

15 November 2005

Niall Bohan
DG MARKET G3 Unit Head
European Commission
B-1049 Brussels
BELGIUM

Dear Niall

THE ENHANCEMENT OF THE EU FRAMEWORK FOR INVESTMENT FUNDS

Scottish Financial Enterprise (SFE) welcomes the opportunity to respond to the Commission's Green Paper on Investment Management and looks forward to contributing to the development of European Union (EU) proposals that affect the sector.

Scottish Financial Enterprise is the independent organisation that supports and represents the interests of Scotland's financial services industry. Our members encompass all sectors of the industry including fund management, banks, insurance, asset servicing, corporate finance and broking services, professional advisors and support services.

Significance of Scotland's financial services industry

The financial services industry accounts for one in 10 Scottish jobs, with over 108,000 people directly employed in the industry and over 100,000 more employed in support services. All of our member firms in the investment management sector have their global or UK headquarters in Scotland and service clients around the world from Scotland, with a significant number of them also coordinating global client servicing from their bases in Scotland.

Our members manage over £308 billion of funds directly from Scotland, of which £250 billion is invested globally in equities and bonds. They manage an additional £145 billion from other offices throughout the rest of the UK, advised by their research units based in Scotland.

These statistics demonstrate the importance of Scotland as a key centre for financial services within the EU. They also highlight the crucial role and relationship that the investment management community has with investors, employees, shareholders and the wider economy in Scotland, elsewhere in the EU and around the world.

Priority issues

Our member companies will respond direct to you on the detailed questions contained in the Green Paper and through trade bodies both in the UK and in other Member States.

Scottish Financial Enterprise supports fully the Commission's stance against wholesale reform of the existing legislation in favour of making better use of the existing framework. We also wish to highlight our members' broad support for early action on the four priority areas set out below, where barriers or obstacles have been widely acknowledged as hindering cross-border activity and therefore the goal of a genuine European single market in financial services.

We believe the successful delivery of these four priorities will help to achieve wider objectives of the EU, particularly those reflected in Commissioner McCreevy's comment that "an efficient investment fund industry can help Europe meet pressing structural challenges"¹. We would urge the Commission to move quickly in the following areas:

1. Simplification of the notification procedures (2.1.2)

The existing procedure is costly, drawn out and hampers cross-border activity. We therefore welcome the recognition in the Green Paper that the simplification of the notification procedure for passporting funds should be treated as a priority. We are also pleased to note that work is already being undertaken by the Committee of European Securities Regulators (CESR) Investment Management Expert Group and national supervisors to build up convergence among the regulators in this area.

2. Management company passport (2.2.1)

The concerns of regulators about risk controls and investor protection when the supervision of the fund and its manager is split between two jurisdictions are well known. The single management approach has not been considered a realistic option by companies due largely to the requirement to appoint a local management company despite the substantial increase in costs caused by replicating the management function in each Member State in which they operate. We are calling for this barrier to be removed through passporting the services of the management company across Member States, allowing the passport to work in the manner in which it was intended.

3. Fund mergers and pooling (3.1.1)

The Green Paper proposal to establish a framework for cross-border fund mergers and pooling is welcomed by our member companies, many of which operate funds in multiple jurisdictions. The creation of such a framework would allow them to rationalise these funds in a tax efficient and cost efficient manner, for the benefit of investors and investment management firms.

4. Harmonisation of private placement rules (3.4)

Our members would strongly support the development of a common private placement regime rather than any attempt at harmonising product regulation, which would be out of date almost immediately as products are updated and new ones launched. Furthermore, it is our view that harmonising the various domestic private placement regimes that currently exist would create a more level playing field across Member States.

Additional priorities

We strongly support Commissioner McCreevy's view that "We must all of us try to cut back and cut down further regulation unless the case is sound from every angle."² In addition SFE supports the principles behind the Better Regulation agenda and the Commission's stance that "better regulation is crucial for promoting competitiveness both at EU level and in the Member States."³

We would go further and argue that regulation should not make it harder to innovate or compete in international markets, in particular the US and the Far East. We would propose that the Commission's regulatory impact assessments and cost/benefit analysis going forward should specifically examine whether the competitiveness of firms operating within and outside the EU would be disadvantaged in non-EU markets. We would also propose that the Commission establishes strong, constructive dialogue with regulators in these markets.

¹ Commission Hearing on Investment Funds (UCITS) 13 October 2005

² Commissioner McCreevy speech at Lamfalussy London Summer Dinner 27 June 2005.

³ Communication from the Commission to the Council and the European Parliament 16 March 2005.

It is also important that, whatever rules or regulations arise, the Commission is vigilant against regulators in individual Member States indulging in what one of our member firms described as “frustrating activity”. An example of this would be where a regulator insists on additional local requirements that act to all intents and purposes as a form of protectionism, effectively excluding new entrants from other Member States from operating in that market.

Efficiency and competition

The creation and maintenance of a more efficient and competitive environment for investment management across the European Union is of fundamental importance to the delivery of a Single Market in financial services and therefore to the continuing success of Scotland’s investment management sector.

Scottish Financial Enterprise would be very pleased to discuss these issues with you and your colleagues in more detail.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Amanda Harvie', written in a cursive style.

Amanda Harvie
Chief Executive