

fundinfo AG
Rüdigerstrasse 15
CH-8045 Zürich
Net www.fundinfo.com
Tel +41 44 286 90 50
Fax +41 44 286 90 54

Mr. Lamberto Cardia
Chair of Investment Management
Expert Group
The Committee of European
Securities Regulators (CESR)
11-13 Avenue de Friedland
75008 Paris
France

Zürich, 27 March 2009

REF: CESR/09-179

**CALL FOR EVIDENCE ON POSSIBLE IMPLEMENTING MEASURES CONCERNING THE
FUTURE UCITS DIRECTIVE**

Dear Mr. Cardia

fundinfo AG welcomes the opportunity to respond to the above call for evidence.

In the above mentioned call for evidence, the CESR invites all interested parties to submit information and views that could contribute to adopt the implementing measures for the revised UCITS Directive as set out in the request for assistance from the European Commission of 13 February 2009.

fundinfo AG is a provider of an international internet platform dealing with the publication of original fund documents in Switzerland and several European countries. As a Member Firm of the Swiss Funds Association (itself Member of Efama) with important cross-border-business throughout Europe and beyond, we would like to contribute with our unique business experience to the CESR Consultation, in particular those set out in Part II¹ and in Part III² of the request.

Our comments always refer and are restricted to issues regarding the publication, the archiving, the exchange or the diffusion of electronic documents (durable medium other than on paper); references herein relate to the request for assistance from the European Commission of 13 February 2009.

A. About fundinfo.com

The platform www.fundinfo.com is operated by fundinfo AG in Zürich. fundinfo AG was established in 2005 and is a co-subsiary company of ifund services AG in Zürich, a leading independent provider of fund research services in Switzerland.

¹ Request for technical advice on the level 2 measures related to key investor information – supplement to the Commission's April 2007 'request for assistance on key investor disclosures for UCITS'

² Request for technical advice on the level 2 measures related to fund mergers, master-feeder structures and the notification procedure

As a cross-border fund information platform, fundinfo.com is active today in Switzerland, Germany, Austria, Liechtenstein, Spain, Singapore and Hong Kong and has in these countries a contractual relationship with around 150 national and international fund providers in respect of the publication of fund documents, key data, fund prices and ratings.

In Switzerland, fundinfo.com is an official publication media recognised by the Swiss Financial Market Supervisory Authority FINMA. Fundinfo.com is currently aiming to obtain a similar status also in Germany and Austria.

B. General Observations

According to our experience, original documents play, in the fund industry, an increasing role for the purpose of providing information to the investors. Furthermore, the electronic form has the advantage that the documents and thus the relevant information can be transmitted much faster and in a much more cost efficient way.

In order to be able to benefit from such efficiency, we believe that the electronic documents should be classified according to the purpose for which they serve. We believe that the following three purposes should imperatively be distinguished:

1. **Electronic filing:** The exchange of documents between the fund companies and the relevant supervisory authority, e.g. in the context of an approval procedure.
2. **Notification:** The exchange of documents between the national supervisory authority or from the supervisory authority to a third party.
3. **Publishing:** Making fund documents publicly available for the purpose of informing the investors.

The reason for this proposal is based on the fact that the technical requirements for documents, in respect of the confidentiality, the safety and the possibility to amend such documents, considerably vary depending on the purpose for which the documents are used.

In the following, we shall therefore refer in our comments to these three purposes: „electronic filing“, „notification“ and „publishing“ respectively.

C. Specific comments on the request for assistance

Item 2.2.2. "Specific conditions to be met when providing KII in a durable medium other than paper (Article 81(2))", page 20, second paragraph:

"Moreover, co-legislators agreed a requirement that an up-to-date version of the KII should always be published on the website of the investment company or a management company, and the competent authorities have been encouraged to consider publishing the KII of all funds present in their market on their website so as to allow investors to easily compare between funds".

This section refers to the purpose „**publishing**“ as described above.

In our opinion, this section does not account for the solution predominantly accepted in practice today, i.e. that the documents along with other information are shown on one or several independent internet platforms. Platforms, which are internationally organised like the one we are operating do have the advantage of an „one stop entry“ for the fund companies that wish to be present in several countries. For the investors, the fact that several platforms are present in the country in question has the advantage that the platforms are in competition with each other and that such competition improves their quality in respect of the functionality, correctness, accurateness, extent and information content of the information provided.

