

# Germany simplifies UCITS notification

An extract from European IMRE News June 2008

# Germany simplifies UCITS notification

Implementation of CESR's guidelines for UCITS notification has resulted in liberalisation and simplification for marketing of foreign UCITS

## Dr Michael Brill

PricewaterhouseCoopers (Germany)  
+49 211 981 7145  
michael.brill@de.pwc.com

## Sandra Steiniger

PricewaterhouseCoopers (Germany)  
+49 211 981 4056  
sandra.steiniger@de.pwc.com

## Stefanie Heeren

PricewaterhouseCoopers (Germany)  
+49 211 981 7886  
stefanie.heeren@de.pwc.com

In December 2007, a new version of the German Investment Act (hereafter InvG) came into force. Subsequently, the German financial regulator (hereafter Bundesanstalt für Finanzdienstleistungsaufsicht – “BaFin”) issued amended instructions for notification of public distribution of UCITS in Germany. Combined, the InvG and the BaFin's instructions represent a significant simplification in line with “CESR's guidelines to simplify the notification procedure of UCITS” (hereafter guidelines).<sup>1</sup>

### Making notification easier

At first, all notification letters to the BaFin seeking authorisation to market the units of foreign UCITS must comply with a standard template, contained in Annex II of the guidelines. The notification letter can now be filed in German or English. The sales documents to be filed together with the notification letter no longer have to bear the original approval by the home State authority. Instead, a self-certification from the UCITS fund is acceptable, stating that these documents are the latest ones which have been approved by, or filed with, the home State authority (recommended in guideline 7). It is now sufficient to file the UCITS certificate with an English translation (stipulated in guidelines 8 and 11).

Particular mention should be given to the amendment allowing the BaFin to reduce the two-month approval period where the review of all documents has been completed and there are no specific reasons why distribution should not begin. Guidelines 5 and 10 say that the two-month period should be shortened whenever possible, especially for new sub-funds of an already registered UCITS, as the host authority will already be familiar with the marketing material and arrangements.

<sup>1</sup> Committee of European Securities Regulators



Furthermore, the expiry of the two-month period can now be suspended in circumstances that might prohibit distribution of units in public, but where there is a realistic prospect that the applicant will fulfil all requirements for notification as set out in the InvG (recommended in guideline 5). Therefore, a UCITS now has the chance to fulfil all requirements subsequently, without the risk of prohibition of public marketing.

A significant change in the marketing provisions of the InvG is that if a UCITS intends to distribute only some of the sub-funds of an umbrella UCITS in Germany, notification is only required for the relevant sub-funds (recommended in guideline 9). Consequently, sub-funds not intended for distribution can now be de-registered. This removes the cost of registration and annual fees, as well as the time spent preparing publications and reporting.

### Further proposals

Additionally, the InvG now prepares the way for electronic filing of documents as proposed in guideline 1. So far, the BaFin has not adopted this and still requires physical filing. Yet electronic filing would reduce costs and speed up filings.

Guideline 8, inter alia, allows CESR members to publish further information regarding required documents and language on their websites using the template provided in Annex III to the guidelines. Up until now, the BaFin has published the required information but has not made use of the template, which would be clearer.

Taken together, these improvements represent a big step towards harmonising the notification procedure in the Member States. Implementation of the remaining guidelines is desirable, especially the proposal for electronic document filing. Whether and when this will take place remains to be seen.

A significant change in the marketing provisions of the InvG is that if a UCITS intends to distribute only some of the sub-funds of an umbrella UCITS in Germany, notification is only required for the relevant sub-funds (recommended in guideline 9). Consequently, sub-funds not intended for distribution can now be de-registered.

# Investment Management and Real Estate contacts

European IMRE News is produced by experts in their particular field at PricewaterhouseCoopers, to address important issues affecting the investment management industry. If you would like to discuss any aspect of this document, please speak to your usual contact at PricewaterhouseCoopers or one of those listed below:

## Global Investment Management and Real Estate Leadership Team

### Marc Saluzzi

PricewaterhouseCoopers  
(Luxembourg)  
Global Investment Management and  
Real Estate Industry Leader  
+352 49 48 48 2511  
marc.saluzzi@lu.pwc.com

### David Newton

PricewaterhouseCoopers (UK)  
Global Investment Management  
Tax Leader  
+44 20 7804 2069  
david.newton@uk.pwc.com

### Tony Artabane

PricewaterhouseCoopers (US)  
Global Hedge Funds Leader  
+1 646 471 7830  
anthony.artabane@us.pwc.com

### Brendan McMahon

PricewaterhouseCoopers  
(Channel Islands)  
Global Private Equity Investment  
Management Real Estate Leader  
+44 1534 838234  
brendan.mcmahon@je.pwc.com

### Henrik Steinbrecher

PricewaterhouseCoopers (Sweden)  
Global Real Estate Industry Leader  
+46 8 555 330 97  
henrik.steinbrecher@se.pwc.com

### Barry Benjamin

PricewaterhouseCoopers (US)  
Americas Investment Management  
and Real Estate Industry Leader  
+1 410 783 7623  
barry.p.benjamin@us.pwc.com

