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**REVIEW PANEL PEER REVIEW EXERCISE ON THE CESR'S GUIDELINES
TO SIMPLIFY THE NOTIFICATION PROCEDURE OF UCITS**

Introduction

1. Following the publication in June last year of the CESR guidelines to simplify the notification procedure of UCITS ("the Guidelines"), (Ref CESR/06-12Ob) as agreed by CESR, the Review Panel ("RP") is conducting a peer review of the implementation of the Guidelines by CESR members, a year after the Guidelines were agreed.
2. All 13 Guidelines are being assessed, and this exercise is being conducted in accordance with the Methodology (Ref: CESR/07-071b) and the RP Protocol (Ref: CESR/07-070b) agreed in January of this year.

Purpose of this document

3. In accordance with Articles 7-13 of the Methodology, this document sets out the Self – Assessment questionnaire that members will fill in using the CESR on line tool.
4. The Self- Assessment questionnaire has been developed in accordance with the Methodology by:
 - a. **establishing the objective assessment criteria** (which form the basis of the benchmarks) which focus on the key issues addressed by each of the Guidelines and its corresponding explanatory text – these are referred to as "**Key Issues**" below;
 - b. **establishing the benchmarks**, which allows for one of the following benchmark categories to be assigned to each of the Guidelines:
 - i. Fully applied ,
 - ii. Not applied,
 - iii. Not Contributing (for incomplete or no answers)

In addition, for many of the questions, the benchmark of "Partially applied" may also be assigned to the Guideline. The benchmarks for each Guideline are referred to as "**Benchmark**" below, and are assessed by giving either a positive or negative answer to a number of questions, referred to below as "**Questions**"

5. The Key Issues and the Benchmarks aim at enabling the RP to assess CESR Members day to day application of the Guidelines, taking into account the fact that the Guidelines were established to simplify as a matter of practice, UCITS notification procedures.
6. As such, some of the Key Issues have been taken directly from the Guideline itself, and others from the explanatory text that goes hand in hand with the Guideline.

7. Taking into account the practical nature of the Guidelines, the questions asked in order to establish the implementation of the Guideline against the relevant benchmark reflect what should be happening on a day to day basis when applying the Guideline in practice, for example – this may be in the form of how notifications can be made to the relevant host or home authority, or the nature of documents that have to be submitted with an application, or a time period and method for communicating decisions to the UCIT in question.
8. The distinction between those questions where a negative as opposed to a positive answer is required in order to be considered as being in line with the benchmark reflects those practices which go against the rational and practical application of the Guideline itself, and those questions where a positive answer is required reflects those practices that are in line with the practical application of the Guideline.
9. It is important to point out at the outset that in view of the practical nature of the Guidelines and their intended use, the difference between Partial and Non application of a Guideline in terms of gravity is very narrow.
10. Information on pending legislative/regulatory amendments can be given by the respondents in the comment box. However the rating will be assigned on the basis of the existing provisions.
11. In addition, this Self-Assessment questionnaire does not set out the basis for an overall assessment of a CESR member's implementation of the guidelines - so a CESR member who has not fully applied some as opposed to other guidelines is not considered as being "better" or worse in terms of their overall implementation of the guidelines.
12. The exercise deals only with the assessment of the Guidelines in relation to those investment funds that are harmonised by Directive 85/611/EEC (the "Directive").



GUIDELINE 1

Guideline 1

For the notification procedure – as far as the harmonized part is concerned – a standardized notification letter which is drafted according to the standard model letter in Annex II should be used by the UCITS.

The notification letter may be submitted in a language common in the sphere of international finance or in the or one of the official languages of the host Member State if it is not contrary to the domestic legislation or regulations of the host Member State¹.

CESR Members agree to facilitate electronic filing of documents.

¹ Due to inter alia a complicated interaction between investment and administrative law/regulation in several Member States CESR Members cannot commit to amend national legal/regulatory provisions.

Key issues

1. UCITS should be able to utilise the standard model letter for notification – as defined in Annex II - to the host competent authority.
2. UCITS should be allowed to submit the model notification letter in a language common in the sphere of international finance unless contrary to the domestic legislation and regulations in the host MS.
3. Competent authorities should allow submission of the model notification letter and the relevant attachments by electronic means and should facilitate electronic filing of the said documents¹.

Key questions

- 1.a) When acting as home Member State, do you require UCITS to use the model notification letter set out in Annex II of the Guidelines?
- 1.b) When acting as host Member State, do you accept notifications submitted in accordance with the model notification letter set out in Annex II of the Guidelines?
- 2.a) Do you accept the notification letter submitted by the notifying UCITS in a language common in the sphere of international finance?
- 2.b) In the negative, is the submission of the notification letter in a language common in the sphere of international finance contrary to your domestic legislation or regulations when acting as host Member State? In such a case did you undertake steps to promote the necessary changes?
- 3.a) Do you accept the notification letters as well as the all other documents and information required in the notification procedure submitted by the notifying UCITS by electronic means? Which kind of electronic means do you accept?

