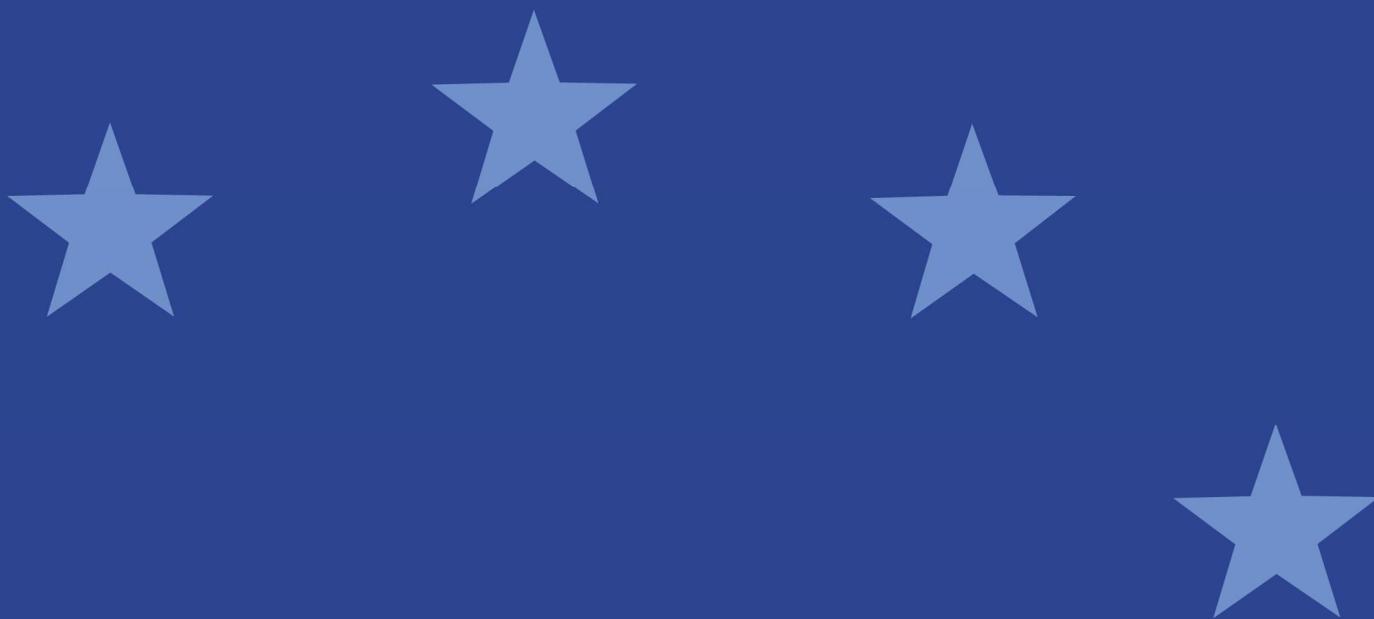




European Securities and
Markets Authority

Questions and Answers

Notification of UCITS and exchange of information between competent authorities





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I. Background

1. The revised Undertakings for Collective Investment in Transferable Securities (UCITS) Directive puts in place a comprehensive framework for the regulation of harmonised investment funds within Europe. The extensive requirements with which UCITS must comply are designed to ensure that these products can be sold on a cross-border basis. The most recent version of the Directive also introduces a management company passport.
2. The UCITS framework is made up of the following EU legislation:
 - a. Directive 2009/65/EC, which was adopted in 2009. It is a 'framework' Level 1 Directive which has been supplemented by technical implementing measures (see the Level 2 legislation in b. below).
 - b. Directive 2007/16/EC¹; Directive 2010/43/EU²; Regulation No 583/2010³; Directive 2010/42/EU⁴; and Regulation No 584/2010⁵.
3. ESMA's predecessor (CESR) produced a series of questions and answers (Q&A) based on questions received through CESR's MiFID Q&A mechanism. The Q&As reflected common positions agreed by CESR Members. They were one of the tools used by CESR to elaborate on the provisions of certain EU legislation, thereby fostering supervisory convergence, and were considered useful by external stakeholders. ESMA has therefore decided to introduce a similar mechanism in the UCITS area.
4. Similarly, ESMA is required to play an active role in building a common supervisory culture by promoting common supervisory approaches and practices. In this regard, ESMA will continue to develop Q&As as and when appropriate.

II. Purpose

5. The purpose of this document is to promote common supervisory approaches and practices in the application of the UCITS Directive and its implementing measures. It does this by providing responses to questions posed by the general public and competent authorities in relation to the practical application of the UCITS framework.
6. The content of this document is aimed at competent authorities under UCITS to ensure that in their supervisory activities their actions are converging along the lines of the responses adopted by ESMA.

¹ COMMISSION DIRECTIVE 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions

² COMMISSION DIRECTIVE 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company

³ COMMISSION REGULATION (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website

⁴ COMMISSION DIRECTIVE 2010/42/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure

⁵ COMMISSION REGULATION (EU) No 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities



However, the answers are also intended to help UCITS management companies by providing clarity as to the content of the UCITS rules, rather than creating an extra layer of requirements.

