Association of the Luxembourg Fund Industry

Response to CESR consultation paper 06-120
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, on 31 March 2006, total net assets of undertakings for collective investment were EUR 1.675 billion and the Luxembourg undertakings for collective investment sector were 40.31% larger than they were twelve months previously.

There are 2,091 undertakings for collective investment in Luxembourg, of which 1,316 are multiple compartment structures containing 7,949 compartments. With the 775 single-compartment UCIs, there are 8,724 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 second consultation on the notification procedure according to Section VIII of the UCITS directive. ALFI welcome's 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.

In this executive summary we present short answers to the questions that CESR asked in its consultation paper. As we did in our response to its first consultation paper, we also attach a more comprehensive review of the consultation paper, which we hope CESR will find helpful. In the interest of brevity, we have not repeated some of the comments that we made in our response to CESR's first consultation paper (e.g., our comment on mediation) but our views remain the same and our responses to both consultation papers should be read together. In this second consultation we have actively taken CESR's advice and supplied draft language and other recommendations, which we think would improve the final guidelines. To help CESR to see them, we have marked our draft language and principal recommendations with ***bold italic*** text. We remain at CESR's disposal to discuss its paper and our response and to assist it in its future work on the European investment fund industry.

(References to page numbers in this summary are references to the page numbers of ALFI's detailed review, which is printed in full below.)

Question 1

We welcome the standardised notification letter subject to the comments that we made within this paper. (Page 5)

We understand why CESR has arranged its consultation paper as a set of guidelines and explanatory text. We recommend that CESR make clear to its members that it is at least as important that they uphold the spirit of the explanatory text as the letter of the guidelines.

Nowhere in its second consultation paper did CESR acknowledge our proposal that, when a UCITS markets its shares or units through regulated entities in the host state, it can be sure that Arts. 44(1) and 45 of the directive will be upheld. We invite CESR to include this principle in its guidelines and have proposed some draft text with which it could do so. (Page 6)

We think that the explanation to Guideline 4 could be more clearly written and we have provided some draft text that could replace it. We can see no reason why it should take up to one month to test a notification file for completeness. We think that two weeks should be more than enough time. (Page 8)

We disagree with CESR's view of when a host state authority may close a notification file and we have provided an alternative text with which we hope CESR will agree. (Page 9)

Question 2

We think that Guideline 6 could be more clearly written and we have provided some draft text that could replace part of it. (Page 10)

We are disappointed that CESR did not acknowledge our comments on the further obligations that some host states impose upon UCITS which, by virtue of the fact that they must be completed before the UCITS may start to market its units, effectively extend the time it takes a foreign fund to enter a market. We invite CESR to adopt our draft text, which makes clear that marketing may commence as soon as the conditions of Guideline 6 have been met. (Page 10)

Guideline 6 (the second paragraph) does not adequately govern the correspondence between a UCITS and a host state authority. We have provided alternative text, which we think is clearer and which confirms that a UCITS' provision of further information to a complete notification file in response to a host state authority's question will not result in the two-month period being "reset". (Pages 10 and 11)

We also make the point that, whilst we would like to see notification files being processed by all host states in considerably less than two-months, we certainly do not want CESR to introduce the graduated approach that it proposes in Guideline 6, which is best illustrated in its worked example at paragraph 23. **We strongly recommend that CESR discard it and concentrate instead on swift execution of the compliance checks.** (Page 11 et seq)

Question 3

We welcome CESR's agreement to allow self-certification. We invite CESR to review our response to its first consultation paper and our further explanation below and to broaden its definition of who may certify a document. We have provided draft text to do so. (Page 14).

Question 4

We welcome CESR's new approach to translation. We invite CESR to review our response to its first consultation paper and to make it clear that translations need not be sworn as true by a court, notary or similar agent. We have provided draft text to do so. (Page 15)

Question 5

We do not think that CESR has done enough to provide relief to UCITS that are obliged to excise from their official documents references to sub-funds that are not registered for sale to the public in some host states. We hope that CESR will reconsider and adopt the draft text that we have provided, which gives that relief. (Page 17)

We hope that CESR will reconsider its decision to subject new sub-funds to a two-month notification period. We certainly think that CESR is too conservative to apply a two-month period to a new share class. (Page 18)

Question 6

We think that CESR's suggested approach is appropriate.

Question 7

We think that CESR's suggested approach is appropriate.

Question 8

We agree with CESR's proposals.

Question 9

Other than the comments that we have made in this response, there is no issue that we would like CESR to deal with in more detail in this consultation.

Question 10

Other than the comments that we have made in this response, there is no other issue that we would like CESR to deal with in this consultation.