¹ Para. 8 of the Explanatory text relating to Guideline 1 states that “It is aimed by the Member States that the notification letter as well as all other documents and information required in the notification procedure as mentioned in these guidelines may also be submitted electronically. Where the notification documents are provided in electronic form it shall not be necessary to submit hard copies”.



3.b) If you do not accept the submission of the notification documents by electronic means, do you facilitate electronic filing of the notification documents? In the affirmative, how?

Did you set standards or rules in relation to the electronic submission of the notification documents?

3.c) In the event that you do not accept the submission of the notification documents by electronic means, but facilitate the document electronic filing, does the notification period commence from the time of receipt of an electronic notification from the UCITS of the notification letter?

3.d) Do you accept that, where the notification documents are provided in electronic form, it shall not be necessary for the notifying UCITS to submit hard copies?

Benchmarks

Fully applied

If a positive answer is given to questions 1.a), 1.b) and 3.d), to questions 2.a) or 2.b), and to questions 3.a) or 3.b)-3.c).

Partially applied

If a positive answer is given to questions 1.a) and 1.b), either to 2.a) or 2.b), and to either question 3.a) or 3.c).

Not applied

Inability to give a positive answer to question 1.a) or 1.b), or to neither question 3.a) or 3.c).

GUIDELINE 2

Guideline 2

Other reasons than non-compliance of marketing arrangements with the provisions referred to in Art. 44(1) and Art. 45 of the Directive, for instance those deriving from divergent interpretations on whether a UCITS complies with the Directive, cannot be used as a reason to refuse the notification according to the Directive.

Therefore, if the marketing arrangements comply with the provisions referred to in Art. 44(1) and Art. 45, the passport of the UCITS has always to be respected.

Key issues

1. UCITS duly authorised by the home MS competent authority cannot be impeded from marketing in the host country unless the marketing arrangements do not comply with the provisions referred to in Art. 44(1) and Art. 45 of the Directive.
2. UCITS duly authorised by the home Member State competent authority cannot be impeded from marketing in the host country due to divergent interpretations on whether the UCITS complies with the Directive.
3. If the marketing arrangements comply with the provisions referred to in Art. 44(1) and Art. 45 of the Directive, the passport of the UCITS has always to be respected.

Key questions

1. Do you refuse passports for any reason differing from non-compliance of marketing arrangements adopted by the notifying UCITS?
In the affirmative, please list which reasons.
2. Do you refuse passports for any reason deriving from divergent interpretations on whether the UCITS complies with the Directive?
3. Do you always accept the passport of the UCITS if the marketing arrangements comply with the provisions referred to in Art. 44(1) and 45 of the Directive?

Benchmarks

Fully applied

If a negative answer is given to questions 1 and 2 and a positive answer is given to question 3.

Partially applied

If a positive answer is given to question 3.

Not applied

Inability to give a negative answer to question 1 or 2 or a positive answer to question 3.

GUIDELINE 3

Guideline 3

An investment company or a management company may begin to market the units of UCITS in the host Member State two months after it has completed the notification by submitting the required information and documents to the competent host State authority, unless the host Member State establishes in a reasoned decision taken before the expiry of that period of two months, that the marketing arrangements do not comply with the provisions referred to in Art. 44(1) and Art. 45.

Key issues

1. An investment company or a management company should be able to begin to market the units of UCITS in the host MS two months after it has completed the notification, unless a reasoned decision is taken by the host MS preventing the investment company or management company from starting the marketing.
2. Any decision of the host MS preventing the investment company or a management company from beginning marketing can exclusively be grounded on non compliance with the provisions referred to in Art. 44(1) and 45.
3. The decision preventing the marketing beginning should be subject to right of appeal.

□

Key questions

1. Do you provide that marketing of the units of UCITS on your territory may begin two months after the notification has been completed, unless a reasoned decision is taken by you before the expiry of that period, that the UCITS' marketing arrangements do not comply with the provisions referred to in Art. 44(1) and Art. 45 of the Directive?
2. Do you ensure that any decision preventing the UCITS from starting the marketing can exclusively be grounded on non-compliance of the UCITS' marketing arrangements with the provisions referred to in Art. 44(1) and Art. 45 of the Directive?
- 3.a) In case that a decision preventing the UCITS from starting the marketing is taken by you, do you communicate the reasons for such decision to the notifying UCITS?
- 3.b) In case that a decision preventing the UCITS from starting the marketing is taken by you, is the decision subject to the right of appeal?

[With regard to the completion of the notification procedure, please refer to Guideline 4]

Benchmarks

Fully applied

If a positive answer is given to questions 1 to 3.b).

Partially applied

If a positive answer is given to questions 1, 2 and 3.b).

Not applied

Inability to give a positive answer to question 1 or 2.

