

# UCITS III News

Pan-European UCITS III Newsletter

Since May, not much has moved on the UCITS III front in terms of new guidance issued by regulators. Belgium has almost enacted its UCITS III implementing legislation (bill of law voted but awaiting publication in Official Gazette) and should provide some practical guidance in the “Arrêtés Royaux” to be published soon. Italy has moved towards a consultation, led by Consob and Banca d’Italia, on certain aspects of the Directives, which should result in a regulation to be issued in early August. The German industry has issued clear guidelines as regards the contents of the simplified prospectus of a “Sondervermögen”.

Having said this no countries have provided a final answer to the current headache of cross-border promoters: is the current or planned registration of my product jeopardized by the uncertainty surrounding some of the UCITS III provisions, namely transition?

The chart below, already published in an earlier issue of UCITS III News but completed and updated since then, provides some insight on this question.

Registration of:	AT	BE	DK	FIN	FR	DE	IR	IT	LU	NL	PT	ES	SE	UK	CZ
(1) Foreign UCITS III vehicle with “Grandfathered” Manco	☺	☺	☺	☺	☺	☺	☺	?	☺	☺	☺	☺	☺	☺	☺
(2) Foreign UCITS I sub-fund created before 13/02/2004 in a GF UCITS I fund	☺	☺	☺	☺	☺	☺	☺	?	☺	☺	☺	☺ SP req’d	☺	☺	☺
(3) Foreign UCITS I sub-fund created after 13/02/2004 in a GF UCITS I fund	☺	☺	☺	☺	☹	☺	☺	?	☺	☺	☺	☺ SP req’d	☹	☺	☺
(4) Foreign UCITS I vehicle newly registered in a EU country	☺	☺	☺	☺	☺	☺	☺	?	☺	☺	☺	☺	☺	☺	☺
(5) Foreign UCITS III vehicle without a Simplified Prospectus	☺	☺	?	?	☹	☺	✗	?	☹	☺	?	☹	☺	☺	☺
(6) Foreign UCITS III sub-fund created after 13/02/2004 in a GF UCITS I fund	☺	☹	?	☺	☹	☹	✗	?	☹	☹	☺	☺	☹	☹	☺

The six questions raised herein are also those found on the agenda of CESR’s Expert Group on Investment Management, which took over the Contact Committee’s job at the end of April 2004 and met again on July 1<sup>st</sup> to discuss these issues. It seems that not much came out of this meeting in terms of decisions, which leaves each country free to apply its own approach towards incoming vehicles.

While it would appear that the French AMF, after a long period of hesitation (and postponed authorisations!) would now accept UCITS III products managed by a “grandfathered” Management Company, thereby joining most other countries in this approach, it still remains inflexible when it comes to accepting sub-funds created after 13/02/04 in a UCITS I fund. Other countries such as Spain will accept those sub-funds, but only if the promoter presents a simplified prospectus.

In Ireland, however, there is as yet no need to produce systematically such simplified prospectus for a UCITS III fund, the IFSRA tolerating, for the time being, its absence. This requirement by a foreign regulator to receive a document not required by the Home State regulator obviously triggers costs and delays at the promoter's level and is a continued source of frustration for the industry.

The above chart is bound to change over the coming months; regulators may also tend to be more accommodating for already registered foreign products that convert from UCITS I to UCITS III or launch new sub-funds, as opposed to newcomers with UCITS III products but an "old" ManCo.

The same caution must be used when reviewing some countries' opinions on the use of derivatives:

Use of derivatives:	AT	BE	FR	DE	IR	IT	LU	ES	SE	UK	CZ
(1) Use of currency derivatives for purposes other than hedging?	☺	?	☺	☺	☺	☺	☺	☺	☺	☺	☺
(2) Maximal global exposure of 200% of the NAV (+10% via borrowings)	☺	?	☺	☺	☺	☺	☺	☺	☺	☺	?
(3) Selling of uncovered derivatives allowed?	☺	?	☺	☹	?	☹	☺	☹	?	☹	?
(4) Possibility to enter into swap transactions to obtain the performance of an "index of underlying hedge funds, commodities, futures indices, etc"?	☹	?	☹	☹	?	☹	☹	☹	?	☹	?
(5) Have you already observed any innovative funds under UCITS III?	☹	☹	☹	☹	☹	☹	☹	☹	☹	☺	☹

What we see is that the EU recommendation on derivatives seems to be followed by all as regards the now unrestricted use of currency derivatives and the maximal global exposure of a UCITS fund. Products using OTC derivatives to get the return of hedge funds indices or of commodities indices are in principle prohibited under UCITS III – but some regulators, pushed by the industry, may try to find an acceptable way of accommodating them even under the new rules.

Finally, it seems that real innovative funds are not yet a priority for asset managers: the few "sexy" ones recently seen have been created under UCITS II!

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