Association of the Luxembourg Fund Industry
Association Luxembourgeoise des Fonds d'Investissement

Luxembourg, January 25, 2006

Response to CESR consultation paper 05-484

Notification procedure according to Section VIII of the UCITS Directive

Executive Summary

Introduction

ALFI represents the Luxembourg investment management and fund industry. It counts among its membership asset management groups from various horizons and a large variety of service providers. According to the latest CSSF figures, as at 30 November 2005, total net assets of undertakings for collective investment were EUR 1,474.551 billion and the Luxembourg undertakings for collective investment sector was 33.30% larger than it was on 31 December 2004.

There are 2,060 undertakings for collective investment in Luxembourg, of which 1,295 are multiple compartment structures containing 7,698 compartments. With the 765 single-compartment UCIs, there are 8,463 active compartments in Luxembourg.

According to 2005 EFAMA figures, Luxembourg's fund industry holds a market share of 22% of the EU fund industry, and according to 2005 PWC/Lipper data, 77% of UCITS that are engaged in cross border business (not including round-trip funds) are domiciled in Luxembourg. As one of the main gateways to EU and global markets, Luxembourg is the largest true cross border fund centre for promoters from diverse origins.

ALFI thanks CESR for the opportunity to participate in a consultation on the notification procedure according to Section VIII of the UCITS Directive. ALFI welcomes CESR's interest in the notification procedure and shares CESR's desire for improved procedures that uphold the spirit as well as the letter of the Directive so that a single market for the cross-border distribution of UCITS will exist in substance as well as in principle and that all participants will be admitted to it on terms that enable them fairly to compete.

We note that CESR prepared its guidelines with the aim of avoiding uncertainty about the procedures and necessary documents by which UCITS procure and maintain their authority to enter a host state's market. **It is not only uncertainty about procedures and necessary documents that lie at the heart of the problem with the notification process but complexity and delay. We would rather see CESR issue guidelines that aim to make the process simple, fast and uniform throughout the EU.**

In the rest of this executive summary we present short answers to the questions that CESR asked in its consultation paper. We also attach a more comprehensive review of the consultation paper, which we hope CESR will find helpful. (References to page numbers in this summary are references to the page numbers of ALFI's detailed review, which is printed in full below.)

ALFI has been involved in the preparation of the EFAMA response to the present consultation and fully supports EFAMA's position. Like EFAMA, ALFI acknowledges CESR's comments at the Open Hearing on 17 January 2006 stating that the existing legal framework (both at EU and national level) in many cases limits CESR's powers, and that for more comprehensive solutions an amendment of the UCITS Directive is required. Nonetheless, **we believe more can be done under current regulations to return the current registration procedure to what it should be, namely a notification**, and that CESR Members need to show more mutual trust. In particular, as mentioned at the CESR hearing, we would welcome CESR to establish and recommend best practice benchmarks in terms of procedures and deadlines, which would entail a commitment to efficiency improvements, and to reach an agreement on the use of one common business language for communication purposes with regulators and professionals.

Furthermore, ALFI strongly supports the European Parliament's draft report on asset management, which urges both the Commission and CESR to find solutions for the **simplification** of the notification procedure, the interpretation of local marketing provisions and the application of the Lamfalussy approach wherever possible. Like EFAMA, the European Parliament stresses the importance of close cooperation among regulators.

Question 1

We believe that a UCITS' delivery of a notification file to a host state authority by a reliable courier service should trigger the start of the two-month period (which should only be applied to business that properly falls under Article 46 of the Directive) unless the notification is, in objective terms, incomplete. (Page 5)

We would like host state authorities to perform completeness checks as soon as possible and if they find the file to be incomplete we would like them to say so (and how so) within two weeks. (Page 6)

We would not wish to see an authority close a file whilst the UCITS continues to engage in good-faith correspondence with that authority. (Page 6)

We think that a host state authority's voluntary confirmation of its receipt of a complete notification would be helpful but not strictly necessary if the authorities agree to adopt the approach that we described above.

Question 2

We very much hope that all host state authorities will begin to admit foreign UCITS to their markets within days or weeks of the notification being filed. (Page 7)

We do not think that the proposal to "stop the clock" will help to speed up the notification process. (Page 8) We prefer the simpler approach, which is that the host state should say as quickly as possible how the UCITS does not comply with Article 44(1) or Article 45 of the Directive and thereafter the UCITS and the host state authority should correspond in good faith: the UCITS to propose how it will comply and the host state authority to review the UCITS' proposal.

We would like to see an end to some host states' practice of imposing a new two-month period upon a notification file when a UCITS replies to the authority's request for more information. (Page 9)

Question 3

We would like the practice of home state authority certification of documents to be replaced by a system of self certification by fit and proper persons (page 10), which will (1) relieve the home state authority of the onerous burden of producing certified copies of documents and

allow it to assign its resources to more beneficial use, (2) allow the UCITS to save time and money and other opportunity costs that are lost under the present notification regime, (3) improve the range and timeliness of products available in host state markets and (4) ensure that information about foreign products is released to investors in every host state as soon as possible after it is released to investors in the home state and the other host states in which it is marketed.

We agree that the publication of a single true copy of a document on an official Web site would be a very significant improvement over current practices in which home state authorities are obliged to put their original stamp or mark upon the many tens of thousands of copies of simplified prospectuses and other documents that are filed with host state authorities each year. This will yield the benefits that we describe above. However, we think that it would be quicker, cheaper and easier for all parties (especially the home state authorities, who might not have the resources to build and maintain the sophisticated document management systems and Web sites that will be necessary for these purposes) if host state authorities agree to rely upon copies of such documents that are certified as true under the self-certification arrangements that we described above. (Page 10)

We welcome the decision not to use the Hague Apostille. (Page 11)

Question 4

We believe that the management company and the UCITS' directors should ensure that translated documents are faithful representations of the original document and that all documents should be true and not misleading, irrespective of the language in which they are written. (Page 11) We see no valid need for certified or sworn translations.

We think that it's a good idea for host states to say on their authority's official Web site (1) which documents have to be translated and (2) which languages other than the host state's official language are acceptable. (Page 12)

Question 5

Our members do not offer or solicit the sale of shares to investors within countries in which they are not authorised and they control their operations to ensure that the restrictions are respected. (Page 13)

We believe that prospectuses and financial reports and accounts that fully describe the structure and operations of UCITS (as the home state versions do) are, by virtue of the simple fact that they are complete, better than the special expurgated versions that our members are presently obliged by some host states to prepare. Our members would prefer fully to inform their investors about their investment company (i.e., to publish complete prospectuses and financial reports and accounts everywhere) than deliberately to withhold from them information which is freely available to investors in other member states and in non-European countries. Our members would like to see an end to demands for special expurgated versions of documents, which are onerous to produce and an unnecessary additional cost to investors. (Page 13)

We do not believe that the publication of a full prospectus and financial reports and accounts (without expurgation) within a host state in the circumstances that we described above implies that a UCITS wishes to market all of its sub-funds in that state. We believe that UCITS should only be required to notify host state authorities of the sub-funds that they intend to market. Consequently, we would not expect host state authorities to require the publication of translated (or indeed any) simplified prospectuses for sub-funds that the UCITS does not intend to market in that state. (Page 13)

We believe that it would be in the UCITS' and the host state authorities' interests to process the notification of several sub-funds of a UCITS under a single notification letter. The notification should describe only those funds that the UCITS wishes to market. (Page 14)

Since a new sub-fund relies upon its UCITS' full prospectus, articles of incorporation, central administration, marketing infrastructure, etc., all of which will have been submitted to the host state authority under the standard notification (initial registration) procedure, we do not believe that it (nor the creation of a new share class) should be treated as a new fund for the purposes of the two-month rule. We believe that it should be admitted to the host state market without delay. In other words, we would like a host state to treat the first notification of an umbrella fund as the only notification event to which the two-month rule should be applied. (Page 14)

Question 6

We agree with the approach described by CESR in paragraphs 46 and 47 of its paper because it substantially concentrates on the documents and information which are specifically referred to in the Directive and CESR's approach in that respect merely constitutes a transcript of the requirements of the Directive. However, the reality is that member states' authorities do not practise what CESR says they ought to.