GUIDELINE 4

Guideline 4

The two-month period starts when the competent host State authority has received the complete notification. If the notification is not complete, the two-month period does not start.

Without prejudice of the provision of Article 46 (2) and of the ability of the competent authority of the host Member State to ask the UCITS for additional information within the two-month period the notification would be considered complete if all information and documents as provided for in the Directive and these Guidelines (cf. A.II., A.III., B. and D.) including its annexes have been received by the competent authority of the host Member State.

If the notification is incomplete, the competent host State authority shall inform the UCITS about the incompleteness and the missing information and documents as soon as possible and in any case within one month from the date of receipt of the incomplete notification.

If there is no communication by the host State authority to the UCITS after two months of the delivery of the complete notification to this authority, the UCITS may upon the expiry of the two-month period start to market its units in that host State.

Key issues

1. The two month period should start when the notification submitted by the UCITS is completed.
2. A notification should be considered as completed once all information and documents as provided in the Directive and the Guidelines have been submitted to the host competent authority.
3. The host competent authority should inform the UCITS that its notification is incomplete as soon as possible, and in any case within one month from the date of the receipt.
4. In case of no communication by the host competent authority, the UCITS can start marketing at the expiry of the two-month period.

Key questions

1. Do you provide that the two-month period start only when the notification submitted by the UCITS is completed?
- 2.a) Do you provide that the notification would be considered complete when all information and documents as provided for in the Directive and the Guidelines (cf. A.II., A.III., B. and D), including its annexes, have been received?
- 2.b) Do you check that the documents to be provided are attached to the notification letter and do you make a preliminary assessment of the content of the documents to ensure that all necessary information is at your disposal?
- 2.c) Do you confirm receipt of the notification?²
How do you send the confirmation?

² Pursuant to Para. 12 of the Explanatory text relating to Guideline 4, "Receipt of the notification will be assumed if delivery by physical submission or by electronic filing via e-mail has been confirmed by the authority".



- 3.a) Do you inform the notifying UCITS about the incompleteness and the missing information and documents as soon as possible and in any case within one month from the date of receipt of the incomplete notification?
- 3.b) If there is no communication by you to the notifying UCITS after one month from the date of receipt of the notification, is it assumed that the notification is complete since the date of receipt?³
- 3.c) When you request the notifying UCITS to submit the missing documents and information, do you set a time limit?
In the affirmative, is the maximum time limit within which the UCITS must provide the requested documents and information no longer than 6 months?⁴
- 4.a) Do you inform the notifying UCITS regarding the date of the start of the two-month period?
In the affirmative, is that communication made as soon as possible, and in any case at the latest within one month after receipt of the complete notification?⁵
- 4.b) Do you provide that, if there is no communication from you to the notifying UCITS after two months of the delivery of the complete notification, the UCITS may upon the expiry of the two-month period start to market its units on your territory?

[The power of the host State authority to ask for additional information is dealt within Guideline 6]

Benchmark

Fully applied

If a positive answer is given to questions 1, 2.a), 2.b.), 2.c), 3.a), 4.b), and, if applicable, to question 3.c) and to questions 3.b) or 4.a).

Partially applied

If a positive answer is given to questions 1, 2.a) and 4.b).

Not applied

Inability to give a positive answer to question 1, 2.a) or 4.b).

³ See para. 13 of the Explanatory text relating to Guideline 4.

⁴ Para. 16 of the Explanatory text relating to Guideline 4 states that “Host States may provide in their national law that the missing documents and information must be submitted by the UCITS upon request by the host authority to it within a defined time period after the request to amend the original notification material. A term of six months may be considered as an appropriate time period”.

⁵ Para. 12 of the Explanatory text relating to Guideline 4 states that “Where the host Member State authority confirms the date of receipt of the complete notification and additionally informs the UCITS regarding the date of the start of the two-month period due to national law, this should be done as fast as possible and at the latest within one month after receipt of the complete notification”.

GUIDELINE 5

Guideline 5

Without prejudice to Guideline 6, the two-month period is the maximum period available for the host State competent authority to check the notification.

The two-month period should be shortened whenever possible. In this case the competent authority should as soon as it has checked the notification inform the UCITS for example via email that it can start the marketing in the host State immediately.

Key issues

1. The host competent authority could not extend the two-month period.
2. The host competent authority should shorten the two-month period whenever possible.
3. The host competent authority should communicate to the UCITS the outcome of the check as soon as this has been completed, in order to allow the UCITS to start marketing immediately.

Key questions

1. Is the two-month period the maximum period available to you to check the notification?
2. Do you ensure in your day-to-day activity that the two-month period is shortened whenever possible?
3. In this case, do you inform the UCITS as soon as you have checked the notification so that the marketing may start immediately?
In what form is the communication made?

Benchmark

Fully applied

If a positive answer is given to questions 1 to 3.