It is interesting to notice that, in spite of different legal environments in Germany, Austria, Liechtenstein and Switzerland, it seems that a very similar system is developing in these

countries. Indeed, in each of these countries, there is one or several central fund information platforms on which all possible documents of the fund companies are published. Moreover, these platforms facilitate the search of information by investors through developed search functions.

Item 2.2.2. "Specific conditions to be met when providing KII in a durable medium other than paper (Article 81(2))", page 20, third paragraph:

„Where the KII is to be delivered in a durable medium other than paper or by a website which does not constitute a durable medium additional safety measures compared to the paper form may be necessary to maintain the integrity of the information, prevent alterations that undermine its comprehensibility and effectiveness, avoid manipulation or modification by unauthorised persons or any other interventions which may have a negative effect on the content, availability, and durability of the information."

This section refers to the purposes „**notification**“ and „**publishing**“ as described above.

We would like to emphasise that the existing technical means available today already allow to meet these requirements. Electronic documents in pdf-format can today be electronically signed in order to guarantee for instance that a document has actually been approved by the supervisory authority. Furthermore, the electronic transmission of documents can be protected through asynchronous encryption.

Question on page 21 above: „CESR is invited to advise the Commission on the specific conditions which need to be met when providing KII in a durable medium other than on paper or by means of a website which does not constitute a durable medium.:

and

Question on page 21 below: „CESR is invited to advise the Commission on the specific conditions which need to be met when providing the prospectus in a durable medium other than on paper or by means of a website which does not constitute a durable medium.:

According to our comments above, it is necessary to attach different requirements to electronic documents depending on the purpose of the „durable medium other than on paper“. We believe that the following criteria should be established:

1. **electronic filing:** the files must be submitted to the national supervisory authority with an electronic signature, so that the originator can be clearly identified. This implies that the version number, the date of creation, the date of transmission, etc. are intrinsically tied to the document. The transmission by the fund company to the supervisory authority must be encrypted.
2. **Notification:** the documents transmitted by the supervisory authorities must bear their electronic signature. In this way, it can be guaranteed, thanks to the signatures, that the documents were sent by the supervisory authority and that their content was not modified.
3. **Publishing:** It must here be guaranteed that it is possible at any time to check when and during which period a document could/can be seen on the website.

Item 3.3.2.: Facilities and procedures providing for the access of a host Member States to statutory documents of a UCITS and other information as referred to in Article 93(1) to (3).

This section refers to the purposes „**electronic filing**“, „**notification**“, „**publishing**“, as described above.

Question on page 40: "1. CESR is invited to advise on the definition of common standards and the content of relevant procedures that will facilitate access for UCITS host Member

States to documents referred to in Article 93(2) in accordance with the provisions of Article 93(7). In particular CESR is invited to assess the need for the general database at the national or EU level containing obligatory disclosures of UCITS notified for cross-border marketing”.

Here, we would like to draw your attention to the Swiss model „publication media“. According to this model, the supervisory authority officially recognises one or several internet platforms for the publication of fund prices, communications required by law and documents, provided that the sales prospectus of the fund in question refers to such platform as the „publication media“.

This model has several advantages. Firstly, the investor can get easily informed on which platform the relevant information is available. Secondly, the competition between the platform providers improves the quality, the accurateness and the scope of the information so published. Finally, this model allows the supervisory authority to fix minimum standards applicable to the operation of such platform and to quickly implement necessary changes as and when the need arises.

In addition, we allow ourselves to draw your attention to the possibility provided for in certain countries (including Switzerland) that a supervisory authority may delegate the function to receive documents officially to a third party. In our view, such third party could also be an electronic platform and to combine the functions of such delegate of a supervisory authority with the above-mentioned functions regarding electronic filing, notification and publishing would be most effective and in the best interest of the investors. If this idea would also find its way into the CESR advice to the European Commission this would be very much appreciated.

We hope this contribution is useful for your further work. Please do not hesitate to contact us should you wish to discuss our response or for any further questions you might have.

Yours sincerely

fundinfo AG



Dr. Michael Partin
Member of the Board



Philipp Portmann
CEO