III. Status

7. The Q&A mechanism is a practical convergence tool used to promote common supervisory approaches and practices under Article 29(2) of the ESMA Regulation.⁶
8. Therefore, due to the nature of Q&As, formal consultation on the draft answers is considered unnecessary. However, even if they are not formally consulted on, ESMA may check them with representatives of ESMA's Securities and Markets Stakeholder Group, the relevant Standing Committees' Consultative Working Group or, where specific expertise is needed, with other external parties.
9. ESMA will review these questions and answers to identify if, in a certain area, there is a need to convert some of the material into ESMA guidelines and recommendations. In such cases, the procedures foreseen under Article 16 of the ESMA Regulation will be followed.

IV. Questions and answers

10. This document is intended to be continually edited and updated as and when new questions are received. The date each question was last amended is included after each question for ease of reference.
11. Questions on the practical application of any of the UCITS requirements in relation to UCITS notification and exchange of information between competent authorities may be sent to the following email address at ESMA: UCITSnotification@esma.europa.eu

⁶ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC Regulation, 15.12.2010, L331/84.

Question 1: Notification of new investment compartments

Date last updated: July 2012

Question 1a: Should UCITS that wish to market new investment compartments in a Member State where they are already notified for marketing for other existing investment compartments undertake a new notification procedure via their competent authority?

Answer 1a: Yes. According to Article 91(4) of Directive 2009/65/EC, the notification procedure as referred in to Article 93 of that Directive also applies to investment compartments of UCITS.

Question 1b: Should UCITS that wish to market several investment compartments of the same UCITS undertake different notification procedures via their competent authority?

Answer 1b: No. UCITS can undertake a single notification procedure via their competent authority when they wish to market several investment compartments of the same UCITS in a Member State. Indeed, according to the Annex I of the Commission Regulation 584/2010, UCITS may indicate names of different investment compartments in the notification letter they transmit to their competent authority pursuant to Article 93(1) of Directive 2009/65/EC.

Question 1c: If the UCITS attestation transmitted to the competent authority of the home Member State lists all the existing investment compartments of a UCITS, should the UCITS undertake a notification procedure for all the investment compartments it intends to market in a Member State?

Answer 1c: Yes. Even if the UCITS attestation lists all the existing investment compartments of a UCITS, the marketing of these investment compartments in a Member State is possible only if the competent authority of the host Member State has been duly notified by the competent authority of the home Member State.

Question 2: Amendments and updates of documents referred to in Article 93(2) of Directive 2009/65/EC

Date last updated: July 2012

Question 2a: Should notifications to the competent authorities of the host Member States of amendments to the documents referred to in Article 93(2) of Directive 2009/65/EC (i.e. fund rules or instruments of incorporation, prospectus, latest annual report and half-yearly report by the UCITS) be accompanied by an attestation letter?

Answer 2a: No. The attestation letter should only be transmitted to the competent authority of the host Member State by the competent authority of the home Member State at the time of the original notification of marketing.

Question 2b: Should notification by the UCITS to the competent authorities of the host Member States of a change in the name of the UCITS or in one of its investment compartments be accompanied by an attestation letter?

Answer 2b: No. When UCITS notify the competent authorities of home Member States of a change in the name of the UCITS or in one of its investment compartments, no UCITS attestation should be transmitted.

Question 2c: Should a UCITS follow a new notification procedure via its competent authority when it notifies updates of documents referred to in Article 93(2) to competent authorities of host Member States?

Answer 2c: No. When UCITS notify updates of documents to the competent authority of the host Member State they should not undertake a new notification procedure via their competent authority.

Question 2d: Should all the documents referred in to Article 93(2) of Directive 2009/65/EC be transmitted when UCITS send updates of documents to the competent authorities of the host Member States pursuant to Article 32(2) of Directive 2010/42/EU?

Answer 2d: No. Only the documents which have been modified should be transmitted to the competent authority of the host Member State.

Question 3: UCITS host Member State's access to documents

Date last updated: July 2012

Question 3a: When a UCITS is notified for the first time for marketing in a Member State, when should the UCITS make available on a website an electronic copy of each document referred to in Article 93(2)?

Answer 3a: In order to satisfy the obligation of Article 31(1) of Directive 2010/42/EU, UCITS should make available on a website an electronic copy of each document referred to in Article 93(2) as soon as possible after they receive confirmation from their national competent authorities that the notification of marketing has been transmitted to the competent authority of the host Member State.

Question 3b: When complying with the obligation of access to documents as required by Article 31(1) of Directive 2010/42/EU, can UCITS use password-protected documents?

Answer 3b: No. The use of password-protected documents by UCITS is not permitted.

Question 4: Part A of the notification letter

Date last updated: July 2012

Question: If the UCITS is a self-managed investment company, what information should be provided under the heading 'details of contact person at the management company' in Part A of the notification letter?

Answer: If the UCITS is a self-managed investment company, the details of the contact person at the self-managed investment company and the relevant contact information should be provided.

Question 5: Exchange of information between competent authorities in the context of establishment of a branch of a UCITS management company

Date last updated: July 2012

Question: In the context of establishment of a branch by a UCITS management company in a different Member State, in which language should competent authorities of home Member States send the relevant information to competent authorities of host Member States?

Answer: The information should be sent in a language customary in the sphere of international finance, unless the competent authorities of the UCITS home and host Member States agree to that information being provided in an official language of both Member States.

Question 6: Attestation of payment of notification fees

Date last updated: July 2012

Question: Under Part B of the model notification letter set out in Annex I of Regulation 584/2010, the UCITS' host Member State may require evidence of payment of notification fees. How should this evidence of payment be provided?

Answer: There should be evidence that the notification fee has been transferred e.g. by a scan of the transfer form. The evidence should be attached to the notification as proof of payment.