Partially applied

If a positive answer is given to questions 1 and 2.

Not applied

Inability to give a positive answer to question 1 or 2.

GUIDELINE 6

Guideline 6

The host State authority has two months to check the contents of the notification, after it has received the complete notification. After the two-month period has expired, the investment company or the management company may begin to market its units in the other Member State, unless the host State authority establishes, in a reasoned decision taken before the expiry of that period that the arrangements made for the marketing of units do not comply with the provisions referred to in Article 44(1) and Article 45.

In the course of this two-month period the host State authority may solicit clarification from the UCITS with regard to the documents and information submitted with the notification letter to check if the marketing of units would comply with the provisions referred to in Art. 44(1) and Art. 45 of the Directive. The right of the UCITS to start marketing after the two-month period will not be affected unless a reasoned decision is issued.

In the case where the host States authority's endeavour is not satisfied, but the authority can nevertheless assume that there is a realistic prospect that compliance with Art. 44(1) and Art. 45 from the applicant's side can be achieved without the need for a reasoned decision, the following more graduated approach should be applied:

The host Member State authority shall inform the UCITS as soon as possible in a written and duly motivated communication (which can be by email) that it considers that there are convincing arguments to believe that the requirements to make a reasoned decision are fulfilled, unless the host State authority receives the required information within the two-month period. Without prejudice to shorten the two-month period according to guideline 5, the expiring of the two-month period will be suspended by this communication to prevent the applicant from a reasoned decision.

If the requested information has been received by the host authority and the arrangements made for the marketing of units do still not fulfil the requirements of Art. 44(1) and Art. 45, the host State authority will formalise its reasoned decision in the remaining time of the two-month period, to prevent the UCITS from starting the marketing.

Key issues

1. The host competent authority can ask clarification from the UCITS with regard to the documents and information submitted with the notification letter only in so far as this is necessary to check compliance with provisions referred to in Art. 44(1) and 45.
2. If the host competent authority is not satisfied despite the request for clarification, but can nevertheless assume that compliance with Art. 44(1) and 45 of the Directive from the UCITS can be achieved, then, before issuing a reasoned decision, it should inform the UCITS as early as possible and by duly motivated communication that there are convincing arguments to believe that the requirements to issue such a reasoned decision are fulfilled, unless the host State authority receives the requested information within the two-month period.
3. In the case mentioned under point 2) above, the expiry of the two-month period is suspended depending on the time necessary – in order to obtain the clarification requested in the written communication.
4. After receiving the required information the host competent authority should finalise the checking of the marketing arrangements in the remaining time that was left of the two month period.

Key questions

- 1.a) Do you have the power to ask for clarification from the UCITS in the two-month period with regard to the documents and information submitted with the notification letter, in order to check if the marketing of units would comply with the provisions referred to in Art. 44(1) and Art. 45 of the Directive?
- 1.b) Do you ask for clarification from the UCITS for purposes differing from those indicated in question 1.a)? Please provide details.
- 2.a) When, despite a request for clarification, you are not satisfied that the applicant complies with Art. 44(1) and Art. 45 of the Directive, but you can nevertheless assume that there is a realistic prospect that such compliance can be achieved from the applicant's side without the need for a reasoned decision; do you apply the graduated approach set out in Guideline 6?
- 2.b) In particular, do you inform the UCITS as soon as possible, in a written and duly motivated communication, that there are convincing arguments to believe that the requirements to issue a reasoned decision are fulfilled, unless you receive the required information within the two-month period?
How is this communication made?
3. In that case, does the communication suspend the expiring of the two-month period?
- 4 Does the remaining part of the two-month period start running again at the date of the reception of the requested clarification?

[As to the first para. of Guideline 6, please refer to the key questions on Guideline 3 above]

Benchmark

Fully applied

If a positive answer is given to questions 1.a), 2.a), 2.b), 3 and 4 and a negative answer is given to question 1.b).

Partially applied

If a positive answer is given to questions 1.a) and 2.b) and a negative answer is given to 1.b).

Not applied

Inability to give a positive answer to question 1.a) or 2.b).

GUIDELINE 7

Guideline 7

The latest versions of the documents to be attached to the notification letter (cf. Annex II), as approved by or filed with the home State authority, must be sent to the host State authority.

The host authorities shall not request certification of these documents by the home State authorities. A self certification by the notifying UCITS or a third person empowered by written mandate to act on behalf of the notifying UCITS will be accepted by the host State authority. The certification must state that the versions of the documents that have been attached to the notification letter are the latest ones which have been approved by or filed with the home State authority.

Key issues

1. The UCITS should provide to the host competent authority the latest versions of the documents approved by or filed with the home competent authority.
2. The UCITS should be able to rely on self-certification to testify that the documents submitted are the latest version as required under point 1.
3. The host competent authority should not seek a certification from the home competent authority on the documents attached to the notification letter.