Questions 11

If CESR removes the tables at paragraphs 13 and 14 and the mention of grandfathering from the model attestation then it will become a very useful document indeed and it will be easier for home state authorities and UCITS to issue and employ. We hope that CESR will agree. (Page 24)

Questions 12

We recommend that CESR entirely remove paragraph 6 (the description of the management company or self-managed investment company) from the model notification letter. Sufficient assurance about these entities exists in the home state's attestation. (Page 24)

We think that the first page of the notification letter should state the name, address, telephone number, e-mail address, etc of the notification filing agent. (Page 24)

We think that the notification letter should make clear whether it is the first notification in respect of the UCITS or a notice of a change to a UCITS that has already been notified. (Page 24)

Questions 12

We hope that CESR will use its office to press for reform within those states whose laws and regulations run contrary to the spirit of the Directive and the Treaties and actively encourage Member States to admit foreign funds to their markets in good faith according to the spirit of the Directive and the Treaties. We would be willing to continue discussions beyond this consultation in order to help CESR to do that. (Page 25)

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29 May 2006

Association of the Luxembourg Fund Industry

Response to CESR consultation paper 06-120
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**
Background 1 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.	
2 The Asset Management Expert Group reviewed in 2004 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 notified separately in each 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 notification requirements foreseen by the UCITS Directive to streamline the notification process.	
3 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.	

Transcript of CESR consultation paper	ALFI response
4 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.	
5 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 8 single European investment fund market. The guidelines aim to promote convergence, certainty and transparency to the supervisory practises.	
6 The main objectives of these guidelines can be summarised as follows: — Simplifying the notification and ongoing process and thus facilitating cross-border fund distribution; — Providing proportionate investor protection; — Reducing costs for investors and fund management companies; — Eliminating barriers to the single market on investment funds in Europe; — Furthering a level playing field between different investment products.	We agree with CESR's aims.
7 These guidelines present proposals for a common approach to the administration, by host authorities, of the notification procedures set out in Art. 46 of the Directive. The document is developed to simplify and 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.	We think that CESR must be bolder if it is to reach the objectives that it set out in Paragraph 6 above; the problems with the notification process lie in the detail.

Transcript of CESR consultation paper	**ALFI response**
8 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 taken into account.	
9 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-to-day regulatory practices on a voluntary basis.	
10 CESR's guidelines will not prejudice, in any case, the role of the Commission as guardian of the Treaties.	
11 The progress on the implementation of these guidelines will be subject to a permanent review by CESR.	We hope that CESR will permit members of the cross-border funds industry to participate in its reviews and to see its findings and conclusions.
12 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). The 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.	
THE GUIDELINES Preamble 1 Taking on board various remarks from responses to the first consultation that questioned the suitability of the first version of these guidelines to achieve its objectives, CESR has decided to include this preamble to reassure the industry that the arrangements proposed in these guidelines seek to enhance the efficiency of the notification procedure and to bring greater transparency and certainty to it. The proposals aim to avoid uncertainty and prolongation of notification procedures.	
2 There is a general commitment by all CESR Members to enhance the processing of notifications where possible. As a response to calls for an improvement in the cooperation between regulators, CESR envisages that host authorities will in practice regarding individual notifications at first communicate with the respective UCITS to find practical solutions on possible open issues. As a second step informal contacts between the host and the home authorities will be enhanced to speed up the procedures. Due to the above mentioned	

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commitment, national regulators will improve their cooperation between each other. CESR will create a contact list of UCITS-regulators for regulators for the purposes of UCITS notification. The objective of such a cooperation is to facilitate a rapid, effective and balanced solution on open issues by home and host State authorities in order to facilitate convergence and the fair implementation and application of the Directive and these guidelines.	
3 Some of the proposals for speedier processing cannot be immediately guaranteed by all host authorities due to limitations imposed by national laws or regulations. In addition improvements in available human or IT resources might be necessary. Acknowledging respondents' calls for bolder deregulatory action, there is however a general commitment by all authorities to accelerate the processing of notifications wherever possible.	
General Commitment and transitional period CESR Members are committed to: — fully implement these guidelines and to act in accordance with them to simplify the notification procedure of UCITS; — adopt working procedures that will all in all aim at speeding up the notification process; — enhance co-operation between themselves by among other things creating a contact list for regulators of the contact persons of each CESR Member for the purposes of UCITS notification.	
As a consequence of the commitment of CESR Members to implement these guidelines and to act according to them, in some cases the amendment of their national legal provisions might be necessary. In many Member States this amendment might require a formal legislation procedure. Where such a procedure must occur, a transitional period would be necessary for the respective CESR Members to implement the guidelines. Even in such a transitional period there is an expectation to CESR Members that they will try to adhere to the guidelines to the extent permitted by there legal framework.	We hope for the shortest possible transitional period. The problems with the notification process that we described in our response to CESR's first consultation paper (e.g., competitive disadvantage caused by delay getting to market, expense, withholding of information from investors in some countries, unfair competition from other types of financial product) warrant prompt action. We further hope that host member state authorities make full use of what rights they have to interpret the law in a way that facilitates cross-border distribution of UCITS and ensures that domestic requirements are only applied to foreign funds in a reasonable and proportionate manner and that the frequency with which host state authorities intervene under the auspices of Arts 44(1) and 45 therefore reduces very much.
Transitional periods apply to the individual guidelines in this document, where indicated by CESR Members on their website, and are without prejudice to Paragraph 9 of the Introduction.	

