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- **Post Madoff**

Commissioner McCreevy initiates clarification of UCITS (Undertakings for Collective Investment in Transferable Securities) regulations regime. Commissioner McCreevy announced today in Brussels that he intends to clarify and strengthen provisions of the UCITS regime particularly as regards the liability of depositories. He announced he will launch a consultation before the end of June to deal with inconsistencies in the application of the UCITS directive which were shown up by the Madoff scandal.

One of the consequences of the Madoff scandal in the EU is that it affected retail investors who had invested in certain UCITS funds the assets of which had been entrusted to a Madoff entity as a sub-custodian.

Last December ([MEMO/09/27](#)) Commissioner McCreevy informed Ministers of Finance that he had asked his services to work closely with the Committee of European Securities Regulators (CESR) to look into the liability of the UCITS depositories in the 27 Member States. The outcome of this review by CESR is now known and it shows that the minimum high level principles of the UCITS Directive have been transposed in very diverging ways by Member States.

The outcome is an unlevel playing field. This means that some EU investors in UCITS funds are better protected than others. On the other hand, the Commission has made stringent proposals on the regulation of depositories, their liability, eligibility, etc in its recent proposal for Alternative Investment Fund Managers (AIFM) ([MEMO/09/211](#)). According to this proposal, depositories should be credit institutions based, authorised and supervised in the EU.

Their liability has been strengthened, including an inversion of the burden of proof, and there are clear provisions on delegation as well as on the conditions under which assets can be entrusted to depositories outside the EU. Mr McCreevy wants to extend such provisions to UCITS funds. The new proposal should at least cover what the AIFM proposal covers. It would not be appropriate to have a less stringent approach for retail investors than for professional investors.