Key questions

1. Do you require that the documents submitted to you as an attachment to the notification letter (see Annex II of the Guidelines) are always the latest versions of the documents as approved by or filed with the home State authority?
2. Do you accept a self-certification by the notifying UCITS (or a third person empowered by written mandate to act on behalf of the notifying UCITS) to attest that the notification documents are the latest versions of the documents as approved by or filed with the home State authority?
3. Do you require a certification of the notification documents by the home State?
In the affirmative, do you accept that the use of the Hague-Apostille⁶ for certification of the notification documents is not required?

Benchmark

Fully applied

If a positive answer is given to questions 1 and 2 and a negative answer is given to question 3.

Partially applied

If a positive answer is given to question 1 and a negative answer is given to question 3.

Not applied

Inability to give a positive answer to question 1 or 2 or a negative answer to question 3.

⁶ Para. 27 of the Explanatory text relating to Guideline 7 states that “CESR Members have also agreed not to require the use of the Hague-Apostille for certification of documents”.

GUIDELINE 8

Guideline 8

The documents which have to be submitted by the UCITS to the host authority must be sent in the original language and translated into the or one of the official languages of the host State except for the UCITS Attestation (see also Guideline 11).

However, in accordance with Art. 47(2), the competent authorities of the host Member State can approve also the use of another language than the official language.

To facilitate transparency of the language requirements to the UCITS, CESR Members will provide information on the documents that must be translated as well as on the accepted languages on their websites (cf. Annex III).

Key issues

1. The necessary documents should be translated into the official language or one of the official languages of the host State.
2. There is no need to provide sworn translations.⁷
3. The host competent authority can approve also the use of another language than (one of) its official language(s).
4. The list of documents to be translated and the details of the linguistic regime applicable to the documents submitted by the UCITS should be publicly available on the host authority's web-site.

Key questions

1. Do you provide that the documents which have to be submitted by the UCITS to you must be sent in the original language and translated into one of the languages accepted by your State? If you accept the use of another language than (one of) your official language(s), please provide details.
2. Do you require translations be sworn as true by a court, notary or similar public agent?
- 4.a) Do you ensure that information on the accepted languages is included in the overview of the non-harmonised national marketing rules and other specific national regulations relating to the application of the Directive and published on your website in accordance with Annex III of the Guidelines?
- 4.b) Do you ensure that information on the documents which have to be translated is included in the overview of the non-harmonised national marketing rules and other specific national regulations relating to the application of the Directive and published on your website in accordance with Annex III of the Guidelines?

⁷ Para. 31 of the Explanatory text relating to Guideline 8 states that "CESR recommends that Members do not require that translations are sworn as true by a court, notary or similar public agent".



Benchmark

Fully applied

If a positive answer is given to questions 1, 3.a) and 3.b), and a negative answer is given to question 2.

Partially applied

If a positive answer is given to question 1 and to question 3.a) and 3.b)

Not applied

Inability to give a positive answer to question 1.



GUIDELINE 9

Guideline 9

CESR Members agree that if a UCITS intends to market actively only part of the sub-funds of an umbrella UCITS in the host State, only those sub-funds proposed to be marketed actively have to be notified.

Key issues

1. In case of umbrella UCITS, notification should be requested only with reference to those sub-funds that the UCITS intends to market actively in the host State.

Key questions

1. Do you accept that, if a UCITS intends to market actively only part of the sub-funds of an umbrella UCITS on your territory, only those sub-funds have to be notified?

Benchmark

Fully applied

If a positive answer is given to question 1.

Not applied

Inability to give a positive answer to question 1.

GUIDELINE 10

Guideline 10

For simplification purposes CESR Members agree on the following:

- 1) Instead of a separate notification of each sub-fund it is possible to include all sub-funds in one notification letter if these notices are provided simultaneously. Furthermore, cross-references concerning documents, for instance if the articles of incorporation of the overall umbrella have remained unchanged can be made and therefore the documents have only to be submitted once. These simplifications also apply to umbrella funds in the contractual and unit trust form.
- 2) If new sub-funds are added to the umbrella fund and these sub-funds are proposed to be marketed in the host State, the notification procedure and the two-month period applies. Given that the most of the notification material e.g. the marketing arrangements will likely in such a case be already familiar to the host authority, the necessary time for check by the host authority should be significantly less than the regular two-month period. The two-month period should therefore be shortened in accordance with Guideline 5.

Some host authorities do not consider it necessary to apply the two-month period at all in the latter case. To facilitate transparency of the requirements to the UCITS, the jurisdictions that will apply the two-month period should indicate the requirement on their websites among the requirements on national marketing rules as stated in Annex III.

- 3) To simplify the processing by the host authority of the notification of umbrella funds with a large number of sub-funds to be marketed, CESR recommends having one full prospectus. If the notifying UCITS provides a separate full prospectus for each sub-fund, the UCITS' authorised directors or a third person empowered by written mandate to act on behalf of the notifying UCITS must self-certify that the information on the marketing arrangements in the host State are the same in each prospectus or indicate where they are different.

