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Morley Fund Management's Response to CESR's Second Consultation on their Guidelines to Simplify the Notification Procedure of UCITS.

Morley Fund Management is the UK based asset management business of Aviva PLC. Morley is the fund manager of a number of UCITS schemes, both UK and Luxembourg based.

We fully support CESR's objective to achieve greater simplicity, transparency and certainty in the notification procedures for UCITS.

Q1: Is the starting of the two-month period dealt with in a practicable way in your view?

In our view, the maximum time period of one month for the competent authority to indicate that a notification is incomplete is too long. We acknowledge that the guideline does request that this notification is made as soon as possible, but one month seems unreasonable as a deadline, especially as this is half of the complete time the competent authority has to make a reasoned decision. We consider one week appropriate and therefore, should an indication of incompleteness not be made within one week of delivery at the competent authority, then the two-month period should commence from the original date of receipt.

Q2: Respondents are asked to provide their view on the practicability of the proposed approach.

We believe that the UCITS and the competent authority should both act without unreasonable delay. We completely agree that it seems unnecessary to suspend the two-month period automatically where further information is required, as the two-month period already permits some time for a reasonable amount of additional information to be requested and reviewed, although this does require the competent authority to request such in sufficient time and the notifier to act expeditiously.

Q3: Respondents are asked to provide their view on the practicability of the proposed approach.

We support this self-certification. In our view, there are unnecessary requirements and delays where certain host state regulators require a stamped visa'd prospectus in order to permit cross-border marketing, which can take up to two months to receive from the home state authority, thereby unreasonably delaying the commencement of business.

However, we do ask CESR to clarify what it means by "UCITS' authorised director". Are these the directors of the management company or the UCITS itself?

Q4: Do you consider the suggested approach as appropriate?

We fully support that translations should be “faithful representations of the original documents” but advise CESR that competent authorities should not require sworn translations, as this is both disproportionately costly and time consuming.

This guideline needs to be cross-referenced to the first guideline in respect of the notification letter.

Q5: Do you consider the suggested approach as appropriate?

In principle, this approach seems reasonable, although we recommend that CESR explicitly shortens the two-month period, rather than just referring to the fifth guideline and we suggest one month as a reasonable maximum time-period. Moreover, where host authorities do not apply the two-month period, they should still be subject to the one-month time limit.

Q6: Do you consider the suggested approach as appropriate?

We support this guideline.

Q7: Do you consider the suggested approach as appropriate?

This approach seems reasonable.

Q8: Do you agree with the proposals concerning the publication of the information or do you prefer another procedure and if, which one?

We fully support CESR’s objective to achieve greater simplicity, transparency and certainty in the notification procedures for UCITS. Whilst in principle we agree that the publication of the information would be beneficial, we strongly advise CESR to review any additional information individual member states require and in light of harmonisation, discourages such requirements unless they are absolutely necessary.

Q9: Do you feel that an issue in this consultation paper should be dealt with in more detail or that other aspects of an issue already contained in the consultation paper should also have been treated?

We have no additional comments.

Q10: Should some additional issues related to the notification procedure have been dealt with in this consultation paper, and if yes, which?

It is our view that CESR should consider the fees payable for notifications, as these are inconsistent across the member states.

Q11: Is the model attestation practicable in your view?

We do not consider it necessary for the model attestation to require a list of the sub funds as these will be detailed in the prospectus, which the host state will receive as required by the eleventh guideline.

Q12: Is the model notification practicable in your view?

Question 5 of the model notification is not clear. For example, we do not understand what is meant by "duration", "code" and "numbers in the sub fund".

Question 6 asks for "duration of the company, if applicable". We ask CESR to clarify what this means.

Q13: What would you suggest CESR to do regarding the national requirements to simplify the notification procedure?

CESR should promote harmonisation between competent authorities and the removal of additional local requirements that create inappropriate or unnecessary inconsistencies.