Transcript of CESR consultation paper	**ALFI response**
Definitions 4 References in this consultation paper to the "Directive" mean, unless the context requires otherwise, Directive 85/611/EEC of the Council of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), as subsequently amended.	
5 References in this consultation paper to terms defined in the Directive shall have the meaning given to them in the Directive.	
A. Procedure Guideline 1 For the notification procedure – as far as the harmonized part is concerned – a standardized notification letter which is drafted according to the standard model letter in Annex II should be used by the UCITS. The notification letter may be submitted in a language common in the sphere of finance at the international level or in the or one of the official languages of the host Member State if it is not contrary to the domestic legislation or regulations of the host Member State. [Footnote] Due to inter alia a complicated interaction between investment and administrative law/regulation in several Member States there is no general commitment to amend national legal/regulatory provisions.	 We welcome the standardised notification letter with the changes that we recommend below. We also welcome the adoption of a common language. ***We recommend that CESR incorporate its paragraph 8 comment on electronic filing into the body of the guideline***.
CESR Members agree to facilitate electronic filing of documents.	We would prefer CESR to say that its members will permit electronic filing rather than just facilitate it.
Explanatory text 6 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.	
7 The model of the standardised notification letter is attached to these guidelines (Annex II). This standardised model will help to facilitate the notification procedure and provides the host State authority with a summary of the necessary information to process the notification.	
8 It is aimed by the Member States that the notification letter as well as all other documents and information required in the notification procedure as mentioned in these guidelines may	

Transcript of CESR consultation paper	ALFI response
also be submitted electronically. Where the notification documents are provided in electronic form it shall not be necessary to submit hard copies.	
Guideline 2 Other reasons than non-compliance of marketing arrangements with the provisions referred to in Art. 44(1) and Art. 45 of the Directive, 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 notification according to the Directive.	Nowhere in its second consultation paper did CESR acknowledge our proposal that, when a UCITS markets its shares or units only through regulated entities in the host state, it can be sure that Arts. 44(1) and 45 of the Directive will be upheld. We strongly recommend that CESR amend this guideline by the addition of the following sentence: ***"A UCITS that distributes its shares or units to the public in a host state exclusively through entities that are regulated by the authorities of that state shall be considered automatically to comply with Art 44(1) and Art 45 of the directive and shall by virtue of that fact be permitted to start marketing its shares or units immediately that the host state authority acknowledges receipt of a complete notification file. (In other words, in respect of its marketing arrangements, the UCITS need only declare that it will exclusively employ regulated entities for the host state authority to be satisfied that Arts 44(1) and 45 will be upheld and to permit the UCITS to start marketing without delay.)"*** Please see also our comments on Guideline 6, in which we ask host state authorities to make clear in their correspondence with UCITS whether they are declaring the notification file to be incomplete or asking a question about compliance with Arts. 44(1) and 45 of the Directive.
Therefore, if the marketing arrangements comply with the provisions referred to in Art. 44(1) and Art. 45, the passport of the UCITS has always to be respected.	
Explanatory text 9 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. The Directive does not provide for explicit tools to deal with problems such as divergent interpretations of the Directive. In particular, CESR Members agree that these issues cannot be dealt with within the notification procedure. Therefore, other solutions 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, might be of help.	

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I. The two-month period Guideline 3 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, unless the host Member State establishes in a reasoned decision taken before the expiry of that period of two months, that the marketing arrangements do not comply with the provisions referred to in Art. 44(1) and Art. 45.	To be clear, we recommend that CESR start this guideline with the words, ***"Subject to Guideline 5"***.
Explanatory text 10 This is however without prejudice to Art. 6a and Art. 6b of the Directive concerning the management company passport. As explained in footnote 1 of Annex I for marketing funds via a third party in a host State, providing the necessary information regarding the management company in the "product notification" makes a separate notification procedure regarding the management company unnecessary. 11 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).	We agree with CESR but suggest that it complete sections 10 and 11 by adding a clear statement that, other than the information comprised in Annexes I and II, no other information or documentation regarding the management company's or, in case of a self-managed UCITS, the UCITS' compliance with Directive 200171077EC should be required by the host state.
1. Starting the two-month period Guideline 4 The two-month period starts when the competent host State authority has received the complete notification. If the notification is not complete, the two-month period does not start.	
Without prejudice of the provision of Article 46 (2) and of the ability of the competent authority of the host Member State to ask the UCITS for additional information within the two month period the notification would be considered 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 have been received by the competent authority of the host Member State.	We agree subject to the modifications and comments that we have made on the relevant parts of CESR's second consultation paper (please see below).
If the notification is incomplete, the competent host State authority shall inform the UCITS	As we said in our response to CESR's first consultation paper, we would like completeness