Key issues

1. In case of umbrella UCITS the UCITS should be allowed to submit a single notification letter for the sub-funds notified simultaneously.
2. Cross-reference to documents previously submitted to the host authority which have remained unchanged should be permitted.
3. If the host Member State provides for the application of the two-month period in case of notification of sub-funds belonging to an umbrella fund already notified, then the application of the two-month period should be clearly indicated on its web-site.
4. Normally, considering that most of the notification material is already known to the host competent authority, the two-month period should be shortened in accordance with Guideline 5.
5. A single full prospectus should be provided in case of umbrella funds.
6. In case of separate full prospectus for each sub-funds, UCITS must self-certify that the information on the marketing arrangements in the host State are the same in each prospectus or indicate where they are different.
7. The umbrella UCITS must notify the host competent authority the new share classes added to sub-funds, and disclose the objective criteria (e.g. the amount of subscription, fees/expenses) on which they are based. The two-month period does not apply, the marketing of the new share classes being possible immediately after the notification.⁸

⁸ Pursuant to para. 35 of the Explanatory text relating to Guideline 10, "If new share classes are added to the sub-funds of an umbrella, the UCITS shall notify the host State authority the new share classes added to the sub-funds of an umbrella disclosing the objective criteria (e.g. the amount of subscription, fees/expenses) on which they are based and the two-month period shall not apply, i.e. the UCITS may begin marketing the share classes immediately provided that other reasons which prohibit marketing do not apply".

Key questions

- 1.a) Do you accept that all sub-funds are included in one notification letter if these notices are provided simultaneously?
- 1.b) Does the simplification referred to under question 1.a) also apply to umbrella funds in the contractual and unit trust form?
- 2.a) Do you accept that cross-references concerning documents (for instance if the articles of incorporation of the overall umbrella have remained unchanged) can be made and therefore the documents have only to be submitted once?
- 2.b) Does the simplification referred to under question 2.a) also apply to umbrella funds in the contractual and unit trust form?
- 3.a) Do you require that, if new sub-funds are added to existing umbrella funds and these sub-funds are proposed to be marketed on your territory, the notification procedure applies?
- 3.b) In the affirmative, does the two-month period apply?
- 3.c) If you apply the two-month period, is that requirement included in the overview of national marketing rules published on your website as stated in Annex III of the Guidelines?
- 4 In case that a positive answer is given to questions 3.a) and 3.b), do you ensure in your day-to-day application activity that the two-month period is whenever possible shortened in accordance with Guideline 5?
- 5.a) Do you accept that only one full prospectus is necessary for the purposes of the notification of umbrella funds?
- 5.b) Do you recommend that only one full prospectus is provided if the umbrella-fund intends to notify its units within another Member State?
6. If the notifying UCITS provide a separate full prospectus for each sub-fund, do you accept the UCITS' authorised directors (or a third person empowered by written mandate to act on behalf of the notifying UCITS) to self-certify that the information on the marketing arrangements in your State are the same in each prospectus or indicate where they are different?
- 7.a) Do you ensure that, if new shares classes are added to the sub-funds of an umbrella, the new share classes added to the umbrella sub-funds are notified by the UCITS to you?
- 7.b) In that case, do you provide that the UCITS must disclose the objective criteria (e.g. the amount of subscription, fees/expenses) on which the new share classes are based?
- 7.c) Do you accept that the two-month period shall not apply, i.e. the UCITS may begin marketing the share classes immediately provided that other reasons which prohibit marketing do not apply?



Benchmark

Fully applied

If a positive answer is given to questions 1.a) to 2.b), to questions 4 to 7 and, if applicable, to questions 3.a), 3.b) and 3.c)

Partially applied

If a positive answer is given to questions 1.a) to 2.b) and questions 5.a), 5.b), 7.a) and 7.c) and, if applicable, to question 3.c).

Not applied

Inability to give a positive answer to question 1.a), 1.b), 2.a), 2.b), 5.a), 5.b), 7.a) or 7.c).

GUIDELINE 11

Guideline 11

If a UCITS proposes to market its units in a host State, it must first inform the competent host State authority of its intention and provide the following documents and information:

