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The Committee of European Securities Regulators
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Your ref
Our ref

Dear Sir

CESR's guidelines to simplify the notification procedure of UCITS – 2nd Consultation Paper (CP)

Thank you for giving Threadneedle the opportunity to respond to the above paper. Threadneedle responded to the 1st CP but to reiterate, Threadneedle is a major UCITS cross border player managing over £18bn in UCITS and successfully marketing UK based UCITS into a number of EU jurisdictions. The proposals outlined in the paper therefore are of significant importance to Threadneedle given our experiences with the registration process in different Member States.

Threadneedle commented on the EC Green Paper on Asset Management and agreed with the priorities outlined in it. Of most importance to Threadneedle is the notification process and private placement rules (as long as UCITS are included). We therefore welcome the 2nd consultation and note that CESR continues to consider this an important topic. We note that, as recently confirmed by the European Parliament in the Report on Asset Management by Wolf Klinz to the Committee of Economic and Monetary Affairs of the European Parliament, that there is a strong call for the notification procedure to be simplified. We also highlight the significance of the issue as set out by Charlie McCreevy in his recent speech at the IMA Dinner in the UK. We attach a similar importance to this subject.

Whilst we note the change in emphasis in the revised wording of the objectives in the introduction, we are extremely disappointed, given the feedback to the first consultation (including our response and that of both the IMA and EFAMA), that there seems to have been no real progress of substance in the proposed guidelines.

In fact we could make the same opening comments that we did in our first response, i.e.:

1. We are very disappointed with the overall proposals and believe a significant opportunity to simplify the regime and facilitate true cross border fund distribution will be lost if implemented as set out. Similarly it does not reduce costs to investors or fund providers, nor does it eliminate barriers to the single market. Given that it is only guidance and not enforceable, too many opportunities exist for Member States to maintain a notification system that is costly, complex and lengthy to overcome, i.e. there will not be a level playing field.
2. We do not see any investor protection justification for the proposals as they stand (particularly as both the product and its distribution are regulated). Nor are we convinced that these proposals are in the spirit of what the Directive intended.

3. We consider that the paper starts from the wrong premise. We believe that it should start with the ideal solution and work towards achieving that. Our view is that notification should be just that, notification, not registration. We consider that fund providers should simply be required to notify host state regulators of their intention to market in that state and send the full prospectus, instruments constituting the UCITS, latest report and accounts (in English or the home state language) and the Simplified Prospectus (SP) in the local language. The reasons for this are that for the former documents it should be left to the product provider to make a commercial decision as to whether to translate them into the local language, and the SP being the marketing document being offered in the local language. Further the product provider should only have to confirm that it will abide by the host state conduct of business rules (as they apply) rather than submit any marketing arrangements. The reason for this is that any breach of local conduct of business rules would lead to relevant regulatory action (we believe this is supported by the Vandamme Commentary on the UCITS Directive) and so there is already an investor protection mechanism in place. This also goes towards CESRs role to engender mutual trust among national supervisors.
4. We strongly urge that where there is no intention to market to retail investors that there be no requirement to notify/register UCITS in a Member State.
5. The CP acknowledges that for some jurisdictions this might require changes to national legislation. Given that this is the case we do not see why it is not possible to go significantly further and to simplify the process as we have suggested above.
6. In no circumstances should host state regulators be able to comment on the structure of the UCITS or question the home state authority's authorisation of the UCITS. For the avoidance of doubt this must also include the risk management process. We are encouraged by CESRs acknowledgement of this in both CPs.

Turning specifically to the 2nd CP, whilst it appears that some progress has been made, in practice we believe it is unlikely to make any difference and will not meet the revised objectives. We would appeal to CESR to take this opportunity to radically simplify the notification process so that there does not need to be any intervention at a higher level.