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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 incomplete notification.	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. If CESR's members seriously want to improve the notification process, hastening this simple check would be a good place to start. We therefore recommend that CESR delete the words "one month" and replace them with the words ***"two weeks"***.
Explanatory text 12 Many respondents to the first consultation expressed the view that CESR should clarify when the two month period would start as regards receipt of the notification. Accordingly receipt of the notification will be assumed if delivery by physical submission or by electronic filing via e-mail has been confirmed by the authority. The records of a reliable commercial courier service in case of physical submission will be considered as giving sufficient proof of delivery. Where the host Member State authority confirms the date of receipt of the complete notification and additionally informs the UCITS regarding the date of the start of the two-months period due to national law, this should be done as fast as possible and at the latest within one month after receipt of the complete notification; in this case a separate confirmation of sole receipt without the additional information of the start of the two-months period which also might be provided for by national law is not necessary.	We recommend that CESR redraft this paragraph as follows and incorporate it into the main body of the guideline, ***"The two-month period starts on the day that a complete notification is filed with the host state authority. The records of a reliable commercial courier service or of an electronic filing via e-mail will be accepted as evidence of a filing date and, provided that the host state authority duly finds the notification to be complete, both parties will take that date as the start of the two-month period. The host state authority shall use its best endeavours to check the notification file for completeness within two weeks of the filing date. If it finds the file to be incomplete it shall promptly inform the UCITS of the fact and both parties shall accept that the two-month period did not start. The UCITS shall promptly file the missing information according to the same principles and, unless the host state authority again declares the file to be incomplete, the two-month period starts on the day that the missing information was filed. Where the host Member State authority confirms the date of receipt of the complete notification and additionally informs the UCITS regarding the date of the start of the two-months period due to national law, this should be done as fast as possible and at the latest within <u>two weeks</u> after receipt of the complete notification; in this case a separate confirmation of sole receipt without the additional information of the start of the two-months period which also might be provided for by national law is not necessary, <u>provided however that in this case, the date of start of the two-months period should correspond to the date of receipt of the complete notification</u>"***.
13 It has been made clear throughout the first consultation and also at the open hearing that industry members expect the two month period to automatically start upon the day that the notification is delivered. However, CESR Member States feel that the starting of the two month period should not be operational until competent authorities are confident that all documents and information have been provided and a preliminary assessment on the contents of those documents gives assurance to them that all information is at their disposal. This means that if all the information and documents are complete and the latter contain all information, the two month period starts from the date of the receipt of the notification. If there is no communication after one month by the competent authority of the host Member State to the UCITS, it is assumed that the notification is complete since the date of the receipt by the host Member State authority.	***We recommend that CESR delete paragraph 13 in favour of our redraft of paragraph 12***, which makes the same point with less risk of misinterpretation. Indeed, we feel that the reference to the period "not be operational" contradicts the sentences that follow it.

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14 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 regulation of the host State. This circumstance will be attested by the UCITS in the notification letter.	We acknowledge that CESR cannot directly overturn the laws and regulations of Member States but we appeal to CESR to use its office to press for reform within those states whose laws and regulations run contrary to the spirit of the Directive and the Treaties. We acknowledge Member States' rights to impose some local requirements upon foreign funds provided that they are reasonable and proportionate. However, we would like to repeat our strongly-held view that the extent and variety of local requirements are onerous and collectively form a barrier to UCITS' reasonable cross-border objectives and put foreign funds at a material and unreasonable economic disadvantage to the domestic funds in each state in which they wish to sell their shares. We therefore call upon CESR actively to encourage Member States to admit foreign funds to their markets in good faith according to the spirit of the Directive and the Treaties. We would be willing to continue discussions beyond this consultation in order to help CESR to do that.
15 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 authority to it within a defined time period after the request to amend the original notification material. A term of six months may be considered as an appropriate time period. This is done to avoid a notification process to be held open for a long time period due to the UCITS not providing the requested additional information. The aim of this requirement is to help directing the resources of authorities to applications that are still in the 'active phase'.	We recommend that CESR redraft paragraph 15 to say, ***"CESR's members agree that a host state authority should not to close a file whilst a UCITS continues to engage in good-faith correspondence with it. A host state authority may close a file if a UCITS fails to answer correspondence (i.e., remains silent) for 6 months provided that the authority must take reasonable steps to ensure that the UCITS received the correspondence and knows the consequences of failing to answer it."***
Q1: Is the starting of the two-month period dealt with in a practicable way in your view?	Please see our comments at paragraphs 10 to 15 above. We hope that CESR agrees with the recommendations for change that we made. If it does, we will agree that the starting of the two-month period is practicable.
2. Shortening the two-month period Guideline 5 Without prejudice to Guideline 6, the two-month period is the maximum period available for the host State competent authority to check the notification.	
The two-month period should be shortened whenever possible. The competent authority should as soon as it has checked the notification inform the UCITS for example via email that it can start the marketing in the host State immediately, even if the two-month period is still going on.	We welcome CESR's comments.