Question 7

We agree that it is important that investors in the host state have the same information available to them as do the investors in the home state. However, the delays that UCITS experience with the notification process from one host state to another means that different versions of the main prospectus can apply in different states. We expect short term differences because the very act of filing notifications takes time but in the most aggravated cases, our members report several months between the date of the latest authorised prospectus in the home state and the oldest prospectus in use in a host state. The delay obliges our members to implement special operational measures to compensate for the circumstances and duration of each difference in order to be sure that all investors are treated equitably. (Page 16)

Question 8

The publication of the information proposed by CESR might be helpful provided that our suggestions made in this paper in respect of electronic filing, the start of the two-month period, certification, etc., are taken into account. Our main concern is that the notification requirements and procedures, which clearly fall within the field of the Directive, should not be considered by host member states to be part of (1) local laws, regulations and administrative provisions that are not governed by the Directive or (2) provisions governing advertising. Any position to the contrary results (as is presently the case within a number of member states) in the host state's discretionary assessment of the UCITS' compliance with those local rules in a manner that changes the notification procedure, de facto, into a formal approval process, which the Directive clearly aims to avoid.

Question 9

We believe that the CESR's paper could have focused more specifically on the abusive practices of certain member states' authorities which prevent the development of the single market despite the fact that the Directive provides for a fairly simple cross border notification process. (Page 18)

Question 10

We said in previous sections that the notification process is substantially jeopardised by host states' practices that purport to satisfy local marketing requirements. CESR could have recommended that if UCITS elect to distribute their shares within a host state through entities that are regulated by that state's authorities (and therefore deemed to comply with the local marketing requirements) the host state's authority should not check or question compliance with local marketing requirements. (Page 19)

Questions 11 – 13

We generally consider the model letter and attestation to be practicable and we welcome standard forms that all member states will adopt. In respect of national requirements, we believe that as long as host states are free to decide in their sole discretion what supporting documents UCITS must provide (Annex III, paragraph III), the notification process will remain unreasonably complex, expensive and prone to delay. We would like CESR to define the limits of what host state authorities may demand. We believe that CESR should model its limits on the requirements of the host states whose practices admit UCITS to their markets with the minimum complexity of process, delay and expense. (Page 19)

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Director General

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Response to CESR consultation paper 05-484
Notification procedure according to Section VIII of the UCITS Directive

Detailed comments

(Only material parts of CESR's consultation paper are transcribed below. The sign "[…]" indicates that text has been omitted. Please refer to CESR's original paper.)

Transcript of CESR consultation paper	ALFI response
[…] INTRODUCTION	
1. CESR invites responses to this consultation paper on its proposed guidelines on the notification procedure of UCITS. Respondents to this consultation paper can post their comments directly on CESR's website (www.cesr-eu.org) under the section "Consultations".	
2. This document is aimed at receiving responses to its content and to the specific questions included in the document. CESR has included a number of questions to highlight those areas in which it would be particularly helpful to have the views of respondents. Comments are, of course, welcome on all aspects of the proposed CESR guidelines but, if changes are required, any reasoning accompanied by practical examples of the impact of the proposals will be very useful. CESR also welcomes specific drafting proposals when respondents are seeking changes to the proposed guidelines.	
Background	
3. The 1985 UCITS Directive (85/611/EEC) introduced a passport for the investment funds harmonised by the Directive. The passport is based on mutual recognition. It allows the units of a UCITS authorised in its home Member State to be marketed in other Member States without seeking authorisation in those host States, provided that the notification requirements of Art. 46 of the Directive are fulfilled. This provision was only slightly amended by the amending UCITS Directive 2001/107/EC, while requirements concerning a new management company passport were added to the Directive.	
4. The Asset Management Expert Group reviewed last year for the European Commission the status of the European regulation on investment management. In its final report in May 2004 the requirement for an investment fund to be registered separately in each	

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host Member State was regarded as a key barrier to efficient cross border fund distribution. The notification procedure has developed to be a de facto registration procedure, which can be very time consuming and may increase costs significantly for the UCITS and, ultimately, its investors. The requirements e.g. on which documents have to be presented differ from market to market. The Group considered that the current system should be replaced by a simple notification procedure. As a first step, the Group recommended that CESR in co-operation with the Commission should develop consistent standards for the registration requirements foreseen by the UCITS Directive to streamline the registration process.	
5. The mandate approved by CESR to the CESR Expert Group on Investment Management (Ref: CESR/04-160) was published on 9th June 2004. According to the mandate, following the work done regarding the transitional provisions of the UCITS III, which would already affect significantly the notification process, the Expert Group would conduct additional work on this area to develop consistent standards for the notification requirements foreseen by the UCITS Directive to streamline the notification process. CESR's guidelines for the notification procedure have also been included in the list of priority actions in the Commission Green Paper on the enhancement of the EU framework for investment funds, published 14th July 2005.	
6. CESR published a Call for Evidence on 9th June 2004 (Ref: CESR/04-267b) on the mandate inviting all interested parties to submit views as to what CESR should consider in its future work on investment management. CESR received 13 submissions and these can be viewed on CESR's website. The simplification of notification requirements was considered as a priority issue by many respondents to the call for evidence. Standardisation and streamlining of processes was considered to provide a significant benefit to cross border distribution of UCITS. Furthermore, it was raised that attention should be paid to avoid the introduction of the management company passport and any ensuing registration duties annulling the efficiency gains that may be achieved in the fund registration area. CESR was asked to avoid the disparity of management company's registration requirements from arising/growing by agreeing, at this early stage, on standardised requirements and formats that are shared by all Member States.	
Objective of the guidelines 7. CESR proposes to draft guidelines that will facilitate the consistency of practices regarding the notification procedure of UCITS. The aim of CESR is to develop operational guidelines which are easy to understand and to use, and which at the same time provide an efficient and adequate response for the protection of investors and for the development and the competitiveness of the single European investment fund market. The guidelines aim to promote convergence, certainty and transparency to the supervisory practises.	