Para 2, page 3	As worded this does not give real comfort to the industry that there is a genuine will to simplify the process. Words such as "general commitment" do not seem to go far enough. In fact CESR also states in a small note at the bottom of page 10 that in some member states there is "no general commitment" to amend national legislation.
First bullet, page 3 Language regime	Whilst in theory this is welcome, in practice it is meaningless because it may be contrary to domestic legislation or regulations.
Second bullet, pages 3-4 Checking completeness	We continue to argue that it should take no longer than one week to confirm if all information has been sent. It should take no longer than one month for all substantive comments, questions and issues to be made by the host state regulator. This means that it should take no longer than the two months stipulated by the Directive for everything to be addressed and for the UCITS to begin marketing (without prejudice to being able to shorten the period). This does not stop a reasoned decision notice being sent to uncooperative product providers.
Third bullet, page 4 Certification of documents	This is welcome provided that host state regulators do not replace the original requirements with an alternative cumbersome and costly, time consuming process.
Further bullet, page 4 Umbrella funds	Again this is welcome if it works in practice. However it should simply be possible for product providers to notify additional sub-funds confirming the same marketing arrangements and to be able to market immediately.
Preamble –	Paragraphs 2 and 3 try to make a positive statement as to intentions but in fact give "let-outs"

page 9	that effectively make the attempt to simplify the notification process meaningless.
Transitional period	Given that no timetable is set out for the transitional period this is a meaningless statement.
Guideline 1	See earlier comments
Guideline 2	We welcome this but see opportunities for the whole notification process to fall apart where a national regulator chooses to deal with its concerns about other reasons than marketing through a long and untested mediation process. If the host state agrees to permit marketing of the UCITS whilst dealing with its non-marketing concerns through the mediation process then this guideline will work, if not then it is a meaningless guideline.
Guideline 3	We take this to mean “silence is assent to the marketing of the UCITS”. This needs to be stated on each regulators website and in these guidelines.
Guideline 4 and Q1	See earlier comments – it does not require one month to ascertain whether an application is complete (existence rather than substance). It can be done in a matter of minutes but in any event no longer than one week. We see absolutely no reason why all issues cannot be resolved within two months, so long as trust exists on all sides.
Guideline 5	We fully support this ability to shorten the two-month period.
Guideline 6 and Q2	We do not accept that the two-month period can be extended where all parties cooperate. It should not take any longer than one month for key issues to be flagged by the host state regulator. That gives sufficient time for the product provider to respond. Any request for further information should not be a reason for suspending or re-starting the two-month period again.
Guideline 7 and Q3	We welcome this subject to comments we have made elsewhere in our response (i.e. not replacing it with another bureaucratic system).
Guideline 8 and Q4	We continue to believe that only the simplified prospectus should be translated with other documents only being required in English. This is consistent with the Prospectus Directive.
Guideline 9	This is welcome although all sub-funds (including those not notified) need to be listed in the prospectus to ensure a consistent document in all jurisdictions. A separate disclosure (either in the prospectus or as a separate sheet) can show which funds are marketed in which countries.
Guideline 10 and Q5	In line with earlier comments, where new sub-funds are to be notified, then so long as the marketing arrangements are the same then no new two-month period should be required.
Guideline 11 and Q6	We agree that only copies of attestations rather than originals should be required. But this has to happen in practice. We do not consider that translations of the instrument or report & accounts should be required and ask that this be re-addressed. We do not agree that it should be open for regulators to ask for further documents – this leads to different interpretations and then we are back to square one.
Guideline 12 and Q7	We have no comments.
Guideline 13, Q8, Q9, Q10	We have no comments but have seen a draft of the IMA response and share the views expressed there.

We are keen to work with all parties to ensure there is a simple, cost effective process that enables a true cross-border UCITS market to be achieved. To that end we have worked closely with the IMA in the UK and commented/input into their response. We hope these comments are of help and would welcome the opportunity of discussing this with CESR.

Yours faithfully

Peter Grimmett
Head of Distribution Compliance

Cc: Investment Management Association