Comments on CESR´s guidelines for supervisors regarding the notification procedure according to Section VIII of the UCITS Directive

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Raiffeisen Capital Management („RCM“) welcomes the possibility to provide comments on CESR´s Consultation Paper regarding the notification of UCITS, dated October 2005. We are glad that CESR has decided to tackle this very important topic. In recent years, the notification procedure has degenerated into a full-fledged registration for UCITS.
We are aware of limitations imposed by national laws, but we think that the solutions presented in the Consultation Paper can be improved.

RCM has prepared the following answers to the questions outlined in the Consultation Paper:

The two-month period

Q 1: Is the starting of the two-month period dealt with in a practicable way in your view? Q 2: Respondents are asked to provide their view on the practicability of the proposed approach?

It should be stipulated that the notification period is two calendar months, in order to avoid different interpretations.

In view of its limited competences, the host State regulator should only perform a formal verification of the documentation, not a material one. We believes therefore that two calendar weeks (not one month) should be sufficient for the host State regulator to

check the information submitted for completeness and notify the UCITS about missing information.

The two-month period, however, should start immediately at delivery of the documentation (not after the notification is deemed to be complete) and two months should be the absolute maximum length of the waiting period, unless the submission is deemed incomplete and/or further information is required. In case the review is completed before expiration of the two-month period, the regulator should always notify the UCITS which could then start marketing immediately. Such procedure should not be optional, and contrary national regulations should be amended.
A courier receipt (for physical document delivery) or other acceptable types of receipts (for electronic delivery, for example) will be deemed to be sufficient proof of delivery and of the starting date for the two-month period.

Any request for additional information should be made as early as possible, in order to avoid last-minute requests that would lengthen the two-month period. We believe that four weeks should be sufficient for the host State regulator to review the file and make any additional requests by issuing a "duly motivated communication".

We disagree with CESR's proposal to "stop the clock" during the two-month period after the issuance of a "duly motivated communication" and restart it when the information requested has been provided. This method would perpetuate the two-month period as a "minimum" review period. Instead, we believe that the notification period could extend beyond two months in case of requests for further information, but that marketing should be allowed to start one week after the additional information has been provided (unless the host State regulator notifies the UCITS otherwise). With the model we suggest, the UCITS would have no reason to delay the submission of necessary additional information just to shorten the review period available to the host State regulatory (as CESR states in Art. 18), since we assume that regulators will strive to be as fast and efficient as possible, and any delay in submitting additional information would automatically delay the marketing start. In any case, even if the notification

period goes beyond two months due to requests of additional information by the host State regulator, the two-month period should not be re-started.

Certification of documents

Q 3: Respondents are asked to provide their view on the practicability of the proposed approach?

RCM agrees that it should be sufficient to certify only the simplified prospectus by the home State authority. However, we believe that even for the simplified prospectus a certification by the home State authority is unnecessary, and UCITS Directors should be able to self-certify, which means certify that the documents presented are true copies of the latest simplified prospectus filed with the home State regulator. Since some CESR Members already accept the practice, it should be sufficient for all CESR Members.

Translation

Q 4: Do you consider the suggested approach as appropriate?

According to Art. 47 of the UCITS-Directive the Member States can choose the language in which the documents have to be translated. The Member States should require only translating the simplified prospectus into the local language. Regarding the remaining documents (annual report, semi-annual report, full prospectus, fund rules) an English version should be sufficient. A similar provision is already existent in Art. 19 of the Prospectus-Directive (2003/71/EC) where only the summary has to be translated into the local language, the remaining documents can be kept in the "language customary in the sphere of international finance". The protection of retail-investor is not curtailed since the simplified prospectus represents the crucial document for this kind of investor; institutional investors could – with respect to the further documentations - rely on an English version.

No sworn translations should be required, as they do not necessarily provide any extra investor protection or better language quality, but lead to a substantial increase of the notification costs (e.g. Spain, Poland).

It should be furthermore sufficient to keep the correspondence and documentations to the host State regulator, like the notification letter or the UCITS-attestation, in English. The requirement of translation leads to the necessity to involve costly legal assistance.

Content of the file

Q6: Do you consider the suggested approach as appropriate?

We welcome the approach that the notification process should be handled in a standardised form within the Member States. Several different kinds of supplements are required by some Member States in an inconsistent and un-uniformed way. This hinders a harmonised notification procedure and leads to a distortion of competition.
In detail, we would like to point out the following remarks:

- **UCITS- attestation according to Point 47/ 1:** An English translation of this attestation should be sufficient for the host State authority. At the moment this attestation has to be translated into each local language which causes unnecessary costs.

- **Notification letter according to Point 47/ 2:** The set-up of the notification letter should - as an option for the applicant - be done in English. The requirement of translation leads to the necessity to involve costly legal assistance. Actually the involvement of legal assistance can cost up to EUR 8.000, -- (e.g. Italy, Poland).

- **Marketing of the fund according to Point 47/ 6:** It should be sufficient to notify that the UCITS is distributed through regulated agents (as is almost always the case), and give name and contact information for distributors and paying agent.

- **Official Fee:** The official fees of the authority for the notification process hugely differ throughout the Member States. It would be desirable if these would be standardised and be proportionally to the effort caused, since the actual situation leads to a barrier of entry (e.g. Spain, Poland).

Modification and on-going process

Q 7: Do you consider the suggested approach as appropriate?

For notified UCITS several host States require a separate attestation that the UCITS fulfils the conditions of the UCITS-Directive if the prospectus have been modified. This requirement lacks any reasoned basis since the home State regulator will in no case approve an amendment of a UCITS that loses its conformity with the Directive (see Art 1 Para. 5 of the Directive).

Q8: Do you agree with the proposals concerning the publication of the information or do you prefer another procedure and if, which one?

- **Annex to the full prospectus:** Actually several host States require modifications to the prospectus (country-specific information) which is contrary to Art. 48 of the Directive. The prospectus is a document fully approved by the home State and should not be amended through local arbitrarily regulations. The full prospectus once authorised in the home State should be deemed valid and complete; providing information to the investor should be ensured through other means.

Q 9: Do you feel that an issue in this consultation paper should be dealt with in more detail or that other aspects of an issue already contained in the consultation paper should also have been treated? Q 10: Should some additional issues related to the notification procedure have been dealt with in this consultation paper, and if yes, which?

- **Register of unit-holders:** In some Member States it is required to appoint one special entity that holds a register of all unit-holders. This provision is also applicable if the UCITS are distributed from Member States that do not know this

requirement. This situation leads to burdensome adaptation for foreign UCITS und to a monopole position of this entity.

- **Single competent authority:** The applicant for notification should be faced with one singular regulator that is responsible for the whole notification process. This is not consistently implemented in all Member States (e.g. Italy).

We hope that our comments will be taken in due account by CESR. For further information, please do not hesitate to contact us:

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