

Instruction no. 5/2007

regarding the notification procedure of UCITS from Member States

Article 1

(1) This Instruction is issued for the enforcement of article 109 and article 113 of the Capital Market Law no. 297/2004 with subsequent amendments, hereinafter referred to as Law no. 297/2004, and sets out the notification procedure of UCITS that propose to market their units in a Member State other than the home Member State.

(2) The terms and expressions used in this instruction bear the meaning provided for by Law no. 297/ 2004 and Regulation no. 15/2004 regarding the authorisation and functioning of investment management firms, collective investment undertaking and depositories hereinafter referred to as Regulation no. 15/2004

(3) For the purposes of this instruction, the terms and expressions bellow bear the following meanings:

1. Umbrella Fund – means a UCITS established under civil contract and shared in several sub-funds each of them having a distinct investment policy and issuing different classes of units.
2. Sub-funds – means a part of an umbrella fund having a specialized investment policy and which is not functioning as an independent UCITS.

Chapter I
UCITS from other Member States intending to market their units in
Romania

Art. 2

(1) By marketing of units is meant the offer for selling of units issued by a UCITS.

(2) A UCITS from other Member State that proposes to market its units in Romania shall be registered with the CNVM registry in accordance with the provisions of this Instruction.

Art. 3

A UCITS from a Member State that proposes to market its units in Romania shall previously inform CNVM of its intention and submit the following documents:

a) a notification letter drafted in Romanian or English language in accordance with Annex 2;

b) an attestation granted by the competent home Member State authority to the effect that the UCITS fulfils the provisions of the national legislation of that state harmonized with the community legislation, drafted in accordance with Annex 1, in original and in English language; The original attestation may be replaced by a copy accompanied by a self-certification by the UCITS' legal representative or a third person empowered by written mandate to act on behalf of the notifying UCITS stating that the copy is a true copy of the original attestation, that the original attestation is in

OPCVM possession and that it is the latest version issued by the home Member State competent authority.

c) its up-to-date fund rules or instruments of incorporation as the case maybe. Funds rules and the instruments of incorporation do not need to be submitted separately if the notifying UCITS or a third person empowered by written mandate to act on behalf of the notifying UCITS declares that they are included in the full prospectus.

d) its up-to-date full and simplified prospectuses, drafted in accordance with the provisions of the community legislation and article 6;

e) its latest annual report and half yearly report or in case of umbrella funds, the latest annual report and the latest half yearly report for the umbrella fund. For the simplification of the notification procedure in case of umbrella funds with a large number of sub funds it is recommended to provide a single annual and half-yearly report dealing with all sub-funds of the umbrella fund. In case the UCITS submits separate annual and half-yearly reports for each sub-fund, then the UCITS responsible persons or a third person empowered by written mandate to act on behalf of the notifying UCITS shall self-certify that the information on the marketing of units in Romania is the same in each annual and half-yearly report or shall indicate the differences, if applicable.

f) details of the arrangements made for the marketing of units in Romania as follows:

1. name, address of head office, telephone number, fax number and e-mail address of the units distributors in Romania;
 2. certification of the legal representatives of distributors providing that they agree with marketing of the units of UCITS in Romania;
 3. information on the way of performing the subscription and redemption of the units of UCITS in Romania
 4. the place where distributors will perform the subscription or the redemption of the units;
 5. the modalities of payment in case of subscriptions and redemptions;
 6. the modalities of payment of dividends and other rights of the unit-holders if the case maybe,
- g) details on the way of disclosing to the investors information that the UCITS is obliged to offer ;
- h) name of the person designated by the UCITS in relation with CNVM, the identification data of this person and the address for correspondence as well.