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3. Managing the two-month period Guideline 6 The host State authority has two months to check the contents of the notification, after it has received the complete notification. After the two-months period has expired, the investment company or the management company may begin to market its units in the other Member State, unless the host State authority establishes, in a reasoned decision taken before the expiry of that period that the arrangements made for the marketing of units do not comply with the provisions referred to in Article 44(1) and Article 45.	We recommend that CESR redraft the second sentence of Guideline 6 to say, ***"If the host state authority has not during the two-month period told the UCITS that it may immediately start to market its units or, before the expiry of the two-month period, told the UCITS in a reasoned decision that the arrangements made for the marketing of units do not comply with the provisions referred to in Article 44(1) and Article 45, then the UCITS may upon the expiry of the two-month period start to market its units in that host state and the host state shall be deemed to have authorised the same."*** We further recommend that CESR accept the recommendation we made opposite Guideline 2 above, and consider a UCITS that distributes its shares or units in a host state exclusively through entities that are regulated by the authorities of that state automatically to comply with Art 44(1) and Art 45 of the directive and by virtue of that fact permit it to start marketing its shares or units immediately that the host state authority acknowledges receipt of a complete notification file. Nowhere in its second consultation paper did CESR acknowledge our observation that 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 also 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 further appreciable shareholder protection. We would therefore like CESR to extend Guideline 6 by saying, ***"CESR's members agree that any obligation that a UCITS might have to publish a notice of its admission to a market in national newspapers or official gazettes shall be without prejudice to its right to advertise its units and to sell them without restriction immediately that the conditions described in this Guideline 6 have been met."***
In the course of this two-months period the host State authority may solicit clarification from the UCITS with regard to the documents and information submitted with the notification letter to check if the marketing of units would comply with the provisions referred to in Art. 44(1) and Art. 45 of the Directive. The right of the UCITS to start marketing after the two-months period will not be affected unless a reasoned decision is issued.	We recommend that CESR redraft this part of Guideline 6 by saying, ***"In the course of the two-month period the host state authority may ask the UCITS questions about its notification file. The host state authority must make clear in its correspondence to the UCITS whether it is declaring the notification file to be incomplete (which it must do within two weeks of its receipt of the file and which means that the two-month period cannot have validly started) or asking a question about compliance with Arts. 44(1) and 45 of the Directive. If it is the latter, the host state authority may choose to ask questions and allow the two-month period to run without interruption. It also may at***

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	any time issue a reasoned decision in writing that the UCITS does not comply with Arts. 44(1) and 45 of the Directive, in which case the two-month period will be discarded and the two parties will begin good-faith discussions to resolve the non-compliance as quickly as possible. The host state authority may not "restart" the two-month period when a UCITS submits more information in reply its questions or in its attempts to resolve the authority's reasoned decision, nor may the authority seek the same effect by insisting that a UCITS answer questions or resolve its non-compliance through a new notification file."
In the case where the host States authority's endeavor is not satisfied, but the authority can nevertheless assume that there is a realistic prospect that compliance with Art. 44(1) and Art. 45 from the applicant's side can be achieved without the need for a reasoned decision, the following more graduated approach should be applied:	We acknowledge and thank CESR for the goodwill that it has shown by offering a graduated approach but we do not think that it is suitable for the following reasons: (1) As we said in our response to CESR's first consultation paper, we do not think that the graduated 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. (2) During the two-month period the host state authority may decide whether the UCITS complies with Arts. 44(1) and 45 or not. If the UCITS complies, it must be admitted to the host state market. If the UCITS does not comply, the host state authority may refuse to admit it to the host state market until it does comply. As soon as the host state authority decides whether the UCITS complies, the two-month period will have served its purpose and should be discarded. Instead of CESR's proposal, we recommend the simpler approach in our draft above, which is that the host state should say as quickly as possible (and in any case within two months of a complete notification being filed) how the UCITS does not comply with Arts. 44(1) or 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. ***We therefore recommend that CESR delete this and the subsequent parts of the guideline.***
The host Member State authority shall inform the UCITS as soon as possible in a written and duly motivated communication (which can be by email) that it considers that there are convincing arguments to believe that the requirements to make a reasoned decision are fulfilled, unless the host State authority receives the required information within the two-months period. Without prejudice to shorten the two months period according to guideline 5,	***We recommend that CESR delete this part of the guideline.***

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the expiring of the two months period will be suspended by this communication to prevent the applicant from a reasoned decision.	
If the requested information has been received by the host authority and the arrangements made for the marketing of units do 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 recommend that CESR delete this part of the guideline.***
Explanatory text 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.	 ***We recommend that CESR delete this paragraph.***
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 led to uncertainties that have been pointed out by respondents to the first consultation. CESR Members have therefore agreed on a common approach regarding the use of the reasoned decision in practice.	***We recommend that CESR delete this paragraph.***
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 recommend that CESR delete this paragraph.***
19 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.	***We recommend that CESR delete this paragraph.***
20 The authority can nevertheless assume that there is a realistic prospect that compliance with Art. 44(1) and Art. 45 from the applicant’s side can be achieved. A more graduated approach to the use of the reasoned decision should be applied.	***We recommend that CESR delete this paragraph.***
21 The host Member State authority shall inform the UCITS as soon as possible in a written procedure, via a duly motivated communication, that it considers that there are convincing	***We recommend that CESR delete this paragraph.***

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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.	
22 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 (cf. A.I.1. to determine the date of receipt), the host State authority will finalise the checking of the arrangements made for the marketing of units in the remaining time that was left of the two-month period, when the host State authority required for the additional information.	***We recommend that CESR delete this paragraph.***
23 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 — 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.	***We recommend that CESR delete this paragraph.***
Q2: Respondents are asked to provide their view on the practicability of the proposed approach.	We acknowledge CESR's efforts to approve the process and we are grateful for its good will but we do not think that the proposal is practicable. We hope that CESR will agree to adopt our simpler proposal and encourage its members to review their national laws.

