UCITS toolbox

update: May 2016

The UCITS toolbox contains a selection of European legislation regarding undertakings for collective investment as well as certain guidelines provided by ESMA. For your ease of reference, Arendt & Medernach has prepared and compiled the legal texts in the UCITS toolbox. The legally binding versions of European legislation are those published in the Official Journal of the European Union (OJ). In the same way, the legally binding versions of guidelines by ESMA are those published on the website of ESMA.

UCITS toolbox

The UCITS toolbox aims to provide reader-friendly access to the EU legislation mentioned below:

Level 1:

- Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (**Directive UCITS IV**) as amended by Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/61/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities as regards depositary functions, remuneration policies and sanctions (**Directive UCITS V**)

Level 2:

- Commission Delegated Regulation (EU) 2016/438 of 17 December 2015 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to obligations of depositaries (**Commission Delegated Regulation 2016/438**)

- Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company (**Commission Directive 2010/43**)

- Commission Directive 2010/42/EU of July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure (**Commission Directive 2010/42**)

- Commission Regulation (EU) No. 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website (**Commission Regulation 583/2010**)

- Commission Regulation (EU) No.584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities (**Commission Regulation 584/2010**)

Level 3:

- ESMA guidelines on sound remuneration policies under the UCITS Directive, 31 March 2016 (**ESMA/2016/411**)

- CESR's guide to clear language and layout for the Key Investor Information document, 20 December 2010 (**CESR/10-1320**)

- CESR's template for the Key Investor Information Document, 20 December 2010 (**CESR/10-1321**)

- CESR's guidelines on the methodology for calculation of the ongoing charges figure in the Key Investor Information Document, 1 July 2010 (**CESR/10-674**)

- CESR's guidelines on the methodology for the calculation of the synthetic risk and reward indicator in the Key Investor Information Document, 1 July 2010 (**CESR/10-673**)

How to use the toolbox

To highlight the amendments to Directive UCITS IV introduced by Directive UCITS V and to increase the readability of the consolidated UCITS Directive, references to the articles and recitals of Directive UCITS IV and the recitals of Directive UCITS V have been inserted under each relevant paragraph in a coloured box (dark blue for references to the UCITS Directive and light blue for the recitals of Directive UCITS V). To link the three levels and to increase their readability, references to the recitals of the UCITS Directive, the recitals and articles of the level 2 measures, as well as to level 3 documents have been added in a coloured box under each relevant paragraph, or under each relevant section heading, as the case may be, using the following colour code:

- light blue font = highlights amendments to Directive UCITS IV introduced by Directive UCITS V

- *dark blue box = references to the relevant recitals of Directive UCITS IV and articles to the consolidated UCITS Directive*

- *light blue box = recitals of Directive UCITS V (included for ease of reference)*

- *purple box = references to recitals and articles of level 2 measures*

- *green box = references to recitals and articles of level 3 measures*

To further ease your navigation throughout the document, links marked "⇧" were inserted to send you back to the origin of your research.

The UCITS toolbox will be updated regularly and will be available on our website.

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- Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (**UCITS IV**), as amended by Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/61/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities as regards depositary functions, remuneration policies and sanctions (**UCITS V**)

DIRECTIVE 2009/65/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 13 July 2009

on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)

(recast)

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 47(2) thereof,

Having regard to the proposal from the Commission,

Acting in accordance with the procedure laid down in Article 251 of the Treaty[1],

Whereas:

(1) Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)[2] has been substantially amended several times[3]. Since further amendments are to be made, it should be recast in the interests of clarity.

(2) Directive 85/611/EEC has largely contributed to the development and success of the European investment funds industry. However, despite the improvements introduced since its adoption, in particular in 2001, it has steadily become clear that changes need to be introduced into the UCITS legal framework in order to adapt it to the financial markets of the twenty-first century. The Commission Green Paper of 12 July 2005 on the enhancement of the EU framework for investment funds launched a public debate on the way in which Directive 85/611/EEC should be amended in order to meet those new challenges. That intense consultation process led to the largely shared conclusion that substantial amendments to that Directive are needed.

(3) National laws governing collective investment undertakings should be coordinated with a view to approximating the conditions of competition between those undertakings at Community level, while at the same time ensuring more effective and more uniform protection for unit-holders. Such coordination facilitates the removal of the restrictions on the free movement of units of UCITS in the Community.

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[1] Opinion of the European Parliament of 13 January 2009 (not yet published in the Official Journal) and Council Decision of 22 June 2009.

[2] OJ L 375, 31.12.1985, p. 3.

[3] See Annex III, Part A.

(4) Having regard to those objectives, it is desirable to provide for common basic rules for the authorisation, supervision, structure and activities of UCITS established in the Member States and the information that they are required to publish.

⇧ (Article 1 consolidated UCITS Directive) ⇧ (Article 27 consolidated UCITS Directive)

(5) The coordination of the laws of the Member States should be confined to UCITS other than of the closed-ended type that promote the sale of their units to the public in the Community. It is desirable that UCITS be permitted, as part of their investment objective, to invest in financial instruments, other than transferable securities, which are sufficiently liquid. The financial instruments which are eligible to be investment assets of the portfolio of the UCITS should be listed in this Directive. The selection of investments for a portfolio by means of an index is a management technique.

⇧ (Article 1 consolidated UCITS Directive) ⇧ (Article 3 consolidated UCITS Directive)

(6) Where a provision of this Directive requires that UCITS take action, that provision should be understood to refer to the management company in cases where the UCITS is constituted as a common fund managed by a management company and where a common fund is not in a position to act by itself because it has no legal personality of its own.

(7) Units of UCITS are considered to be financial instruments for the purposes of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments[1].

⇧ (Article 2(1) consolidated UCITS Directive)

(8) An authorisation granted to the management company in its home Member State should ensure investor protection and the solvency of management companies, with a view to contributing to the stability of the financial system. The approach adopted in this Directive is to ensure the essential harmonisation necessary and sufficient to secure the mutual recognition of authorisation and of prudential supervision systems, making possible the grant of a single authorisation valid throughout the Community and the application of the principle of home Member State supervision.

⇧ (Article 1 UCITS consolidated Directive) ⇧ (Article 6 consolidated UCITS Directive)

(9) In order to ensure that the management company will be able to fulfil the obligations arising from its activities and thus to ensure its stability, initial capital and an additional amount of own funds are required. To take account of developments, particularly those pertaining to capital charges on operational risk, within the Community and other international forums, those requirements, including the use of guarantees, should be reviewed.

⇧ (Article 7(1)(a) consolidated UCITS Directive)

(10) It is necessary, for the protection of investors, to guarantee the internal overview of every management company in particular by means of a two-person management system and by adequate internal control mechanisms.

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[1] OJ L 145, 30.4.2004, p. 1.

⇧ (Article 7 consolidated UCITS Directive) ⇧ (Article 12 consolidated UCITS Directive)

(11) By virtue of the principle of home Member State supervision, management companies authorised in their home Member States should be permitted to provide the services for which they have received authorisation throughout the Community by establishing branches or under the freedom to provide services.

⇧ (Article 6(1) consolidated UCITS Directive) ⇧ (Article 16(1) consolidated UCITS Directive)

(12) With regard to collective portfolio management (management of unit trusts/common funds or investment companies), the authorisation granted to a management company in its home Member State should permit the company to pursue in host Member States the following activities, without prejudice to Chapter XI: to distribute, through the establishment of a branch, the units of the harmonised unit trusts/common funds managed by that company in its home Member State; to distribute, through the establishment of a branch, the shares of the harmonised investment companies, managed by that company; to distribute the units of the harmonised unit trusts/common funds or shares of the harmonised investment companies managed by other management companies; to perform all the other functions and tasks included in the activity of collective portfolio management; to manage the assets of investment companies incorporated in Member States other than its home Member State; to perform, on the basis of mandates, on behalf of management companies incorporated in Member States other than its home Member State, the functions included in the activity of collective portfolio management. Where a management company distributes the units of its own harmonised unit trusts/common funds or shares of its own harmonised investment companies in host Member States, without the establishment of a branch, it should be subject only to rules regarding cross-border marketing.

⇧ (Article 6(2) consolidated UCITS Directive) ⇧ (Article 16(1) consolidated UCITS Directive) ⇧ (Article 17(3) consolidated UCITS Directive) ⇧ (Article 18(2) consolidated UCITS Directive) ⇧ (Article 19(1) consolidated UCITS Directive)

(13) With regard to the scope of activity of management companies and in order to take into account national law and permit such companies to achieve significant economies of scale, it is desirable to permit them also to pursue the activity of management of portfolios of investments on a client-by-client basis (individual portfolio management), including the management of pension funds as well as some specific non-core activities linked to the main business without prejudicing the stability of such companies. However, specific rules should be laid down in order to prevent conflicts of interest when management companies are authorised to pursue the business of both collective and individual portfolio management.

⇧ (Article 6(3) consolidated UCITS Directive) ⇧ (Article 12(2) consolidated UCITS Directive)

(14) The activity of management of individual portfolios of investments is an investment service covered by Directive 2004/39/EC. In order to ensure a homogeneous regulatory framework in this area, it is desirable to subject management companies, the authorisation of which also covers that service, to the operating conditions laid down in that Directive.

⇧ (Article 6(2) consolidated UCITS Directive) ⇧ (Article 6(3) consolidated UCITS Directive) ⇧ (Article 12(2) consolidated UCITS Directive)

(15) A home Member State should be able, as a general rule, to establish rules stricter than those laid down in this Directive, in particular as regards authorisation conditions, prudential requirements and the rules on reporting and the prospectus.

⇧ (Article 1(7) consolidated UCITS Directive) ⇧ (Article 69(4) consolidated UCITS Directive) ⇧ (Article 70(4) consolidated UCITS Directive)

(16) It is desirable to lay down rules defining the preconditions under which a management company may delegate, on the basis of mandates, specific tasks and functions to third parties so as to increase the efficiency of the conduct of its business. In order to ensure the correct functioning of the principle of the home Member State supervision, Member States permitting such delegations should ensure that the management company to which they granted authorisation does not delegate the totality of its functions to one or more third parties, so as to become a letter-box entity, and that the existence of mandates does not hinder an effective supervision over the management company. However, the fact that the management company has delegated its functions should not affect the liabilities of that company or of the depositary vis-à-vis the unit-holders and the competent authorities.

⇧ (Article 13(2) consolidated UCITS Directive)

(17) In order to ensure a level playing field and appropriate supervision in the long term, it should be possible for the Commission to examine the possibilities for harmonising delegation arrangements at Community level.

⇧ (Article 13(2) consolidated UCITS Directive)

(18) The principle of home Member State supervision requires that the competent authorities withdraw or refuse to grant authorisation where factors, such as the content of programmes of operations, the geographical distribution or the activities in fact pursued indicate clearly that a management company has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to pursue or does pursue the greater part of its activities. For the purposes of this Directive, a management company should be authorised in the Member State in which it has its registered office. In accordance with the principle of home Member State supervision, only the competent authorities of the management company's home Member State should be considered competent to supervise the organisation of the management company, including all procedures and resources to perform the function of administration referred to in Annex II, which should be subject to the law of the management company's home Member State.

⇧ (Article 7(1) consolidated UCITS Directive) ⇧ (Article 7(5) consolidated UCITS Directive) ⇧ (Article 17(3) consolidated UCITS Directive) ⇧ (Article 18(3) consolidated UCITS Directive)

(19) Where the UCITS is managed by a management company authorised in a Member State other than the UCITS home Member State, that management company should adopt and establish appropriate procedures and arrangements to deal with investor complaints, such as through appropriate provisions in distribution arrangements or through an address in the UCITS home Member State, which should not need to be an address of the management company itself. Such a management company should also establish appropriate procedures and arrangements to make information available at the request of the public or the competent authorities of the UCITS home Member State, such as through the designation of a contact person, from among the employees of the management company, to deal with requests for information. However, such a

management company should not be required by the law of the UCITS home Member State to have a local representative in that Member State in order to fulfil those duties.

⇧ (Article 5(3) consolidated UCITS Directive) ⇧ (Article 15 consolidated UCITS Directive)

(20) The competent authorities that authorise the UCITS should take into account the rules of the common fund or the instruments of incorporation of the investment company, the choice of the depositary and the ability of the management company to manage the UCITS. Where the management company is established in another Member State, the competent authorities should be able to rely on an attestation, issued by the competent authorities of the management company's home Member State, regarding the type of UCITS that the management company is authorised to manage. Authorisation of a UCITS should not be subject to an additional capital requirement at the level of the management company, the location of the management company's registered office in the UCITS home Member State, or the location of any activity of the management company in the UCITS home Member State.

⇧ (Article 5 consolidated UCITS Directive) ⇧ (Article 16(2) consolidated UCITS Directive) ⇧ (Article 17(3) consolidated UCITS Directive) ⇧ (Article 27 consolidated UCITS Directive)

(21) The competent authorities of the UCITS home Member State should be competent to supervise compliance with the rules regarding the constitution and functioning of the UCITS, which should be subject to the law of the UCITS home Member State. To this end, the competent authorities of the UCITS home Member State should be able to obtain information directly from the management company. In particular, the competent authorities of the management company's host Member State may require management companies to provide information on transactions concerning the investments of the UCITS authorised in that Member State, including information contained in books and records of those transactions and fund accounts. To remedy any breach of the rules under their responsibility, the competent authorities of the management company's host Member States should be able to rely on the cooperation of the competent authorities of the management company's home Member State and, if necessary, should be able to take action directly against the management company.

⇧ (Article 19(3) consolidated UCITS Directive) ⇧ (Article 27 consolidated UCITS Directive)

(22) It should be possible for the UCITS home Member State to provide for rules regarding the content of the unit-holder register of the UCITS. The organisation of the maintenance and the location of that register should, however, remain part of the organisational arrangements of the management company.

⇧ (Article 19(3) consolidated UCITS Directive)

(23) It is necessary to provide the UCITS home Member State with all means to remedy any breach in the rules of the UCITS. To that end, the competent authorities of the UCITS home Member State should be able to take preventive measures and adopt penalties as regards the management company. As a last resort, the competent authorities of the UCITS home Member State should have the possibility to require the management company to cease managing the UCITS. Member States should provide for the necessary provisions in order to arrange for an orderly management or liquidation of the UCITS in such a case.

⇧ (Article 21(4) consolidated UCITS Directive) ⇧ (Article 21(5) consolidated UCITS Directive) ⇧ (Article 98(2)(m) consolidated UCITS Directive) ⇧ (Article 108(1)(c) consolidated UCITS Directive) ⇧ (Article 108(3) consolidated UCITS Directive)

(24) In order to prevent supervisory arbitrage and promote confidence in the effectiveness of supervision by the home Member State's competent authorities, authorisation should be refused where a UCITS is prevented from marketing its units in its home Member State. Once authorised, UCITS should be free to choose the Member State(s) where its units are to be marketed, in accordance with this Directive.

⇧ (Article 5(5) consolidated UCITS Directive)

(25) To safeguard shareholders' interests and secure a level playing field in the market for harmonised collective investment undertakings, initial capital is required for investment companies. Investment companies which have designated a management company will, however, be covered through the management company's additional amount of own funds.

⇧ (Article 29(1) consolidated UCITS Directive)

(26) Where there are applicable rules on the conduct of business and the delegation of functions and where such delegation by a management company is allowed under the law of its home Member State, authorised investment companies should comply with such rules, mutatis mutandis, either directly, where they have not designated a management company authorised in accordance with this Directive, or indirectly, where they have designated such a management company.

⇧ (Article 29(1)(b) consolidated UCITS Directive)

(27) Despite the need for consolidation between UCITS, mergers of UCITS encounter many legal and administrative difficulties in the Community. It is therefore necessary, in order to improve the functioning of the internal market, to lay down Community provisions facilitating mergers between UCITS (and investment compartments thereof). Although some Member States are likely to authorise only contractual funds, cross-border mergers between all types of UCITS (contractual, corporate and unit trusts) should be permitted and recognised by each Member State without the need for Member States to provide for new legal forms of UCITS in their national law.

⇧ (Article 38(2) consolidated UCITS Directive)

(28) This Directive concerns those merger techniques which are most commonly used in Member States. It does not require all Member States to introduce all three techniques into their national law, but each Member State should recognise a transfer of assets resulting from those merger techniques. This Directive does not prevent UCITS from using other techniques on a purely national basis, in situations where none of the UCITS concerned by the merger has been notified for cross-border marketing of its units. Those mergers will remain subject to the relevant provisions of national law. National rules on quorum should neither discriminate between national and cross-border mergers, nor be more stringent than those laid down for mergers of corporate entities.

⇧ (Article 38(2) consolidated UCITS Directive) ⇧ (Article 44 consolidated UCITS Directive) ⇧ (Article 48(3) consolidated UCITS Directive)

(29) In order to safeguard investors' interests, Member States should require proposed domestic or cross-border mergers between UCITS to be subject to authorisation by

their competent authorities. For cross-border mergers, the competent authorities of the merging UCITS should authorise the merger so as to ensure that the interests of the unit-holders who effectively change UCITS are duly protected. If the merger involves more than one merging UCITS and such UCITS are domiciled in different Member States, the competent authorities of each merging UCITS will need to authorise the merger, in close cooperation with each other, including through appropriate information-sharing. Since the interests of the unit-holders of the receiving UCITS also need to be adequately safeguarded, they should be taken into account by the competent authorities of the receiving UCITS home Member State.

⇧ (Article 39(1) consolidated UCITS Directive) ⇧ (Article 39(4) consolidated UCITS Directive)

(30) Unit-holders of both the merging and the receiving UCITS should also be able to request the repurchase or redemption of their units or, where possible, to convert them into units in another UCITS with similar investment policies and managed by the same management company or by a linked company. That right should not be subject to any additional charge, save for fees, to be retained exclusively by the respective UCITS, to cover disinvestment costs in all situations, as set out in the prospectuses of the merging and the receiving UCITS.