Art. 4

(1) For the purpose of simplification of the preliminary notification procedure, in case of an umbrella fund with a large number of sub-funds, the following rules shall apply:

- a) the preliminary notification shall be made for those sub-funds proposed to be marketed actively;
- b) for the enforcement of article 3 lett. a) a single notification letter is allowed for all sub-funds of the respective UCITS proposed to be marketed on the Romanian territory;

c) in case the documents of the notification procedure for a sub-fund are also available for the preliminary notification procedure of other sub-fund, that documents shall be submitted once mentioning the sub-fund/sub-funds which the documents apply to;

d) if new sub-funds are added to existing umbrella funds and these sub-funds are proposed to be marketed on the Romanian territory, the preliminary notification procedure shall apply complying with the requirements of this instruction;

e) in case of an umbrella fund with a large number of sub-funds proposed to be marketed on the Romanian territory, drafting one full prospectus is recommended. If the notifying UCITS provide a separate full prospectus for each sub-fund, the UCITS' legal representative or a third person empowered by written mandate to act on behalf of the notifying UCITS must self-certify that the information on the marketing arrangements in Romania is the same in each prospectus or indicate the differences, if applicable.

(2) If new classes of units are issued by a sub-fund of an umbrella, the umbrella fund shall notify the new issue to CNVM specifying the objective criteria that this issue was based (e.g. the amount of subscriptions, the commissions charged)

(3) The two-month period provided for in article 109 paragraph (3) of Law no. 297/2004 does not apply to the situation provided in paragraph (2). The umbrella fund may begin marketing the new units immediately provided that other reasons which prohibit marketing do not apply.

Art. 5

(1) The documents attached to the notification letter have to be the latest version authorized by the home Member State authority or provided to this authority as the case may be.

(2) The documents provided for in paragraph (1) shall be accompanied by a self-certification of the UCITS or a third person empowered by written mandate to act on behalf of the notifying UCITS provided that these documents are the latest version authorized by the home Member State competent authority or provided to the home Member State competent authority.

Art. 6

(1) The documents related to the preliminary notification procedure shall be provided to CNVM in the official language of the home Member State and accompanied by a translation into Romanian, except the attestation issued by the home Member State authority and the notification letter that shall comply with the provisions of article 3 lett. a) and b).

(2) CNVM publishes a notice on its own web site on the notification procedure for which the translation in Romanian language is required.

Art. 7

OPCVM of another Member State which intends to market or which markets units in Romania shall submit to CNVM any modifications on documents and/or information previously submitted, including the latest annual report

and half yearly report within maximum 15 working days from the date when these have been made public in the home Member State.

Art. 8

- (1) Within the deadline established at art. 109, paragraph (3) of Law 297/2004, CNVM may request clarifications from OPCVM on the documents and information which accompany the notification letter for verifying whether the activity of marketing the units is in compliance with the provisions of Title III, Chapter V, Section 7 of Law no. 297/2004. The right of OPCVM of marketing units in Romania after the deadline provided for in paragraph (5) is not affected unless CNVM issues a reasoned decision in accordance with paragraph (4).

- (2) CNVM requests OPCVM as soon as possible but no later than one month from the submission of documents, additional information and documents, if necessary.

- (3) Where after the request mentioned at paragraph (2), the information submitted by OPCVM is not complete, but CNVM considers that OPCVM has the capacity to fulfill the conditions for compliance with the provisions of Title III, Chapter V, Section 7 of Law no. 297/2004 shall notify OPCVM on the fact that in case OPCVM does not provide the information in accordance with its request, it shall issue a motivated decision in accordance with paragraph (5).

- (4) In case of enforcement of paragraphs (2) and (3), the deadline of two months as provided for in article 109, paragraph (3) of Law no. 297/2004 shall be stopped and shall continue from the date when the complete documentation is submitted.
- (5) In case where, after the submission of additional documents and information, CNVM notices that the provisions of Title III, Chapter V, Section 7 of Law no. 297/2004 are not fulfilled, as well as in case where OPCVM does not submit within 6 months the requested documents and information, CNVM shall issue a reasoned decision by which the respective OPCVM is forbidden to market units in Romania.
- (6) The decision provided for in paragraph (5) is issued:
- a) within the period of time left between the interruption provided for in paragraph (4) and the maximum deadline of two months, for previous notification; or, by case,
 - b) after the maximum deadline of 6 months set for submission of additional documents and information.
- (7) In case where CNVM finalized the procedure of verification the documentation and information submitted by OPCVM for previous information before the deadline of two months, and noticed the compliance with the provisions of Title III, Chapter V, Section 7 of Law no. 297/2004, OPCVM is informed by CNVM that it may start the activity of marketing units in Romania.