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II. Certification of documents Guideline 7 The latest versions of the 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 host authorities shall not request certification of these documents by the home State authorities. A self certification by the UCITS' authorised directors will be accepted by the host State authority. The certification must state that the versions of the documents that have been attached to the notification letter are the latest ones which have been approved by or filed with the home State authority.	We welcome CESR's adoption of self-certification, which we think will help the industry to process notification files more quickly and will ease the administrative burden of certification on CESR's members. Some of our members have delegated the day-to-day service of UCITS to their management companies or to their properly-authorised general managers (for example, self-managed SICAVs tend to delegate day-to-day service to regulated fund service companies and to grant certain executive powers to those companies' general managers). As we said in our response to CESR's first consultation paper, we 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 therefore recommend that CESR redraft the second sentence of Guideline 7 to say, ***"A self certification by the UCITS' directors, the directors of its management company or their properly authorised agents will be accepted by the host State authority"***.
Explanatory text 24 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. So far many Member States have required the certification of the documents related to the notification procedure by the home State authority of the UCITS. This has been 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.	
25 To simplify the supervisory practices in this respect, CESR Members agree, that the host State authorities shall rely on self-certification by the UCITS. This agreement addresses a widespread demand from those that contributed to the first consultation.	
26 CESR Members have also agreed not to require the use of the Hague-Apostille for certification of documents.	We welcome CESR's decision no to use the Hague-Apostille for certification of documents.

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Q3: Respondents are asked to provide their view on the practicability of the proposed approach.	Yes, provided that the definition of who may certify documents is broadened as we described above.
III. Translation Guideline 8 The documents which have to be submitted by the UCITS to the host authority must be sent in the original language and translated into the or one of the official languages of the host State except for the UCITS Attestation (see also Guideline 11).	
However, 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 the documents that must be translated as well as on the accepted languages on their websites (cf. Annex III).	We recommend that CESR add another paragraph to this guideline saying, ***"CESR's members shall not require translations to be sworn as true by a court, notary or similar public agent"***.
Explanatory text 27 Many contributors to CESR's first consultation on these draft guidelines stressed the need to broaden the scope for use of international languages in the sphere of finance. Some respondents suggested that, along the lines of the recently introduced Prospectus Directive, it would be enough to provide the simplified prospectus in the official local language. CESR has carefully considered this option. However, since UCITS investors are mainly retail investors, CESR decided for the sake of investor protection to leave such an assessment to the host country authorities. Transparency of admissible languages is ensured by the commitment of CESR Members to disclose on their web-site the accepted relevant languages and the documents which have to be translated.	We acknowledge and support CESR's position.
28 Correct, sufficient, and unambiguous information for the investor is one of the core elements of investor protection provided for by the Directive.	We agree
29 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, translated documents should be faithful representations of the original documents. The translation has to be correct, i.e. the documents have to be understandable and should not contain material errors, omissions or misleading expressions.	We agree

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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 regulation of the host Member State.	
Q4: Do you consider the suggested approach as appropriate?	Yes.
IV. Umbrella funds Explanatory text 30 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). Moreover, sub-funds of an umbrella funds may have different own characteristics (e.g. risk profile) which may have an impact upon the requirements of the host State regarding marketing arrangements, selling or advertising conditions (e.g. the commercial information and advice given to investors by distributors). Member States have developed different approaches on how to deal with the characteristics of umbrella funds with respect to the notification procedure. CESR has tried to reach convergence in these practises as far as possible.	
1. Marketing of only part of the sub-funds Guideline 9 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.	As we said in our response to CESR's first consultation paper, 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 publicly 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

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	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. We therefore recommend that CESR extend Guideline 9 by saying, ***"CESR's members do not consider that the publication of a full prospectus and financial reports and accounts (without expurgation) within a host state implies that a UCITS wishes to market all of its sub-funds in that state and consequently agree that UCITS may publish their full prospectus and financial reports and accounts without expurgation in each host state in which they are registered. CESR's members also agree that host state authorities will only require the publication of translated simplified prospectuses for the sub-funds that the UCITS intends to market in that state"***.
Explanatory text 31 As stated in Art. 46 of the Directive, a UCITS has to inform the host State authority if it 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.	
32 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.	
33 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.	