⇧ (Article 45(1) consolidated UCITS Directive)

(31) Third-party control of mergers should also be ensured. The depositaries of each of the UCITS involved in the merger should verify the conformity of the common draft terms of the merger with the relevant provisions of this Directive and of the UCITS fund rules. Either a depositary or an independent auditor should draw-up a report on behalf of all the UCITS involved in the merger validating the valuation methods of the assets and liabilities of such UCITS and the calculation method of the exchange ratio as set out in the common draft terms of merger as well as the actual exchange ratio and, where applicable, the cash payment per unit. In order to limit costs connected with cross-border mergers, it should be possible to draw up a single report for all UCITS involved and the statutory auditor of the merging or the receiving UCITS should be enabled to do so. For investor protection reasons, unit-holders should be able to obtain a copy of such report on request and free of charge.

⇧ (Article 39(2) consolidated UCITS Directive) ⇧ (Article 40(2) consolidated UCITS Directive) ⇧ (Article 41 consolidated UCITS Directive) ⇧ (Article 42(3) consolidated UCITS Directive)

(32) It is particularly important that the unit-holders are adequately informed about the proposed merger and that their rights are sufficiently protected. Although the interests of the unit-holders of the merging UCITS are most concerned by the merger, those of the unit-holders of the receiving UCITS should also be safeguarded.

⇧ (Article 39(2) consolidated UCITS Directive) ⇧ (Article 43(3) consolidated UCITS Directive)

(33) The provisions on mergers laid down in this Directive are without prejudice to the application of the legislation on control of concentrations between undertakings, in

particular Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (the EC Merger Regulation)[1].

⇧ (Articles 37 ff. consolidated UCITS Directive)

(34) The free marketing of the units issued by UCITS authorised to invest up to 100 % of their assets in transferable securities issued by the same body (State, local authority, etc.) should not have the direct or indirect effect of disturbing the functioning of the capital market or the financing of the Member States.

⇧ (Article 54 consolidated UCITS Directive)

(35) The definition of transferable securities included in this Directive applies only for the purposes of this Directive and does not affect the various definitions used in national legislation for other purposes such as taxation. Consequently, shares and other securities equivalent to shares issued by bodies such as building societies and industrial and provident societies, the ownership of which cannot, in practice, be transferred except by the issuing body buying them back, are not covered by this definition.

⇧ (Article 2(1) consolidated UCITS Directive) ⇧ (Article 50(1)(a) consolidated UCITS Directive) ⇧ (Article 50(1)(b) consolidated UCITS Directive) ⇧ (Article 50(1)(c) consolidated UCITS Directive) ⇧ (Article 50(1)(d)(ii) consolidated UCITS Directive)

(36) Money market instruments comprise transferable instruments which are normally dealt in on the money market rather than on the regulated markets, for example treasury and local authority bills, certificates of deposit, commercial papers, medium-term notes and bankers' acceptances.

⇧ (Article 2 consolidated UCITS Directive) ⇧ (Article 50(1)(b) consolidated UCITS Directive) ⇧ (Article 50(1)(c) consolidated UCITS Directive) ⇧ (Article 50(1)(h)(iv) consolidated UCITS Directive)

(37) The concept of regulated market in this Directive corresponds to that in Directive 2004/39/EC.

⇧ (Article 50(1)(a) consolidated UCITS Directive)

(38) It is desirable to permit a UCITS to invest its assets in units of UCITS and other collective investment undertakings of the open-ended type which also invest in liquid financial assets referred to in this Directive and which operate on the principle of risk spreading. It is necessary that UCITS or other collective investment undertakings in which a UCITS invests be subject to effective supervision.

⇧ (Article 3(d) consolidated UCITS Directive) ⇧ (Article 50(1)(e)(iv) consolidated UCITS Directive) ⇧ (Article 55(3) consolidated UCITS Directive)

(39) The development of opportunities for a UCITS to invest in UCITS and in other collective investments undertakings should be facilitated. It is therefore essential to ensure that such investment activity does not diminish investor protection. Because of the enhanced possibilities for UCITS to invest in the units of other UCITS and collective

[1] OJ L 24, 29.1.2004, p. 1.

investment undertakings, it is necessary to lay down certain rules on quantitative limits, the disclosure of information and prevention of the cascade phenomenon.

⇧ (Article 50(1)(e)(iv) consolidated UCITS Directive) ⇧ (Article 55(3) consolidated UCITS Directive)

(40) In order to take into account market developments and in consideration of the completion of economic and monetary union it is desirable to permit UCITS to invest in bank deposits. To ensure adequate liquidity of investments in deposits, those deposits should be repayable on demand or have the right to be withdrawn. If the deposits are made with a credit institution the registered office of which is located in a third country, the credit institution should be subject to prudential rules equivalent to those laid down in Community law.

⇧ (Article 50(1)(f) consolidated UCITS Directive)

(41) In addition to the case in which a UCITS invests in bank deposits in accordance with its fund rules or instruments of incorporation, it should be possible to allow all UCITS to hold ancillary liquid assets, such as bank deposits at sight. The holding of such ancillary liquid assets may be justified, inter alia, in order to cover current or exceptional payments; in the case of sales, for the time necessary to reinvest in transferable securities, money market instruments or in other financial assets provided for in this Directive; or for a period of time strictly necessary when, because of unfavourable market conditions, the investment in transferable securities, money market instruments and in other financial assets is suspended.

⇧ (Article 50(1)(f) consolidated UCITS Directive) ⇧ (Article 50(2)(b) consolidated UCITS Directive) ⇧ (Article 84(2) consolidated UCITS Directive)

(42) For prudential reasons it is necessary to avoid excessive concentration by a UCITS in investments which expose it to counterparty risk to the same entity or to entities belonging to the same group.

⇧ (Article 52(3) consolidated UCITS Directive) ⇧ (Article 54(3) consolidated UCITS Directive) ⇧ (Article 55(3) consolidated UCITS Directive) ⇧ (Article 56(3) consolidated UCITS Directive)

(43) UCITS should be expressly permitted, as part of their general investment policy or for hedging purposes in order to reach a set financial target or the risk profile indicated in the prospectus, to invest in financial derivative instruments. In order to ensure investor protection, it is necessary to limit the maximum potential exposure relating to derivative instruments so that it does not exceed the total net value of the UCITS' portfolio. In order to ensure constant awareness of the risks and commitments arising from derivative transactions and to check compliance with investment limits, those risks and commitments should be measured and monitored on an ongoing basis. Finally, in order to ensure investor protection through disclosure, UCITS should describe their strategies, techniques and investment limits governing their derivative operations.

⇧ (article 50(1)(g)(iii) consolidated UCITS Directive) ⇧ (Article 51(3) consolidated UCITS Directive)

(44) It is necessary for measures to address the potential misalignment of interests in products where credit risk is transferred by securitisation, as envisaged with regard to Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions[1] and Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions[2], to be consistent and coherent in all relevant financial sector regulation. The Commission will put forward the appropriate legislative proposals, including as regards this Directive, to ensure such consistency and coherence, after duly considering the impact of such proposals.

(45) With regard to over-the-counter (OTC) derivatives, requirements should be set in terms of the eligibility of counterparties and instruments, liquidity and ongoing assessment of the position. The purpose of such requirements is to ensure an adequate level of investor protection, close to that which they obtain when they acquire derivatives dealt in on regulated markets.

⇧ (Article 50(1)(g)(iii) consolidated UCITS Directive) ⇧ (Article 51(1) consolidated UCITS Directive)

(46) Operations in derivatives should never be used to circumvent the principles or rules set out in this Directive. With regard to OTC derivatives, additional risk-spreading rules should apply to exposures to a single counterparty or group of counterparties.

⇧ (Article 50(1)(g)(iii) consolidated UCITS Directive) ⇧ (Article 51(1) consolidated UCITS Directive)

(47) Some portfolio management techniques for collective investment undertakings investing primarily in shares or debt securities are based on the replication of stock indices or debt-security indices. It is desirable to permit UCITS to replicate well-known and recognised stock indices or debt-security indices. It may therefore be necessary to introduce more flexible risk-spreading rules for UCITS investing in shares or debt securities to this end.

⇧ (Article 53(2) consolidated UCITS Directive)

(48) Collective investment undertakings falling within the scope of this Directive should not be used for purposes other than the collective investment of the capital raised from the public according to the rules laid down in this Directive. In the cases identified by this Directive, it should be possible for a UCITS to have subsidiaries only when necessary to pursue effectively, on its own behalf, certain activities, also defined in this Directive. It is necessary to ensure effective supervision of UCITS. The establishment of a subsidiary of a UCITS in a third country should therefore be permitted only in the cases identified and in accordance with the conditions laid down in this Directive. The general obligation to act solely in the interests of unit-holders and, in particular, the objective of increasing cost efficiencies, never justify a UCITS undertaking measures that could hinder the competent authorities from effectively exercising their supervisory functions.

⇧ (Article 56(3)(e) consolidated UCITS Directive)

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[1] OJ L 177, 30.6.2006, p. 1.

[2] OJ L 177, 30.6.2006, p. 201.

(49) The original version of Directive 85/611/EEC contained a derogation from the restriction on the percentage of its assets that a UCITS can invest in transferable securities issued by the same body, which applied in the case of bonds issued or guaranteed by a Member State. That derogation allowed UCITS to invest, in particular, up to 35 % of their assets in such bonds. A similar but more limited derogation is justified with regard to private sector bonds which, even in the absence of a State guarantee, offer special guarantees to the investor under the specific rules applicable thereto. It is necessary, therefore, to extend the derogation to the totality of private sector bonds which fulfil jointly fixed criteria, while leaving it to the Member States to draw up the list of bonds to which they intend, where appropriate, to grant a derogation.

⇧ (Article 52(4) consolidated UCITS Directive)

(50) Several Member States have enacted provisions that enable non-coordinated collective investment undertakings to pool their assets in one so-called master fund. In order to allow UCITS to make use of those structures, it is necessary to exempt feeder UCITS wishing to pool their assets in a master UCITS from the prohibition to invest more than 10 % of their assets or, as the case may be, 20 % of their assets in a single collective investment undertaking. Such an exemption is justified as the feeder UCITS invests all or almost all of its assets into the diversified portfolio of the master UCITS, which itself is subject to UCITS diversification rules.

⇧ (Article 58(1) consolidated UCITS Directive)

(51) In order to facilitate the effective operation of the internal market and to ensure the same level of investor protection throughout the Community, master-feeder structures should be allowed both where the master and the feeder are established in the same Member State and where they are established in different Member States. In order to allow investors better to understand master-feeder-structures and regulators to supervise them more easily, notably in a cross-border situation, no feeder UCITS should be able to invest into more than one master. In order to ensure the same level of investor protection throughout the Community the master should itself be an authorised UCITS. In order to avoid an undue administrative burden, provisions on notification of cross-border marketing should not apply if a master UCITS does not raise capital from the public in a Member State other than that in which it is established, but has only one or more feeder UCITS in that other Member State.

(52) In order to protect the feeder UCITS' investors, the feeder UCITS' investment into the master UCITS should be subject to prior approval by the competent authorities of the feeder UCITS home Member State. Only the initial investment into the master UCITS, by which the feeder UCITS exceeds the limit applicable for investing into another UCITS, requires approval. In order to facilitate the effective operation of the internal market and to ensure the same level of investor protection throughout the Community, the conditions which must be met and the documents and information which are to be provided for approving the feeder UCITS' investment into the master UCITS should be exhaustive.

⇧ (Article 59(3) consolidated UCITS Directive)

(53) In order to allow the feeder UCITS to act in the best interests of its unit-holders and notably place it in a position to obtain from the master UCITS all information and documents necessary to perform its obligations, the feeder and the master UCITS should enter into a binding and enforceable agreement. If both feeder and master UCITS are managed by the same management company, however, it should be sufficient that the latter establish internal conduct of business rules. Information-sharing

agreements between the depositaries or the auditors respectively of the feeder UCITS and the master UCITS should ensure the flow of information and documents that is needed for the feeder UCITS' depositary or auditor to fulfil its duties. This Directive should ensure that, when complying with those requirements, the depositaries or the auditors are not to be found in breach of any restriction on disclosure of information or of data protection.

⇧ (Article 60(1) consolidated UCITS Directive) ⇧ (Article 62(3) consolidated UCITS Directive) ⇧ (Article 65(1) consolidated UCITS Directive) ⇧ (Articles 24 ff. Commission Directive 2010/42) ⇧ (Articles 27 ff. Commission Directive 2010/42)

(54) In order to ensure a high level of protection of the interests of the feeder UCITS' investors, the prospectus, the key investor information, as well as all marketing communications should be adapted to the specificities of master-feeder structures. The investment of the feeder UCITS into the master UCITS should not affect the ability of the feeder UCITS itself either to repurchase or redeem units at the request of its unit-holders or to act in the best interests of its unit-holders.

⇧ (Article 63 consolidated UCITS Directive)

(55) Under this Directive, unit-holders should be protected from being charged unjustified additional costs by a prohibition against master UCITS charging feeder UCITS subscription and redemption fees. The master UCITS should, however, be able to charge subscription or redemption fees to other investors in the master UCITS.

⇧ (Article 65(2) consolidated UCITS Directive) ⇧ (Article 66(2) consolidated UCITS Directive)

(56) The conversion rules should enable an existing UCITS to convert into a feeder UCITS. At the same time they should sufficiently protect unit-holders. As conversion is a fundamental change of the investment policy, the converting UCITS should be required to provide its unit-holders with sufficient information in order to enable them to decide whether to maintain their investment. The competent authorities should not require the feeder UCITS to provide more or information other than that specified in this Directive.

⇧ (Article 64(3) consolidated UCITS Directive)

(57) Where the competent authorities of the master UCITS home Member State are informed of an irregularity with regard to the master UCITS or detect that the master UCITS does not comply with the provisions of this Directive, they may decide, where appropriate, to take relevant action to ensure that unit-holders of the master UCITS are informed accordingly.

⇧ (Article 67(2) consolidated UCITS Directive)

(58) Member States should make a clear distinction between marketing communications and obligatory investor disclosures provided for under this Directive. Obligatory investor disclosure includes key investor information, the prospectus and annual and half-yearly reports.

⇧ (Article 68(2)(b) consolidated UCITS Directive) ⇧ (Article 78(1) consolidated UCITS Directive)

(59) Key investor information should be provided as a specific document to investors, free of charge, in good time before the subscription of the UCITS, in order to help them to reach informed investment decisions. Such key investor information should contain

only the essential elements for making such decisions. The nature of the information to be found in the key investor information should be fully harmonised so as to ensure adequate investor protection and comparability. Key investor information should be presented in a short format. A single document of limited length presenting the information in a specified sequence is the most appropriate manner in which to achieve the clarity and simplicity of presentation that is required by retail investors, and should allow for useful comparisons, notably of costs and risk profile, relevant to the investment decision.

⇧ (Article 78(5) consolidated UCITS Directive) ⇧ (Article 79(2) consolidated UCITS Directive) ⇧ (Article 80(3) consolidated UCITS Directive)

(60) The competent authorities of each Member State may make available to the public, in a dedicated section of their website, key investor information concerning all UCITS authorised in that Member State.

⇧ (Article 82 UCITS consolidated Directive)

(61) Key investor information should be produced for all UCITS. Management companies or, where applicable, investment companies should provide key investor information to the relevant entities, in accordance with the distribution method used (direct sales or intermediated sales). Intermediaries should provide key investor information to clients and potential clients.

⇧ (Article 80(2) consolidated UCITS Directive)

(62) UCITS should be able to market their units in other Member States subject to a notification procedure based on improved communication between the competent authorities of the Member States. Following transmission of a complete notification file by the competent authorities of the UCITS home Member State, it should not be possible for the UCITS host Member State to oppose access to its market by a UCITS established in another Member State or challenge the authorisation given by that other Member State.

⇧ (Article 91(2) consolidated UCITS Directive) ⇧ (Article 93(1) consolidated UCITS Directive) ⇧ (Article 93(3) consolidated UCITS Directive) ⇧ (Article 93(5) consolidated UCITS Directive) ⇧ (Article 93(6) consolidated UCITS Directive) ⇧ (Article 94(3) consolidated UCITS Directive)

(63) UCITS should be able to market their units subject to their taking the necessary measures to ensure that facilities are available for making payments to unit-holders, repurchasing or redeeming units and making available the information which UCITS are required to provide.

⇧ (Article 84(1) consolidated UCITS Directive) ⇧ (Article 92 consolidated UCITS Directive) ⇧ (Article 94(2) consolidated UCITS Directive)

(64) In order to facilitate cross-border marketing of units of UCITS, control of compliance of arrangements made for marketing of units of UCITS with laws, regulations and administrative procedures applicable in the UCITS host Member State, should be performed after the UCITS has accessed the market of that Member State. That control could cover the adequacy of arrangements made for marketing, in particular the adequacy of distribution arrangements and the obligation for marketing communications to be presented in a manner that is fair, clear and not misleading. This Directive should not prevent the competent authorities of the host Member State from verifying that marketing communications, not including key investor information, the

prospectus and annual and half-yearly reports, comply with national law before the UCITS can use them, subject to such control being non-discriminatory and not preventing that UCITS from accessing the market.

⇧ (Article 77 consolidated UCITS Directive) ⇧ (Article 93(3) consolidated UCITS Directive)

(65) For the purpose of enhancing legal certainty there is a need to ensure that a UCITS which markets its units on a cross-border basis has easy access, in the form of an electronic publication and in a language customary in the sphere of international finance, to complete information on the laws, regulations and administrative provisions applicable in the UCITS host Member State, which specifically relate to the arrangements made for marketing of units of UCITS. Liabilities relating to such publications should be subject to national law.

⇧ (Article 91(3) consolidated UCITS Directive)

(66) To facilitate access of UCITS to the markets of other Member States, the UCITS should be required to translate only the key investor information into the official language or one of the official languages of a UCITS host Member State or a language approved by its competent authorities. Key investor information should specify the language(s) in which other obligatory disclosure documents and additional information are available. Translations should be produced under the responsibility of the UCITS, which should decide whether a simple or a sworn translation is necessary.

