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UCITS: have passport, will travel?

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European Union, Portugal
August 20 2013



Among the novelties of the recent transposition of the UCITS IV Directive regarding the legal regime of collective investment undertakings was the harmonization of the cross border marketing procedure of UCITS.

One of the main novelties of the UCITS IV Directive (the “Directive”) transposed to the “*Novo Regime Jurídico de Organismos de Investimento Colectivo*” (“NRJOIC”) was the harmonization of the cross border marketing procedure of UCITS – which allowed that a UCITS incorporated in another Member State (the “Home Member State”) be marketed in another Member-State (the “Host Member State”), through a process of simple notification between the respective supervising authorities, at the request of the managing entity.



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In addition to this change and with the objective of creating a true single market of investment funds in the European Union, more efficient and flexible, the managing entities were granted the possibility of, through a branch or simply by the free rendering of services, exercise their activities, notably those related to marketing UCITS controlled by such managing entities directly (i.e. without resorting to financial intermediaries) in a different Member-State from the Home Member State.

Taking into consideration that the Directive was transposed nearly two years following the limit date for transposition, on June 30, 2011, and that the Securities Market Commission (“CMVM”) was limited to the acceptance of the notification letters from UCITS incorporated in Member States which already transposed the Directive, CMVM, does not, in contrast with supervising authorities from other Member States, have the same experience regarding its practical application. Therefore and given the recent entry into force of NRJOIC, we would like to point out, as a preventive note, some of the difficulties which have arisen from the application of European rules: (i) the notice mechanisms between the supervising authorities have showed some frailties, notably on the compliance with communication deadlines for each of the supervising authorities involved; (ii) the lack of even a slight

harmonization in what concerns UCITS publicity rules, rendering the standardization of advertising materials for each of the Member States impossible; and (iii) the difficulty, notwithstanding the newly instituted possibility, of not resorting to financial intermediaries for the marketing of UCITS, given their know-how and experience of dealing with supervising authorities, as well as the in-depth knowledge of the market in which they operate.

Tags European Union, Portugal, Capital Markets,
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