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8. The main aims of these guidelines can be summarised as follows: — Avoiding uncertainty related to procedures and necessary documents for a UCITS which proposes to market its units in a Member State other than that in which it is situated. — Avoiding uncertainty related to procedures and necessary documents for a UCITS which wants to maintain its authorisation for marketing in a Member State other than that in which it is situated.	It is not only uncertainty about procedures and necessary documents that lie at the heart of the problem with the notification process but complexity and delay. We would rather see CESR issue guidelines that aim to make the process simple, fast and uniform throughout the EU.
9. These guidelines are developed to harmonise the key points affecting the notification procedure, not all the related details, keeping in mind proportionality between procedures to be set up and objectives to be achieved.	
10. The elaboration of the guidelines will not only facilitate a consistent approach to these supervisory issues across the EU but also ensure, by way of this prior public consultation, that the views from market participants and end-users will be fully considered.	
11. The outcome of CESR's work will be reflected in common guidelines which do not constitute European Union legislation. CESR Members will introduce these guidelines in their day-today regulatory practices on a voluntary basis.	
12. CESR's guidelines will not prejudice, in any case, the role of the Commission as guardian of the Treaties.	
13. Preparation of these guidelines is being undertaken by the Expert Group on Investment Management. The Group is chaired by Mr Lamberto Cardia, Chairman of the Italian securities regulator, the Commissione nazionale per le società e la Borsa (CONSOB) and supported by Mr Jarkko Syyrilä from the CESR Secretariat. The Expert Group set up a working sub-group on this issue, coordinated by Mr Thomas Neumann of the German financial regulator, Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin). The Expert Group is assisted by the Consultative Working Group on Investment Management composed of 16 market practitioners and consumers' representatives. […]	

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General reservation CESR Members are committed to act in accordance with these guidelines to simplify the notification procedure of UCITS. The draft guidelines contain various proposals on how to deal with issues related to the notification procedure in practice and how to facilitate a practicable application of the Directive. However, as a consequence of the commitment of CESR Members to implement these guidelines, the amendment of their national legal provisions might be necessary. In many Member States this might also require a formal legislation procedure. Hence, in those cases a transitional period would be necessary for these CESR Members to implement the guidelines. This general reservation is without prejudice to Paragraph 11 of the Introduction.	
A. Procedure 3. For marketing of units of a UCITS in other Member States than those in which the UCITS is situated, Section VIII of the UCITS Directive applies. If the UCITS proposes to market its units in a Member State other than that in which it is situated, it must first notify the competent authority of that other Member State in advance.	
4. According to the UCITS Directive, the host Member State authority's competences are confined to refusing the marketing of a foreign UCITS on its territory in case the marketing arrangements do not comply with the provisions referred to in Art. 44(1) and Art. 45 of the Directive. CESR Members agree that other reasons, for instance those deriving from divergent interpretations on whether a UCITS complies with the Directive, can not be used as a reason to refuse the marketing according to the Directive. In other words, if the marketing arrangements comply with the provisions referred to in Art. 44(1) and Art. 45, the passport of the UCITS has to be respected.	We know of at least one case where a host state significantly delayed the admission of a UCITS to a market by asking several technical questions about its investments in credit default swaps (which were authorised by the home state under the terms of the UCITS III Directive). In another case, a question about the (home state authorised) use of mortgage-backed securities caused similar delay. In our opinion of each case, the host state's action amounted to the repudiation of the home state's authority in matters that were properly within the home state's competence and power to decide. This is wholly unacceptable.
5. The Directive does not provide for tools to deal with such type of problems. In particular, they cannot be dealt with within the notification procedure according to Art. 46. Therefore, other solutions might need to be found. In this context, the results to be worked out by the CESR Task Force on Mediation which is mandated to develop a proposal for a general CESR mediation mechanism, should be awaited. The objective of such a mediation mechanism is to facilitate a rapid, effective and balanced solution to disputes between home and host State authorities in order to facilitate convergence and the fair implementation and application of the Directive and these guidelines.	Although we recognise the merit of CESR's intervention through consultation papers and resulting recommendations (on grandfathering provisions, for example), the basic principle of the home country's authority to grant authorisation for a UCITS on the basis of an interpretation of the Directive must remain unchallenged, and we therefore see no need and no room for any mediation, neither on a case by case basis (in relation to a specific UCITS notification) nor on a general bilateral basis (between a home country and a host country in relation to all UCITS filing).
6. CESR suggests that for this notification procedure – as far as the harmonized part is concerned – a standardized notification letter is used by the UCITS. The draft model of the letter is attached to these guidelines (Annex II). This standardised European model for a	We welcome member states' adoption of a single standard notification letter. If CESR's members intend to translate the English draft (at Annex II) to the host state's official language, we recommend that the standard English text be printed underneath the official text

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notification letter as a part of the notification procedure will help to facilitate the notification procedure and provides the host State with a summary of the necessary information to process the notification.	throughout the letter. This will help our members to control their costs and to maintain a high quality for all notifications.
7. The notification letter as well as all other documents and information required in the notification procedure as mentioned in these guidelines may also be submitted electronically, for example via fax or e-mail, if this is permitted by the law of the host State. As a best practice, CESR Members agree to facilitate electronic filing of documents, as far as it is possible taking into account the national legal framework and available IT-resources of CESR Members.	We welcome the opportunity to file notifications electronically (though we hope not by fax) provided that host states do not require UCITS also to file original physical documents to support the electronic file. (This begs a question about the certification of certain documents, which we comment on below.) We understand that host states might employ different types of computer system and that the exact circumstances of one state's electronic filing service might be different from another's, but we hope that all states' electronic filing services will conform to basic standards (i.e., the functional steps required to file a notification, the number and format of documents to be filed, the filing agent registration and authentication processes, etc., will be the same).
I. The two-month period	
8. An investment company or a management company may begin to market the units of UCITS in the host Member State two months after it has completed the notification by submitting the required information and documents to the competent host State authority. This is however without prejudice to Art. 6a and Art. 6b of the Directive concerning the management company passport. CESR has so far dealt with the "product passport" procedure, which is clearly the most urgent concern for the markets. The management company passport has only been dealt with regarding the necessary information to be provided for the application of Art. 6b(5) in the attestation and the notification letter (Annexes I and II). As explained in footnote 1 of Annex I, providing the necessary information regarding the management company in the "product notification" makes a separate notification procedure regarding the management company unnecessary.	For all practical purposes and regardless of what the Directive intended, the management company passport does not exist. Management companies may not cross borders. The management company is authorised only in the home state and is approved by the home state authority. Why, therefore, would a management company submit a notification *about itself* to any other member state? To the extent that a UCITS' host state wishes to know the identity of a UCITS' management company, it might be sensible to include it in the product notification letter. We would not expect the host state to request certified copies of the management company's home state authorisation (which the host state can determine by inspection of the home state authority's public lists or by calling the home state authority directly if it wishes) nor would we expect the host state to object to a UCITS from entering a market for any reason to do with the management company. We are therefore disappointed to see that four host state authorities have started to ask UCITS for proof of their management companies' home state authorisation.
1. Starting the two-month period	
9. The two-month period starts if the competent host State authority has received the complete notification. If the notification is not complete, the two-month period does not start.	This seems clear but in practice it is not. In many host states UCITS cannot be certain that the two-month period has started until weeks have passed. In order to reduce this uncertainty, which can hinder the UCITS' marketing plans and put it at a disadvantage to domestic funds, we would like to adopt the following protocol: (1) The UCITS delivers its notification to the host state authority using a reliable commercial courier service on terms that allow the UCITS to confirm the file's delivery at the host state authority's premises. (2) The UCITS and the host state authority agree that the two-month period will automatically start upon the day that the

