

31 May 2006

Ms Lucie Matolinova
The Committee of European Securities Regulators
11-13 Avenue de Friedland
75008 Paris
France

Dear Ms Matolinova,

**RESPONSE TO CESR'S SECOND CONSULTATION PAPER "CESR'S
GUIDELINES TO SIMPLIFY THE NOTIFICATION PROCEDURE OF
UCITS"**

Fidelity International Limited serves the major markets of the world by providing investment products and services to individual and institutional investors outside the US. FIL's products and services include equity funds, fixed-income funds, money market funds and institutional portfolio management. FIL's programme of overseas expansion has continued and today we have a network of offices trading 24 hours a day, covering all the major world stock markets.

Within Europe, FIL has three significant mutual fund centres: the UK, Luxembourg and Dublin. All the key fund ranges have multiple registrations outside their home jurisdiction and this underlines the importance of the creation of an efficient Single Market for Fidelity.

Right direction of travel but not far enough

CESR's approach is still marked by a lack of ambition and of any substantive basis for improving the lot of funds seeking to passport throughout Europe and is unlikely to lead to any substantial improvement. The proposals for example would still allow a period of between three and five months to elapse from the initial notification to regulatory clearance (see response to guideline 4). It is hard to acknowledge this as material progress.

The fact remains that many regulators which are members of CESR regularly meet the industry's need for simple and streamlined processing of notifications in a constructive and efficient manner. It is perplexing that others find it apparently so difficult to accept the underlying requirements of the Directive.

Indeed the misconception that we are dealing with a simple notification process rather than an unnecessary and duplicative *de facto* re-registration process with some regulators undermines the ability of these proposals to effect the required step change in processes and procedures to create a true Single Market. These proposals will do little to reduce costs for investors and management companies; they barely scratch the surface of those barriers to the single market it is acknowledged exist and perpetuate the potential for differing investment products of different provenance to be discriminated between.

It seems evident therefore that the objectives that CESR itself sets out for the guidelines have not and will not be achieved by the guidance as it stands. We support the objectives CESR has set out and acknowledge the difficulty of the task facing CESR in broking a consensus across the different interest groups.

Need for a further review

We therefore propose that CESR commit to a review of the guidelines within two years. That review should consider:

- whether the authorities have implemented the guidelines;
- whether fund passportability has objectively improved; and
- what steps can be taken to improve further their freedom of movement.

Two years should allow time for regulators to see the effects of the greater harmonisation of eligible assets criteria and to feel more comfortable that the system is working as envisaged.

Implementation deadline required

There is no formal deadline set out by which competent authorities need to have implemented the guidelines. While we appreciate that some authorities will have a more complex implementation path we feel the discipline of a deadline will help add clarity and focus to the process of implementation.

Standard Format for marketing information

EFAMA's response to the first consultation suggested that there be a standard template for the provision of information regarding marketing intentions. It is disappointing that this has not been taken up as we believe it would streamline the process significantly in respect of the one area where the host authority has a clear locus for involvement. We believe that a high level summary of the distribution channels to be used, budgeted sales for the first 12 months, and likely use of media for promotion will provide sufficient information for a regulator to review the marketing proposals.

Comments on specific guidelines

Guideline 1.

The use of a standard letter is welcomed as is the flexibility re language. However, we have two concerns:

- the use of “a language common in the sphere of finance” is subject to any local rules or regulations to the contrary with no indication that authorities should seek to have such provisions amended. We would suggest that authorities are tasked with initiating change in any local regime to facilitate this; and
- while the guideline states that authorities will “facilitate electronic filing” this is weaker than the statement in the commentary that “Where the notification documents are provided in electronic form it shall not be necessary to submit hard copies”. We would prefer this latter statement be included within the Guideline.

Guideline 2

This is a very important part of the jigsaw and is welcome. It would be helpful if further comfort could be provided that in the case of a dispute, the use of the CESR mediation mechanism will not hold up approval for a fund.

Guideline 3

No comment

Guideline 4

We have some suggestions as to how the guideline may be improved better to meet CESR’s objectives for this process:

- we feel that one month is sufficient to check both formal and material completeness, particularly as documentation is being standardised through other proposals in this paper; and
- the wording regarding the assumption that an application is complete after the deadline has been passed that is set out in the last sentence of paragraph 13 should be included within the Guideline itself.

Using the deadlines set out here and elsewhere it is clear that an authority can take up to three months to approve, not allowing for the time required for a fund to supply omitted information and not allowing for the “stopped clock” time. This implies a notification process can take over four months before it is regarded as excessive in timescale under these Guidelines. This is based on the not unlikely scenario that: the regulator uses the full 1 month to check completeness; the firm takes three weeks to collect and prepare extra documentation requested; the full two month review period allowed with between 3 and 6 weeks of “stopped clock” while firms respond to further regulator queries.

Guideline 5

Where notification is approved within the two month window we would prefer that the advice to the fund be issued “with dispatch” to help avoid unnecessary delay.

Guideline 6

What this guideline does not address is the situation where an authority waits until the end of the two month period to raise a fundamental question, thereby increasing the time to market. We think this Guideline is workable only so long as there is an obligation on the part of the regulator to raise any issue that might affect the notification’s acceptability as soon as identified. This should help ensure that most applications are dealt with within the already generous two month time frame.

Guideline 7

This is a welcome and helpful improvement.

Guideline 8

The Simplified Prospectus (SP) is now the key client document produced by funds in a marketing context and requests for other formal documentation of the fund is very rare. Accordingly we feel that while a version of the SP should be provided in the local language to enable the host authority to evaluate the marketing plan, there is no need for the other materials (such as the full prospectus) to be translated.

In line with the self-certification permitted under Guideline 7 we feel it might be helpful to confirm within this Guideline that any translation need not be sworn or otherwise certified except by the fund.

Guideline 9

This is helpful as far as it goes, but it needs to go further. Some regulators ask that any references at all to sub-funds not registered for sale are removed from the prospectus materials. We believe that it should be sufficient that the prospectus make clear if a sub-fund is not available for sale in a particular jurisdiction and that this will not prejudice investor protection, especially as the prospectus is so little called for by investors.

Guideline 10

We agree that the addition of a single sub-fund to an established umbrella should result in a shortened process and believe that the Guideline should specify one month as the maximum required or permitted.

Guideline 11

We feel that the Guideline should be explicit in saying that a notification including the materials set out here is *de facto* a complete notification and that therefore a regulator may not claim such an application incomplete under the one month rule, nor request further documents unless there is a “reasoned decision” requiring the production of non-standard documentation.

Guideline 12

We agree with the desirability of keeping all documentation up to date, but it should be clear that the provision of such documentation should not constitute a notification requiring approval.

Guideline 13

We believe it might be helpful if regulators were required, alongside the details of any “non-harmonised national provisions”, to include a reasoned statement as to why such provisions are not a breach of the Directive or other applicable EU legislation. Then the database process could be used as a catalyst to remove further those barriers to the single market, which aim CESR sets out as an objective for these Guidelines.

Annex II – Model Notification Letter

Under item 5 we think it should be made clear that the fund names to be included should relate only to those funds/sub-funds which are the subject of the notification.

If you want to discuss any of the points raised in our response please do not hesitate to contact me.

Yours sincerely,

Gareth Adams
Executive Director, Regulatory Strategy