⇧ (Article 78(6) consolidated UCITS Directive)

(67) To facilitate the access to the markets of other Member States, it is important that notification fees are disclosed.

(68) Member States should take the necessary administrative and organisational measures to enable cooperation between national authorities and competent authorities of other Member States, including through bilateral or multilateral agreements between those authorities, which could provide for the voluntary delegation of tasks.

⇧ (Article 102(3) consolidated UCITS Directive)

(69) It is necessary to enhance convergence of powers at the disposal of competent authorities so as to bring about the equal enforcement of this Directive throughout the Member States. A common minimum set of powers, consistent with those conferred upon competent authorities by other Community financial services legislation should guarantee supervisory effectiveness. In addition, Member States should lay down rules on penalties, which may include criminal or administrative penalties, and administrative measures, applicable to infringements of this Directive. Member States should also take the measures necessary to ensure that those penalties are enforced.

⇧ (Article 21(4) consolidated UCITS Directive) ⇧ (Article 98(1)(d) consolidated UCITS Directive) ⇧ (Article 99(7) consolidated UCITS Directive)

(70) It is necessary to reinforce provisions on exchange of information between national competent authorities and to strengthen the duties of assistance and cooperation between them.

⇧ (Article 17(3) consolidated UCITS Directive) ⇧ (Article 18(2) consolidated UCITS Directive) ⇧ (Article 20(2) consolidated UCITS Directive) ⇧ (Article 21(4) consolidated UCITS Directive) ⇧ (Article 74 consolidated UCITS Directive) ⇧ (Article 98(1)(d)

consolidated UCITS Directive) ⇧ (Article 99(2) consolidated UCITS Directive) ⇧ (Article 99c(2) consolidated UCITS Directive) ⇧ (Article 101(2) consolidated UCITS Directive) ⇧ (Article 101(5) consolidated UCITS Directive) ⇧ (Article 108(2) consolidated UCITS Directive) ⇧ (Article 109(4) consolidated UCITS Directive)

(71) For the purpose of cross-border provision of services, clear competences should be assigned to the respective competent authorities so as to eliminate any gaps or overlaps, in accordance with the applicable law.

⇧ (Article 17(3) UCITS Directive) ⇧ (Article 18(2) consolidated UCITS Directive) ⇧ (Article 93(5) consolidated UCITS Directive) ⇧ (Article 97(3) consolidated UCITS Directive) ⇧ (Article 108(1)(c) consolidated UCITS Directive)

(72) The provisions in this Directive relating to the competent authorities' effective exercise of their supervisory functions covers supervision on a consolidated basis which must be exercised over a UCITS or an undertaking contributing towards its business activity where the provisions of Community law so provide. In such cases, the authorities applied to for authorisation must be able to identify the authorities competent to exercise supervision on a consolidated basis over that UCITS or an undertaking contributing towards its business activity.

⇧ (Article 21(4) consolidated UCITS Directive)

(73) The principle of home Member State supervision requires that the competent authorities withdraw or refuse to grant authorisation where factors such as the content of programmes of operations, the geographical distribution or the activities actually pursued indicate clearly that a UCITS or an undertaking contributing towards its business activity has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within whose territory it pursues or intends to pursue the greater part of its activities.

⇧ (Article 7(5) consolidated UCITS Directive)

(74) Certain behaviour, such as fraud or insider offences, is liable to affect the stability, including integrity, of the financial system, even when involving undertakings other than UCITS or undertakings contributing towards their business activity.

⇧ (Article 103(4) consolidated UCITS Directive)

(75) It is appropriate to provide for the possibility of exchanges of information between the competent authorities and authorities or bodies which, by virtue of their function, help to strengthen the stability of the financial system. In order to preserve the confidential nature of the information forwarded, however, the addressees of such exchanges should remain within strict limits.

⇧ (Article 101(1) consolidated UCITS Directive) ⇧ (Article 102(5)(a) consolidated UCITS Directive) ⇧ (Article 103(4) consolidated UCITS Directive)

(76) It is necessary to specify the conditions under which such exchanges of information are authorised.

⇧ (Article 17(3) consolidated UCITS Directive) ⇧ (Article 18(2) consolidated UCITS Directive) ⇧ (Article 103(6) consolidated UCITS Directive)

(77) Where it is stipulated that information may be disclosed only with the express agreement of the competent authorities, these may, where appropriate, make their agreement subject to compliance with strict conditions.

⇧ (Article 102(2) consolidated UCITS Directive)

(78) Exchanges of information between the competent authorities on the one hand and central banks, bodies with a function similar to central banks, in their capacity as monetary authorities, or, where appropriate, other public authorities responsible for supervising payment systems on the other, should also be authorised.

⇧ (Article 104(2) consolidated UCITS Directive)

(79) The same obligation of professional secrecy on the authorities responsible for authorising and supervising UCITS and the undertakings contributing towards such authorising and supervising and the same possibilities for exchanging information as those granted to the authorities responsible for authorising and supervising credit institutions, investment firms and insurance undertakings, should be included in this Directive.

⇧ (Article 102(1) consolidated UCITS Directive) ⇧ (Article 104(3) consolidated UCITS Directive)

(80) For the purpose of strengthening the prudential supervision of UCITS or of undertakings contributing towards their business activity and protection of clients of UCITS or of undertakings contributing towards their business activity, auditors should have a duty to report promptly to the competent authorities, wherever, as provided for by this Directive, they become aware, while carrying out their tasks, of facts which are likely to have a serious effect on the financial situation or the administrative and accounting organisation of a UCITS, or an undertaking contributing towards its business activity.

⇧ (Article 106(1) consolidated UCITS Directive)

(81) Having regard to the aim in this Directive, it is desirable for Member States to provide that such a duty should apply in all circumstances where such facts are discovered by an auditor during the performance of his tasks in an undertaking which has close links with a UCITS or an undertaking which contributes towards its business activity.

(82) The duty of auditors to communicate, where appropriate, to the competent authorities certain facts and decisions concerning a UCITS or an undertaking contributing towards its business activity which they discover during the performance of their tasks in an entity which is neither a UCITS nor an undertaking contributing towards the business activity of a UCITS does not, alone, change the nature of their tasks in that entity nor the manner in which they must perform those tasks in that entity.

⇧ (Article 102(1) consolidated UCITS Directive) ⇧ (Article 106(1)(c) consolidated UCITS Directive)

(83) This Directive should not affect national rules on taxation, including arrangements that may be imposed by Member States to ensure compliance with those rules in their territory.

(84) The measures necessary for the implementation of this Directive should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[1].

(85) In particular, the Commission should be empowered to adopt the following implementing measures. As regards management companies, the Commission should be empowered to adopt measures specifying the details of organisational requirements, risk management, conflicts of interest and rules of conduct. As regards depositaries, the Commission should be empowered to adopt measures specifying the measures to be taken by depositaries in order to fulfil their duties in regard to UCITS managed by a management company, established in a Member State other than the UCITS home Member State and the particulars of the agreement between the depositary and the management company. Those implementing measures should facilitate a uniform application of the obligations of management companies and depositaries but should not be a precondition for implementing the right of management companies to pursue the activities for which they have been authorised in their home Member State throughout the Community by establishing branches or under the freedom to provide services including the management of UCITS in another Member State.

⇧ (Article 7(6) consolidated UCITS Directive) ⇧ (Article 12(3) consolidated UCITS Directive) ⇧ (Article 14 consolidated UCITS Directive) ⇧ (Article 26b consolidated UCITS Directive)

(86) As regards mergers, the Commission should be empowered to adopt measures designed to specify detailed content, format and way to provide information to unit-holders.

⇧ (Article 43(5) consolidated UCITS Directive)

(87) As regards master-feeder structures, the Commission should be empowered to adopt measures designed to specify the content of the agreement between master and feeder UCITS or of the internal conduct of business rules, the content of the information-sharing agreement between either their depositaries or their auditors, the definition of measures appropriate to coordinate the timing of their net asset value calculation and publication in order to avoid market timing, the impact of the merger of the master on the authorisation of the feeder, the type of irregularities originating from the master to be reported to the feeder, the format and the way to provide information to unit-holders in case of conversion from a UCITS to a feeder UCITS, the procedure for valuing and auditing the transfer of assets from a feeder to a master, and the role of the depositary of the feeder in this process.

⇧ (Article 61(3)(b) consolidated UCITS Directive) ⇧ (Article 62(4) consolidated UCITS Directive) ⇧ (Article 64(4)(b) consolidated UCITS Directive)

(88) As regards the provisions on disclosure, the Commission should be empowered to adopt measures designed to specify the specific conditions to be met when the prospectus is provided in a durable medium other than paper or by means of a website which does not constitute a durable medium, the detailed and exhaustive content, form and presentation of the key investor information taking into account the different nature

[1] OJ L 184, 17.7.1999, p. 23.

or components of the UCITS concerned, and the specific conditions for providing key investor information in a durable medium other than paper or by means of a website which does not constitute a durable medium.

⇧ (Article 69(5) consolidated UCITS Directive) ⇧ (Article 75(4) consolidated UCITS Directive) ⇧ (Article 78(7)(c) consolidated UCITS Directive) ⇧ (Article 81(2) consolidated UCITS Directive)

(89) As regards notification, the Commission should be empowered to adopt measures designed to specify the scope of the information on the applicable local rules to be published by host Member State competent authorities and the technical details on access by host Member State competent authorities to stored and updated UCITS documents.

⇧ (Article 95(1) consolidated UCITS Directive)

(90) The Commission should also be empowered, inter alia, to clarify definitions and align terminology and framing definitions in accordance with subsequent acts on UCITS and related matters.

(91) Since the measures referred to in Recitals 85 to 90 are of general scope and are designed to amend non-essential elements of this Directive, by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

⇧ (Article 7(6) consolidated UCITS Directive)

(92) Since the objectives of this Directive cannot be sufficiently achieved by the Member States in so far as they involve the adoption of rules with common features applicable at Community level and can therefore, by reason of the scale and effects of those rules, be better achieved at Community level, the Community may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary to achieve those objectives.

(93) The obligation to transpose this Directive into national law should be confined to those provisions that represent a substantive change as compared with the directives that it recasts. The obligation to transpose the provisions which are unchanged arises under the earlier directives.

(94) This Directive should be without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and application of the Directives set out in Annex III, Part B.

⇧ (Article 117 consolidated UCITS Directive)

(95) In accordance with point 34 of the Interinstitutional Agreement on better law-making[1], Member States are encouraged to draw up, for themselves and in the interest of the Community, their own tables illustrating, as far as possible, the correlation between this Directive and the transposition measures, and to make them public,

[1] OJ C 321, 31.12.2003, p. 1.

HAVE ADOPTED THIS DIRECTIVE:

[Content]

CHAPTER I
SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

1. This Directive applies to undertakings for collective investment in transferable securities (UCITS) established within the territories of the Member States.

- *Recital 4 of UCITS IV – p. 4*

2. For the purposes of this Directive, and subject to Article 3, UCITS means an undertaking:

   (a) with the sole object of collective investment in transferable securities or in other liquid financial assets referred to in Article 50(1) of capital raised from the public and which operate on the principle of risk-spreading; and

- *Recital 5 of UCITS IV – p. 4*

   (b) with units which are, at the request of holders, repurchased or redeemed, directly or indirectly, out of those undertakings' assets. Action taken by a UCITS to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or redemption.

   Member States may allow UCITS to consist of several investment compartments.

3. The undertakings referred to in paragraph 2 may be constituted in accordance with contract law (as common funds managed by management companies), trust law (as unit trusts), or statute (as investment companies).

   For the purposes of this Directive:

   (a) 'common funds' shall also include unit trusts;

   (c) 'units' of UCITS shall also include shares of UCITS.

4. Investment companies, the assets of which are invested through the intermediary of subsidiary companies, mainly other than in transferable securities, shall not be subject to this Directive.

5. The Member States shall prohibit UCITS which are subject to this Directive from transforming themselves into collective investment undertakings which are not covered by this Directive.

6. Subject to the provisions in Community law governing capital movements and subject to Articles 91 and 92 and the second subparagraph of Article 108(1), no Member State shall apply any other provisions in the field covered by this Directive to UCITS established in another Member State or to the units issued by such UCITS, where those UCITS market their units within the territory of that Member State.

7. Without prejudice to this Chapter, a Member State may apply to UCITS established within its territory requirements which are stricter than or additional to those laid down in this Directive, provided that they are of general application and do not conflict with the provisions of this Directive.

- *Recitals 8 and 15 of UCITS IV – p. 4 and p. 6*

Article 2

1. For the purposes of this Directive the following definitions apply:

   (a) 'depositary' means an institution entrusted with the duties set out in Articles 22 and 32 and subject to the other provisions laid down in Chapter IV and Section 3 of Chapter V;

   (b) 'management company' means a company, the regular business of which is the management of UCITS in the form of common funds or of investment companies (collective portfolio management of UCITS);

   (c) 'management company's home Member State' means the Member State in which the management company has its registered office;

   (d) 'management company's host Member State' means a Member State, other than the home Member State, within the territory of which a management company has a branch or provides services;

   (e) 'UCITS home Member State' means the Member State in which the UCITS is authorised pursuant to Article 5;

   (f) 'UCITS host Member State' means a Member State, other than the UCITS home Member State, in which the units of the UCITS are marketed;

   (g) 'branch' means a place of business which is a part of the management company, which has no legal personality and which provides the services for which the management company has been authorised;

   (h) 'competent authorities' means the authorities which each Member State designates under Article 97;

   (i) 'close links' means a situation in which two or more natural or legal persons are linked by either:

(i) ‘participation’, which means the ownership, direct or by way of control, of 20 % or more of the voting rights or capital of an undertaking; or

(ii) ‘control’, which means the relationship between a ‘parent undertaking’ and a ‘subsidiary’, as defined in Articles 1 and 2 of Seventh Council Directive 83/349/EEC of 13 June 1983 based on the Article 54(3)(g) of the Treaty on consolidated accounts[1] and in all the cases referred to in Article 1(1) and (2) of Directive 83/349/EEC, or a similar relationship between any natural or legal person and an undertaking;

(j) ‘qualifying holding’ means a direct or indirect holding in a management company which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the management company in which that holding subsists;

(k) ‘initial capital’ means the funds as referred to in Article 57(a) and (b) of Directive 2006/48/EC;

(l) ‘own funds’ means own funds as referred to in Title V, Chapter 2, Section 1 of Directive 2006/48/EC;

(m) ‘durable medium’ means an instrument which enables an investor to store information addressed personally to that investor in a way that is accessible for future reference for a period of time adequate for the purposes of the information and which allows the unchanged reproduction of the information stored;

- *Recital 35 of UCITS IV – p. 10*

(n) ‘transferable securities’ means:

(i) shares in companies and other securities equivalent to shares in companies (shares);

(ii) bonds and other forms of securitised debt (debt securities);

(iii) any other negotiable securities which carry the right to acquire any such transferable securities by subscription or exchange;

(o) ‘money market instruments’ means instruments normally dealt in on the money market which are liquid and have a value which can be accurately determined at any time;

- *Recital 36 of UCITS IV – p. 10*

(p) ‘mergers’ means an operation whereby:

(i) one or more UCITS or investment compartments thereof, the ‘merging UCITS’, on being dissolved without going into liquidation, transfer all of their assets and liabilities to another existing UCITS or an investment

[1] OJ L 193, 18.7.1983, p. 1.

compartment thereof, the 'receiving UCITS', in exchange for the issue to their unit-holders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10 % of the net asset value of those units;

(ii) two or more UCITS or investment compartments thereof, the 'merging UCITS', on being dissolved without going into liquidation, transfer all of their assets and liabilities to a UCITS which they form or an investment compartment thereof, the 'receiving UCITS', in exchange for the issue to their unit-holders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10 % of the net asset value of those units;

(iii) one or more UCITS or investment compartments thereof, the 'merging UCITS', which continue to exist until the liabilities have been discharged, transfer their net assets to another investment compartment of the same UCITS, to a UCITS which they form or to another existing UCITS or an investment compartment thereof, the 'receiving UCITS';

(q) 'cross-border merger' means a merger of UCITS:

(i) at least two of which are established in different Member States; or

(ii) established in the same Member State into a newly constituted UCITS established in another Member State;

(r) 'domestic merger' means a merger between UCITS established in the same Member State where at least one of the involved UCITS has been notified pursuant to Article 93;

(Article 1(1) of UCITS V)

(s) 'management body' means the body with ultimate decision-making authority in a management company, investment company or depositary, comprising the supervisory and the managerial functions, or only the managerial function if the two functions are separated. Where, according to national law, the management company, investment company or depositary has in place different bodies with specific functions, the requirements laid down in this Directive directed at the management body or at the management body in its supervisory function shall also, or shall instead, apply to those members of other bodies of the management company, investment company or depositary to whom the applicable national law assigns the respective responsibility;

- Recital 4 of UCITS V: *While some actions are to be taken by the management body, it should be ensured that where, according to national law, the management company or investment company has in place different bodies with specific functions assigned, the requirements directed at the management body or at the management body in its supervisory function should also, or should instead, apply to those bodies, such as the General Meeting.*

(t) 'financial instrument' means a financial instrument specified in Section C of Annex I to Directive 2014/65/EU of the European Parliament and of the Council[1].

[1] Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

▪ *Recital 7 of UCITS IV – p. 4*

2. For the purposes of paragraph 1(b), the regular business of a management company shall include the functions referred to in Annex II.

3. For the purposes of paragraph 1(g), all the places of business established in the same Member State by a management company with its head office in another Member State shall be regarded as a single branch.

4. For the purposes of point (i)(ii) of paragraph 1, the following shall apply:

   (a) a subsidiary undertaking of a subsidiary undertaking shall also be considered to be a subsidiary of the parent undertaking which is at the head of those undertakings;

   (b) situations in which two or more natural or legal persons are permanently linked to the same person by a control relationship shall also be regarded as constituting a close links between such persons.

5. For the purposes of paragraph 1(j), the voting rights referred to in Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market[1] shall be taken into account.