(8) After the deadline of two months from the submission to CNVM of completed documentation has expired, in the situation where OPCVM does not receive any communication from CNVM, OPCVM may start the activity of marketing units in Romania, except for the case where CNVM issues a decision in accordance with paragraph (5).

Art. 9

- (1) The activity of marketing the units in Romania may be performed by:
- a) financial investment services companies and asset management companies in Romania, authorized by CNVM;
 - b) investment firms and asset management companies authorized by the Member States competent authorities, following the procedure of notification in accordance with the provisions of Law no. 297/2004 and of the regulations issued for its enforcement;
 - c) credit institutions in Romania authorized by BNR or credit institutions authorized by the Member States competent authorities, following the notification procedure in accordance with the banking legislation in force;
 - d) branches of investment firms/ asset management companies/ credit institutions of non Member States, following the procedure of authorization in accordance with Law no. 297/2004 and the regulations issued for its enforcement and respectively, with the provisions of the banking legislation in force.

(2) In case the activity of an OPCVM to market units in Romania is finished, the arrangements for redemption and payment shall ensure the compliance

with the rights of units'holders acquired in Romania, including those on units' redemption.

Chapter II

UCITS authorized by C.N.V.M. which intend to market their units in other Member States

Art. 10

(1) UCITS authorized by CNVM which intend to market their units in other Member States are required to comply with the notification procedure set in the national legislation of the host Member State similar with that mentioned in Chapter 1 of the present Instruction.

(2) In order to obtain the attestation which shall be provide to the competent authority of the host Member State that will certify that UCITS is fulfilling with the provisions of the national legislation, in accordance with the model referred to in Annex 1, the UCITS representative shall provide CNVM an appliance together with the following:

- a) the name of the Member State where the UCITS intend to market its units;
- b) The latest up-to-date fund rules or instruments of incorporation authorized by CNVM;
- c) the proof of paying the attestation fee in the CNVM account;
- d) any other information or documents that CNVM considers necessary in order to check the compliance with the regulations in force.

(3) CNVM shall decide on delivering the attestation in maximum 30 days from submitting the documents mentioned in paragraph (2) and may refuse its deliverance in case of noticing the non-compliance with the regulations in force by UCITS or investment management company, as the case may be.

Art. 11

This instruction shall come into force on the date of publishing it and the approval order in the Official Gazette of Romania, Part I. and shall be published in the CNVM Bulletin and on the CNVM website. (www.cnvmr.ro).

PRESIDENT

Prof. Ph. Dr. Gabriela ANGHELACHE

Annex I

**MODEL ATTESTATION TO MARKET UNITS OF UCITS
IN A MEMBER STATE**

1.....is
the competent authority
(name of the competent home Member State authority)

2. in
.....
.....
(the home Member State)

3. address

4. telephone number

5. telefax number

6. e-mail address

7. that carries out duties provided for in the Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), as required by Art. 49(1) of the Directive,

8. For the purpose of Art. 46(1) and Art. 6b(5) of the Directive

9. certifies that:

.....
.....
(name of UCITS)

10. has been set up

on.....

(date of approval of the fund rules/instruments of incorporation of UCITS)

11. has registry

no.....

.....

(UCITS registry no. in the home Member State, if any)

name of the authority

(name of the authority by which the register is conducted, if applicable)

12. is based in

.....

(the home Member State and details of the address of the UCITS' head office)

13. is an investment fund of the type unit fund/ common trust

List of all sub-funds approved in the home Member State, if applicable	
Serial no.	Name
1	
2	
3	
.....	

- managed by the management company

.....

(name of the management company)

14. an investment company

List of all sub-funds approved in the home Member State, if applicable	
Serial no.	name
1	
2	
3	
.....	

that has designated as its management company

.....

