CESR's guidelines for supervisors regarding the notification procedure according to Section VIII of the UCITS Directive - 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 broad support for the responses it will receive from the European Fund and Asset Management Association (EFAMA), the Association of the Luxembourg Fund Industry (ALFI) and the UK's Investment Management Association (IMA).

JPMorgan Asset Management is a global fund manager, with 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 around €95bn, about half 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.

The whole set of notification procedures for UCITS funds is one of our main business concerns around the operation of the cross-border funds market in Europe, incurring the deployment of considerable resources and costs, and delays in pan-European product marketing. We find it difficult to argue that the current implementation of the notification procedures (or registration procedures, to be more accurate in their application) are what was intended when the UCITS Directive was originally drafted. They certainly do not have the features of a single market, and create frustration for the asset management industry as a whole. We would also like to point out that:-

(a) The cost and resources required to complete the notification process are out of proportion to its benefits. At JPMorgan Asset Management, we estimate that we are going to spend almost €1m per annum on external costs for registering new funds.

(b) The notification process, which can, in some states, take over two months to complete, results in significant delays in the product development process, extending time to market for new products, and putting new UCITS funds at a significant disadvantage to new domestic non-UCITS products.

(c) It is our understanding that none of the UCITS competitor (or substitute) products, such as life insurance funds or certificates, has to go though any notification process for cross-border distribution. Again, this puts new UCITS funds at a further disadvantage to other product types.

(d) Until a new sub-fund of an umbrella UCITS has been notified in a state, it is normal that the new prospectus containing that sub-fund cannot be distributed in that state. Because of the delays in the notification of the new UCITS, it means that, in the case of a typical umbrella UCITS, which is being updated with new funds two or three times a year, investors will never be given the opportunity of an up-to-date prospectus - this is because the latest prospectus authorised in the home state is awaiting registration in the host state. This must result in investor confusion and sub-optimal disclosure.

(e) There can be considerable confusion on the part of fund promoters, where different states have different notification procedures. How should umbrella funds be treated? Why do some states require fund notification, and others share class notification (the latter being difficult to justify under the terms of the UCITS Directive)?

In response to CESR's consultation, we would like to make the following suggestions:-

Content of the file and certification of documents

1. That the only documents that should be required before distribution can commence in a host state are those listed in Article 46 of the Directive, i.e.:
   - an attestation by the home authorities that the fund complies with the Directive
   - the fund's rules/articles/instrument
   - the fund's full and simplified prospectus
   - the latest annual and any subsequent half-year report, and
   - details of the marketing arrangements in the host state.

   Copies of these documents should be permitted. Where there is a need for certified documentation, then the fund's board or other authorised signature should be enough.

   Where the host state has required additional material to comply with its marketing rules, as long as it is not a requirement of the home state regulator, then these should not need to be signed-off by the home state regulator.

   No other documents should be required.

   Electronic filing of documents should be considered as best practice.

Umbrella Funds

2. In terms of umbrella funds, the two month waiting period should apply only to new applications to market an umbrella in a host state, or where the marketing arrangements for that umbrella have changed. We can see no necessity for a waiting period to apply to new sub-funds where the marketing arrangements are the same as those already operating in the host state for previously registered sub-funds in the same umbrella.

Modifications and on-going process

3. Again, the two month waiting period should not apply to any prospectuses that are not new funds/umbrellas, or do not contain new sub-funds for registration, but are an update of an existing fund or series of sub-funds. Updates might include name changes, objective changes or new share or unit classes.

The two-month period

4. As defined in Article 46 of the UCITS Directive, the notification is only a notification process, not a registration process, and the maximum two month waiting period should be respected. In particular:-

   (a) There should be no need under the directive for a fund promoter to wait for a positive affirmation from the host state that it can start marketing. In fact, we do not believe that Article 46 obliges the fund promoter to wait for any positive affirmation that it can start to distribute in the host state. In addition, the promoter should be allowed to consider that the two month waiting period has started from the delivery confirmation of a reliable courier service.

   (b) If the host state wishes to make '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 this should be made in writing to the fund promoter, and only for a material reason. Informal telephone conversations or clarification requirements should not be allowed to prejudice the two month period. We do not support CESR's idea of a clock stopping and starting. We believe that:
   - it would be too complicated,
   - it would result in longer waiting periods, and
   - its operation would be open to disagreement and dispute.

   (c) We do not believe that there are any powers under Article 46 for host states to refuse authorisation because they might object to any investment or organisational practices of the UCITS. The notification process should not be an opportunity for the host state regulator to 'second guess' the home state regulator, or to delay the distribution of the UCITS in the host

state. Neither should the host state regulator be allowed to ask for changes to be made to any document that has already been approved by the home state regulator.

Translation

5. Now that the simplified prospectus is the formal marketing document, there should be no requirement for a promoter to translate the fund's full prospectus into the host state's local language. This would be similar to the requirement of the Prospectus Directive. Any translation requirements for the full prospectus should be a commercial decision between the fund promoter and its clients. Where a document is translated, there should be no requirement for this translation to be sworn:-

   (a) This leads to additional costs and delay.

   (b) It does not guarantee that the final document sent to prospective clients is the sworn translation.