Institutional Money Market Funds Association

Mr Fabrice Demarigny
Secretary General
The Committee of European Securities Regulators
11-13 Avenue de Friedland
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France

1 June 2006

Dear Mr Demarigny

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

The Institutional Money Market Funds Association (IMMFA) is grateful for the opportunity to comment again 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 May 2006[2] were in excess of €210 billion. You may obtain further information on triple-A rated money market funds from our website, www.immfa.org.

General comments

IMMFA recognises that some progress has been made as a result of the first consultation on this issue and welcomes the positive moves by CESR to simplify the process. However, we are disappointed to note that CESR appears to be avoiding taking the perhaps more difficult decisions that could result in an effective simplification. Notification procedures as operated by some competent host state authorities go beyond the approach envisaged in the Directive. The guidelines currently suggested by CESR, particularly where they clearly reference national discretion, leave the door open to the maintenance of this type of regime.

We reiterate the point that CESR needs to incentivise host state authorities to develop effective mechanisms for dealing with notification requests efficiently and speedily. The most effective way for this to be achieved is for CESR to make transparent the details of host authorities requirements and the effectiveness of their processes. This would allow for comparison of the processes and identification of the best performing authorities so that best practice and efficient procedures can be taken up by other authorities. 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.

[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.

We endorse the comments made by the UK Investment Management Association (IMA) about other aspects of CESR's guidelines. We welcome CESR's decision to revise the objectives of the guidelines in point 6 of the introduction to include facilitating cross-border fund distribution, eliminating barriers to the single market, and reducing costs for investors and fund management companies and agree that the proposed guidelines do not provide enough tools to reach these objectives.

Specific issues

General Commitment and transitional period

IMMFA welcomes the commitment given by CESR members to simplify and speed up the notification process, particularly the recognition that the amendment of their national legal provisions might be necessary in some cases. We suggest that CESR identify a deadline for the transitional period to encourage prompt adoption.

We welcome the statement by the Chairman of the CESR Expert Group on Investment Management in the open hearing held in Paris on 23 May 2006 that CESR is strongly committed to monitor that its members effectively implement the guidelines, and that a first review will take place in a year's time. We ask that this timetable be endorsed along with a similar deadline for the implementation of the guidelines by CESR members.

Guideline 1

IMMFA welcomes the proposal that the notification letter may be submitted to the host Member State authority in a language common in the sphere of finance at the international level. However, we are concerned that the guideline may not be implemented as a consequence of the caveat "...if it is not contrary to the domestic legislation or regulations of the host Member State." We believe that this caveat may allow for some authorities to avoid introducing modifications for an effective regime. We suggest that host authorities review their domestic legislation and identify where it would prevent the implementation of guideline 1. If, for example, requirements are obligatory it would be useful if the authority were to provide justification. If not obligatory, this would allow for speedy implementation of the guideline. It would be interesting to identify those countries require as a matter of law that communications must be in the local language.

Guideline 2

IMMFA notes that it is essential that authorities avoid the problem of differing interpretations of the directive. We urge CESR members to clarify these interpretations between themselves as a matter of urgency so that outstanding issues can be dealt with in a timely manner and preferably pre-emptively.

Guideline 3

IMMFA notes that it is important that a maximum period be established so that the process cannot be indefinitely prolonged. Please also refer to our comments at guidelines 5 and 6.

Guideline 4

In the consultation paper CESR has suggested 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 the guideline notes, 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 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 a maximum period of two months is achievable if relatively straightforward tasks take a month to complete.

Following the statement by the Chairman of the CESR Expert Group on Investment Management in the open hearing that CESR members undertake a material and not simply a content check within the one month period mentioned, we would ask that this point be clarified. We find that this conclusion is not clear from the text of Guideline 4. We would welcome the suggestion that a material check could be completed within one month in the vast majority of cases.

Guideline 5

IMMFA welcomes this guideline and requests that CESR members commit to shortening of the two-month period as a matter of course. The two-month period should be considered as a maximum not as a general target or minimum period.

Guideline 6

We remain concerned 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 significantly beyond the two-month period. 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.

We reiterate that in cases where there are repeated issues that necessitate requests for further information that the competent host state authority issue a clarification 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.

Guideline 7

IMMFA welcomes CESR's decision to permit the self-certification of documents by the UCITS.

Guideline 8

IMMFA is disappointed to note that CESR appears to have missed a real opportunity to simplify the process by limiting the requirements for translation of documents. 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. We believe translation of most documentation is primarily a commercial issue and has no effect on the quality of investor protection. Indeed, for professional clients there may be no need or demand for translation. As CESR has itself previously noted, the simplified prospectus is considered the most essential document regarding the fund for the investor, the key tool to make well informed investment decisions. Given its importance, we reiterate that the simplified prospectus should be the only document that requires translation.

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Guideline 9

IMMFA welcomes the agreement that where a UCITS intends to market actively only some of the sub-funds in an umbrella fund, only those sub-funds have to be notified.

Guideline 10

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.

Guideline 11

IMMFA welcomes CESR's proposal to accept copies of the attestation instead of requiring the originals, and also the acceptance of English as the language for the attestation.

We find helpful the clarification at paragraph 37 the regarding additional documentation. However, we are concerned CESR caveats this with the comment that additional documentation "to streamline the notification process" might allow for requirements for unnecessary additional documents. We remind CESR of its comment in the previous consultation that "UCITS should not be obliged by the host state to send other documents and information than those mentioned in this chapter". While we agree that there may be a need for clarification, this should not be described as 'additional documentation'. We suggest that CESR clearly state that additional documentation is not required.

We note that there have been difficulties in some areas with expiry dates for attestations. We do not believe any expiry dates should apply.

Guideline 12

We agree with the statement at paragraph 38 that "...documents and information have to be published in the host State in accordance with the same procedures as those provided for in the home State." 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.

Guideline 13

IMMFA welcomes the proposal to develop a standardised overview on the non-harmonised national provisions of a host State which relate to the application of the Directive and for this to be published. We ask that this overview be presented so that it is complete and covers all the requirements that a UCITS would face, so that there are 'no surprises' in terms of additional requirements not set out in the list. It would be useful for all additional information requirements to be maintained in a single website, possibly CESR's own.

With regard to content of the rules, however, we are concerned that there is no commitment from CESR members to move towards a more harmonised approach. We suggest that CESR members should seek to operate national marketing rules in the least onerous way. As we noted previously, 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.

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CESR members should use the opportunity presented by identifying national provisions included under Annex III to review and compare with each other whether these provisions should be maintained and seek to limit additional requirements to an absolute minimum.

Additional comments

We 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.

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

Yours Sincerely,

Gerard Fitzpatrick
Secretary General, IMMFA