6. For the purposes of paragraph 1(l), Articles 13 to 16 of Directive 2006/49/EC shall apply *mutatis mutandis*.

7. For the purposes of paragraph 1(n), transferable securities shall exclude the techniques and instruments referred to in Article 51.

Article 3

The following undertakings are not subject to this Directive:

(a) collective investment undertakings of the closed-ended type;

(b) collective investment undertakings which raise capital without promoting the sale of their units to the public within the Community or any part of it;

(c) collective investment undertakings the units of which, under the fund rules or the instruments of incorporation of the investment company, may be sold only to the public in third countries;

(d) categories of collective investment undertakings prescribed by the regulations of the Member States in which such collective investment undertakings are established, for which the rules laid down in Chapter VII and Article 83 are inappropriate in view of their investment and borrowing policies.

[1] OJ L 390, 31.12.2004, p. 38.

- *Recital 5 of UCITS IV – p. 4*

Article 4

For the purposes of this Directive, a UCITS shall be deemed to be established in its home Member State.

CHAPTER II
AUTHORISATION OF UCITS

Article 5

1. No UCITS shall pursue activities as such unless it has been authorised in accordance with this Directive.

   Such authorisation shall be valid for all Member States.

2. A common fund shall be authorised only if the competent authorities of its home Member State have approved the application of the management company to manage that common fund, the fund rules and the choice of depositary. An investment company shall be authorised only if the competent authorities of its home Member State have approved both its instruments of incorporation and the choice of depositary, and, where relevant, the application of the designated management company to manage that investment company.

- *Recital 20 of UCITS IV – p. 7*

3. Without prejudice to paragraph 2, if the UCITS is not established in the management company's home Member State, the competent authorities of the UCITS home Member State shall decide, on the application of the management company, to manage the UCITS pursuant to Article 20. Authorisation shall not be subject either to a requirement that the UCITS be managed by a management company having its registered office in the UCITS home Member State or that the management company pursue or delegate any activities in the UCITS home Member State.

- *Recital 19 of UCITS IV – p. 6*

4. The competent authorities of the UCITS home Member State shall not authorise a UCITS if:

   (a) they establish that the investment company does not comply with the preconditions laid down in Chapter V; or

   (b) the management company is not authorised for the management of UCITS in its home Member State.

   Without prejudice to Article 29(2), the management company or, where applicable, the investment company, shall be informed, within two months of the submission of a complete application, whether or not authorisation of the UCITS has been granted.

The competent authorities of the UCITS home Member State shall not authorise a UCITS if the directors of the depositary are not of sufficiently good repute or are not sufficiently experienced also in relation to the type of UCITS to be managed. To that end, the names of the directors of the depositary and of every person succeeding them in office shall be communicated forthwith to the competent authorities.

Directors shall mean those persons who, under the law or the instruments of incorporation, represent the depositary, or who effectively determine the policy of the depositary.

5. The competent authorities of the UCITS home Member State shall not grant authorisation if the UCITS is legally prevented (for example, through a provision in the fund rules or instruments of incorporation) from marketing its units in its home Member State.

- *Recital 24 of UCITS IV – p. 8*

6. Neither the management company nor the depositary shall be replaced, nor shall the fund rules or the instruments of incorporation of the investment company be amended, without the approval of the competent authorities of the UCITS home Member State.

7. The Member States shall ensure that complete information on the laws, regulations and administrative provisions implementing this Directive which relate to the constitution and functioning of the UCITS are easily accessible at a distance or by electronic means. Member States shall ensure that such information is available at least in a language customary in the sphere of international finance, provided in a clear and unambiguous manner, and kept up to date.

8. In order to ensure consistent harmonisation of this Article the European Supervisory Authority (European Securities and Markets Authority) (hereinafter 'ESMA'), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council[1] may develop draft regulatory technical standards to specify the information to be provided to the competent authorities in the application for authorisation of a UCITS.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

[1] OJ L 331, 15.12.2010, p. 84.

CHAPTER III
OBLIGATIONS REGARDING MANAGEMENT COMPANIES

SECTION 1
Conditions for taking up business

Article 6

1. Access to the business of management companies shall be subject to prior authorisation to be granted by the competent authorities of the management company's home Member State. Authorisation granted under this Directive to a management company shall be valid for all Member States.

- *Recitals 8 and 11 of UCITS IV – p. 4 and p. 5*

ESMA shall be notified of every authorisation granted and shall publish and keep up-to-date a list of authorised management companies on its website.

2. No management company shall engage in activities other than the management of UCITS authorised under this Directive, with the exception of the additional management of other collective investment undertakings which are not covered by this Directive and for which the management company is subject to prudential supervision but the units of which cannot be marketed in other Member States under this Directive.

The activity of management of UCITS shall include, for the purpose of this Directive, the functions referred to in Annex II.

- *Recitals 12 to 14 of UCITS IV – p. 5 ff.*

3. By way of derogation from paragraph 2, Member States may authorise management companies to provide, in addition to the management of UCITS, the following services:

(a) management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Annex I, Section C to Directive 2004/39/EC; and

(b) as non-core services:

(i) investment advice concerning one or more of the instruments listed in Annex I, Section C to Directive 2004/39/EC;

(ii) safekeeping and administration in relation to units of collective investment undertakings.

Management companies shall not be authorised under this Directive to provide only the services referred to in this paragraph, or to provide non-core services without being authorised for the services referred to in point (a) of the first subparagraph.

- *Recitals 13 and 14 of UCITS IV – p. 5*

4. Article 2(2) and Articles 12, 13 and 19 of Directive 2004/39/EC shall apply to the provision of the services referred to in paragraph 3 of this Article by management companies.

Article 7

1. Without prejudice to other conditions of general application laid down by national law, the competent authorities shall not grant authorisation to a management company unless the following conditions are met:

   (a) the management company has an initial capital of at least EUR 125 000, taking into account the following:

      (i) when the value of the portfolios of the management company exceeds EUR 250 000 000, the management company must be required to provide an additional amount of own funds which is equal to 0,02 % of the amount by which the value of the portfolios of the management company exceeds EUR 250 000 000 but the required total of the initial capital and the additional amount must not, however, exceed EUR 10 000 000;

      (ii) for the purposes of this paragraph, the following portfolios must be deemed to be the portfolios of the management company:

         – common funds managed by the management company including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation,

         – investment companies for which the management company is the designated management company,

         – other collective investment undertakings managed by the management company including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation;

      (iii) irrespective of the amount of those requirements, the own funds of the management company must at no time be less than the amount prescribed in Article 21 of Directive 2006/49/EC;

▪ *Recital 9 of UCITS IV – p. 4*

   (b) the persons who effectively conduct the business of a management company are of sufficiently good repute and are sufficiently experienced also in relation to the type of UCITS managed by the management company, the names of those persons and of every person succeeding them in office being communicated forthwith to the competent authorities and the conduct of the business of a management company being decided by at least two persons meeting such conditions;

▪ *Recital 10 of UCITS IV – p. 4*

(c) the application for authorisation is accompanied by a programme of activity setting out, at least, the organisational structure of the management company; and

(d) the head office and the registered office of the management company are located in the same Member State.

- *Recital 18 of UCITS IV – p. 6*

For the purposes of point (a) of the first subparagraph, Member States may authorise management companies not to provide up to 50 % of the additional amount of own funds referred to in point (i) of point (a) if they benefit from a guarantee of the same amount given by a credit institution or an insurance undertaking which has its registered office in a Member State, or in a third country where it is subject to prudential rules considered by the competent authorities as equivalent to those laid down in Community law.

2. Where close links exist between the management company and other natural or legal persons, the competent authorities shall grant authorisation only if those close links do not prevent the effective exercise of their supervisory functions.

The competent authorities shall also refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the management company has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions.

The competent authorities shall require management companies to provide them with the information they require to monitor compliance with the conditions referred to in this paragraph on a continuous basis.

3. The competent authorities shall inform the applicant within six months of the submission of a complete application whether or not authorisation has been granted. Reasons shall be given where an authorisation is refused.

4. A management company may start business as soon as authorisation has been granted.

5. The competent authorities may withdraw the authorisation issued to a management company subject to this Directive only where that company:

(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased the activity covered by this Directive more than six months previously, unless the Member State concerned has provided for authorisation to lapse in such cases;

(b) has obtained the authorisation by making false statements or by any other irregular means;

(c) no longer fulfils the conditions under which authorisation was granted;

(d) no longer complies with Directive 2006/49/EC if its authorisation also covers the discretionary portfolio management service referred to in Article 6(3)(a) of this Directive;

(e) has seriously or systematically infringed the provisions adopted pursuant to this Directive; or

(f) falls within any of the cases where national law provides for withdrawal.

- *Recitals 18 and 73 of UCITS IV – p. 6 and p. 17*

6. In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify:

(a) the information to be provided to the competent authorities in the application for the authorisation of the management company, including the programme of activity;

(b) the requirements applicable to the management company under paragraph 2 and the information for the notification provided for in paragraph 3;

(c) the requirements applicable to shareholders and members with qualifying holdings, as well as obstacles which may prevent effective exercise of the supervisory functions of the competent authority, as provided for in Article 8(1) of this Directive and in Article 10(1) and (2) of Directive 2004/39/EC, in accordance with Article 11 of this Directive.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine standard forms, templates and procedures for the notification or provision of information provided for in points (a) and (b) of the first subparagraph.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

- *Recital 85 to 91 of UCITS IV – pp.19 ff.*

Article 8

1. The competent authorities shall not grant authorisation to take up the business of management companies until they have been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings.

The competent authorities shall refuse authorisation if, taking into account the need to ensure the sound and prudent management of a management company, they are not satisfied as to the suitability of the shareholders or members referred to in the first subparagraph.

2. In the case of branches of management companies that have registered offices outside the Community and are taking up or pursuing business, the Member States shall not

apply provisions that result in treatment more favourable than that accorded to branches of management companies that have registered offices in Member States.

3. The competent authorities of the other Member State involved shall be consulted beforehand in relation to the authorisation of any management company which is one of the following:

   (a) a subsidiary of another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State;

   (b) a subsidiary of the parent undertaking of another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State; or

   (c) a company controlled by the same natural or legal persons as control another management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State.

SECTION 2
Relations with third countries

Article 9

1. Relations with third countries shall be regulated in accordance with the relevant rules laid down in Article 15 of Directive 2004/39/EC.

   For the purposes of this Directive, the terms 'investment firm' and 'investment firms' referred to in Article 15 of Directive 2004/39/EC shall mean, respectively, 'management company' and 'management companies'; the term 'providing investment services' referred to in Article 15(1) of Directive 2004/39/EC shall mean 'providing services'.

2. Member States shall inform ESMA and the Commission of any general difficulties which UCITS encounter in marketing their units in any third country.

   The Commission shall examine such difficulties as quickly as possible in order to find an appropriate solution. ESMA shall assist it in discharging that task.

SECTION 3
Operating conditions

Article 10

1. The competent authorities of the management company's home Member State shall require that the management company which they have authorised complies at all times with the conditions laid down in Article 6 and Article 7(1) and (2).

   The own funds of a management company shall not fall below the level specified in Article 7(1)(a). If they do, however, the competent authorities may, where the circumstances so justify, allow such firms a limited period in which to rectify their situations or cease their activities.

2. The prudential supervision of a management company shall be the responsibility of the competent authorities of the management company's home Member State, whether the management company establishes a branch or provides services in another Member State or not, without prejudice to those provisions of this Directive which confer responsibility to the competent authorities of a management company's host Member State.

Article 11

1. Qualifying holdings in management companies shall be subject to the same rules as those laid down in Articles 10, 10a and 10b of Directive 2004/39/EC.

2. For the purposes of this Directive, the terms 'investment firm' and 'investment firms' referred to in Article 10 of Directive 2004/39/EC, mean, respectively, 'management company' and 'management companies'.

3. In order to ensure consistent harmonisation of this Directive, ESMA may develop draft regulatory technical standards to establish an exhaustive list of information, as provided for in this Article, with reference to Article 10b(4) of Directive 2004/39/EC, to be included by proposed acquirers in their notification, without prejudice to Article 10a(2) of that Directive.

   Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

   In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the modalities of the consultation process between the relevant competent authorities, as provided for in this Article, with reference to Article 10(4) of Directive 2004/39/EC.

   Power is conferred to the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 12

1. Each Member State shall draw up prudential rules which management companies authorised in that Member State, with regard to the activity of management of UCITS authorised according to this Directive, shall observe at all times.

   In particular, the competent authorities of the management company's home Member State, having regard also to the nature of the UCITS managed by a management company, shall require that each such company:

   (a) has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in financial instruments in order to invest on its own account and ensuring, at least, that each transaction involving the UCITS may be reconstructed according to its origin, the

parties to it, its nature, and the time and place at which it was effected and that the assets of the UCITS managed by the management company are invested according to the fund rules or the instruments of incorporation and the legal provisions in force;

- *Recital 10 of UCITS IV – p. 4*

- *Articles 4 to 16 of Commission Directive 2010/43 – pp. 188 to 197*
- *Articles 17 to 21 of Commission Directive 2010/43 – pp. 198 to 200*

(b) is structured and organised in such a way as to minimise the risk of UCITS' or clients' interests being prejudiced by conflicts of interest between the company and its clients, between two of its clients, between one of its clients and a UCITS, or between two UCITS.

2. Each management company the authorisation of which also covers the discretionary portfolio management service referred to in Article 6(3)(a) shall:

(a) not be permitted to invest all or a part of the investor's portfolio in units of collective investment undertakings it manages, unless it receives prior general approval from the client;

(b) be subject with regard to the services referred to in Article 6(3) to the provisions laid down in Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes[1].

- *Recitals 13 and 14 of UCITS IV – p. 5*

(Amended by article 1(19) of UCITS V)

3. Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts in accordance with Article 112a, measures specifying the procedures and arrangements as referred to under point (a) of the second subparagraph of paragraph 1 and the structures and organisational requirements to minimise conflicts of interests as referred to under point (b) of the second subparagraph of paragraph 1.

- *Recital 85 of UCITS IV – p. 19*

4. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of applications of the delegated acts adopted by the Commission regarding the procedures, arrangements, structures and organisational requirements referred to in paragraph 3.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

[1] OJ L 84, 26.3.1997, p. 22.

Article 13

1. If the law of the management company's home Member State allows management companies to delegate to third parties for the purpose of a more efficient conduct of the companies' business, to carry out on their behalf one or more of their own functions, all of the following preconditions shall be complied with:

   (a) the management company must inform the competent authorities of its home Member State in an appropriate manner; the competent authorities of the management company's home Member State must, without delay, transmit the information to the competent authorities of the UCITS home Member State;

   (b) the mandate must not prevent the effectiveness of supervision over the management company, and, in particular, must not prevent the management company from acting, or the UCITS from being managed, in the best interests of its investors;

   (c) when the delegation concerns the investment management, the mandate must be given only to undertakings which are authorised or registered for the purpose of asset management and subject to prudential supervision; the delegation must be in accordance with investment-allocation criteria periodically laid down by the management companies;

   (d) where the mandate concerns the investment management and is given to a third-country undertaking, cooperation between the supervisory authorities concerned must be ensured;

   (e) a mandate with regard to the core function of investment management must not be given to the depositary or to any other undertaking whose interests may conflict with those of the management company or the unit-holders;

   (f) measures must exist which enable the persons who conduct the business of the management company to monitor effectively at any time the activity of the undertaking to which the mandate is given;

   (g) the mandate must not prevent the persons who conduct the business of the management company from giving further instructions to the undertaking to which functions are delegated at any time or from withdrawing the mandate with immediate effect when this is in the interest of investors;

   (h) having regard to the nature of the functions to be delegated, the undertaking to which functions will be delegated must be qualified and capable of undertaking the functions in question; and

   (i) the UCITS' prospectuses must list the functions which the management company has been allowed to delegate in accordance with this Article.

2. The liability of the management company or the depositary shall not be affected by delegation by the management company of any functions to third parties. The management company shall not delegate its functions to the extent that it becomes a letter-box entity.

- *Recital 16 and 17 of UCITS IV – p. 6*

- *Recital 4 of Commission Directive 2010/43 p. 180*

Article 14

1. Each Member State shall draw up rules of conduct which management companies authorised in that Member State shall observe at all times. Such rules shall implement at least the principles set out in this paragraph. Those principles shall ensure that a management company:

   (a) acts honestly and fairly in conducting its business activities in the best interests of the UCITS it manages and the integrity of the market;

   (b) acts with due skill, care and diligence, in the best interests of the UCITS it manages and the integrity of the market;

   (c) has and employs effectively the resources and procedures that are necessary for the proper performance of its business activities;

   (d) tries to avoid conflicts of interests and, when they cannot be avoided, ensures that the UCITS it manages are fairly treated; and

   (e) complies with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.

- *Articles 22 to 29 of Commission Directive 2010/43 (Rules of conduct) – pp. 201 to 206*
- *Articles 17 to 21 of Commission Directive 2010/43 (Conflicts of interest) – pp.198 to 200*
- *Articles 25 and 26 of Commission Directive 2010/43 (Best execution) – pp. 203 and 204*

(Amended by article 1(19) of UCITS V)

2. Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts in accordance with Article 112a, measures with a view to ensuring that the management company complies with the duties set out in paragraph 1, in particular to:

   (a) establish appropriate criteria for acting honestly and fairly and with due skill, care and diligence in the best interests of the UCITS;

   (b) specify the principles required to ensure that management companies employ effectively the resources and procedures that are necessary for the proper performance of their business activities; and

   (c) define the steps that management companies might reasonably be expected to take to identify, prevent, manage or disclose conflicts of interest as well as to establish appropriate criteria for determining the types of conflicts of interest whose existence may damage the interests of the UCITS.

- *Recital 85 of UCITS IV – p. 19*

3. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the delegated acts adopted by the Commission regarding the criteria, principles and steps referred to in paragraph 2.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

- *Articles 4 ff. Commission Directive 2010/43 – p. 179*

- *Cf. ESMA guidelines on sound remuneration (ESMA/2016/411) – pp. 289 ff.*

(Amended by article 1(2) of UCITS V)

Article 14a

1. Member States shall require management companies to establish and apply remuneration policies and practices that are consistent with, and promote, sound and effective risk management and that neither encourage risk taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the UCITS that they manage nor impair compliance with the management company's duty to act in the best interest of the UCITS.

