IMMFA
Institutional Money Market Funds Association

The Committee of European Securities Regulators
11-13 Avenue de Friedland
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France

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Dear Sirs

CESR's consultation on the simplification procedure for notification of UCITS

The Institutional Money Market Funds Association (IMMFA) is grateful for the opportunity to comment on CESR's consultation paper on guidelines for supervisors regarding the notification procedure according to Section VIII of the UCITS Directive.

IMMFA is the trade body representing promoters of triple-A rated money market funds[1] and covers nearly all of the major promoters of this type of fund outside the USA. Triple-A rated money market funds are bought primarily by institutions to manage their liquidity positions and not for 'total return' investment purposes. They are used as an alternative to bank deposits by many investors as they offer a practical means of consolidating and outsourcing short-term investment of cash. Total assets in IMMFA members' funds as at 6th January 2006[2] were in excess of Euro200 billion. You may obtain further information on triple-A rated money market funds from our website, www.immfa.org.

General comments

IMMFA welcomes the CESR paper and considers that a review of notification procedures is timely. Notification procedures as enforced by some competent host state authorities are effectively a full registration regime, which is significantly beyond the approach envisaged in the Directive. IMMFA members have experienced significant delays when trying to notify triple-A rated money market funds in certain CESR member jurisdictions, with the process sometimes taking as long as six months. We do not believe notification should take so long. Our members have also experienced significant costs, in particular because certain competent host state authorities require translation of all the documentation relating to the notification (including the accounts, full prospectus and simplified prospectus). In our experience, investors very rarely read the full prospectus or accounts of a fund, and so translating those documents generates a cost with no consequent investor protection benefit. These are examples of direct costs; we would also add that there are significant indirect costs, not least the delays in bringing a fund to the relevant market.

Given the importance of this issue, IMMFA believes that there are several areas where CESR should heighten its ambition. We are fully cognisant that some competent host state authorities face significant resource constraints and may be concerned about signing up to

[1] References to triple-A rated money market funds in this letter means funds rated, specifically, AAAm by Standard & Poors, Aaa/MR1+ by Moody's and AAA/V-1+ by Fitch.
[2] Source: iMoneyNet *IMMFA* Money Fund Report.

standards that they might struggle to achieve. Generally, however, the number of notification requests tends to relate to authorities' resource levels. We suggest that CESR adopt a flexible and transparent approach that can accommodate differences of ability to deal with the notification period. Authorities that can achieve significant efficiencies should ensure that they meet effective response standards. To encourage transparency, CESR members should publish appropriate statistics with regard to response times etc. This would result in an outcome that positively reinforces an aspirational approach as opposed to a 'lowest common denominator' consensus.

We endorse the comments made by the European Funds and Asset Management Association (EFAMA) and UK Investment Management Association (IMA) about other aspects of CESR's guidelines. We agree that objectives of the CESR review should focus on simplification, proportionality, reducing costs, eliminating barriers and furthering a level playing field among investors. While we believe that the ultimate aim should be to remove the requirement for notification completely, we understand that this cannot be done without a change to the Directive. We therefore suggest that the immediate issue should be for the industry and regulators to work together to minimise different national requirements and to commit to finding ways of speeding up the process for consideration of notification requests.

Specific issues in the consultation paper

Starting the two month period

CESR has suggested in paragraph 11 that if the notification is incomplete "... the competent host state authority shall inform the UCITS ...as soon as possible and in any case within one month from the date of receipt of the notification letter." We believe that one month is too long to respond to what should be a very straightforward administrative exercise. As CESR notes in paragraph 10, the notification is complete if all information and documents are provided to the competent host state authority. As this documentation is clearly specified in the Directive, the identification of incomplete applications should be a relatively straightforward matter. We urge that CESR members commit to respond to the UCITS within 1 week. It is unreasonable to assume that the objective of concluding the process within two months is achievable if relatively straightforward tasks take a significant length of time (ie half the allotted time).

We suggest that absent an indication that an application is incomplete within two weeks of an appropriately evidenced delivery of an application, the two month period should be deemed to have started as from the date of delivery of the documentation. This would provide an appropriate incentive for the competent host state authority to act expeditiously.

Shortening and managing the two month period

We welcome the CESR's view that the two month period can be shortened. We are concerned, however, with the proposal that requests for further information from the UCITS should 'stop the clock' on the two month period. While we recognise the need to create an incentive for a rapid response from the UCITS to queries from the competent host state authority, we believe that the proposal could inadvertently create a situation that could result in a delay beyond the two month period. Instead we suggest that to provide an appropriate incentive for the UCITS and the competent host state authority to act expeditiously the marketing should be allowed from a specific period from the response by

the UCITS. This period should be set at a prompt but achievable period of, for example, two weeks.