Transcript of CESR consultation paper	ALFI response
	notification is delivered and that the courier's records are sufficient proof for these purposes. (3) The host state authority promptly informs the UCITS in the event that it discovers the notification to be incomplete (see comments below).
10. The notification is complete if all information and documents as provided for in the Directive and these guidelines (cf. A.II., A.III., B. and D.) including its annexes (cf. E.) have been received by the competent authority of the host Member State. The text of the documents may not have any deletions in comparison with the documents which have been provided to the home Member State authority except to the extent that the changes are prescribed in the Directive or in the applicable provisions of the law of the host State. This circumstance will be attested by the UCITS in the notification letter.	Please refer to our comments on CESR paragraph 41 in respect of deletions.
11. If the notification is incomplete, the competent host State authority shall inform the UCITS about the incompleteness and the missing information and documents as soon as possible and in any case within one month from the date of receipt of the notification letter.	We would like completeness checks to be performed as soon as possible and (because we believe that the tests should be simple to perform) we hope that CESR's members will agree to reduce the upper limit from one month to two weeks.
12. Host States may provide in their national law that the missing documents and information must be submitted by the UCITS upon request by the host Member State authority to this authority within a defined time period after the request to amend the original notification material. This is done to avoid a notification process to be held open for a long time period (e.g. one year) due to the UCITS not providing the requested additional information. The aim of this requirement is to direct the resources of authorities to applications that are still in the 'active phase'.	We would not wish to see an authority close a file whilst the UCITS continues to engage in good-faith correspondence with the authority. (Our members find that some discussions with host state authorities take many months to complete and oblige the UCITS to return one or more times to its home authority before the host state authority permits the UCITS to enter its market.)
13. If provided for by national legislation or on a voluntary basis the host State can also confirm the date of receipt of the complete notification within one month to inform the UCITS regarding the date of the start of the two-month period (cf. D).	Please see our comment at paragraph 9 above. If assured delivery by courier were accepted as the start date of the two-month period, a host state authority need only contact the UCITS in the event that it found the notification to be incomplete. We hope that member states will do that within two weeks of the day upon which the notification was filed.
Q1: Is the starting of the two-month period dealt with in a practicable way in your view?	Please see our comments at paragraphs 9 to 13 above. We welcome CESR's wish to improve the notification process and in this reply to the consultation paper we have provided some suggestions that we hope will help CESR to do that.
2. Shortening the two-month period	
14. The two-month period is the maximum period available for the host State competent authority to check the notification.	

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15. The two-month period can be shortened. CESR Members agree that if permitted by the national law of the host State, the competent authority can after checking the notification inform the UCITS that it can start the marketing in the host State immediately, even if the two month-period is still going on. CESR Members are committed to adopt on best efforts basis working procedures that will speed up the notification process.	Some states consistently admit foreign UCITS to their markets within days or weeks of the notification being filed. Others consistently take several months to process what is effectively the same file (the two-month period seems at best to be treated as a mandatory waiting period and at worst to be a prologue to a lengthy review). Notwithstanding their right under the Directive to take up to two months to review a notification file, we hope that the slower group of host authorities will resolve to do so much more quickly in future. (We do not think that the difference between the faster and the slower authorities can be attributed to differences in host state national laws.)
3. Managing the two-month period	
16. Art. 46(2) of the Directive provides that a UCITS may start marketing its units two months after the communication of the required information and documents unless the host Member State authority establishes in a reasoned decision that the marketing arrangements do not comply with Art. 44(1) and Art. 45.	Some host states only permit UCITS to market their units after they have published notices of their admission to that host state's market in national newspapers or official gazettes. Some host states require UCITS to publish similar notices about changes to funds, despite the fact that state regulations oblige UCITS to give their shareholders prior written notice of the change and sometimes even to seek the shareholders' consent for it. We believe that these requirements are contrary to the spirit of the Directive. They further delay UCITS' access to hosts state markets, increase cost and deliver no appreciable shareholder protection. We would like them to cease.
17. However, the Directive does not expressly explain the details of the reasoned decision. The procedures regarding the issuing of a reasoned decision are governed by national law. In fact the ways the Member States have implemented this provision have lead to uncertainties. CESR Members have therefore agreed on the following common approach regarding the use of the reasoned decision in practice.	
18. The proposal aims at striking a balance between the needs of the host State authority for adequate information, and the desire of the UCITS to start marketing. The approach should therefore neither allow the UCITS to shorten the review period available to the host State authority by delaying the submission of necessary additional information, for instance by submitting it to the host authority at the very last moments of the two-month period, nor allow host Member States to unfairly delay the marketing of the UCITS.	We agree that UCITS and member state authorities should work in good faith to process notifications properly and with best possible speed.
19. As presented above, the competent authority of the host State has two months to check the contents of the notification, after it has received the complete notification. During this two-month period the host State authority has to inform the UCITS, if in its view the submitted documents/ information imply that the marketing arrangements by the UCITS would not comply with Art. 44(1) and Art. 45 of the Directive.	

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20. In the course of this two-month period the host State authority may solicit clarification of information from the UCITS regarding the elements under the residual competences of the host Member State according to Art. 44(1) and Art. 45 of the Directive. Such informal exchanges at the initiative of the host authority are without prejudice to the right of the UCITS to start marketing after the two-month period. In other words, unless a formal communication is provided to the UCITS by the competent host State authorities, it can start the marketing after the two-month period.	A host state's clarification questions might not technically be prejudicial to a UCITS' right to enter the host state's market two months after filing a notification but in practice they are. UCITS are effectively obliged to treat all correspondence from a host state authority as formal (even when conducted by telephone or e-mail). UCITS would be unwise to sell their units in a market or even to make firm commitments to do so whilst any such correspondence remained open and the possibility existed that the host state authority did not have a clear understanding of the product and its marketing arrangements and might subsequently object to them.
21. Based on practical experience CESR Members are sometimes confronted with the following situation: According to their check of the submitted documents the marketing arrangements by the UCITS would not comply with Art. 44(1) and Art. 45 of the Directive. This would justify the use of a reasoned decision.	
22. In these cases where the authority can assume that there is a realistic prospect that compliance with Art. 44(1) and Art. 45 from the applicant's side can be achieved, the following more graduated approach should be applied.	
23. The host Member State authority may inform the UCITS in a written procedure, via *a duly motivated communication*, that it considers that there are convincing arguments to believe that the requirements to make a reasoned decision preventing the UCITS to start marketing are fulfilled, unless the host State authority receives the necessary information it explicitly requires.	We are uncertain why CESR has stressed the term "duly motivated communication". Does CESR intend to define the procedure by which a reasoned decision is made and communicated to the UCITS?
24. Taking into account that the UCITS has a commercial interest to start the marketing very quickly, it will normally provide the required information as soon as possible. After receiving the required information, the host State authority will finalise the checking of the notification in the remaining time that was left of the two-month period, when the host State authority required for the additional information. If the notification does still not fulfil the requirements of Art. 44(1) and Art. 45, the host State authority will formalise its reasoned decision in the remaining time of the two-month period, to prevent the UCITS from starting the marketing.	We acknowledge that the UCITS has a commercial interest to start marketing quickly but the speed of its response depends upon the nature of the host state authority's request for more information. Also, if the host state authority's satisfaction depends upon something which is subject to the home state authority's approval, it can take more than a month to obtain the home state approval before the UCITS can reply. If the UCITS is globally distributed it will take longer to reply if the consent of authorities in non-European jurisdictions is required.
25. Applying this approach to the following example would mean: ▪ Receipt of the complete notification file by the host State authority: 7 July ▪ Check on the compliance with Art. 44(1) and Art. 45 of the Directive of the notification and regular expiring of the two-month period: 7 September	We do not think that this approach will help to achieve the aim of speeding up the notification process or (more to the point) hastening the admission of foreign UCITS to host states' markets. We suspect that keeping a record of the clock will become a burden for the host state authorities and the UCITS. All could better spend their time on other activity. We would prefer the simpler approach, which is that the host state should say as quickly as possible (and in

