KBC Towarzystwo Funduszy Inwestycyjnych S.A.

Mr. Fabrice Demarigny
Committee of European Securities Regulators (CESR)
11-13 Avenue de Friedland
75008 Paris
France

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CESR's guidelines for supervisors regarding the notification procedure according to Section VIII of the UCITS Directive

Dear Mr. Demarigny,

Being a licensed UCITS management company, KBC Towarzystwo Funduszy Inwestycyjnych S.A. welcomes CESR's initiative to simplify and harmonize the notification procedure based on section VIII of the UCITS Directive and at the same time is grateful for the opportunity it had been given to comment on the proposed guidelines.

After analyzing CESR's proposals, we have observed that however an undeniable effort had been made to streamline the notification procedure, the document still preserves diversities in national approaches towards foreign UCITS.

In our response we have included the remarks which we believe are crucial to provide effective cross-border distribution of UCITS, although we would like to indicate that in case of issues we have not brought up in this correspondence, we fully support comments made by EFAMA.

Q1 and Q2: Two months' period

We understand that the local authority of a Member State should have a possibility to verify completeness of notification documents submitted by UCITS, however we believe that such verification should be done not later than within the two-weeks period from the date of receiving such documents by the authority. In such a case, the two-months period should start on the day following the date of submitting complete documentation.

Unless the local authority informs UCITS that the notification is incomplete within two-weeks time, the two-months period should be deemed to commence on the date of delivery of the documentation.

We appreciate a suggestion that a two-months period can be shortened, however we believe all CESR's Members should adopt the same approach. The expression "*if permitted by the national law*" creates another source of inconsistency in the notification procedure across Europe.

As for the proposed method of managing the two-months period, we fully support comments made by EFAMA.

Q3:Certification of documents

It has been stipulated in the Article 46 of the UCITS Directive that UCITS must submit to the authorities of a Host Member State "*an attestation by the competent authorities to the effect that it fulfils the conditions imposed by this (UCITS) Directive*". From this perspective, it seems unnecessary that UCITS provide to authorities of the Host Member State certified documents as *the attestation itself should prove that a fund requesting to be marketed as well as all its offering* documents such as prospectus, simplified prospectus comply with the pan-European legislation covering UCITS.

Q4: Translation

In the light of provisions of the Prospectus Directive, CESR's Members should consider a possibility to limit to the minimum number of documents which UCITS is obligated to submit to the local authorities as translations. Above all, English language should be allowed and recognized as the language "*customary in the sphere of international finance*". Irrespective of the latter, sworn translations should be abandoned as cost-generating, especially that they did not so far proved to be effective additional protection of the local investor in a sense of a quality of the terminology used.

Q5: Compartment UCITS

In our view, no difference should be made as for the notification process of marketing sub-funds included in the original notification material which had not been proposed to be distributed in a Host Members State and brand new sub-fund of the same compartment UCITS. Since the local authorities are in fact limited to verification whether UCITS "*in accordance with the laws, regulations and administrative provisions in force in the Member State of marketing, take measures necessary to ensure that facilities are available in that State for making payments to unit-holders, re-purchasing or redeeming units and making available the information which UCITS are obliged to provide*", those marketing arrangements are the only issue which should be considered when judging whether two-months' period should or should not apply.

Q6: Content of the file

Regarding CESR's statement that UCITS should not be obliged by the Host State to send other documents that those mentioned in the Article 46 of the UCITS Directive, "*without prejudice to the documents and information due to Art. 44(1) and 45 of the Directive*" we would like to mention that a common approach should be adopted by CESR's Members to achieve consistent practice regarding national requirements stipulated under Art. 44(1) and 45.

Q11 and Q12: Model attestation and Model notification letter

We welcome the initiative to prepare a model frame for attestation and notification letter. We are looking forward to seeing such standardized documents employed by local authorities across the European Union.

Q13: National marketing rules

Whilst in our view the proposals put forward by CESR are a significant step forward to improving existing practices, we believe that true harmonization and consistency of requirements in the scope of cross-border UCITS distribution is still needed across the European Union and that it should be one of the major aspects to be included in further works of CESR. This should include not only common interpretation of the relevant provisions of the UCITS Directive, but also consistent requirements regarding adopted marketing solutions and channels.

We do believe such a common approach will be soon adopted by all CESR's Members as it would undeniably contribute to creating the level playing field for UCITS operating in Europe.

Additional issues

Besides to what has already been stipulated, we believe CESR should also consider the possibility to introduce a common approach of drafting a more detailed prospectus on a sub-fund level and smaller full prospectus on an umbrella-level. We are convinced that such approach would be more effective for both: investors - as they will be provided only with relevant information, and regulators – as it would significantly facilitate their work.

Yours sincerely,

Piotr Habiera
Deputy Chief Executive Officer

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