It might also be useful in cases where there are repeated issues that necessitate requests for further information that the competent host state authority issue a clarifications or Frequently Asked Questions to ensure as much as possible that general queries to the UCITS are dealt with in the initial application and do not cause avoidable delays.

Certification of documents

We welcome CESR's clarification that only the simplified prospectus should be required to be certified as the most recent approved by or filed with the home state authority. We believe that such certification should be provided by the applicant and not by the home state authority. Also, we note that there have been difficulties in some areas with expiry dates for attestations. We do not believe any expiry dates should apply.

We welcome the agreement not to require the use of the Hague Apostile for certification of documentation and ask that this agreement have immediate effect.

Translation

Current practice from some competent host state authorities is to require the translation of broader range of documents than is required under the Directive. We suggest that CESR members should review the necessity of requiring such translations, and taking into consideration the comments made at paragraph 29 concerning the importance of the simplified prospectus, we suggest that the simplified prospectus should be the only document that requires translation.

We believe translation of the other documentation is primarily a commercial issue and has no effect on the quality of investor protection. It should be left to the fund promoter, rather than required as part of the notification procedure. We note that the Prospectus Directive leaves issuers with the choice of publishing their prospectus in either the local or an internationally accepted language.

Umbrella funds

We welcome CESR's view expressed in paragraph 43 that only those sub-funds that are being marketed need to be notified. However, we are concerned that paragraph 45 (3) may introduce additional requirements that extend beyond those in the Directive. As the competent host state authority's responsibilities solely with marketing issues, where a sub-fund is added or existing sub-fund is notified but where marketing does not change, we believe that there should be no necessity for extending the notification period or initiating a new period.

We also suggest that modifications to the text of prospectuses to remove reference to non-marketed sub-funds should not be required. This requirement has the potential to create confusion among investors as to the appropriateness of the information and does not contribute to investor protection. We note that CESR's reference in paragraph 48 to the importance of availability of the same information to investors in the home and host state emphasises the importance of this view.

Contents of the file

We welcome CESR's comment at paragraph 46 that "UCITS should not be obliged by the host state to send other documents and information than those mentioned in this chapter" but note that barriers will remain until and unless commitment is given to simplify procedures or converging national requirements under Articles 44(1) and 45.

There are some areas where efficiencies can be achieved. In particular, we suggest that the requirement for an original attestation is unnecessary. As the documentation is homogeneous, it would be good practice to require a single attestation that could be copied and used for all applicable competent host state authorities.

Modifications to documentation

We strongly support the comments in paragraph 48 that the same information should be available to all investors. We believe that this should mean that national versions of documentation should not be permitted and that only the home state should be the competent authority which may require and approve changes. We believe that processes should be established whereby the home authority notifies the host authority of any approved changes to documentation.

It would be helpful if all relevant documentation were lodged with the home state authority and made available to all host state authorities, perhaps through some form of web-based mechanism. Also, we suggest that that communication be undertaken primarily on a regulator to regulator basis rather than using the UCITS as a channel for communication between the relevant authorities. This does not mean that the UCITS should be excluded from these communications, particularly if there are issues of clarification, rather the UCITS should be kept updated and informed where delays may be identified.

Further approval should not be required from the host authority unless there is some change to the marketing arrangements, and the modifications should be capable of being notified to investors immediately.

National marketing rules

We appreciate the proposal for publication of rules but consider that it is the application of the rules that is the key concern. We believe that it is important to maintain a clear sense of proportionality and for competent authorities to keep to a minimum the differences in these requirements. We urge competent authorities to keep to a minimum the additional information they require from funds. We believe that competent authorities should clarify specifically what additional information they may require and why.

Recognising that CESR members have limited ability to affect national legislations, we suggest that CESR members seek to commit to operate the legislation in as harmonised a way as possible. Although CESR members may have powers to require additional requirements they do not always have to apply those powers. CESR members should identify where this discretion exists and seek to operate national marketing rules in the least onerous way. To give certainty to the UCITS and to other CESR members, this could take the form of issuing some form of 'No Action' letter to state the circumstances under which national rules would not be applied.

Finally, it would be useful for all additional information requirements to be maintained in a single website, possibly CESR's own. This would have the advantage both of having the necessary information in one place and of allowing regulators to compare requirements, and see where national differences can be ironed out.

Additional comments

As noted by EFAMA and IMA, we would ask CESR to consider the diversity of fees applicable for registration as we believe that an effort to identify and reduce these costs would greatly assist in the identification of unnecessary and duplicative requirements.

Annexes

The issues noted above relating to informational requirements should be reflected in the text of the model documentation attached in the annexes.

IMMFA recommends that CESR consider the issues set out above when progressing its work on notification. We would welcome the opportunity to explain the operation and regulation of money market funds in more detail and would be very pleased to meet to further explore these issues should clarification be required.

Yours faithfully,

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Secretary General, IMMFA

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