Transcript of CESR consultation paper	ALFI response
▪ Non-compliance with Art. 44(1) and Art. 45 communicated via a duly motivated communication by the host State authority to the UCITS: in this case 12 August (i.e. remaining time until regular expiring of the two-month period on 7 September: 26 days) ▪ Receipt of the requested information in the requested quality by the host State authority: in this case 26 August (i.e. start of the remaining time of the two-month period of 26 days) ▪ Expiring of the two-month period: 26 August + 26 days = 21 September (which is also equal to the regular expiring of the two-month period on 7 September + 14 days, i.e. the time it took the applicant to submit the requested information). ▪ The deadline is in any case without prejudice to the possibility of the host Member State authority to shorten the two-month period, if this is permitted by the national law of the host State.	any case within two months of a complete notification being filed) how the UCITS does not comply with Art. 44(1) or Art. 45 of the Directive and thereafter the UCITS and the host state authority should correspond in good faith: the UCITS to propose how it will comply and the host state authority to review the UCITS' proposal. As some host state authorities show, it is possible to do all of this reliably in much less than two months. Some host state authorities impose a new two-month period upon a notification file when a UCITS replies to the authority's request for more information. (This in respect not of the notification being incomplete but of a question about the UCITS' compliance with Arts 44(1) and 45 of the Directive.) The practice is wholly unreasonable and contrary to the letter and the spirit of the Directive. We would like to see an end to it.
Q2: Respondents are asked to provide their view on the practicability of the proposed approach.	Please see our comments at paragraphs 14 to 25 above.
II. Certification of documents	
26. The latest versions of the necessary documents to be attached to the notification letter (cf. Annex II), as approved by or filed with† the home State authority, must be sent to the host State authority. [†The terms "approved by or filed with" the competent home State Authority are both used in this document because of the fact that in some Member States e.g. prospectuses of the UCITS and amendments thereto are approved by the competent authority, whereas in other Member States only the fund rules/ instruments of incorporation are approved, and prospectuses are only filed with the authority.]	
27. CESR has discussed different ways on how it could be given evidence that it is always the latest version of the documents which is sent to the host State authority, after an attestation pursuant to Art. 46 of the Directive has been issued by the home State authority. This discussion is especially of relevance for the modifications and on-going process (cf. C). Art. 4(4), 30 and 32 of the Directive provide that the fund rules may only be amended with the approval of the competent authorities and that the UCITS must send its simplified and full prospectuses and any amendments thereto keeping them up-to-date, to the competent authorities. On the other hand, according to Art. 46 of the Directive the host State authority is not entitled to a further quality check of the documents concerning their compliance with the Directive without prejudice to Art. 44(1) and Art. 45 of the Directive (cf. especially Annex I	We agree that a UCITS should only file the latest home-state-approved documents when it files a notification with a host state. We strongly believe that the directors of the UCITS, its management company and their properly authorised agents are competent, fit and proper persons to warrant that the documents so filed are the latest true copies of the documents that were filed with the home state authority. We note that some host state authorities customarily only accept documents that bear an original imprint of the home state authority's stamp or mark of authenticity. We believe that this is an unhappy state of affairs which casts unreasonable doubt upon the integrity and competence of authorised and regulated persons to conduct their business in accordance with the laws of their home state and the host states to whose markets they seek admission. We regard the practice of stamping documents as a

Transcript of CESR consultation paper	ALFI response
Schedule A, No 4 of the Directive) once the attestation pursuant to Art. 46 of the Directive was issued. In this situation it could happen that documents are sent to the host State authority which do not correspond to the documents sent by the UCITS to its home State authority to comply with Art. 4(4), 30 and 32 of the Directive. Thus, documents could be circulated to the investors in the host State which neither have been filed with or approved by the home or host State competent authority.	needlessly bureaucratic burden upon UCITS and home state authorities, which delays the UCITS' submission of their notifications to host states. We think that the practice should be replaced by a system of self certification by fit and proper persons, which will (1) relieve the home state authority of the onerous burden of producing certified copies of documents and allow it to assign its resources to more beneficial use, (2) allow the UCITS to save time and money and other opportunity costs that are lost under the present notification regime, (3) improve the range and timeliness of products available in host state markets and (4) ensure that information about foreign products is released to investors in every host state as soon as possible after it is released to investors in the home state and the other host states in which it is marketed.
28. Currently many Member States require the certification of the documents related to the notification procedure for UCITS. This is done to make sure, that the documents provided to the host State authorities are the most recent ones approved by or filed with the home State authority.	
29. To simplify the supervisory practice in this respect, CESR Members agree, that a host Member State authority may require such a certification of the simplified prospectus. CESR Members agree that such certification is not necessary for any other documents. The simplified prospectus is considered to be the most essential document regarding the fund for the investor, the key tool to make well-informed investment decisions, as regulated by the amended UCITS Directive. The simplified prospectus is indeed the key element of the marketing of the UCITS in the host State. Therefore the simplified prospectus and its proper translation can be relevant for the supervision of the marketing of UCITS which is under competence of the host State. It is very important that the host authorities can be sure which is the latest version of the simplified prospectus.	Please see our comments above on the deprecation of host state certification in favour of self certification. We hold the same view for all documents, including the simplified prospectus. We agree that only the most important documents should be certified before they are filed in support of a notification to a host state authority and we welcome some host state authorities' views that certification is not necessary at all (which we assume to mean that the authority deems certification to be implied by the act of filing the notification). In our opinion, no matter what its genesis, the simplified prospectus is not a marketing document. It is a regulatory document.
30. All host State authorities do not consider specific certification necessary, therefore the UCITS would need to provide the certified simplified prospectus only to the authorities of those Member States, that explicitly require it. To facilitate transparency of the requirements to the UCITS, these jurisdictions should indicate the requirement on their websites among the requirements on national marketing rules as stated in Annex III.	We think that it's a good idea for member states to publish their certification (and other notification) requirements on their authority's official Web site. It would be very helpful if the requirements were published in English as well as the host state's official language. We consider however that the publication of certification (and other notification) requirements should not be considered as being part of the national marketing rules, as they are not.
31. CESR Members agree that in case the simplified prospectuses of the UCITS are published on an official website in the internet under the responsibility of the home State authority, no further confirmation measures by the home State authority are needed, because the documents are in that case available also for the host State authorities when they need to know which are the latest versions of the documents.	We agree that the publication of a single true copy of a document on a trusted Web site would be a very significant improvement over current practices in which home state authorities are obliged to put their original stamp or mark upon the many tens of thousands of copies of simplified prospectuses *and other documents* that are filed with host state authorities each year. This will yield the benefits that we describe at paragraph 27 above. However, we think that it would be quicker, cheaper and easier for all parties (especially the home state

