

CESR's guidelines for supervisors regarding the notification procedure according to Section VIII of the UCITS Directive - 2nd Consultation Paper - Response from JPMorgan Asset Management

Please find below JPMorgan Asset Management's response to the consultation on CESR's guidelines for supervisors regarding the notification procedure according to Section VIII of the UCITS Directive. We would also like to pass on to the CESR our support for the response it will receive from the UK's Investment Management Association (IMA).

JPMorgan Asset Management is a global fund manager, with major operations in Europe, USA and Asia. We have around €700bn. in funds under management, and cover all main asset classes (equity, bond, money market, real estate, hedge, private equity and currency). In Europe, where we employ over 1,500 staff, our locations include France, Germany, Italy, Luxembourg, Spain and UK.

JPMorgan Asset Management has an extensive European mutual fund range, comprising around 110 Luxembourg UCITS, 30 UK UCITS and two Irish UCITS. We also manage around 25 EU based non-harmonised mutual funds, which include hedge funds, funds of hedge funds and a real estate fund. Our Luxembourg funds are worth over €110bn, about a third of which is in money market funds, the remainder largely in long-only equity and bond funds.

Regarding EU registrations, the core JPMorgan Asset Management UCITS are registered in 16 EU and EEA countries. We have also registered a number of its funds outside the EU, principally in Switzerland, Hong Kong, Taiwan, Japan, Chile and Peru.

At JPMorgan Asset Management, we welcome the changes made to the draft guidelines in the 2nd consultation, and believe that the new document is an important improvement on the earlier one. In particular we welcome:-

- (a) The commitment by CESR members to fully implement the guidelines and to speed up the notification process.
- (b) The recognition that divergent interpretations on compliance of a UCITS with the Directive cannot be used as a reason to refuse notification.
- (c) The recognition that the two-month notification period is the maximum period available for the host state to check the notification, that this period should be shortened wherever possible, and that it can only be extended when the host state issues to the UCITS a reasoned decision that the proposed marketing of the units will not comply with national law.
- (d) The recognition of umbrella funds, and the fact that, for most, the marketing arrangements are likely to be the same for each sub-fund, and therefore that new sub-funds should have a notification period that is significantly less than 2 months.

- (e) The self-certification of documents and the aim to introduce electronic filings, with no paper follow-up, together with the reliance on the records of a reliable courier service for proof of delivery.

However, we still believe that there are gaps in the procedures. These are:-

- (a) Although CESR members are 'committed to fully implement' the guidelines, we are concerned that there are some let-out clauses in the guidelines, such as the notes that says 'Due to inter alia a complicated interaction between investment administrative law/regulation in several Member States there is no general commitment to amend national legal/regulatory provisions'.
- (b) It should be made clear that a new share class of an existing fund or sub-fund does not require separate notification if the fund or sub-fund has been previously notified to the host state. This would not, of course, exempt the UCITS from notifying the host state promptly when there has been any change to the prospectus.
- (c) We would like CESR to clarify whether a host state has a right to ask for any further requirements or changes to a prospectus or simplified prospectus that has already been approved by the home state.
- (d) In terms of changes to the prospectus of an umbrella fund, where the update includes both changes to existing funds and new sub-funds, CESR should note that the timeliness of informing unitholders of those changes in the host country is largely dependant on a swift completion of the notification requirements for the new sub-funds by that host country's regulator.

It is clear that these CESR guidelines, or any other guidelines designed to improve the notification process, can work only if everyone abides by them and they contain no let-out clauses. That is why the commitment by CESR members to fully implement the guidelines and to act in accordance with them is so important. However, to be fully effective, it is also important that all the let-out clauses in the draft guidelines are removed. We believe that, with everyone complying with the guidelines, as drafted by CESR, but without the let-out clauses, there could be a much needed significant improvement in the notification process.

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