### Robert Grome

PricewaterhouseCoopers (Hong Kong)  
Asia Pacific Investment Management  
and Real Estate Industry Leader  
+852 2289 1133  
robert.grome@hk.pwc.com

### Kees Hage

PricewaterhouseCoopers  
(Luxembourg)  
European Investment Management and  
Real Estate Industry Leader  
+352 49 48 48 2059  
kees.hage@lu.pwc.com

### Pars Purewal

PricewaterhouseCoopers (UK)  
UK Investment Management and  
Real Estate Leader  
+44 20 7212 4738  
pars.s.purewal@uk.pwc.com

## Territory Leaders

### Andrea Cerne-Stark

PricewaterhouseCoopers (Austria)  
+43 1 501 88 1720

### Emmanuele Attout

PricewaterhouseCoopers (Belgium)  
+32 2 710 40 21

### Brendan McMahon

PricewaterhouseCoopers  
(Channel Islands)  
+44 1534 838234

### Costas Mavrocordatos

PricewaterhouseCoopers (Cyprus)  
+357 22 555 202

### Petr Kriz

PricewaterhouseCoopers  
(Czech Republic)  
+420 2 5115 2045

### Mikael Sørensen

PricewaterhouseCoopers (Denmark)  
+45 3945 9102

### Urmás Kaarlepe

PricewaterhouseCoopers (Estonia)  
+372 614 1801

### Tuukka Lahkela

PricewaterhouseCoopers (Finland)  
+358 9 2280 1333

### Jean-Pierre Bouchart

PricewaterhouseCoopers (France)  
+33 1 5657 1702

### Arno Kempf

PricewaterhouseCoopers (Germany)  
+49 69 9585 2367

### Edgar C Lavarello

PricewaterhouseCoopers (Gibraltar)  
+350 782 6724

### Nicos Komodromos

PricewaterhouseCoopers (Greece)  
+30 210 6874 671

### David Wake

PricewaterhouseCoopers (Hungary)  
+36 1 461 9514

### Hjalti Schiöth

PricewaterhouseCoopers (Iceland)  
+354 550 5337

### Damian Neylin

PricewaterhouseCoopers (Ireland)  
+353 1 792 6551

### Mike Simpson

PricewaterhouseCoopers (Isle of Man)  
+44 1 624 689 689

### Joseph Fellus

PricewaterhouseCoopers (Israel)  
+972 3 795 4683

### Elisabetta Caldirola

PricewaterhouseCoopers (Italy)  
+39 02 7785 380

### Juris Lapshe

PricewaterhouseCoopers (Latvia)  
+371 6709 4505

### Chris Butler

PricewaterhouseCoopers (Lithuania)  
+370 5 239 2303

### John Parkhouse

PricewaterhouseCoopers  
(Luxembourg)  
+352 49 48 48 2133

### Joseph Camilleri

PricewaterhouseCoopers (Malta)  
+356 25 647 603

### Fred Gertsen

PricewaterhouseCoopers  
(The Netherlands)  
+31 10 407 6622

### Geir Julsvoll

PricewaterhouseCoopers (Norway)  
+47 23 16 0540

### Antoni F Reczek

PricewaterhouseCoopers (Poland)  
+48 22 5234 339

### António Assis

PricewaterhouseCoopers (Portugal)  
+351 213 197 013

### Vasile Iuga

PricewaterhouseCoopers (Romania)  
+40 21 202 8800

### Richard Gregson

PricewaterhouseCoopers (Russia)  
+7 095 967 6327

### Peter Vazan

PricewaterhouseCoopers  
(Slovak Republic)  
+421 259 350 472

### Pierre de Villiers

PricewaterhouseCoopers (South Africa)  
+27 11 797 5368

### Antonio Greño

PricewaterhouseCoopers (Spain)  
+34 91 568 4636

### Susanne Sundvall

PricewaterhouseCoopers (Sweden)  
+46 8 555 33 273

### Thomas Huber

PricewaterhouseCoopers (Switzerland)  
+41 58 792 2436

### Pars Purewal

PricewaterhouseCoopers (UK)  
+44 20 7212 4738

If you would like to receive copies of this newsletter or would like further information about PricewaterhouseCoopers Investment Management and Real Estate publications, please contact Denise Cook at [denise.cook@uk.pwc.com](mailto:denise.cook@uk.pwc.com)

Editor: Rupert Bruce

[pwc.com](http://pwc.com)

© 2009 PricewaterhouseCoopers. All rights reserved. PricewaterhouseCoopers refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity.

PricewaterhouseCoopers provides industry-focused assurance, tax, and advisory services to build public trust and enhance value for its clients and their stakeholders. More than 155,000 people in 153 countries across our network share their thinking, experience and solutions to develop fresh perspectives and practical advice.

This report is produced by experts in their particular field at PricewaterhouseCoopers, to review important issues affecting the financial services industry. It has been prepared for general guidance on matters of interest only, and is not intended to provide specific advice on any matter, nor is it intended to be comprehensive. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PricewaterhouseCoopers firms do not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.