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2. Notification procedure for new sub-funds Guideline 10 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. These simplifications also apply to umbrella funds in the contractual and unit trust form.	
2) 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. Given that the most of the notification material e.g. the marketing arrangements will likely in such a case be already familiar to the host authority, the necessary time for check by the host authority should be significantly less than the regular two-month period. The two-month period should therefore be shortened in accordance with Guideline 5. Some host authorities do not consider it necessary to apply the two-month period at all 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.	***We acknowledge the point but we hope that CESR will reconsider.*** Our members market the sub-funds of their UCITS consistently under the same umbrella and can see no reason why the host state authority's assessment of the UCITS with respect to Arts. 44(1) and 45 should be different. We therefore invite CESR to reconsider paragraph 2 of Guideline 10 and to admit new sub-funds to host state markets immediately upon their notification to the host state authority. Even if CESR disagrees with our view that the marketing arrangements are the same for all sub-funds of an umbrella inasmuch as Arts, 44(1) and 45 are concerned, we hope that it will agree it to be true of the share classes within a sub-fund and that it will agree to add the following new paragraph to Guideline 10: ***"If new share classes are added to the sub-funds of an umbrella, the UCITS shall notify the host state authority and the two-month period shall not apply (i.e., the UCITS may begin marketing the share classes immediately)"***.
3) To simplify the processing by the host authority of the notification of umbrella funds with a large number of sub-funds, the following procedure applies: Basically, the whole umbrella should have one full prospectus but if the notifying UCITS cannot avoid providing a separate full prospectus for each sub-fund, the UCITS' authorised directors must self-certify that the information on the marketing arrangements in the host State are the same in each prospectus.	

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Explanatory text 34 The large majority of respondents to CESR's first consultation objected that host State competent authorities apply the two-months period to notifications of new sub-funds added to existing umbrella funds that would be actively marketed in the host State when marketing arrangements remain unchanged. However, as explained under paragraph 32, CESR Members came to the conclusion that these sub-funds should receive the same treatment as any other single fund as they may have different own characteristics.	
35 The proposed guidelines aim to simplify the notification process by providing a framework for efficient use of the information the host authority is receiving with the notification or has received with previous notifications. Duplication of work should be avoided by both sides i.e. notifying same information twice by the UCITS and checking twice the same information by the host authority should be avoided as far as possible. A level playing field should also be promoted between funds operating in different legal formats, e.g. same simplified procedures should be where possible applied to contractual or unit trust funds where their notifications include repetitive information. Also the UCITS can contribute to simplify and fasten the process. Especially for large umbrella funds with many sub-funds it is preferable that one full prospectus comprising all sub-funds to be marketed should be submitted, i.e. separate full prospectuses for every single sub-fund should not be issued, since it demands lot of work by the host authority to go through all these prospectuses. This right should be "reserved" to the simplified prospectuses which may be produced for an individual sub-fund or share class within an umbrella.	We agree with all of paragraph 35 except the last sentence, which we do not understand.
Q5: Do you consider the suggested approach as appropriate?	Yes, provided that CESR adopts the points that we made about expurgated prospectuses and the notification of sub-funds and share classes.
B. Content of the file Guideline 11 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. The 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). The UCITS may however, as an alternative, submit a copy of the original attestation, provided that its authorized directors selfcertify that the copy is a true copy of the valid original in their possession. The original attestation should be issued as an English	We welcome CESR's agreement to rely upon self-certified copies of the home state authority's attestation but we invite CESR to conform this paragraph with our comment at Guideline 7 above to say, ***"The UCITS may, as an alternative, submit a copy of the original attestation provided that its directors or the directors of its management company or their properly authorised agents certify that the copy is a true copy of the***

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version.	***valid original in their possession"***.
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 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; for umbrella funds annual reports and subsequent half yearly reports comprising the whole umbrella should be submitted; and	
6. Details of the arrangements made for the marketing of units in the host Member State (cf. Annexes III and IV).	
Explanatory text 36 This chapter only deals with the documents and information required according to Art. 46 of the Directive. UCITS should not be obliged by the host State to send other documents and information than those mentioned in these guidelines, however without prejudice to the documents and information due to Art. 44(1) and Art. 45 of the Directive. The documents and information due to Art. 44(1) and Art. 45 of the Directive are dealt with in Chapter D and in Annex III and Annex IV.	
37 Unless provided for by the laws, regulations or administrative provisions in the host Member State in accordance with Art. 44(1) and Art. 45 of the Directive, host State authorities are not allowed to request additional documents or information which are not required according to Art. 46 of the Directive as outlined in this chapter and which do not speed up the notification process. Therefore, the host State regulator is not allowed to request for example letters warranting the veracity of the information submitted with the notification letter; letters of "commercialisation", describing the main characteristics of a fund and its subfunds, including investment policies, subscription and redemption procedures, fees etc.; or letters warranting that the foreign UCITS' management company will remit trailer fees in respect investments by	

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domestic funds only to those funds, unless these submissions are foreseen by national law, regulations or administrative provisions complying with Art. 44(1) and Art. 45 of the Directive. However, if documents are appropriate to streamline the notification process, they might be requested by the host State regulator. For example, letters describing what changes have been made to the prospectus being filed are appropriate to streamline the notification procedure and may therefore requested by the host State authority.	
Q6: Do you consider the suggested approach as appropriate?	Yes.
C. Modifications and on-going process Guideline 12 CESR Members 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 indicated 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.	
Submission is requested without delay after the documents and information have been made the first time available in the home Member State and without prejudice to the notification procedure for new sub-funds.	We recommend that CESR redraft this part of Guideline 12 to say, ***"without unreasonable delay"***. Translation and service of process takes time. Delay is inevitable; our joint aim is to minimise it.
Explanatory text 38 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.	
39 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.	
40 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.	