1. The valid original attestation granted by the competent home Member State authority, to the effect that the UCITS fulfils the conditions imposed by the Directive (cf. Annex I, with a model attestation to market units of UCITS in an EEA Member State). The UCITS may however, as an alternative, submit a copy of the original attestation, provided that the UCITS' authorised directors or a third person empowered by written mandate to act on behalf of the notifying UCITS self-certify that the copy is a true copy of the valid original in their possession and that it is the latest version issued by the home State authority. The original attestation should include an English version to be provided by the UCITS. In those cases where the home Member State authority and the host Member State authority have the same official language/s, the English version of the attestation will not be required.
2. A notification letter (cf. Annex II, with a model notification letter to market units of UCITS in an EEA Member State);
3. Its latest up-to-date fund rules or instruments of incorporation (they need not be submitted separately if they are included in the prospectus; the latter must be indicated by the notifying UCITS or a third person empowered by written mandate to act on behalf of the notifying UCITS);
4. Its latest up-to-date full and simplified prospectuses, containing all information as provided for by Art. 28(2) including Schedule A of Annex I and Art. 28(3) including Schedule C of Annex I of the Directive, and as endorsed by the Commission's Recommendation on some contents of the simplified prospectus;
5. Its latest published annual report and any subsequent half-yearly report; for umbrella funds annual reports and subsequent half yearly reports comprising the whole umbrella should be submitted; To simplify the processing by the host authority of the notification of umbrella funds with a large number of sub-funds to be marketed, CESR recommends to have one annual and half-yearly report dealing with all sub-funds of an umbrella fund. If the notifying UCITS provides a separate annual and half-yearly report for each sub-fund, the UCITS' authorised directors or a third person empowered by written mandate to act on behalf of the notifying UCITS must self-certify that the information on the marketing arrangements, if any, in the host State are the same in each annual and half-yearly report or indicate where they are different.
6. Details of the arrangements made for the marketing of units in the host Member State (cf. Annexes III and IV).

Key issues

1. The UCITS should provide to the host competent authority the following documents:
 - 1.1 Model attestation of the home country authority in original or a self-certified copy by the UCITS drafted in the official language of the home competent authority and accompanied by a translation in English, except where the home and host authorities have the same language;

- 1.2 Model notification letter;
 - 1.3 Latest up-to-date fund rules or instruments of incorporation, unless included in the full prospectus;
 - 1.4 Latest up-to-date full and simplified prospectuses;
 - 1.5 Latest published annual report and any subsequent half-yearly report;
 - 1.6 Details of the arrangements made for the marketing of units in the host Member State.
2. Without prejudice to the documents due under Art. 44(1) and 45 of the Directive and Guidelines (cf Annexes III and IV), the host competent authority should not require additional documents with respect to the above list.
 3. In case of umbrella funds with a large number of sub-funds, a single annual and half-yearly report dealing with all sub-funds of the umbrella fund should be provided.
 4. In case the UCITS submits separate annual and half-yearly reports for each sub-fund, then it should self-certify that the information on the marketing arrangements, if any, in the host State are the same in each annual and half-yearly report or indicate where they are different.
 5. The UCITS should be allowed to provide self-certification as to all the documents submitted.

Key questions

- 1.a) Do you provide that the UCITS proposing to market its units on your territory must first inform you and submit the following information and documents?
 - (i) the valid original attestation granted by the competent home Member State authority, to the effect that the UCITS fulfils the conditions imposed by the Directive (cf. Annex 1 with the model attestation), or, as alternative
 - (ii) a copy of the original attestation, accompanied by a self-certification by the UCITS' authorised directors (or a third person empowered by written mandate to act on behalf of the notifying UCITS) that the copy is a true copy of the valid original in their possession and that it is the latest version issued by the home State authority.
- 1.b) Do you provide that the UCITS attestation does not have to be translated into the (or one of your) official languages, but that instead the original attestation includes an English version to be provided by the UCITS, in those cases where you do not accept the official language of the home Member State?
- 1.c) Do you provide that the UCITS proposing to market its units on your territory must first inform you and submit the following further information and documents?
 - (i) a notification letter drafted in accordance with Annex II of the Guidelines;
 - (ii) its latest up-to-date fund rules or instruments of incorporation;
 - (iii) its latest up-to-date full prospectuses, containing all information as provided for by Art. 28(2) including Schedule A of Annex I;
 - (iv) its latest up-to-date simplified prospectuses, containing all information as provided for by Art. 28(3) including Schedule C of Annex I of the Directive, and as endorsed by the Commission's Recommendation on some contents of the simplified prospectus;
 - (v) its latest published annual report;
 - (vi) any subsequent half-yearly report; and
 - (vii) details of the arrangements made for the marketing of units in your territory (cf. Annex III).
- 1.d) When you are requested to attest that an UCITS fulfils the conditions imposed by the Directive, do you use the model attestation set out in Annex 1 of the Guidelines? In the negative, please provide details of the method of attestation used by your authority.
- 1.e) Do you accept that the latest up-to-date fund rules or instruments of incorporation (and any amendments thereto) do not need to be submitted separately, if they are included in the full prospectus and the latter is indicated by the notifying UCITS (or a third person empowered by



written mandate to act on behalf of the notifying UCITS)?