Transcript of CESR consultation paper	ALFI response
	authorities, who might not have the resources to build and maintain the sophisticated document management systems and Web sites that will be necessary for these purposes) if host state authorities agree to rely upon copies of such documents that are certified as true under the self-certification arrangements that we described at paragraph 29 above.
32. CESR Members are committed to work in close cooperation when acting as home/ host Member State authorities, and to provide timely to the host authorities the necessary information that these might require in potential enforcement cases, to facilitate the proper functioning of the regulatory system in accordance with Art. 50(1) and Art. 52.	
33. CESR has also discussed the possible benefits of the use of the Hague-Apostille as a means for certification of documents, and concluded that it is not necessary. CESR Members therefore agree not to require the use of the Hague-Apostille for certification of documents.	We look forward to the replacement of Hague-Apostille certification with more practical measures (e.g., self-certification) as soon as possible.
Q3: Respondents are asked to provide their view on the practicability of the proposed approach.	Please see our comments at paragraphs 26 to 33 above.
III. Translation	
34. The notification according to Art. 46 of the Directive including the documents which have to be submitted by the UCITS must be sent in the original language and translated into the or one of the official languages of the host State.	
35. Since the documents are distributed to the investors, only a correct translation ensures that the information which has to be provided to the investors in the host Member State is actually transmitted to them. However, it is neither the task of the competent host State authority nor would it be possible to check whether the translations are consistent with the original versions. Therefore, the translated versions should be primarily literal translations of the latest original language versions approved by or filed with the home State authority. The translation has to be correct, i.e. the documents have to be understandable and should not contain material errors, omissions or misleading expressions. Supplementary text, modifications, omissions or any other changes to the text in the translated version are permissible only to the extent that the changes are prescribed by the Directive and by the applicable provisions of the law of the host Member State.	We do not think that foreign language versions of documents should be primarily literal translations of the native language source. We think that there should be a reasonable degree of freedom to respect local language conventions and style. However, we agree that translated documents should be faithful representations of the original document and that all documents should be true and not misleading, irrespective of the language in which they are written. We agree that it is not the task of the competent host state authority to check the quality of a translated document. We note that most host state authorities (reasonably) take the good faith view that the UCITS' directors know and uphold their obligation to ensure that foreign language versions of documents comply with the principles that we described above. We also note that some host state authorities require the UCITS to furnish them with sworn court translations of documents. The practice is uncommon but it is nevertheless unreasonably expensive and time-consuming for the UCITS and arguably offers no great comfort to the authority or investors. We would like to see an end to it.

Transcript of CESR consultation paper	ALFI response
	We acknowledge that the Directive permits the host state in certain circumstances to prescribe what supplementary text must be inserted into and what modifications or omissions must be made to UCITS' document before admitting it to the host market. We are concerned that the variety of host state prescription in certain matters including but not limited to the simplified prospectus means that the UCITS cannot offer exactly the same information to investors in all member states (it is impossible to reconcile the host states' demands) and a host state will always be able to cite Art 44(1) and Art. 45 *vis a vis* the simplified prospectus as the basis for a reasoned decision to deny the UCITS access to a market. So long as this continues, the notification process will not be what the Directive intended it should be.
36. Correct, sufficient, and unambiguous information for the investor is one of the core elements of investor protection provided for by the Directive.	
37. In accordance with Art. 47(2), the competent authorities of the host Member State can approve also the use of another language than the official language. To facilitate transparency of the language requirements to the UCITS, CESR Members will provide information on these requirements on their websites (cf. Annex III).	We think that it's a good idea for member states to say on their authority's official Web site which documents must be translated and which documents need not be. We would also like the Web site to say which languages are acceptable. It would be helpful if the requirements were stated on the Web site in English as well as the host state's official language.
Q4: Do you consider the suggested approach as appropriate?	Not entirely; please see our comments at paragraphs 35 to 37 above.
IV. Umbrella funds	
38. Though umbrella funds are acknowledged by the market practice and also the supervisory practice under the UCITS Directive, the Directive does not further address their treatment. However, CESR Members agree that in an umbrella UCITS all sub-funds must comply with the UCITS Directive. Nevertheless, sub-funds of an umbrella fund sometimes differ between themselves as regards the marketing arrangements in the host State (e.g. distribution channels).	
39. Member States have developed different approaches on how to deal with the characteristics of umbrella funds with respect to the notification procedure.	Our members would prefer all member states to adopt a consistent approach.
1. Marketing of only part of the sub-funds	
40. As stated in Art. 46 of the Directive, a UCITS has to inform the host State authority if it	

Transcript of CESR consultation paper	ALFI response
proposes to market its units in the host State. However, the Directive does not define the term "marketing" and how it could be interpreted especially for the application of Art. 46 of the Directive. Thus, from the Directive's perspective it is not clear when a UCITS or the sub-fund of an umbrella UCITS might be marketed in a Member State with the consequence that the host State authority has to be informed by a notification procedure before the start of marketing.	
41. As a result, Member States have provided own definitions of marketing in their national law. The scope of marketing varies from a narrow understanding to a very broad understanding. Especially with regard to the full prospectus or other documents of the umbrella UCITS published and offered in the host State, including a description of all existing sub-funds, the offer to switch units between the different sub-funds and thereby the offer to sign units of every sub-fund, these activities are considered to be marketing of all sub-funds in those Member States where a broad definition of marketing prevails. As a consequence, those host States generally require a notification of each single sub-fund of the umbrella fund, even if the umbrella intends to market actively only a few sub-funds. This procedure would also apply when a new sub-fund is established under the umbrella although from the UCITS' perspective active marketing of this sub-fund is not intended in the host State. On the other side, where a narrower understanding of marketing prevails, other host State authorities only require the notification of those sub-funds which are actively marketed.	We believe that the broad definition of marketing is unreasonable. A UCITS is perfectly capable of making clear in its prospectus that restrictions apply to the sale of shares, including the fact that not all sub-funds are available to investors in all member states. Investors are perfectly capable of understanding these facts. Our members do not offer or solicit the sale of shares to investors within countries in which they are not authorised and they control their operations to ensure that the restrictions are respected. We believe that prospectuses and financial reports and accounts that fully describe the structure and operations of UCITS (as the home state versions do) are, by virtue of the simple fact that they are complete, better than the special expurgated versions that our members are presently obliged by some host states to prepare. Our members would prefer fully to inform their investors about their investment company (i.e., to publish complete prospectuses and financial reports and accounts everywhere) than deliberately to withhold from them information which is freely available to investors in other member states and in non-European countries. Our members would like to see an end to demands for special expurgated versions of documents, which are onerous to produce and an unnecessary additional cost to investors. We do not believe that the publication of a full prospectus and financial reports and accounts (without expurgation) within a host state in the circumstances that we described above implies that a UCITS wishes to market all of its sub-funds in that state. We believe that UCITS should only be required to notify host state authorities of the sub-funds that they intend to market. Consequently, we would not expect host state authorities to require the publication of translated (or indeed any) simplified prospectuses for sub-funds that the UCITS does not intend to market in that state.
42. A harmonized definition of the terms "marketing" and "proposes to market" has not been dealt with so far in CESR's work, because the interpretation of these definitions is pending with the EU Commission. Until a common understanding has been formed, it is at national discretion how to define this criterion.	
43. However, without prejudice to the general reservation of CESR Members as referred to under paragraph 2 of the draft guidelines, CESR Members agree that if a UCITS intends to market actively only part of the sub-funds of an umbrella UCITS in the host State, only those sub-funds proposed to be marketed actively have to be notified.	We agree.

