation delivered by the UCITS' Home Regulator.

### **Impact of UCITS III Passport on Existing Authorized Products**

CESR has clarified that both non-UCITS and UCITS I funds authorized currently for sale to the public in an EU Member State should not experience any disruption in their ability to market in that Member State as a result of their compliance with the new European Directives.

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<sup>1</sup> Grandfathered UCITS I management companies which have not yet launched "passportable" UCITS III funds and will not launch them during the transitory period ending 13 February 2007, are not affected by the deadline of 30 April 2006. These management companies can continue to operate their grandfathered UCITS I funds until 13 February 2007. They must, however, ensure compliance with the Management Directive by that date, at the latest.

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## Practice group contacts

If you have questions regarding the information in this legal update, please contact the Dechert lawyer with whom you regularly work, or any of the lawyers listed. Visit the financial services practice area at [www.dechert.com](http://www.dechert.com)

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