2. Do you ensure that, without prejudice to the documents and information due under Art. 44(1) and Art. 45 of the Directive or those aimed at speeding up the notification process, no documents and information other than those mentioned in Guideline 11 are to be submitted by the notifying UCITS?
In the negative, please provide details of any further information and document required by you.
3. Do you recommend that only one annual and half-yearly report dealing with all sub-funds is submitted if the umbrella-fund intends to notify its units within another Member State?
4. If the notifying UCITS provide a separate annual and half-yearly report for each sub-fund, do you accept the UCITS' authorised directors (or a third person empowered by written mandate to act on behalf of the notifying UCITS) to self-certify that the information on the marketing arrangements, if any, in your State are the same in each annual and half-yearly report or indicate where they are different?
5. Do you accept that the UCITS provides self-certification as to all the documents submitted?

Benchmark

Fully applied

If a positive answer is given to questions 1.a) to 5.

Partially applied

If a positive answer is given to questions 1.a), 1.b), 1.c), 1.d), 2, 3, 5 and a negative answer is given to question 4.

Not applied

Inability to give a positive answer to question 1.a), 1.b), 1.c), 1.d), 2, 3 or 5.

GUIDELINE 12

Guideline 12

CESR Members expect foreign UCITS to keep their documents and information up-to-date, e.g. any amendments to the fund rules or instruments of incorporation (which do not need to be submitted separately if they are included in the full prospectus; the latter must be indicated by the notifying UCITS or a third person empowered by written mandate to act on behalf of the notifying UCITS) or the addition of new share classes, the full and/or simplified prospectuses, or new prospectuses, if applicable, have to be sent to the competent authority in the host State; also the latest published annual report and any subsequent half-yearly report have to be submitted.

Submission is requested without delay after the documents and information have been made the first time available in the home Member State and without prejudice to the notification procedure for new sub-funds.

Key issues

1. Foreign UCITS must keep their documents and information up-to-date.
2. Any amendments to the fund rules or instruments of incorporation (which do not need to be submitted separately if they are included in the full prospectus; the latter must be indicated by the notifying UCITS or a third person empowered by written mandate to act on behalf of the notifying UCITS) or the addition of new share classes, the full and/or simplified prospectuses, or new prospectuses, if applicable, should be submitted to the host competent authority.
3. The latest published annual report and any subsequent half-yearly report should be submitted to the host competent authority;
4. Submission of the up-to-dated documents and information to the host authority is requested without delay after they have been made the first time available in the home Member State.

Key questions

1. Do you require that foreign UCITS keep their documents and information up-to-date?
2. In particular, do you require that e.g. the documents and information listed below are submitted by foreign UCITS to you?
 - (i) any amendments to the fund rules or instruments of incorporation;
 - (ii) the addition of new share classes;
 - (iii) any amendments to the full prospectus;
 - (iv) any amendments to the simplified prospectus;
 - (v) any new full prospectus;
 - (vi) any new simplified prospectus.
3. Do you require that foreign UCITS provide you with the following documents?
 - (i) the latest published annual report;
 - (ii) any subsequent half-yearly report.



4. Do you require the documents and information mentioned in questions 1 to 3 be submitted by foreign UCITS to you, without delay after they have been made the first time available in the home Member State and without prejudice to the notification procedure for new sub-funds?

Benchmark

Fully applied

If a positive answer is given to questions 1 to 4.

Partially applied

If a positive answer is given to questions 1 and 4 in relation to the documents listed in question 2.

Not applied

Inability to give a positive answer to questions 1 or 4 in relation to the documents listed in question 2.

GUIDELINE 13

Guideline 13

To simplify the access to information for UCITS, the host State authorities will be requested to fill in Annex III of these guidelines and to publish it on their websites. This Annex gives a standardized overview on the non-harmonized national provisions of a host State which relate to the application of the Directive. CESR Members are also expected to publish any amendment or abolition of these provisions or the enactment of new provisions to keep the compilation published with Annex III on their website up-to-date. Annex IV gives the details on which website each host State authority publishes its overview and where it can be downloaded. CESR Members are expected to inform CESR on any amendment of the internet address so that the Annex IV can be updated accordingly.

Key issues

1. Each competent authority should publish on its web-site a standardised overview on the non-harmonised national provisions of its host State relating to the application of the Directive as set out in Annex III of CESR guidelines.
2. The information should be kept up to date.
3. The competent authority should inform CESR on the internet address where the information is available and it should keep CESR informed of any change to the Internet address.

Key questions

1. Do you publish on your website an overview of the non-harmonised national marketing rules and other specific national regulations relating to the application of the Directive in accordance with Annex III of the Guidelines?
2. Do you ensure that the overview is kept up-to-date, by publishing any amendment or abolition of these provisions or the enactment of new provisions?
3. Do you ensure the submission of the details of the website on which the above-mentioned overview is communicated to CESR?

Benchmark

Fully applied

If a positive answer is given to questions 1 to 3.

Partially applied

If a positive answer is given to questions 1 and 2.

Not applied

Inability to give a positive answer to question 1 or 2.