Transcript of CESR consultation paper	ALFI response
2. Notification procedure for new sub-funds	
44. As outlined above, some Member States currently require the notification of the umbrella fund as a whole including a notification of all its sub-funds. Some other Member States just require those sub-funds that are actively marketed to be notified. If new sub-funds are added they request a separate notification procedure of the added sub-funds including the application of the two-month period, which can be shortened if this is permitted by the national legislation. A third group of Member States requires the notification of the umbrella and the sub-funds to be actively marketed and consider the adding of further sub-funds as a modification of the notification of the umbrella. In this case, the documents for the respective sub-fund including the marketing arrangements have to be filed but the two-month period is not applied.	
45. For simplification purposes CESR Members agree on the following: 1) Instead of a separate notification of each sub-fund it is possible to include all sub-funds in one notification letter if these notices are provided simultaneously. Furthermore, cross-references concerning documents, for instance if the articles of incorporation of the overall umbrella have remained unchanged can be made and therefore the documents have only to be submitted once. 2) If in a later stage the UCITS intends to market sub-funds, which were already included in the original notification material, but which were not proposed to be marketed in the host State at that stage (cf. Paragraph 43), without changing the marketing arrangements already in place for other sub-funds, and to the extent that the relevant information already submitted is unchanged, a simple communication concerning the adding of these sub-funds is needed and the two-month period does not apply. The adoption of this practise is an option that the host State authority may use, if it considers this might provide additional flexibility in the notification process. CESR Members will inform on their websites, if they adopt this practice (cf. Annex III). 3) If new sub-funds are added to the umbrella fund and these sub-funds are proposed to be marketed in the host State, the notification procedure and the two-month period applies; this procedure also applies in case the above option no. 2) is not made use of in the host State. This is in order to allow the host State authority to examine e.g. the translation of the prospectus. The two-month period may be shortened if this is permitted by the national legislation of the host State. All host authorities do not consider it necessary to apply the two-month period in the latter case. To facilitate transparency of the requirements to the UCITS, the jurisdictions that will apply the two-month period should indicate the requirement on their websites among the requirements on national marketing rules as stated in Annex III.	(CESR paragraph 45.1) We believe that it would be in the UCITS' and the host state authorities' interests to process the notification of several sub-funds of a UCITS under a single notification letter. The notification should describe only those funds that the UCITS wishes to market. (CESR paragraph 45.2) We do not understand why a UCITS would notify a host state authority about a sub-fund other than to market it. If we reasonably assume that the host state did not object to the first notification, we do not understand why, if the sub-fund's circumstances had not changed, the UCITS would repeat the notification. If CESR's members are proposing a regime that discriminates between one notification for the purposes of declaring a sub-fund's existence and another for the purposes of marketing it, we do not think it a good idea. (CESR paragraph 45.3) We regard some host states' application of the two-month rule to new share classes of a sub-fund as vexatious. (CESR paragraph 45.3) Since a new sub-fund relies upon its UCITS' full prospectus, articles of incorporation, central administration, marketing infrastructure, etc., all of which will have been submitted to the host state authority under the standard notification (initial registration) procedure, we do not believe that it should be treated as a new fund for the purposes of the two-month rule. We believe that it should be admitted to the host state market without delay. In other words, we would like a host state to treat the first notification of an umbrella fund as the only notification event to which the two-month rule should be applied.

Transcript of CESR consultation paper	ALFI response
Q5: Do you consider the suggested approach as appropriate?	Please see our comments at paragraphs 38 to 45 above.
B. Content of the file	
46. UCITS should not be obliged by the host State to send other documents and information than those mentioned in this chapter, however without prejudice to the documents and information due to Art. 44(1) and Art. 45 of the Directive. This chapter only deals with the documents and information required according to Art. 46 of the Directive whilst the documents and information due to Art. 44(1) and Art. 45 of the Directive are dealt with in Chapters D. and in Annex III and Annex IV.	Irrespective of the host state authorities' justifications for demanding additional documents, we believe that some ask for too many. The net effect is to hinder cross-border distribution of UCITS within the EU. Examples of what we consider to be unreasonable additional documents include: — Letters warranting the veracity of the information submitted with the notification file; — Letters describing what changes have been made to the prospectus being filed. — Letters of "commercialisation", describing the main characteristics of a fund and its sub-funds, including investment policies, subscription and redemption procedures, fees, etc.; — Declarations of payment of registration fees per sub-fund; — Letters warranting that the UCITS will not distribute its prospectus in the host state without the addendum that was produced for that market and authorised by the host state authority; — Letters warranting that the foreign UCITS' management company will remit trailer fees in respect investments by domestic funds only to those funds.
47. If a UCITS proposes to market its units in a host State, it must first inform the competent host State authority of its intention and provide the following documents and information: 1. a valid original attestation granted by the competent home Member State authority, to the effect that the UCITS fulfils the conditions imposed by the Directive (cf. Annex I, with a model attestation to market units of UCITS in an EEA Member State); 2. a notification letter (cf. Annex II, with a model notification letter to market units of UCITS in an EEA Member State); 3. its latest up-to-date fund rules or instruments of incorporation (they need not be submitted separately if they are included in the prospectus; the latter must be indicated by the notifying UCITS or a third person empowered by written mandate to act on behalf of the notifying UCITS); 4. its latest up-to-date full and simplified prospectuses, containing all information	(CESR paragraph 47.1) Further to our comments about certification at paragraphs 27 et seq above, we do not believe that the demand for an *original* home state authority attestation provides worthwhile further assurance about the UCITS' status in its home state. We would prefer host state authorities to accept a photocopy of the home state authority's original attestation, which the UCITS' authorised directors or agents can certify to be true copy of the original in their possession. The home state authorities would gain relief from an onerous and ultimately bureaucratic task and the UCITS would be able to process notifications more quickly. (CESR paragraph 47.4) Although we recognise the merit of the Commission's recommendations on some contents of the simplified prospectus, we take the view that it is ultimately up to the home state authority to approve the content of the full and simplified prospectus and the host state should not be in a position to challenge the content of these documents on the ground that the aforesaid Commission's recommendations have been endorsed or not.

Transcript of CESR consultation paper	ALFI response
as provided for by Art. 28(2) including Schedule A of Annex I and Art. 28(3) including Schedule C of Annex I of the Directive, and as endorsed by the Commission's Recommendation on some contents of the simplified prospectus; 5. its latest published annual report and any subsequent half-yearly report; and 6. details of the arrangements made for the marketing of units in the host Member State (cf. Annexes III and IV).	
Q6: Do you consider the suggested approach as appropriate?	Please see our comment at paragraph 47 above and at Annex III below.
C. Modifications and on-going process	
48. Generally according to Art. 47 of the Directive, 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. In CESR Members' view it is important that the investors in the host State have the same information available as the investors in the home State.	(CESR last sentence) The host state authorities' habit of prescribing what must be in the prospectus and in other documents (see our comments at paragraph 41 above, for example) means that this can never be so. Also, the delays that UCITS experience with the notification process from one host state to another means that different versions of the main prospectus can apply in different states. We expect short term differences because the very act of filing notifications takes time but in the most aggravated cases, our members report several months between the date of the latest authorised prospectus in the home state and the oldest prospectus in use in a host state *the cause of which can reasonably be attributed to the host state's extraordinary requirements*. The delay obliges our members to implement special operational measures to compensate for the circumstances and duration of each difference in order to be sure that all investors are treated equitably. The fact that some host states will readily accept a home state's approval of a UCITS' prospectus whilst other hosts states will not encourages our members to believe that it is certain host states and their authorities who must reform rather than the industry. Our members see these problems as more to do with host states' unwillingness to uphold the spirit of the Directive rather than with the detail of the process.
49. Based on the reference of Art. 47 to Art. 29 and Art. 30 of the Directive, Member States expect foreign UCITS to keep their documents and information up-to-date, e.g. any amendments to the fund rules or instruments of incorporation (which do not need to be submitted separately if they are included in the full prospectus; the latter must be certified by the notifying UCITS or a third person empowered by written mandate to act on behalf of the notifying UCITS), the full and/or simplified prospectuses, or new prospectuses, if applicable, have to be sent to the competent authority in the host State; also the latest published annual report and any subsequent half-yearly report have to be submitted.	Based on our suggestions in respect of chapter A. IV. 1., there should be no requirement for any new or updated simplified prospectus to be filed in a host state in respect of a sub-fund of an umbrella fund which is not actively marketed in the relevant host state.

