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Consultation Paper CESR/09-785

CESR's technical advice to the European Commission on level 2 measures relating to mergers of UCITS, master-feeder UCITS structures and cross-border notification of UCITS

Dear Madam or Sir,

We appreciate the opportunity to provide comments on the consultation paper CESR/09-785 (the "Consultation Paper").

We represent foreign-owned investment management companies located in Germany as well as those located abroad. A lot of our members distribute UCITS fund units on a cross-border basis and are subject to the relevant rules on the notification procedure. We would like to focus on Section III. of the Consultation Paper.

Questions:

34. Do you agree with CESR's proposals in relation to publication of marketing information?

Yes, we agree.

35. What would be the additional costs of the proposal in Box 10? Please quantify your estimates for one-off and ongoing costs. What would be the benefits of this proposal, compared to no prescription at level 2?



In addition to IT costs, we think that material translation costs are to be expected, both on a one-off basis and for updates. The benefit of CESR's proposal would be to provide for a minimum standard of publication. We would welcome Level 2 measures in this area.

36. Do you support the development of a centralised IT system to facilitate the notification procedure and provide a central repository for fund documents? Could the OAM developed under the Transparency Directive be adapted for this purpose?

37. What are the current costs of the notification process? What would be the additional costs (direct or indirect) to stakeholders other than competent authorities of developing a centralised system? Please quantify your estimate of one-off and ongoing costs.

38. What would be the benefits of these proposals, compared to no prescription at level 2?

Management companies and/or UCITS would have to bear either the costs for direct access to the data base of a centralised system, or the costs charged by competent authorities for including updated documents in the data base on behalf of the management company/ the UCITS.

We are not able to quantify these costs at the present stage.

A centralised system may have its merits, if carefully prepared. However, at the moment, we are not aware of potential benefits of a centralised data base which exceed the benefits a simple e-mail solution would create. As regards costs, the latter seems less risky to implement, at least for the time being.

39. Do you consider the notification letter (Annex I) satisfactory? Are there any other matters that it ought to cover?

We consider the notification letter satisfactory. However, we still do not understand why details about the firms marketing the UCITS units should be included under Part B "Arrangements for distribution". UCITS are by definition financial instruments within the meaning of the MiFID and can be marketed by every investment firm holding a license for providing investment services to clients in the host Member State (on a domestic or cross-border basis). It does not make sense to name some of them in the notification letter, thereby excluding others that would normally also have the license to sell and/or trade in the fund units concerned and would be available as distribution channels.

40. Do you have any comments on the draft attestation letter (Annex II)?

No.

41. Do you consider that use of the proposed letters would generate any additional costs, compared to the existing procedure following the CESR Guidelines? What would be the additional benefits, again compared to the existing procedure?

n/a



42. Do you support the development of a dedicated electronic system to effect transmission of notifications between competent authorities? What would be the costs and benefits of such a system to UCITS and their management companies?

In our opinion, the e-mail solution outlined in the Consultation Paper is a good start. Once the e-mail system is in place, the results should be monitored and evaluated in order to detect any shortcomings. But for the time being, e-mail seems both cost-efficient and effective.

43. Do you agree with the proposed procedures in Boxes 11 and 12 for use of e-mail to transmit notifications, if no dedicated system is made available? Do you consider that any additional measures are desirable, and what would be their costs and benefits?

Bearing in mind that e-mail solutions are not yet available in Germany due to national law, we very much welcome the proposal.

44. Does the proposed procedure for transmission and acknowledgement of receipt give sufficient certainty to UCITS that wish to access the market of another Member State? Does it give adequate protection to investors in a host State, in the event that an incomplete notification takes place?

Yes. Investors are protected, in the first place, by the competent authorities supervising the UCITS. So in general, the risk of financial losses for them to bear is low, even in the case of incomplete notification.

45. Should CESR develop level 3 guidelines in this area instead of advising the use of level 2 measures?

In Germany, the law would have to be changed in order to establish the possibility of legally relevant e-mail communication with national authorities. So we would very much welcome Level 2 measures because they would be binding for national legislators.

In case of any further queries, please do not hesitate to contact us.

Best regards,

Dr. Oliver Wagner

Wolfgang Vahldiek