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ES/05366

Our Ref.: 04-1003

4-476

#88

January 15, 2004

Anticipated via fax:
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The Honorable William H. Donaldson
Securities and Exchange Commission
450 5th Street N.W.
Washington, DC 20549

Dear Chairman Donaldson:

Undesired Effects of Prohibition on Joint Management of Different Portfolios

As the European investment fund industry's representative trade body, FEFSI[1] regularly follows legislative and regulatory developments in the United States, and we have a particular interest in pending legislative proposals to address, among other things, abusive trading practices with respect to mutual fund shares. We are writing to express our concern about the potential -- and, we believe, unintended -- impact of certain of one of the proposals on the European investment fund industry.

We support Congress' efforts to remedy any abusive trading practices and to help assure compliance with the highest ethical standards throughout the mutual funds industry in the US. This is an objective to which we at FEFSI are committed with respect to the fund industry in Europe as well. The integrity and reputation of US funds has been a key to their success and a source of inspiration for investment funds worldwide. We take no position and do not wish to obtrude on any deliberations with respect to purely US issues. We do wish to take the opportunity to comment on and to express our concerns about proposals that impact the operations of European investment funds.

One such issue that has come to our attention is the proposed ban on joint management of mutual funds and "hedge funds," as set out in the House of Representatives Bill N° 2420 (Sec. 202), as well as in the alternative bill introduced in the Senate by Senators Christopher Dodd and John Corzine (Sec. 302). Although we understand and support efforts to address the potential conflict of interest that may arise from the concurrent management of different investment portfolios, we have strong reservations as to the current wording of this provision. In its title, the provision expresses the aim of avoiding the joint management of mutual funds and "hedge funds," whereas the provision itself does

1 FEFSI http://www.fefsi.org/, the *Fédération Européenne des Fonds et Sociétés d'Investissement*, represents the interests of the European investment fund industry. Through its members, the national associations of the 15 EU member states, the Czech Rep., Hungary, Liechtenstein, Norway, Poland, Slovakia and Switzerland, FEFSI represents some 900 management companies and about 41,000 investment funds with EUR4.6 trillion in investment assets.

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not accomplish this purpose. In fact, the provision, in its present wording, has a scope that is considerably wider than hedge funds and would include, if left unchanged, investment funds that operate as the local equivalent in Europe of US mutual funds. While not regulated by the US Securities and Exchange Commission, such funds are registered with, and regulated by, their comparable authorities in the EU. If enacted into law, this provision would prohibit a portfolio manager for a European mutual fund from providing investment advice and services to a US mutual fund, and a US mutual fund manager from providing such advice and services to a European fund. The cross-border impact of this prohibition would be far-reaching and adverse, in that currently a significant number of European fund managers also advise US mutual funds (for example, with respect to EU and international investment portfolios), and a substantial number of US advisers likewise manage EU funds (similarly exporting their investment management services and expertise).

FEFSI believes that the aim of the provision -- i.e., to deal with conflicts of interest that may arise from a single portfolio manager advising different kinds of funds -- can be achieved just as effectively by other means that would not adversely affect such cross-border provision of investment advisory services. One such approach would be to require that the fund manager in question establish and observe policies and procedures in place that effectively neutralise any possible conflict. In fact, this is commonplace for investment funds in Europe.

We note that, although imposing a ban on joint management, the provision in these Bills would permit the SEC to allow joint management by a portfolio manager "in exceptional circumstances when necessary to protect the interest of investors". In place of this "exceptional circumstances" authority for the SEC, FEFSI would urge that Congress direct the Commission to adopt additional disclosure requirements and mandate policies and procedures to address the conflicts of interest that may arise under these circumstances. The SEC also could be directed to scrutinise the effectiveness of such policies and procedures and take appropriate corrective action where they prove to be insufficient or unsatisfactory.

In conclusion, the investment funds industry of Europe respectfully requests reconsideration of this provision, to confine its ban on joint management only to US mutual funds and true "hedge funds" or, alternatively, to address the potential conflicts by appropriate disclosure and other compliance requirements.

We appreciate the opportunity to express our views in this regard. Should you or your staff have any questions or require any additional information, please do not hesitate to contact the undersigned at the following tel. n°: +32 2 513-39 69.

Yours sincerely,

Steffen Matthias
Secretary General