- *Recital 2 of UCITS V: In order to address the potentially detrimental effect of poorly designed remuneration structures on the sound management of risks and on the control of risk-taking behaviour by individuals, there should be an express obligation for management companies of undertakings for collective investment in transferable securities (UCITS) to establish and maintain, for those categories of staff whose professional activities have a material impact on the risk profiles of the UCITS that they manage, remuneration policies and practices that are consistent with sound and effective risk management. Those categories of staff should include any employee and other member of staff at fund or sub-fund level who are decision takers, fund managers and persons who take real investment decisions, persons who have the power to exercise influence on such employees or members of staff, including investment advisors and analysts, senior management and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and decision takers. Those rules should also apply to investment companies that have not designated a management company authorised pursuant to Directive 2009/65/EC. Those remuneration policies and practices should apply, in a proportionate manner, to any third party which takes investment decisions that affect the risk profile of the UCITS because of functions which have been delegated in accordance with Article 13 of Directive 2009/65/EC.*

- *Recital 5 of UCITS V: When applying the principles regarding sound remuneration policies and practices established by this Directive, Member States should take into account the principles set out in Commission Recommendation 2009/384/EC, the work of the Financial Stability Board and G-20 commitments to mitigate risk in the financial services sector.*

- *Cf. ESMA guidelines on sound remuneration (ESMA/2016/411) - pp. 289 ff.*

2. The remuneration policies and practices shall include fixed and variable components of salaries and discretionary pension benefits.

- *Recital 6 of UCITS V: Guaranteed variable remuneration should be exceptional because it is not consistent with sound risk management or the pay-for-performance principle and should be limited to the first year of engagement.*

- *Paragraphs 11 to 17 of the ESMA guidelines on sound remuneration (ESMA/2016/411) – pp. 292 to 294*

3. The remuneration policies and practices shall apply to those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls within the remuneration bracket of senior management and risk takers whose professional activities have a material impact on the risk profiles of the management companies or of the UCITS that they manage.

- *Recital 2 of UCITS V: In order to address the potentially detrimental effect of poorly designed remuneration structures on the sound management of risks and on the control of risk-taking behaviour by individuals, there should be an express obligation for management companies of undertakings for collective investment in transferable securities (UCITS) to establish and maintain, for those categories of staff whose professional activities have a material impact on the risk profiles of the UCITS that they manage, remuneration policies and practices that are consistent with sound and effective risk management. Those categories of staff should include any employee and other member of staff at fund or sub-fund level who are decision takers, fund managers and persons who take real investment decisions, persons who have the power to exercise influence on such employees or members of staff, including investment advisors and analysts, senior management and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and decision takers. Those rules should also apply to investment companies that have not designated a management company authorised pursuant to Directive 2009/65/EC. Those remuneration policies and practices should apply, in a proportionate manner, to any third party which takes investment decisions that affect the risk profile of the UCITS because of functions which have been delegated in accordance with Article 13 of Directive 2009/65/EC.*

- *Paragraphs 18 to 21 of the ESMA guidelines on sound remuneration (ESMA/2016/411) – pp. 294 to 295*

4. In accordance with Article 16 of Regulation (EU) No 1095/2010, ESMA shall issue guidelines addressed to competent authorities or to financial market participants concerning the persons referred to in paragraph 3 of this Article and the application of the principles referred to in Article 14b. Those guidelines shall take into account the principles on sound remuneration policies set out in Commission Recommendation 2009/384/EC[1], the size of the management company and the size of the UCITS that they manage, their internal organisation, and the nature, scope and complexity of their activities. In the process of the development of those guidelines, ESMA shall cooperate closely with the European Supervisory Authority (European Banking Authority) ('EBA'), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[2], in order to ensure consistency with requirements developed for other financial services sectors, in particular credit institutions and investment firms.

- *Recital 9 of UCITS V: In order to promote supervisory convergence in the assessment of remuneration policies and practices, the European Supervisory Authority (European Securities and Markets Authority) ('ESMA'), established by Regulation (EU) No 1095/2010 of the European*

[1] Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector (OJ L 120, 15.5.2009, p. 22).

[2] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

Parliament and of the Council[1], should ensure the existence of guidelines on sound remuneration policies and practices in the asset management sector. The European Supervisory Authority (European Banking Authority) ('EBA'), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council[2], should assist ESMA in the elaboration of such guidelines. In order to prevent circumvention of the provisions on remuneration, those guidelines should also provide further guidance on the persons to whom remuneration policies and practices apply and on the adaptation of the remuneration principles to the size of the management company or the investment company, the size of the UCITS that they manage, their internal organisation and the nature, scope and complexity of their activities. ESMA's guidelines on remuneration policies and practices should, where appropriate, be aligned, to the extent possible, with those for funds regulated under Directive 2011/61/EU of the European Parliament and of the Council[3].

Article 14b

1. When establishing and applying the remuneration policies referred to in Article 14a, management companies shall comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:

- *Recital 3 of UCITS V: Provided that management companies of UCITS and investment companies apply all the principles governing remuneration policies, they should be able to apply those policies in different ways according to their size, the size of the UCITS that they manage, their internal organisation, and the nature, scope and complexity of their activities.*

- *Paragraphs 22 to 27 of the ESMA guidelines on sound remuneration (ESMA/2016/411) – pp. 295 to 297*

(a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the UCITS that the management company manages;

- *Paragraphs 80 to 83 of the ESMA guidelines on sound remuneration (ESMA/2016/411) – pp. 306 to 307*

(b) the remuneration policy is in line with the business strategy, objectives, values and interests of the management company and the UCITS that it manages and of the investors in such UCITS, and includes measures to avoid conflicts of interest;

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[1] Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

[2] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC.

[3] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.

- *Paragraphs 80 to 83, and 40 to 53 of the ESMA guidelines on sound remuneration (ESMA/2016/411) – pp. 306 to 307 and pp. 300 to 302*

(c) the remuneration policy is adopted by the management body of the management company in its supervisory function, and that body adopts, and reviews at least annually, the general principles of the remuneration policy and is responsible for, and oversees, their implementation; the tasks referred to in this point shall be undertaken only by members of the management body who do not perform any executive functions in the management company concerned and who have expertise in risk management and remuneration;

- *Paragraphs 40 to 53 of the ESMA guidelines on sound remuneration (ESMA/2016/411) – pp. 300 to 302*

(d) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;

- *Paragraphs 50 to 53 of the ESMA guidelines on sound remuneration (ESMA/2016/411) – pp. 301 to 302*

(e) staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independently of the performance of the business areas that they control;

- *Paragraphs 72 to 78 of the ESMA guidelines on sound remuneration (ESMA/2016/411) – pp. 305 to 306*

(f) the remuneration of the senior officers in the risk management and compliance functions is overseen directly by the remuneration committee, where such a committee exists;

- *Paragraphs 72 to 78 of the ESMA guidelines on sound remuneration (ESMA/2016/411) – pp. 305 to 306*

(g) where remuneration is performance-related, the total amount of remuneration is based on a combination of the assessment as to the performance of the individual and of the business unit or UCITS concerned and as to their risks and of the overall results of the management company when assessing individual performance, taking into account financial and non-financial criteria;

- *Paragraphs 103 to 108, and paragraphs 112 to 115 of the ESMA guidelines on sound remuneration (ESMA/2016/411) – pp. 310 to 311 and pp. 312 to 312*

(h) the assessment of performance is set in a multi-year framework appropriate to the holding period recommended to the investors of the UCITS managed by the management company in order to ensure that the assessment process is based on the longer-term performance of the UCITS and its investment risks and that the actual payment of performance-based components of remuneration is spread over the same period;

- *Paragraphs 101 to 103 and paragraphs 129 to 133 of the ESMA guidelines on sound remuneration (ESMA/2016/411) – p. 310 and pp. 315 to 316*

(i) guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year of engagement;

- Recital 6 of UCITS V: *Guaranteed variable remuneration should be exceptional because it is not consistent with sound risk management or the pay-for-performance principle and should be limited to the first year of engagement.*

(j) fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component;

- *Paragraph 96 of the ESMA guidelines on sound remuneration (ESMA/2016/411) – p. 309*

(k) payments relating to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;

- *Paragraphs 89 to 91 of the ESMA guidelines on sound remuneration (ESMA/2016/411) – pp. 308 to 308*

(l) the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;

- *Paragraphs 109 to 111 and paragraphs 119 to 126 of the ESMA guidelines on sound remuneration (ESMA/2016/411) – p. 312 and pp. 314*

(m) subject to the legal structure of the UCITS and its fund rules or instruments of incorporation, a substantial portion, and in any event at least 50 %, of any variable remuneration component consists of units of the UCITS concerned, equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments with equally effective incentives as any of the instruments referred to in this point, unless the management of the UCITS accounts for less than 50 % of the total portfolio managed by the management company, in which case the minimum of 50 % does not apply.

The instruments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the interests of the management company and the UCITS that it manages and the investors of such UCITS. Member States or their competent authorities may place restrictions on the types and designs of those instruments or ban certain instruments as appropriate. This point shall apply to both the portion of the variable remuneration component deferred in line with point (n) and the portion of the variable remuneration component not deferred;

- *Paragraph 134 to 149 of the ESMA guidelines on sound remuneration (ESMA/2016/411) – pp. 316 to 318*

(n) a substantial portion, and in any event at least 40 %, of the variable remuneration component, is deferred over a period which is appropriate in view of the holding period recommended to the investors of the UCITS concerned and is correctly aligned with the nature of the risks of the UCITS in question.

The period referred to in this point shall be at least three years; remuneration payable under deferral arrangements vests no faster than on a pro-rata basis; in the case of a variable remuneration component of a particularly high amount, at least 60 % of the amount shall be deferred;

- *Paragraphs 127 to 133 of the ESMA guidelines on sound remuneration (ESMA/2016/411) – pp. 315 to 316*

(o) the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the management company as a whole, and justified according to the performance of the business unit, the UCITS and the individual concerned.

The total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the management company or of the UCITS concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements;

- *Paragraphs 36 to 38, paragraphs 119 to 126 and paragraphs 150 to 160 of the ESMA guidelines on sound remuneration (ESMA/2016/411) – p. 299 and pp. 313 and 314*

(p) the pension policy is in line with the business strategy, objectives, values and long-term interests of the management company and the UCITS that it manages.

If the employee leaves the management company before retirement, discretionary pension benefits shall be held by the management company for a period of five years in the form of instruments referred to in point (m). In the case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in point (m), subject to a five-year retention period;

- *Paragraphs 80 to 88 of the ESMA guidelines on sound remuneration (ESMA/2016/411) – pp. 306 to 307*

(q) staff are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;

- *Paragraphs 92 to 94 of the ESMA guidelines on sound remuneration (ESMA/2016/411) – pp. 308 ff.*

(r) variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements laid down in this Directive.

- *Paragraphs 14 to 17 of the ESMA guidelines on sound remuneration (ESMA/2016/411) – pp. 293 to 294*

2. In accordance with Article 35 of Regulation (EU) No 1095/2010, ESMA may request information from competent authorities on the remuneration policies and practices referred to in Article 14a of this Directive.

ESMA shall, in close cooperation with EBA, include in its guidelines on remuneration policies provisions on how different sectoral remuneration principles, such as those set

out in Directive 2011/61/EU of the European Parliament and of the Council[1] and in Directive 2013/36/EU of the European Parliament and of the Council[2], are to be applied where employees or other categories of personnel perform services subject to different sectoral remuneration principles.

- *Paragraphs 30 to 35 of the ESMA guidelines on sound remuneration (ESMA/2016/411) – pp. 298 to 299*

3. The principles set out in paragraph 1 shall apply to any benefit of any type paid by the management company, to any amount paid directly by the UCITS itself, including performance fees, and to any transfer of units or shares of the UCITS, made for the benefit of those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls into the remuneration bracket of senior management and risk takers, whose professional activities have a material impact on their risk profile or the risk profile of the UCITS that they manage.

- *Recital 7 of UCITS V: The principles regarding sound remuneration policies should also apply to payments made from UCITS to management companies or investment companies.*

- *Paragraphs 11 to 21 of the ESMA guidelines on sound remuneration (ESMA/2016/411) – pp. 292 to 295*

4. Management companies that are significant in terms of their size or of the size of the UCITS that they manage, their internal organisation and the nature, scope and complexity of their activities shall establish a remuneration committee. The remuneration committee shall be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk.

   The remuneration committee that is, where appropriate, set up in accordance with the ESMA guidelines referred to in Article 14a(4) shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the management company or the UCITS concerned and which are to be taken by the management body in its supervisory function. The remuneration committee shall be chaired by a member of the management body who does not perform any executive functions in the management company concerned. The members of the remuneration committee shall be members of the management body who do not perform any executive functions in the management company concerned.

   If employee representation on the management body is provided for by national law, the remuneration committee shall include one or more employee representatives. When preparing its decisions, the remuneration committee shall take into account the long-term interest of investors and other stakeholders and the public interest.

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[1] Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).

[2] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

- *Paragraphs 54 to 66 of the ESMA guidelines on sound remuneration (ESMA/2016/411) – pp. 302 to 304*

Article 15

Management companies or, where relevant, investment companies shall take measures in accordance with Article 92 and establish appropriate procedures and arrangements to ensure that they deal properly with investor complaints and that there are no restrictions on investors exercising their rights in the event that the management company is authorised in a Member State other than the UCITS home Member State. Those measures shall allow investors to file complaints in the official language or one of the official languages of their Member State.

Management companies shall also establish appropriate procedures and arrangements to make information available at the request of the public or the competent authorities of the UCITS home Member State.

- *Recital 19 of UCITS IV – p. 6*

- *Article 6 of Commission Directive 2010/43 – p. 189*

SECTION 4
Freedom of establishment and freedom to provide services

Article 16

1. Member States shall ensure that a management company, authorised by its home Member State, may pursue within their territories the activity for which it has been authorised, either by the establishment of a branch or under the freedom to provide services.

   Where a management company so authorised proposes, without establishing a branch, only to market the units of the UCITS it manages as provided for in Annex II in a Member State other than the UCITS home Member State, without proposing to pursue any other activities or services, such marketing shall be subject only to the requirements of Chapter XI.

- *Recitals 11 and 12 of UCITS IV – p. 5*

2. Member States shall not make the establishment of a branch or the provision of the services subject to any authorisation requirement, to any requirement to provide endowment capital or to any other measure having equivalent effect.

- *Recital 20 of UCITS IV – p. 7*

3. Subject to the conditions set out in this Article, a UCITS shall be free to designate, or to be managed by a management company authorised in a Member State other than the UCITS home Member State in accordance with the relevant provisions of this Directive, provided that such a management company complies with the provisions of:

(a) Article 17 or Article 18; and

(b) Articles 19 and 20.

Article 17

1. In addition to meeting the conditions imposed in Articles 6 and 7, a management company wishing to establish a branch within the territory of another Member State to pursue the activities for which it has been authorised shall notify the competent authorities of its home Member State accordingly.

2. Member States shall require every management company wishing to establish a branch within the territory of another Member State to provide the following information and documents, when effecting the notification provided for in paragraph 1:

   (a) the Member State within the territory of which the management company plans to establish a branch;

   (b) a programme of operations setting out the activities and services according to Article 6(2) and (3) envisaged and the organisational structure of the branch, which shall include a description of the risk management process put in place by the management company. It shall also include a description of the procedures and arrangements taken in accordance with Article 15;

   (c) the address in the management company's host Member State from which documents may be obtained; and

   (d) the names of those responsible for the management of the branch.

3. Unless the competent authorities of the management company's home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of a management company, taking into account the activities envisaged, they shall, within two months of receiving all the information referred to in paragraph 2, communicate that information to the competent authorities of the management company's host Member State and shall inform the management company accordingly. They shall also communicate details of any compensation scheme intended to protect investors.

   Where the competent authorities of the management company's home Member State refuse to communicate the information referred to in paragraph 2 to the competent authorities of the management company's host Member State, they shall give reasons for such refusal to the management company concerned within two months of receiving all the information. The refusal or any failure to reply shall be subject to the right to apply to the courts in the management company's home Member State.

   Where a management company wishes to pursue the activity of collective portfolio management referred to in Annex II, the competent authorities of the management company's home Member State shall enclose with the documentation sent to the competent authorities of the management company's host Member State an attestation that the management company has been authorised pursuant to the provisions of this Directive, a description of the scope of the management company's authorisation and details of any restriction on the types of UCITS that the management company is authorised to manage.

- *Recitals 12, 18 and 20 of UCITS IV - pp. 5 ff.*
- *Recitals 70, 71 and 76 of UCITS IV - pp. 16 ff.*

4. A management company which pursues activities by a branch within the territory of the host Member State shall comply with the rules drawn up by the management company's host Member State pursuant to Article 14.

5. The competent authorities of the management company's host Member State shall be responsible for supervising compliance with paragraph 4.

6. Before the branch of a management company starts business, the competent authorities of the management company's host Member State shall, within two months of receiving the information referred to in paragraph 2, prepare for supervising the compliance of the management company with the rules under their responsibility.

7. On receipt of a communication from the competent authorities of the management company's host Member State or on the expiry of the period provided for in paragraph 6 without receipt of any communication from those authorities, the branch may be established and start business.

8. In the event of change of any particulars communicated in accordance with paragraph 2(b), (c) or (d), a management company shall give written notice of that change to the competent authorities of the management company's home Member State and of the management company's host Member State at least one month before implementing the change so that the competent authorities of the management company's home Member State may take a decision on the change under paragraph 3 and the competent authorities of the management company's host Member State may do so under paragraph 6.

9. In the event of a change in the particulars communicated in accordance with the first subparagraph of paragraph 3, the competent authorities of the management company's home Member State shall inform the competent authorities of the management company's host Member State accordingly.