(name of the designated management company)

that is self-managed

15. it is fully compliant with the requirements laid down in the Directive 85/611/EEC prior to its amendments by the Directive 2001/108/EC

16. it is fully compliant with the requirements laid down in the Directive 85/611/EEC as amended by the Directive 2001/108/EC

17. also certifies that:

(the home Member State authority)

18. a).....

(name of the UCITS management company, if applicable, according to what has been indicated above)

19. it is fully compliant with the requirements laid down in the Directive 85/611/EEC prior to its amendments by the Directive 2001/108/EC

20. it is fully compliant with the requirements laid down in the Directive 85/611/EEC as amended by the Directive 2001/108/EC

21. b) the latest version of the fund rules/instruments of incorporation has been approved by the home Member State competent authority on *(date of approval)*

22. Date

.....*(signature of the legal representative of the home Member State authority)*

..... *(name in full and position of the undersigned representative of the home Member State authority)*

Annex 2

**Model Notification Letter to Market Units of UCITS in another
Member State**

***COMMUNICATION FOR MARKETING UNITS OF UCITS IN
ANOTHER MEMBER STATE***

PART I - HARMONIZED PART

1. Name of the UCITS:

.....

2. Home Member State of the UCITS

.....

3. Legal form of the UCITS: common fund/ unit trust/ investment company
(please circle the correct choice)

4. Does the UCITS have sub-funds or compartments? yes / no

5.

Name of the fund(s) and/or the numbers in the sub-fund(s) to be marketed in Romania ¹	Duration (if applicable)	ISIN Code (if available)

6.

Management Company/Self-managed investment company Address of the registered office and of the head office if these are not identical Name, telephone number, fax number and e-mail address of the contact person

.....

Duration of the company, if applicable

.....

Scop of activities of the management company in Romania

.....

.....

Additional comments of the UCITS, if applicable

.....

.....

.....

LIST OF THE DOCUMENT SUBMITTED ²:

7. A valid original attestation granted by the home Member State authority or a copy of the original attestation self - certified by a UCITS or a third person empowered by written mandate to act on behalf of the UCITS that the copy is a true copy of the valid original, that the original attestation is in OPCVM possession and that is the latest version issued by the home State authority. The original attestation at the CNVM disposal shall also include a version in English language.

8. Up-to-date fund rules or instruments of incorporation (they do not need to be submitted separately if the UCITS or a third person empowered by written mandate to act on behalf of the notifying OPCVM declare that they are included in the prospectus)

9. The up-to-date full and simplified prospectus

10. The latest annual report and half-yearly report

Note:

The documents to be attached to the notification letter represent the latest version of them, as approved by or filed with the home Member State competent authority. These documents are submitted accompanied by a self certification by the UCITS or a third person empowered by written mandate to act on behalf of the notifying UCITS that state that the versions of the documents that have been attached to the notification letter are the latest ones which have been approved by or filed with the home Member State competent authority.

The notification letter may refer to documents that have already been sent to CNVM, if still valid. The attestation from the home Member State competent authority must be sent in any case.

PART II - Documents and information according to national marketing rules and other specific national regulations

12. Details of the arrangements made for the marketing of the units in Romania, as well as documents and information for marketing the units in Romania, payment procedures of the units holders, redeem the units, as well as information that UCITS must provide and the way of submitting.

13. Confirmation by the UCITS

I hereby confirm that the documents attached to this notification letter contain all relevant information as provided for in the Capital Market Law no. 297/2004 with subsequent amendments and CNVM Instruction no. 5/2007. The text of the documents do not have any deletions or changes in comparison with the documents which have been provided to the home Member State authority.

14. Date and place(signature of the UCITS representative or of a third person empowered by written mandate to act on behalf of the notifying UCITS)

..... (name in full and the position of the UCITS representative or the third person empowered by written mandate to act on behalf of the notifying UCITS)

¹ If UCITS intend to market only certain category of units, they must indicate only those.

² The documents must be sent in the home Member State language and translated into at least one of the official languages of the host State, as provided for in article 6.