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Q7: Do you consider the suggested approach as appropriate?	Yes.
D. National marketing rules and other specific national regulations Guideline 13 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.	
Explanatory text 41 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 regulation of another Member State.	
42 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.	
43 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	We would like to reiterate the following points, which we made in our response to CESR's first consultation paper: 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

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administrative law). Due to these legal provisions which are not harmonised, UCITS may also be required to fulfill 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.	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.
44 According to these guidelines apart from Art. 44 and Art. 45 of the Directive the following issues are governed by national regulation:	
— electronic submission of documents for example via 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.); - translation (cf. A.III.) — marketing within the sense of Art. 46 of the Directive (cf. A.IV.1.); and — transitional provisions with respect to the General commitment and transitional period under the Preamble.	
Q8: Do you agree with the proposals concerning the publication of the information or do you prefer another procedure and if, which one?	We agree with CESR's proposals.
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?	No.
Q10: Should some additional issues related to the notification procedure have been dealt with in this consultation paper, and if yes, which?	No.
ANNEXES TO THE CONSULTATION PAPER	

Transcript of CESR consultation paper	ALFI response
Annex I MODEL ATTESTATION TO MARKET UNITS OF UCITS IN AN EEA MEMBER STATE […]	We think that the attestation should be limited to the facts that the home state authority can know and that are relevant to the authorisation of the UCITS in its home country. To the extent that a UCITS cannot comprise sub-funds which are not authorised by its home state authority it is not relevant for the home state authority to attest which sub-funds are intended to be marketed in the relevant host state. The UCITS should be the only party to declare which sub-funds it wishes to market in the host state and this information is therefore covered by the notification letter (Annex II). We don't believe that the home state authority should do it. ***We therefore recommend that CESR redraft the model attestation letter by removing the tables at paragraphs 13 and 14***, in which the *home* member state authority is asked to list the sub-funds that the UCITS wishes to market in the *host* member state. This change will further relieve the home state authority of an administrative burden because the attestation will be general, as it should be, and be valid for every host state market that the UCITS wishes to enter for as long as the facts of the attestation remain true. That seems to us also to be in accordance with the principle of maximum utility implied by CESR's Guideline 11, paragraph 1, in which it proposed to permit the UCITS to submit self-certified copies of the home state authority's attestation with the notification file. ***We also recommend that CESR delete any information on the grandfathering provisions applicable to the UCITS or the management company***. We think that this information is not relevant (a grandfathered UCITS or management company can undertake the same activities as a fully authorised non grandfathered UCITS or management company) and is anyhow, pursuant to the CESR recommendations on grandfathering provisions, no longer relevant since 1 May 2006.
Q11: Is the model attestation practicable in your view?	Yes, provided that CESR adopts the changes that we described above.
Annex II MODEL NOTIFICATION LETTER TO MARKET UNITS OF UCITS IN AN EEA MEMBER STATE […]	We think that the meaning of “duration” be made clear or the references should be removed. ***We recommend that CESR entirely remove paragraph 6*** (the box describing the management company or the self-managed investment company) of the notification letter. CESR's model attestation letter names the UCITS management company. We think that should be enough. Please also see our comments opposite CESR's paragraph 10, above.

Transcript of CESR consultation paper	ALFI response
	We think that the first page of the notification letter should state the name, address, telephone number, e-mail address, etc., of the notification filing agent. (If paragraph 6 was intended for that purpose, we do not think that it would have succeeded; many UCITS employ third parties to act as their notification agents.) ***We think that the letter should make clear whether this is the first notification in respect of a UCITS (in which case all of the information will be new) or a notice of a change to a UCITS that has already been notified (i.e., the addition, removal or amendment of some feature, in which case only the change should be described in the model letter).*** We expect that notices of change would still be supported by full copies of documents such as the prospectus.
Q12: Is the model notification letter practicable in your view?	No, please see our comments above.
Annex III National marketing rules and other specific national regulations […]	
Q13: What would you suggest CESR to do regarding the national requirements to simplify the notification procedure?	We hope that CESR will use its office to press for reform within those states whose laws and regulations run contrary to the spirit of the Directive and the Treaties and actively encourage Member States to admit foreign funds to their markets in good faith according to the spirit of the Directive and the Treaties. We would be willing to continue discussions beyond this consultation in order to help CESR to do that.
Annex IV List of CESR Members' websites for the downloading of national marketing rules and other national regulations regarding the notification process […]	