   The competent authorities of the management company's home Member State shall update the information contained in the attestation referred to in the third subparagraph of paragraph 3 and inform the competent authorities of the management company's host Member State whenever there is a change in the scope of the management company's authorisation or in the details of any restriction on the types of UCITS that the management company is authorised to manage.

10. In order to ensure consistent harmonisation of this Article ESMA may develop draft regulatory technical standards to specify the information to be notified in accordance with paragraphs 1, 2, 3, 8 and 9.

    Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

    In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 3 and 9.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 18

1. Any management company wishing to pursue the activities for which it has been authorised within the territory of another Member State for the first time under the freedom to provide services shall communicate the following information to the competent authorities of the management company's home Member State:

   (a) the Member State within the territory of which the management company intends to operate; and

   (b) a programme of operations stating the activities and services referred to in Article 6(2) and (3) envisaged which shall include a description of the risk management process put in place by the management company. It shall also include a description of the procedures and arrangements taken in accordance with Article 15.

2. The competent authorities of the management company's home Member State shall, within one month of receiving the information referred to in paragraph 1, forward it to the competent authorities of the management company's host Member State.

   The competent authorities of the management company's home Member State shall also communicate details of any applicable compensation scheme intended to protect investors.

   Where a management company wishes to pursue the activity of collective portfolio management as referred to in Annex II, the competent authorities of the management company's home Member State shall enclose with the documentation sent to the competent authorities of the management company's host Member State an attestation that the management company has been authorised pursuant to the provisions of this Directive, a description of the scope of the management company's authorisation and details of any restriction on the types of UCITS that the management company is authorised to manage.

   Notwithstanding Articles 20 and 93, the management company may then start business in the management company's host Member State.

- *Recital 12 of UCITS IV - p. 5*
- *Recitals 70, 71 and 76 of UCITS IV - pp. 16 ff.*

3. A management company which pursues activities under the freedom to provide services shall comply with the rules drawn up by the management company's home Member State pursuant to Article 14.

- *Recital 18 of UCITS IV - p. 6*

4. Where the content of the information communicated in accordance with paragraph 1(b) is amended, the management company shall give notice of the amendment in writing to the competent authorities of the management company's home Member State and of

the management company's host Member State before implementing the change. The competent authorities of the management company's home Member State shall update the information contained in the attestation referred to in paragraph 2 and inform the competent authorities of the management company's host Member State whenever there is a change in the scope of the management company's authorisation or in the details of any restriction on the types of UCITS that the management company is authorised to manage.

5. In order to ensure consistent harmonisation of this Article ESMA may develop draft regulatory technical standards to specify the information to be notified in accordance with paragraphs 1, 2 and 4.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the transmission of information in accordance with paragraphs 2 and 4.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 19

1. A management company which pursues the activity of collective portfolio management on a cross-border basis by establishing a branch or under the freedom to provide services shall comply with the rules of the management company's home Member State which relate to the organisation of the management company, including delegation arrangements, risk-management procedures, prudential rules and supervision, procedures referred to in Article 12 and the management company's reporting requirements. Those rules shall be no stricter than those applicable to management companies conducting their activities only in their home Member State.

- *Recital 12 of UCITS IV - p. 5*

2. The competent authorities of the management company's home Member State shall be responsible for supervising compliance with paragraph 1.

3. A management company which pursues the activity of collective portfolio management on a cross-border basis by establishing a branch or in accordance with the freedom to provide services shall comply with the rules of the UCITS home Member State which relate to the constitution and functioning of the UCITS, namely the rules applicable to:

- *Recital 21 of UCITS IV - p. 7*

(a) the setting up and authorisation of the UCITS;

(b) the issuance and redemption of units and shares;

(c) investment policies and limits, including the calculation of total exposure and leverage;

(d) restrictions on borrowing, lending and uncovered sales;

(e) the valuation of assets and the accounting of the UCITS;

(f) the calculation of the issue or redemption price, and errors in the calculation of the net asset value and related investor compensation;

(g) the distribution or reinvestment of the income;

(h) the disclosure and reporting requirements of the UCITS, including the prospectus, key investor information and periodic reports;

(i) the arrangements made for marketing;

(j) the relationship with unit-holders;

(k) the merging and restructuring of the UCITS;

(l) the winding-up and liquidation of the UCITS;

(m) where applicable, the content of the unit-holder register;

- *Recital 22 of UCITS IV - p. 7*

(n) the licensing and supervision fees regarding the UCITS; and

(o) the exercise of unit-holders' voting rights and other unit-holders' rights in relation to points (a) to (m).

4. The management company shall comply with the obligations set out in the fund rules or in the instruments of incorporation, and the obligations set out in the prospectus, which shall be consistent with the applicable law as referred to in paragraphs 1 and 3.

5. The competent authorities of the UCITS home Member State shall be responsible for supervising compliance with paragraphs 3 and 4.

6. The management company shall decide and be responsible for adopting and implementing all the arrangements and organisational decisions which are necessary to ensure compliance with the rules which relate to the constitution and functioning of the UCITS and with the obligations set out in the fund rules or in the instruments of incorporation, and with the obligations set out in the prospectus.

7. The competent authorities of the management company's home Member State shall be responsible for supervising the adequacy of the arrangements and organisation of the management company so that the management company is in a position to comply with the obligations and rules which relate to the constitution and functioning of all the UCITS it manages.

8. Member States shall ensure that any management company authorised in a Member State is not subject to any additional requirement established in the UCITS home Member State in respect of the subject matter of this Directive, except in the cases expressly referred to in this Directive.

Article 20

1. Without prejudice to Article 5, a management company which applies to manage a UCITS established in another Member State shall provide the competent authorities of the UCITS home Member State with the following documentation:

(Article 1(3) of UCITS V)

(a) the written contract with the depositary referred to in Article 22(2);

(b) information on delegation arrangements regarding functions of investment management and administration referred to in Annex II.

If a management company already manages other UCITS of the same type in the UCITS home Member State, reference to the documentation already provided shall be sufficient.

2. In so far as it is necessary to ensure compliance with the rules for which they are responsible, the competent authorities of the UCITS home Member State may ask the competent authorities of the management company's home Member State for clarification and information regarding the documentation referred to in paragraph 1 and, based on the attestation referred to in Articles 17 and 18, as to whether the type of UCITS for which authorisation is requested falls within the scope of the management company's authorisation. Where applicable, the competent authorities of the management company's home Member State shall provide their opinion within 10 working days of the initial request.

- *Recital 70 of UCITS IV - p. 16*

3. The competent authorities of the UCITS home Member State may refuse the application of the management company only if:

(a) the management company does not comply with the rules falling under their responsibility pursuant to Article 19;

(b) the management company is not authorised by the competent authorities of its home Member State to manage the type of UCITS for which authorisation is requested; or

(c) the management company has not provided the documentation referred to in paragraph 1.

Before refusing an application, the competent authorities of the UCITS home Member State shall consult the competent authorities of the management company's home Member State.

4. Any subsequent material modifications of the documentation referred to in paragraph 1 shall be notified by the management company to the competent authorities of the UCITS home Member State.

5. In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to determine the information to be provided to the competent authorities in the application for managing a UCITS established in another Member State.

The Commission may adopt the regulatory technical standards referred to in the first subparagraph in accordance with the procedure laid down in Articles 10 to 14 of Regulation (EU) No 1095/2010.

In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for such provision of information.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the third subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 21

1. A management company's host Member State may, for statistical purposes, require all management companies with branches within its territory to report periodically on their activities pursued in that host Member State to the competent authorities of that host Member State.

2. A management company's host Member State may require management companies pursuing business within its territory through the establishment of a branch or under the freedom to provide services, to provide the information necessary for the monitoring of their compliance with the rules under the responsibility of the management company's host Member State that apply to them.

   Those requirements shall not be more stringent than those which the same Member State imposes on management companies authorised in that Member State for the monitoring of their compliance with the same standards.

   Management companies shall ensure that the procedures and arrangements referred to in Article 15 enable the competent authorities of the UCITS home Member State to obtain directly from the management company the information referred to in this paragraph.

3. Where the competent authorities of a management company's host Member State ascertain that a management company that has a branch or provides services within its territory is in breach of one of the rules under their responsibility, those authorities shall require the management company concerned to put an end to that breach and inform the competent authorities of the management company's home Member State thereof.

4. If the management company concerned refuses to provide the management company's host Member State with information falling under its responsibility, or fails to take the necessary steps to put an end to the breach referred to in paragraph 3, the competent authorities of the management company's host Member State shall inform the competent authorities of the management company's home Member State accordingly. The competent authorities of the management company's home Member State shall, at the earliest opportunity, take all appropriate measures to ensure that the management company concerned provides the information requested by the management company's host Member State pursuant to paragraph 2 or puts an end to the breach. The nature of those measures shall be communicated to the competent authorities of the management company's host Member State.

▪ *Recital 23 of UCITS IV - p. 7*

- *Recitals 69 to 70 and 72 of UCITS IV - pp. 16 ff.*

5. If, despite the measures taken by the competent authorities of the management company's home Member State or because such measures prove to be inadequate or are not available in the Member State in question, the management company continues to refuse to provide the information requested by the management company's host Member State pursuant to paragraph 2, or persists in breaching the legal or regulatory provisions, referred to in the same paragraph, in force in the management company's host Member State, the competent authorities of the management company's host Member State may take either of the following actions:

   (a) after informing the competent authorities of the management company's home Member State, take appropriate measures, including under Articles 98 and 99, to prevent or penalise further irregularities and, in so far as necessary, to prevent that management company from initiating any further transaction within its territory. Member States shall ensure that within their territories it is possible to serve the legal documents necessary for those measures on management companies. Where the service provided within the management company's host Member State is the management of a UCITS, the management company's host Member State may require the management company to cease managing that UCITS; or

- *Recital 23 of UCITS IV - p. 7*

   (b) where they consider that the competent authority of the management company's home Member State has not acted adequately, refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

6. Any measure adopted pursuant to paragraphs 4 or 5 involving measures or penalties shall be properly justified and communicated to the management company concerned. Every such measure shall be subject to the right to apply to the courts in the Member State which adopted it.

7. Before following the procedure laid down in paragraphs 3, 4 or 5, the competent authorities of the management company's host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of investors and others for whom services are provided. The Commission, ESMA, and the competent authorities of the other Member States concerned shall be informed of such measures at the earliest opportunity.

   After consulting the competent authorities of the Member States concerned, the Commission may decide that the Member State in question must amend or abolish those measures, without prejudice to power of ESMA under Article 17 of Regulation (EU) No 1095/2010.

8. The competent authorities of the management company's home Member State shall consult the competent authorities of the UCITS home Member State before withdrawing the authorisation of the management company. In such cases, the competent authorities of the UCITS home Member State shall take appropriate measures to safeguard investors' interests. Those measures may include decisions preventing the management company concerned from initiating any further transactions within its territory.

   Every two years the Commission shall issue a report on such cases.

9. Member States shall inform ESMA and the Commission of the number and type of cases in which they refuse authorisation under Article 17 or an application under Article 20 and of any measures taken in accordance with paragraph 5 of this Article.

Every two years the Commission shall issue a report on such cases.

CHAPTER IV
OBLIGATIONS REGARDING THE DEPOSITARY

- *Recital 11 of UCITS V: In order to ensure the necessary level of harmonisation of the relevant regulatory requirements in different Member States, additional rules should be adopted laying down the tasks and duties of depositaries, designating the legal entities that may be appointed as depositaries and clarifying the liability of depositaries in the event that the assets of the UCITS are lost in custody or in the case of depositaries' improper performance of their oversight duties. Such improper performance may result in the loss of assets but also in a loss of the value of assets, if, for example, a depositary fails to act on investments that are not compliant with fund rules.*

- *Recital 14 of UCITS V: In order to ensure a harmonised approach to the performance of depositaries' duties in all Member States irrespective of the legal form taken by the UCITS, it is necessary to introduce a uniform list of oversight duties that are incumbent on depositaries in relation to UCITS with a corporate form (an investment company) and UCITS in a contractual form.*

(Article 1(4) of UCITS V)

Article 22

1. An investment company and, for each of the common funds that it manages, a management company shall ensure that a single depositary is appointed in accordance with this Chapter.

- *Recital 12 of UCITS V: It is necessary to clarify that a UCITS should appoint a single depositary having general oversight over the assets of the UCITS. Requiring that there be a single depositary should ensure that the depositary has an overview of all the assets of the UCITS and both fund managers and investors have a single point of reference in the event that problems occur in relation to the safekeeping of assets or the performance of oversight functions. The safekeeping of assets includes holding assets in custody or, where assets are of such a nature that they cannot be held in custody, verification of the ownership of those assets as well as record-keeping for those assets.*

- *Recitals 30 to 32 of Commission Delegated Regulation 2016/438 – pp. 157 f.*
- *Article 20 to 24 of Commission Delegated Regulation 2016/438 – pp. 174 to 176*

2. The appointment of the depositary shall be evidenced by a written contract.

- *Recitals 2 and 3 of Commission Delegated Regulation 2016/438 – p. 149*
- *Article 2 of Commission Delegated Regulation 2016/438 – p. 158*

That contract shall, inter alia, regulate the flow of information deemed to be necessary to allow the depositary to perform its functions for the UCITS for which it has been

appointed as depositary, as laid down in this Directive and in other relevant laws, regulations and administrative provisions.

3. The depositary shall:

- *Recital 4 of Commission Delegated Regulation 2016/438 – p. 150*

(a) ensure that the sale, issue, repurchase, redemption and cancellation of units of the UCITS are carried out in accordance with the applicable national law and the fund rules or instruments of incorporation;

- *Recital 5 of Commission Delegated Regulation 2016/438 – p. 150*
- *Article 2(2)(h) of Commission Delegated Regulation 2016/438 – p. 158*
- *Article 4 of Commission Delegated Regulation 2016/438 – p. 161*

(b) ensure that the value of the units of the UCITS is calculated in accordance with the applicable national law and the fund rules or the instruments of incorporation;

- *Recital 6 of Commission Delegated Regulation 2016/438 – p. 151*
- *Article 5 of Commission Delegated Regulation 2016/438 – p. 162*

(c) carry out the instructions of the management company or an investment company, unless they conflict with the applicable national law, or with the fund rules or the instruments of incorporation;

- *Recital 7 of Commission Delegated Regulation 2016/438 – p. 151*
- *Article 6 of Commission Delegated Regulation 2016/438 – p. 162*

(d) ensure that in transactions involving the assets of the UCITS any consideration is remitted to the UCITS within the usual time limits;

- *Article 7 of Commission Delegated Regulation 2016/438 – p. 163*

(e) ensure that the income of the UCITS is applied in accordance with the applicable national law and the fund rules or the instruments of incorporation.

- *Recital 8 of Commission Delegated Regulation 2016/438 – p. 151*
- *Article 8 of Commission Delegated Regulation 2016/438 – p. 163*

4. The depositary shall ensure that the cash flows of the UCITS are properly monitored, and, in particular, that all payments made by, or on behalf of, investors upon the subscription of units of the UCITS have been received, and that all cash of the UCITS has been booked in cash accounts that are:

(a) opened in the name of the UCITS, of the management company acting on behalf of the UCITS, or of the depositary acting on behalf of the UCITS;

(b) opened at an entity referred to in points (a), (b) and (c) of Article 18(1) of Commission Directive 2006/73/EC[1]; and

(c) maintained in accordance with the principles set out in Article 16 of Directive 2006/73/EC.

Where the cash accounts are opened in the name of the depositary acting on behalf of the UCITS, no cash of the entity referred to in point (b) of the first subparagraph and none of the own cash of the depositary shall be booked on such accounts.

- *Recital 15 of UCITS V: The depositary should be responsible for the proper monitoring of the cash flows of the UCITS, and, in particular, for ensuring that investor money and cash belonging to the UCITS is booked correctly on accounts opened in the name of the UCITS, in the name of the management company acting on behalf of the UCITS, or in the name of the depositary acting on behalf of the UCITS, at an entity referred to in point (a), (b) or (c) of Article 18(1) of Commission Directive 2006/73/EC [2]. Therefore, detailed provisions should be adopted on cash flow monitoring so as to ensure effective and consistent levels of investor protection. When ensuring investor money is booked in cash accounts, the depositary should take into account the principles set out in Article 16 of that Directive.*
- *Recital 16 of UCITS V: In order to prevent fraudulent cash transfers, no cash account associated with the transactions of the UCITS should be opened without the depositary's knowledge.*

- *Recitals 9 to 11 of Commission Delegated Regulation 2016/438 – p. 151*
- *Article 2(2)(l) of Commission Delegated Regulation 2016/438 – p. 158*
- *Article 9 and 10 of Commission Delegated Regulation 2016/438 – pp. 164 f.*

5. The assets of the UCITS shall be entrusted to the depositary for safekeeping as follows:

(a) for financial instruments that may be held in custody, the depositary shall:

(i) hold in custody all financial instruments that may be registered in a financial instruments account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary;

(ii) ensure that all financial instruments that can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts in accordance with the principles set out in Article 16 of Directive 2006/73/EC, opened in the name of the UCITS or the management company acting on behalf of the UCITS, so that they can be clearly identified as belonging to the UCITS in accordance with the applicable law at all times;

[1] Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive (OJ L 241, 2.9.2006, p. 26).

[2] Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

- *Recital 17 of UCITS V: Any asset held in custody for a UCITS should be distinguished from the depositary's own assets, and should at all times be identified as belonging to that UCITS. Such a requirement should confer an additional layer of protection for investors in the event that the depositary defaults.*

- *Recital 18 of UCITS V: In addition to the existing duty of safekeeping of assets belonging to a UCITS, assets that are capable of being held in custody should be differentiated from those that are not, to which record-keeping and ownership verification requirements apply instead. The group of assets that can be held in custody should be clearly differentiated, since the duty to return lost assets should apply only to that specific category of assets.*

- *Recitals 12 and 13 of Commission Delegated Regulation 2016/438 – p. 152*

- *Articles 12 and 13 of Commission Delegated Regulation 2016/438 – pp. 166 to 166*

(b) for other assets, the depositary shall:

(i) verify the ownership by the UCITS, or by the management company acting on behalf of the UCITS, of such assets by assessing whether the UCITS or the management company acting on behalf of the UCITS holds the ownership based on information or documents provided by the UCITS or by the management company and, where available, on external evidence;

(ii) maintain a record of those assets for which it is satisfied that the UCITS or the management company acting on behalf of the UCITS holds the ownership and keep that record up to date.

