

UCITS notifications in the Netherlands as of July 2011

Introduction

The UCITS IV Directive needed to be implemented by all EU Member States on 1 July 2011. The Netherlands implemented the Directive slightly later, on 22 July 2011.

The Directive will have the following practical consequences for the registration and maintenance of all incoming UCITS in the Netherlands. The below guidance relates to incoming UCITS only and is based on information which Clifford Chance received from the Dutch Authority for the Financial Markets ("AFM").

Registration and AFM information

Initial UCITS registrations

Initial registrations of UCITS will be a matter between regulators. The home state regulator will notify the AFM and the UCITS will be registered by the AFM upon receipt of that notification. The UCITS may be marketed in the Netherlands as of that moment. The AFM will inform the UCITS in writing about such registration and will charge a registration fee of EUR 800 (payable directly to the AFM). The AFM does not charge ongoing fees at this moment.

Home state regulators should among other matters ensure that a Dutch translation of the Key Investor Information Document ("KIID") is part of the information sent to the AFM (please also see the remarks on KIID below).

New sub-funds

The notification of new sub-funds of existing UCITS will need to be made by the UCITS (or the management company) directly to the AFM. This notification will not go through the home state regulator. This also applies to other notifications that need to be made to the AFM, e.g. name changes or de-registrations (see remarks below). Only those changes which require a change to the AFM's public register will need to be notified. The home state regulator will in principle not be involved in this notification process except for the provision to the UCITS of an updated attestation reflecting the changes made.

Key Investor Information Document

The KIID can be used in the Netherlands as of 1 July 2011. UCITS which can benefit from the transitional regime in their home state that allows them to continue to use a simplified prospectus can also benefit from that transitional regime in the Netherlands until 1 July 2012.

De-registration

The procedures for de-registration of UCITS or sub-funds remain the same. The type of information to be provided to the AFM will depend on whether there are Dutch investors in the UCITS or sub-fund. If there are no Dutch investors in the relevant UCITS or sub-fund, a statement from the UCITS that there are no more Dutch investors in the UCITS or sub-fund should be provided. If there are Dutch investors, the AFM should receive information on the communication to the investors regarding the envisaged termination of the UCITS or sub-fund.

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Overview required actions and documentation

The following table sets out the actions to be taken in various situations.

Documents	Regulator	UCITS certificate	Prospectus	KIID in Dutch	Other
Situation					
Initial UCITS registration	Home state	Yes	Yes	Yes	Notification specifying the requested registration.
New sub-fund(s) registration	AFM	Yes	Yes	Yes	Letter or email specifying the new sub-fund(s).
De-registration of sub-fund	AFM	No	No	No	Letter or email specifying sub-fund de-registration, plus: (i) a statement from the UCITS that there are no more Dutch investors in the sub-fund, if applicable; or otherwise (ii) the communication to the investors regarding the envisaged termination of the sub-fund.
Name change of UCITS or sub-fund	AFM	Yes	Yes	Yes	Letter or email specifying the name change made.
De-registration of UCITS	AFM	No	No	No	Letter or email specifying UCITS de-registration, plus: (i) a statement from the UCITS that there are no more Dutch investors in the UCITS, if applicable; or otherwise (ii) the communication to the investors regarding the envisaged de-registration of the UCITS.

Other information

No changes have occurred as to the type of information the AFM needs to receive in addition to the above. This means that e.g. the (semi) annual accounts of the UCITS do not have to be filed with the AFM. **However, the information requirements towards Dutch investors remain.** Therefore, an up to date Dutch KIID (or for the transitional regime simplified prospectus) should be available in Dutch. Other documents should be available in English or Dutch. This includes the information that needs to be disclosed to investors pursuant to the law and regulations of the home state of the UCITS.

Marketing

It is important to realise that an incoming UCITS needs to adhere to Dutch rules when marketing the UCITS to Dutch investors. A mandatory risk warning needs to be inserted in marketing material together with a warning sentence: "*Loop geen onnodig risico. Lees de Essentiële Beleggersinformatie.*" The risk warning is required when marketing takes place in

printed media (newspaper, flyers), on television, internet and other media that enable the reflection of the warning. Dutch versions of the mandatory risk warning to be included in the KIID are available on www.afm.nl. An example of the mandatory risk warning for use in printed media is presented below.



A separate format of the risk warning for use in television commercials or on the internet is available on www.afm.nl. Radio commercials have to include a standard voice recording at the end of the commercial, also warning for the risk of investment in a prescribed format.

Apart from the risk warning, several other requirements will apply to marketing material as well. These also concern the presentation of the historic or expected performance of a UCITS. ■

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