Transcript of CESR consultation paper	ALFI response
50. The guidelines set out in chapters A.II., III. and B, where applicable, also apply if a UCITS notifies the host State authority of any modifications of the fund rules or instruments of incorporation, the full and/or simplified prospectuses, or, if applicable, the introduction of new prospectuses.	
Q7: Do you consider the suggested approach as appropriate?	Please see our comment at paragraph 48 above.
D. National marketing rules and other specific national regulations	
51. This chapter deals with the non-harmonized national provisions which relate to the application of the Directive. Non-harmonized provisions may be found in each Member State, as the Directive either expressly does not rule on a specific issue in detail and instead instructs the Member States to deal with the particulars of this issue in their own national legislation, or the Directive is simply silent regarding an issue and thus leaves room for interpretation of this issue by national law of each Member State. Thus, the same issue may be either subject to diverging regulations in Member States, or an issue may be subject to regulation in a jurisdiction whilst it is not regulated in the national law of another Member State.	
52. Due to Art. 45 of the Directive, UCITS are obliged to make facilities in the host State available for making payments to unit-holders, re-purchasing or redeeming units (e.g. paying agent) and for making available the information which UCITS are obliged to provide (e.g. information agent). The Directive does not rule these requirements in more detail and leaves it to the Member States how to establish and to design the respective facilities in their own national law.	We believe that recently established facilities (Regulation EC Nr 2560/2001) that allow permit cross-border payments to be made through the European banking system as easily as domestic payments and at no additional cost enable UCITS to meet their payment obligations under the terms of the Directive without the need to retain local paying agents. However, some member states continue to require UCITS to appoint local paying agents. We would like them to cease and permit UCITS to discharge their payment obligations in a more cost-effective manner..
53. According to Art. 44(2) of the Directive, UCITS must comply with the provisions governing advertising in the host State. Pursuant to Art. 44(1) of the Directive, UCITS which market their units in other Member States are required to comply also with the laws, regulations and administrative provisions in force in the host State which do not fall within the field governed by the Directive. This circumstance can also affect the notification procedure (for instance administrative law). Due to these legal provisions which are not harmonised, UCITS may also be required to fulfil certain requirements or may be required to send additional documents or information, other than those mentioned in Art. 46 of the Directive and listed in Chapter B. of these guidelines, to the host State authority.	We believe that host states should make a clearer distinction than they do today between the notification requirements that are set out in the Directive and host state marketing requirements that are set out in local law. In host states where there is insufficient distinction the notification process exists in form only; it is substantially a marketing compliance exercise. We do not think that is how it should be. We acknowledge what CESR said about the laws, regulations and administrative provisions that do not fall within the field governed by the Directive but the extent and variety of local requirements are onerous and collectively form a barrier to UCITS' reasonable cross-border objectives and put foreign UCITS at a material and unreasonable economic disadvantage to the domestic funds in each state in which they wish to sell their shares.

Transcript of CESR consultation paper	ALFI response
54. According to these guidelines apart from Art. 44 and Art. 45 of the Directive the following issues are governed by national law: — electronic submission of documents for example via fax or e-mail (cf. A. Procedure); — confirmation of the date of receipt of the complete notification within one month to inform the UCITS of the date of the start of the two-month period (cf. A.I.1.); — submission period for missing documents and information (cf. A.I.1.); – shortening of the two-month period (cf. A.I.2.); — submission of certified documents (cf. A.II.); — marketing within the sense of Art. 46 of the Directive (cf. A.IV.1.); and — transitional provisions with respect to the General reservation under point 2.	Please refer to our comments above on electronic filing of notification, the start of the two-month period and earlier admission to a host state market, certification of documents and the onerous nature of heterogeneous national marketing requirements.
55. To simplify the access to information for UCITS, the host State authorities will be requested to fill in Annex III of these guidelines and to publish it on their websites. This Annex gives a standardized overview on the non-harmonized national provisions of a host State which relate to the application of the Directive. CESR Members are also expected to publish any amendment or abolition of these provisions or the enactment of new provisions to keep the compilation published with Annex III on their website up-to-date. Annex IV gives the details on which website each host State authority publishes its overview and where it can be downloaded. CESR Members are expected to inform CESR on any amendment of the internet address so that the Annex IV can be updated accordingly.	
Q8: Do you agree with the proposals concerning the publication of the information or do you prefer another procedure and if, which one?	Please see our comments above.
Q9: 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?	We believe that CESR's paper does not adequately recognise and redress the fact that the impositions by many host state authorities of obligations that are special to those states collectively constitute barriers to the cross-border distribution of UCITS, in most cases under the clearly unjustified pretext that the obligations concerned relate to local provisions or advertising rules which do not fall within the field of the Directive. At their worst, the barriers discourage UCITS from entering foreign markets (which is the market failure that the Directive was meant to fix). Typically the barriers delay UCITS long enough to impair their ability to respond competitively to changes within foreign markets. Domestic funds will clearly have an advantage when – as so often is the case – a fund's ability to bring a product quickly to market determines what share of that market it will win. The cost of compliance with today's unreasonably complex cross-border European regulatory regime also hinders foreign funds

Transcript of CESR consultation paper	ALFI response
	from competing on price with domestic funds, which face the lesser burden of complying only with home state regulations. The disadvantage to which this puts foreign funds is material and will become acute in the future as regulators force greater disclosure of expenses and competition on price. We believe that the European and member state authorities are therefore morally bound to ensure that the single market exists in substance as well as in principle and that all participants are admitted to markets on terms that enable them fairly to compete. With some notable exceptions, they do not do that today. We do not believe that this situation can be justified by a reasonable interpretation of Articles 44(1) and 45 of the Directive: the barriers are real, effective and plain to see. We are concerned that the problems in the cross-border notification process also put UCITS at a disadvantage with respect to other investment products, domestic and foreign.
Q10: Should some additional issues related to the notification procedure have been dealt with in this consultation paper, and if yes, which?	We believe that UCITS that elect to distribute their shares within a host state only through entities that are regulated by that state's authorities should, provided that they are willing to warrant the fact, not be subject to the host state authority's review for the purposes of compliance with local marketing requirements. In other words, the notification process should be only that: a notification.
ANNEXES TO THE CONSULTATION PAPER Annex I MODEL ATTESTATION TO MARKET UNITS OF UCITS IN AN EEA MEMBER STATE […] **Q11: Is the model attestation practicable in your view?**	We think that the attestation should be limited to the facts that the home state authority can know. We do not think that the home state should be obliged to attest the identity of the sub-funds that the UCITS wishes to market in the host state. This should always be for the UCITS to do.
Annex II MODEL NOTIFICATION LETTER TO MARKET UNITS OF UCITS IN AN EEA MEMBER STATE […] **Q12: Is the model notification letter practicable in your view?**	We think that the meaning of "duration" be made clear or the references should be removed. We doubt that the standard format of this letter will easily reconcile with the differences that are bound to exist between member states' requirements for supporting documents.
Annex III National marketing rules and other specific national regulations […]	We believe that as long as host states are free to decide in their sole discretion what supporting documents UCITS must provide (Annex III, paragraph III), the notification process will remain unreasonably complex, expensive and prone to delay. We would like CESR to define the limits of what host state authorities may demand. We believe that CESR should model its limits on the requirements of the host states whose practices admit UCITS to their

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Q13: What would you suggest CESR to do regarding the national requirements to simplify the notification procedure?	markets with the minimum complexity of process, delay and expense.
Annex IV List of CESR Members' websites for the downloading of national marketing rules and other national regulations regarding the notification process […] Annex V Indicative CESR work plan on the guidelines on the notification procedure of UCITS […]	