- *Recital 18 of UCITS V: In addition to the existing duty of safekeeping of assets belonging to a UCITS, assets that are capable of being held in custody should be differentiated from those that are not, to which record-keeping and ownership verification requirements apply instead. The group of assets that can be held in custody should be clearly differentiated, since the duty to return lost assets should apply only to that specific category of assets.*

- *Recitals 14 to 16 of Commission Delegated Regulation 2016/438 – p. 153*

- *Article 14 of Commission Delegated Regulation 2016/438 – p. 167*

6. The depositary shall provide the management company or the investment company, on a regular basis, with a comprehensive inventory of all of the assets of the UCITS.

- *Recitals 14 to 16 of Commission Delegated Regulation 2016/438 – p. 153*

- *Article 2(2)(e) of Commission Delegated Regulation 2016/438 – p. 158*

7. The assets held in custody by the depositary shall not be reused by the depositary, or by any third party to which the custody function has been delegated, for their own account. Reuse comprises any transaction of assets held in custody including, but not limited to, transferring, pledging, selling and lending.

The assets held in custody by the depositary are allowed to be reused only where:

(a) the reuse of the assets is executed for the account of the UCITS;

(b) the depositary is carrying out the instructions of the management company on behalf of the UCITS;

(c) the reuse is for the benefit of the UCITS and in the interest of the unit holders; and

(d) the transaction is covered by high-quality and liquid collateral received by the UCITS under a title transfer arrangement.

The market value of the collateral shall, at all times, amount to at least the market value of the reused assets plus a premium.

- *Recital 19 of UCITS V: The assets held in custody by the depositary should not be reused by the depositary, or by a third party to which the custody function has been delegated, for their own account. Certain conditions should apply to the reuse of assets for the account of the UCITS.*

8. Member States shall ensure that in the event of insolvency of the depositary and/or of any third party located in the Union to which custody of UCITS assets has been delegated, the assets of a UCITS held in custody are unavailable for distribution among, or realisation for the benefit of, creditors of such a depositary and/or such a third party.

- *Recital 17 of UCITS V: Any asset held in custody for a UCITS should be distinguished from the depositary's own assets, and should at all times be identified as belonging to that UCITS. Such a requirement should confer an additional layer of protection for investors in the event that the depositary defaults.*

- *Recitals 19 to 22 of Commission Delegated Regulation 2016/438 – p. 154 f.*
- *Article 17 of Commission Delegated Regulation 2016/438 – p. 171*

(Article 1(5) of UCITS V)

Article 22a

1. The depositary shall not delegate to third parties the functions referred to in Article 22(3) and (4).

2. The depositary may delegate to third parties the functions referred to in Article 22(5) only where:

(a) the tasks are not delegated with the intention of avoiding the requirements laid down in this Directive;

(b) the depositary can demonstrate that there is an objective reason for the delegation;

(c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it intends to delegate parts of its tasks, and continues to exercise all due skill, care and diligence in the periodic review and ongoing monitoring of any third party to which it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it.

- *Recital 20 of UCITS V: It is necessary to lay down the conditions for the delegation of the depositary's safekeeping duties to a third party. Delegation and sub-delegation should be*

objectively justified and subject to strict requirements in relation to the suitability of the third party entrusted with the delegated function, and in relation to the due skill, care and diligence that the depositary should employ to select, appoint and review that third party. For the purpose of achieving uniform market conditions and an equally high level of investor protection, such conditions should be aligned with those applicable under Directive 2011/61/EU. Provisions should be adopted to ensure that third parties to which safekeeping functions have been delegated have the necessary means to perform their duties and that they segregate the assets of the UCITS.

- *Recital 17 and 18 of Commission Delegated Regulation 2016/438 – p. 153*
- *Article 15 of Commission Delegated Regulation 2016/438 – p. 168*

3. The functions referred to in Article 22(5) may be delegated by the depositary to a third party only where that third party at all times during the performance of the tasks delegated to it:

(a) has structures and expertise that are adequate and proportionate to the nature and complexity of the assets of the UCITS or the management company acting on behalf of the UCITS which have been entrusted to it;

(b) for custody tasks referred to in point (a) of Article 22(5), is subject to:

(i) effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned;

(ii) an external periodic audit to ensure that the financial instruments are in its possession;

- *Recital 23 of UCITS V: Where custody is delegated to a third party, it is also necessary to ensure that the third party is subject to specific requirements on effective prudential regulation and supervision. In addition, in order to ensure that the financial instruments are in the possession of the third party to which custody was delegated, periodic external audits should be performed.*

(c) segregates the assets of the clients of the depositary from its own assets and from the assets of the depositary in such a way that they can, at any time, be clearly identified as belonging to clients of a particular depositary;

- *Recital 22 of UCITS V: A third party to which the safekeeping of assets is delegated should be able to maintain an omnibus account, as a common segregated account for multiple UCITS.*

- *Recital 21 of Commission Delegated Regulation 2016/438 – p. 154*
- *Article 16 of Commission Delegated Regulation 2016/438 – p. 170*

(d) takes all necessary steps to ensure that in the event of insolvency of the third party, assets of a UCITS held by the third party in custody are unavailable for distribution among, or realisation for the benefit of, creditors of the third party; and

- *Recitals 19 to 22 of Commission Delegated Regulation 2016/438 – p. 154*
- *Article 15(2) and 17 of Commission Delegated Regulation 2016/438 – p. 168 and 171*

(e) complies with the general obligations and prohibitions laid down in Article 22(2), (5) and (7) and in Article 25.

Notwithstanding point (b)(i) of the first subparagraph, where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in that point, the depositary may delegate its functions to such a local entity only to the extent required by the law of that third country, only for as long as there are no local entities that satisfy the delegation requirements, and only where:

(a) the investors of the relevant UCITS are duly informed, prior to their investment, of the fact that such a delegation is required due to legal constraints in the law of the third country, of the circumstances justifying the delegation and of the risks involved in such a delegation;

(b) the investment company, or the management company on behalf of the UCITS, has instructed the depositary to delegate the custody of such financial instruments to such a local entity.

The third party may, in turn, sub-delegate those functions, subject to the same requirements. In such a case, Article 24(2) shall apply *mutatis mutandis* to the relevant parties.

4. For the purposes of this Article, the provision of services as specified by Directive 98/26/EC of the European Parliament and of the Council [1] by securities settlement systems as designated for the purposes of that Directive or the provision of similar services by third-country securities settlement systems shall not be considered to be a delegation of custody functions.

- *Recital 21 of UCITS V: When a Central Securities Depository (CSD), as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council [2], or a third-country CSD provides the services of operating a securities settlement system as well as at least either the initial recording of securities in a book-entry system through initial crediting or providing and maintaining securities accounts at the top tier level, as specified in Section A of the Annex to that Regulation, the provision of those services by that CSD with respect to the securities of the UCITS that are initially recorded in a book-entry system through initial crediting by that CSD should not be considered to be a delegation of custody functions. However, entrusting the custody of securities of the UCITS to any CSD, or to any third-country CSD should be considered to be a delegation of custody functions.*

(Article 1(6) of UCITS V)

Article 23

1. A depositary shall either have its registered office or be established in the UCITS home Member State.

[1] Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems (OJ L 166, 11.6.1998, p. 45).

[2] Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (see page 1 of this Official Journal).

2. The depositary shall be:

(a) a national central bank;

(b) a credit institution authorised in accordance with Directive 2013/36/EU; or

(c) another legal entity, authorised by the competent authority under the law of the Member State to carry out depositary activities under this Directive, which is subject to capital adequacy requirements not less than the requirements calculated depending on the selected approach in accordance with Article 315 or 317 of Regulation (EU) No 575/2013 of the European Parliament and of the Council[1] and which has own funds not less than the amount of initial capital under Article 28(2) of Directive 2013/36/EU.

A legal entity as referred to in point (c) of the first subparagraph shall be subject to prudential regulation and ongoing supervision and shall satisfy the following minimum requirements:

(a) it shall have the infrastructure necessary to keep in custody financial instruments that can be registered in a financial instruments account opened in the depositary's books;

(b) it shall establish adequate policies and procedures sufficient to ensure compliance of the entity, including its managers and employees, with its obligations under this Directive;

(c) it shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment and effective control and safeguard arrangements for information processing systems;

(d) it shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest;

(e) it shall arrange for records to be kept of all services, activities and transactions that it undertakes, which shall be sufficient to enable the competent authority to fulfil its supervisory tasks and to perform the enforcement actions provided for in this Directive;

(f) it shall take reasonable steps to ensure continuity and regularity in the performance of its depositary functions by employing appropriate and proportionate systems, resources and procedures including to perform its depositary activities;

(g) all members of its management body and senior management, shall, at all times, be of sufficiently good repute, possess sufficient knowledge, skills and experience;

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[1] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No648/2012 (OJ L 176, 27.6.2013, p. 1).

(h) its management body shall possess adequate collective knowledge, skills and experience to be able to understand the depositary's activities, including the main risks;

(i) each member of its management body and senior management shall act with honesty and integrity.

- *Recital 25 of UCITS V: In order to ensure a high level of investor protection and to guarantee an appropriate level of prudential regulation and ongoing control, it is necessary to establish an exhaustive list of entities that are eligible to act as depositaries. Those entities should be limited to national central banks, credit institutions, and other legal entities authorised under the law of Member States to carry out depositary activities under this Directive, which are subject to prudential supervision and capital adequacy requirements not less than the requirements calculated depending on the selected approach in accordance with Article 315 or 317 of Regulation (EU) No 575/2013 of the European Parliament and of the Council[1], have own funds not less than the amount of initial capital under Article 28(2) of Directive 2013/36/EU of the European Parliament and of the Council[2] and have their registered office or a branch in the UCITS home Member State.*

3. Member States shall determine which of the categories of institutions referred to in the first subparagraph of paragraph 2 shall be eligible to be depositaries.

4. Investment companies or management companies acting on behalf of the UCITS that they manage, which, before 18 March 2016, appointed as a depositary an institution that does not meet the requirements laid down in paragraph 2, shall appoint a depositary that meets those requirements before 18 March 2018.

(Article 1(7) of UCITS V)

Article 24

1. Member States shall ensure that the depositary is liable to the UCITS and to the unit-holders of the UCITS for the loss by the depositary or a third party to whom the custody of financial instruments held in custody in accordance with point (a) of Article 22(5) has been delegated.

In the case of a loss of a financial instrument held in custody, Member States shall ensure that the depositary returns a financial instrument of an identical type or the corresponding amount to the UCITS or the management company acting on behalf of the UCITS without undue delay. The depositary shall not be liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

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[1] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

[2] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

Member States shall ensure that the depositary is also liable to the UCITS, and to the investors of the UCITS, for all other losses suffered by them as a result of the depositary's negligent or intentional failure to properly fulfil its obligations pursuant to this Directive.

- *Recital 26 of UCITS V: It is necessary to specify and clarify the UCITS depositary's liability in case of the loss of a financial instrument that is held in custody. The depositary should be liable, where a financial instrument held in custody has been lost, to return a financial instrument of an identical type or the corresponding amount to the UCITS. No discharge of liability in the case of loss of assets should be envisaged, except where the depositary is able to prove that the loss is due to an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary. In that context, a depositary should not be able to rely on internal situations such as a fraudulent act by an employee to discharge itself of liability.*

- *Recitals 23 to 29 of Commission Delegated Regulation 2016/438 – p. 155 to 156*
- *Articles 18 and 19 of Commission Delegated Regulation 2016/438 – pp. 172 to 173*

2. The liability of the depositary referred to in paragraph 1 shall not be affected by any delegation as referred to in Article 22a.

- *Recital 21 of UCITS V: When a Central Securities Depository (CSD), as defined in point (1) of Article 2(1) of Regulation (EU) No 909/2014 of the European Parliament and of the Council (1), or a third-country CSD provides the services of operating a securities settlement system as well as at least either the initial recording of securities in a book-entry system through initial crediting or providing and maintaining securities accounts at the top tier level, as specified in Section A of the Annex to that Regulation, the provision of those services by that CSD with respect to the securities of the UCITS that are initially recorded in a book-entry system through initial crediting by that CSD should not be considered to be a delegation of custody functions. However, entrusting the custody of securities of the UCITS to any CSD, or to any third-country CSD should be considered to be a delegation of custody functions.*
- *Recital 27 of UCITS V: Where the depositary delegates custody tasks and the financial instruments held in custody by a third party are lost, the depositary should be liable. In the case of loss of an instrument held in custody, a depositary should return a financial instrument of an identical type or the corresponding amount, even if the loss occurred with a third party to which the custody has been delegated. The depositary should be discharged of that liability only where it is able to prove that the loss resulted from an external event beyond its reasonable control and with consequences that were unavoidable despite all reasonable efforts to the contrary. In that context, a depositary should not be able to rely on internal situations such as a fraudulent act by an employee to discharge itself of liability. No discharge of liability, be it regulatory or contractual, should be possible in the case of loss of assets by the depositary or a third party to which the custody has been delegated.*

3. The liability of the depositary referred to in paragraph 1 shall not be excluded or limited by agreement.

[1] Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (see page 1 of this Official Journal).

- *Recital 29 of UCITS V: Without prejudice to this Directive, a depositary should not be prevented from making arrangements to cover damages and losses to the UCITS or to the unit-holders of the UCITS. In particular, such arrangements should not constitute a discharge of the depositary's liability, result in a transfer or any change to the depositary's liability nor should they impinge on investors' rights, including redress rights.*

4. Any agreement that contravenes paragraph 3 shall be void.

5. Unit-holders in the UCITS may invoke the liability of the depositary directly or indirectly through the management company or the investment company provided that this does not lead to a duplication of redress or to unequal treatment of the unit-holders.

- *Recital 28 of UCITS V: Every investor in a UCITS should be able to invoke claims relating to the liability of its depositary directly or indirectly through the management company or the investment company. Redress against the depositary should not depend on the legal form of the UCITS (corporate or contractual) or the legal nature of the relationship between the depositary, the management company and the unit-holders. The right of unit-holders to invoke depositary liability should not lead to a duplication of redress or to unequal treatment of the unit-holders.*

(Article 1(8) of UCITS V)

Article 25

1. No company shall act as both management company and depositary. No company shall act as both investment company and depositary.

- *Recital 24 of UCITS V: In order to ensure consistently high levels of investor protection, provisions on conduct and on the management of conflicts of interest should be adopted and should apply in all situations, including in the case of a delegation of safekeeping duties. Those rules should in particular ensure a clear separation of tasks and functions between the depositary, the UCITS and the management company or the investment company.*

- *Recitals 31 to 33 of Commission Delegated Regulation 2016/438 – pp. 156 to 157*
- *Articles 20 to 24 of Commission Delegated Regulation 2016/438 – pp. 174 to 176*

2. In carrying out their respective functions, the management company and the depositary shall act honestly, fairly, professionally, independently and solely in the interest of the UCITS and the investors of the UCITS. In carrying out their respective functions, the investment company and the depositary shall act honestly, fairly, professionally, independently and solely in the interest of the investors of the UCITS.

- *Recital 13 of UCITS V: In performing its tasks, a depositary should act honestly, fairly, professionally, independently and in the interest of the UCITS and of the investors of the UCITS.*

A depositary shall not carry out activities with regard to the UCITS or the management company on behalf of the UCITS that may create conflicts of interest between the UCITS, the investors in the UCITS, the management company and itself, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the UCITS.

- *Recital 31 of Commission Delegated Regulation 2016/438 – p. 156*
- *Article 23 of Commission Delegated Regulation 2016/438 – p. 176*

(Article 1(9) of UCITS V)

Article 26

1. The law or the fund rules of the common fund shall lay down the conditions for the replacement of the management company and of the depositary and rules to ensure the protection of unit-holders in the event of such a replacement.

2. The law or the instruments of incorporation of the investment company shall lay down the conditions for the replacement of the management company and of the depositary and rules to ensure the protection of unit-holders in the event of such a replacement.

- *Recital 32 of UCITS V: It is necessary to ensure that the same requirements apply to depositaries irrespective of the legal form of the UCITS. Consistency of requirements should enhance legal certainty, increase investor protection and contribute to the creation of uniform market conditions. The Commission has not received any notification that the derogation from the general obligation to entrust assets to a depositary has been used by an investment company. Therefore, the requirements laid down in Directive 2009/65/EC regarding the depositary of an investment company should be considered as to be redundant.*

(Article 1(10) of UCITS V)

Article 26a

The depositary shall make available to its competent authorities, on request, all information which it has obtained while performing its duties and that may be necessary for its competent authorities or for the competent authorities of the UCITS or of the management company.

If the competent authorities of the UCITS or of the management company are different from those of the depositary, the competent authorities of the depositary shall without delay share the information received with the competent authorities of the UCITS and of the management company.

Article 26b

The Commission shall be empowered to adopt delegated acts in accordance with Article 112a specifying:

- *Recital 85 of UCITS IV – p.19*

- *Recital 42 of UCITS V: In order to ensure that the objectives of this Directive are attained, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission. In particular, the Commission should be empowered to adopt delegated acts to specify the particulars that need to be included in the standard agreement between the depositary and the management company or the investment company, the conditions for performing depositary functions, including the type of financial instruments that should be included in the scope of the*

depositary's custody duties, the conditions subject to which the depositary may exercise its custody duties over financial instruments registered with a central depository and the conditions subject to which the depositary should safekeep the financial instruments issued in a nominative form and registered with an issuer or a registrar, the due diligence duties of depositaries, the segregation obligation, the conditions subject to and circumstances in which financial instruments held in custody should be considered to be lost, and what is to be understood by external events beyond reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary. The level of investor protection provided by those delegated acts should be at least as high as that provided by delegated acts adopted under Directive 2011/61/EU. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

(a) the particulars that need to be included in the written contract referred to in Article 22(2);

(b) the conditions for performing the depositary functions pursuant to Article 22(3), (4) and (5), including:

  (i) the types of financial instrument to be included in the scope of the custody duties of the depositary in accordance with point (a) of Article 22(5);

  (ii) the conditions subject to which the depositary is able to exercise its custody duties over financial instruments registered with a central depositary;

  (iii) the conditions subject to which the depositary is to safekeep the financial instruments issued in a nominative form and registered with an issuer or a registrar, in accordance with point (b) of Article 22(5);

(c) the due diligence duties of depositaries pursuant to point (c) of Article 22a(2);

(d) the segregation obligation pursuant to point (c) of Article 22a(3);

(e) the steps to be taken by the third party pursuant to point (d) of Article 22a(3);

(f) the conditions subject to which and circumstances in which financial instruments held in custody are to be considered to be lost for the purpose of Article 24;

(g) what is to be understood by external events beyond reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary, pursuant to Article 24(1);

(h) the conditions for fulfilling the independence requirement referred to in Article 25(2).

CHAPTER V
OBLIGATIONS REGARDING INVESTMENT COMPANIES

SECTION 1
Conditions for taking up business

Article 27

Access to the business of an investment company shall be subject to prior authorisation to be granted by the competent authorities of the investment company's home Member State.

- *Recitals 4, 20 and 21 of UCITS IV – pp. 4 and 7*

Member States shall determine the legal form which an investment company must take.

The registered office of the investment company shall be situated in the investment company's home Member State.

Article 28

No investment company may engage in activities other than those referred to in Article 1(2).

Article 29

1. Without prejudice to other conditions of general application laid down by national law, the competent authorities of the investment company's home Member State shall not grant authorisation to an investment company that has not designated a management company unless the investment company has a sufficient initial capital of at least EUR 300 000.

- *Recital 25 of UCITS IV – p. 8*

In addition, when an investment company has not designated a management company authorised pursuant to this Directive, the following conditions shall apply:

(a) the authorisation must not be granted unless the application for authorisation is accompanied by a programme of operations setting out, at least, the organisational structure of the investment company;

(b) the directors of the investment company must be of sufficiently good repute and be sufficiently experienced also in relation to the type of business pursued by the investment company and, to that end: the names of the directors and of every person succeeding them in office must be communicated forthwith to the competent authorities; the conduct of an investment company's business must be decided by at least two persons meeting such conditions; and 'directors' shall mean those persons who, under the law or the instruments of incorporation, represent the investment company, or who effectively determine the policy of the company; and

- *Recital 26 of UCITS IV – p. 8*

(c) where close links exist between the investment company and other natural or legal persons, the competent authorities must grant authorisation only if those close links do not prevent the effective exercise of their supervisory functions.

The competent authorities of the investment company's home Member State shall also refuse authorisation if the laws, regulations or administrative provisions of a third country governing one or more natural or legal persons with which the investment company has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions.

The competent authorities of the investment company's home Member State shall require investment companies to provide them with the information they need.

2. Where an investment company has not designated a management company, the investment company shall be informed, within six months of the submission of a complete application, whether or not authorisation has been granted. Reasons shall be given whenever an authorisation is refused.

3. An investment company may start business as soon as authorisation has been granted.

4. The competent authorities of the investment company's home Member State may withdraw the authorisation issued to an investment company subject to this Directive only where that company:

(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased the activity covered by this Directive more than six months previously, unless the Member State concerned has provided for authorisation to lapse in such cases;

(b) has obtained the authorisation by making false statements or by any other irregular means;

(c) no longer fulfils the conditions under which authorisation was granted;

(d) has seriously or systematically infringed the provisions adopted pursuant to this Directive; or

(e) falls within any of the cases where national law provides for withdrawal.

5. In order to ensure consistent harmonisation of this Directive, ESMA may develop draft regulatory technical standards to specify:

(a) the information to be provided to the competent authorities in the application for the authorisation of the investment company, including the programme of operations; and

(b) the obstacles which may prevent effective exercise of the supervisory functions of the competent authority under paragraph 1(c).

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

6. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish standard forms, templates and procedures for the provision of information referred to in point (a) of the first subparagraph of paragraph 5.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

SECTION 2
Operating conditions

Article 30

(Article 1(11) of UCITS V)

Articles 13 to 14b shall apply *mutatis mutandis* to investment companies that have not designated a management company authorised pursuant to this Directive.

- *Recital 3 of UCITS V: Provided that management companies of UCITS and investment companies apply all the principles governing remuneration policies, they should be able to apply those policies in different ways according to their size, the size of the UCITS that they manage, their internal organisation, and the nature, scope and complexity of their activities.*

- *Recital 4 of UCITS V: While some actions are to be taken by the management body, it should be ensured that where, according to national law, the management company or investment company has in place different bodies with specific functions assigned, the requirements directed at the management body or at the management body in its supervisory function should also, or should instead, apply to those bodies, such as the General meeting.*

For the purpose of the Articles referred to in the first paragraph, 'management company' means 'investment company'.

Investment companies shall manage only assets of their own portfolio and shall not, under any circumstances, receive any mandate to manage assets on behalf of a third party.

Article 31

Each investment company's home Member State shall draw up prudential rules which shall be observed at all times by investment companies that have not designated a management company authorised pursuant to this Directive.

In particular, the competent authorities of the investment company's home Member State, having regard also to the nature of the investment company, shall require that the company has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management

of investments in financial instruments in order to invest its initial capital and ensuring, at least, that each transaction involving the company may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the investment company are invested according to the instruments of incorporation and the legal provisions in force.

(Art. 1(12) of UCITS V)

Section 3 of Chapter V [articles 32 to 36] is deleted.

CHAPTER VI
MERGERS OF UCITS

- *Recital 33 of UCITS IV – p. 9*

SECTION 1
Principle, authorisation and approval

Article 37

For the purposes of this Chapter, a UCITS shall include investment compartments thereof.

Article 38

1. Member States shall, subject to the conditions set out in this Chapter and irrespective of the manner in which UCITS are constituted under Article 1(3), allow for cross-border and domestic mergers as defined in Article 2(1)(q) and (r) in accordance with one or more of the merger techniques provided for in Article 2(1)(p).

2. The merger techniques used for cross-border mergers as defined in Article 2(1)(q) must be provided for under the laws of the merging UCITS home Member State.

   The merger techniques used for domestic mergers as defined in Article 2(1)(r) must be provided for under the laws of the Member State, in which the UCITS are established.

- *Recitals 27 and 28 of UCITS IV – p. 8*

Article 39

1. Mergers shall be subject to prior authorisation by the competent authorities of the merging UCITS home Member State.

- *Recital 29 of UCITS IV – p. 8*

2. The merging UCITS shall provide the following information to the competent authorities of its home Member State:

(a) the common draft terms of the proposed merger duly approved by the merging UCITS and the receiving UCITS;

(b) an up-to-date version of the prospectus and the key investor information, referred to in Article 78, of the receiving UCITS, if established in another Member State;

(c) a statement by each of the depositaries of the merging and the receiving UCITS confirming that, in accordance with Article 41, they have verified compliance of the particulars set out in points (a), (f) and (g) of Article 40(1) with the requirements of this Directive and the fund rules or instruments of incorporation of their respective UCITS; and

- *Recital 31 of UCITS IV – p. 9*

(d) the information on the proposed merger that the merging and the receiving UCITS intend to provide to their respective unit-holders.

- *Recital 32 of UCITS IV – p. 9*

That information shall be provided in such a manner as to enable the competent authorities of both the merging and the receiving UCITS home Member State to read them in the official language or one of the official languages of that Member State or those Member States, or in a language approved by those competent authorities.

3. Once the file is complete, the competent authorities of the merging UCITS home Member State shall immediately transmit copies of the information referred to in paragraph 2 to the competent authorities of the receiving UCITS home Member State. The competent authorities of the merging and the receiving UCITS home Member State shall, respectively, consider the potential impact of the proposed merger on unit-holders of the merging and the receiving UCITS to assess whether appropriate information is being provided to unit-holders.

If the competent authorities of the merging UCITS home Member State consider it necessary, they may require, in writing, that the information to unit-holders of the merging UCITS be clarified.

If the competent authorities of the receiving UCITS home Member State consider it necessary, they may require, in writing, and no later than 15 working days of receipt of the copies of the complete information referred to in paragraph 2, that the receiving UCITS modify the information to be provided to its unit-holders.

In such a case, the competent authorities of the receiving UCITS home Member State shall send an indication of their dissatisfaction to the competent authorities of the merging UCITS home Member State. They shall inform the competent authorities of the merging UCITS home Member State whether they are satisfied with the modified information to be provided to the unit-holders of the receiving UCITS within 20 working days of being notified thereof.

4. The competent authorities of the merging UCITS home Member State shall authorise the proposed merger if the following conditions are met:

(a) the proposed merger complies with all of the requirements of Articles 39 to 42;

(b) the receiving UCITS has been notified, in accordance with Article 93, to market its units in all Member States where the merging UCITS is either authorised or has been notified to market its units in accordance with Article 93; and

(c) the competent authorities of the merging and the receiving UCITS home Member State are satisfied with the proposed information to be provided to unit-holders, or no indication of dissatisfaction from the competent authorities of the receiving UCITS home Member State has been received under the fourth subparagraph of paragraph 3.

- *Recital 29 of UCITS IV – p. 8*

5. If the competent authorities of the merging UCITS home Member State consider that the file is not complete, they shall request additional information within 10 working days of receiving the information referred to in paragraph 2.

The competent authorities of the merging UCITS home Member State shall inform the merging UCITS, within 20 working days of submission of the complete information, in accordance with paragraph 2, whether or not the merger has been authorised.

The competent authorities of the merging UCITS home Member State shall also inform the competent authorities of the receiving UCITS home Member State of their decision.

6. Member States may, in accordance with the second subparagraph of Article 57(1), provide for a derogation from Articles 52 to 55 for receiving UCITS.

Article 40

1. Member States shall require that the merging and the receiving UCITS draw up common draft terms of merger.

The common draft terms of merger shall set out the following particulars:

(a) an identification of the type of merger and of the UCITS involved;

(b) the background to and rationale for the proposed merger;

(c) the expected impact of the proposed merger on the unit-holders of both the merging and the receiving UCITS;

(d) the criteria adopted for valuation of the assets and, where applicable, the liabilities on the date for calculating the exchange ratio as referred to in Article 47(1);

(e) the calculation method of the exchange ratio;

(f) the planned effective date of the merger;

(g) the rules applicable, respectively, to the transfer of assets and the exchange of units; and

(h) in the case of a merger pursuant to point (p)(ii) of Article 2(1) and, where applicable, point (p)(iii) of Article 2(1), the fund rules or instruments of incorporation of the newly constituted receiving UCITS.

The competent authorities shall not require that any additional information is included in the common draft terms of mergers.

2. The merging UCITS and the receiving UCITS may decide to include further items in the common draft terms of merger.

- *Recital 31 of UCITS IV – p. 9*

SECTION 2

Third-party control, information of unit-holders and other rights of unit-holders

Article 41

Member States shall require that the depositaries of the merging and of the receiving UCITS verify the conformity of the particulars set out in points (a), (f) and (g) of Article 40(1) with the requirements of this Directive and the fund rules or instruments of incorporation of their respective UCITS.

- *Recital 31 of UCITS IV – p. 9*

- *Article 12(3)(b) of Commission Directive 2010/43 – p. 193*

Article 42

1. The law of the merging UCITS home Member States shall entrust either a depositary or an independent auditor, approved in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts[1], to validate the following:

   (a) the criteria adopted for valuation of the assets and, where applicable, the liabilities on the date for calculating the exchange ratio, as referred to in Article 47(1);

   (b) where applicable, the cash payment per unit; and

   (c) the calculation method of the exchange ratio as well as the actual exchange ratio determined at the date for calculating that ratio, as referred to in Article 47(1).

2. The statutory auditors of the merging UCITS or the statutory auditor of the receiving UCITS shall be considered independent auditors for the purposes of paragraph 1.

3. A copy of the reports of the independent auditor, or, where applicable, the depositary shall be made available on request and free of charge to the unit-holders of both the merging UCITS and the receiving UCITS and to their respective competent authorities.

[1] OJ L 157, 9.6.2006, p. 87.

- *Recital 31 of UCITS IV - p. 9*

- *Article 12(3)(b) of Commission Directive 2010/43 – p. 193*

Article 43

1. Member States shall require merging and receiving UCITS to provide appropriate and accurate information on the proposed merger to their respective unit-holders so as to enable them to make an informed judgement of the impact of the proposal on their investment.

- *Recitals 1 to 5 of Commission Directive 2010/42 – p. 217*
- *Articles 3 to 6 of Commission Directive 2010/42 – pp. 222 to 224*

2. That information shall be provided to unit-holders of the merging and of the receiving UCITS only after the competent authorities of the merging UCITS home Member State have authorised the proposed merger under Article 39.

   It shall be provided at least 30 days before the last date for requesting repurchase or redemption or, where applicable, conversion without additional charge under Article 45(1).

3. The information to be provided to unit-holders of the merging and of the receiving UCITS, shall include appropriate and accurate information on the proposed merger such as to enable them to take an informed decision on the possible impact thereof on their investment and to exercise their rights under Articles 44 and 45.

   It shall include the following:

   (a) the background to and the rationale for the proposed merger;

   (b) the possible impact of the proposed merger on unit-holders, including but not limited to any material differences in respect of investment policy and strategy, costs, expected outcome, periodic reporting, possible dilution in performance, and, where relevant, a prominent warning to investors that their tax treatment may be changed following the merger;

   (c) any specific rights unit-holders have in relation to the proposed merger, including but not limited to the right to obtain additional information, the right to obtain a copy of the report of the independent auditor or the depositary on request, and the right to request the repurchase or redemption or, where applicable, the conversion of their units without charge as specified in Article 45(1) and the last date for exercising that right;

   (d) the relevant procedural aspects and the planned effective date of the merger; and

   (e) a copy of the key investor information, referred to in Article 78, of the receiving UCITS.

- *Recital 32 of UCITS IV – p. 9*

4. If the merging or the receiving UCITS has been notified in accordance with Article 93, the information referred to in paragraph 3 shall be provided in the official language, or one of the official languages, of the relevant UCITS host Member State, or in a language approved by its competent authorities. The UCITS required to provide the information shall be responsible for producing the translation. That translation shall faithfully reflect the content of the original.

(Article 1(19) of UCITS V)

5. The Commission may adopt, by means of delegated acts in accordance with Article 112a, measures specifying the detailed content, format and method by which to provide the information referred to in paragraphs 1 and 3.

- *Recital 86 of UCITS IV – p. 19*

6. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of applications of the delegated acts adopted by the Commission regarding the content, format and method by which the information referred to in paragraphs 1 and 3 of this Article is to be provided.

   Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

- *Article 12(3)(b) of Commission Directive 2010/43 – p. 193*

Article 44

Where the national laws of Member States require approval by the unit-holders of mergers between UCITS, Member States shall ensure that such approval does not require more than 75 % of the votes actually cast by unit-holders present or represented at the general meeting of unit-holders.

The first paragraph shall be without prejudice to any presence quorum provided for under national laws. Member States shall impose neither more stringent presence quorums for cross-border than for domestic mergers nor more stringent presence quorums for UCITS mergers than for mergers of corporate entities.

- *Recital 28 of UCITS IV – p. 8*

- *Article 12 of Commission Directive 2010/43*

Article 45

1. The laws of Member States shall provide that unit-holders of both the merging and the receiving UCITS have the right to request, without any charge other than those retained by the UCITS to meet disinvestment costs, the repurchase or redemption of their units or, where possible, to convert them into units in another UCITS with similar investment policies and managed by the same management company or by any other company with which the management company is linked by common management or

control, or by a substantial direct or indirect holding. That right shall become effective from the moment that the unit-holders of the merging UCITS and those of the receiving UCITS, have been informed of the proposed merger in accordance with Article 43 and shall cease to exist five working days before the date for calculating the exchange ratio referred to in Article 47(1).

- *Recital 30 of UCITS IV – p. 9*

2. Without prejudice to paragraph 1, for mergers between UCITS and by way of derogation from Article 84(1), Member States may allow the competent authorities to require or to allow the temporary suspension of the subscription, repurchase or redemption of units provided that such suspension is justified for the protection of the unit-holders.

SECTION 3
Costs and entry into effect

Article 46

Except in cases where UCITS have not designated a management company, Member States shall ensure that any legal, advisory or administrative costs associated with the preparation and the completion of the merger shall not be charged to the merging or the receiving UCITS, or to any of their unit-holders.

Article 47

1. For domestic mergers, the laws of the Member States shall determine the date on which a merger takes effect as well as the date for calculating the exchange ratio of units of the merging UCITS into units of the receiving UCITS and, where applicable, for determining the relevant net asset value for cash payments.

   For cross-border mergers, the laws of the receiving UCITS home Member State shall determine those dates. Member States shall ensure that, where applicable, those dates are after the approval of the merger by unit-holders of the receiving UCITS or the merging UCITS.

2. The entry into effect of the merger shall be made public through all appropriate means in the manner prescribed by the laws of the receiving UCITS home Member State, and shall be notified to the competent authorities of the home Member States of the receiving and the merging UCITS.

3. A merger which has taken effect as provided for in paragraph 1 shall not be declared null and void.

Article 48

1. A merger effected in accordance with point (p)(i) of Article 2(1) shall have the following consequences:

(a) all the assets and liabilities of the merging UCITS are transferred to the receiving UCITS or, where applicable, to the depositary of the receiving UCITS;

(b) the unit-holders of the merging UCITS become unit-holders of the receiving UCITS and, where applicable, they are entitled to a cash payment not exceeding 10 % of the net asset value of their units in the merging UCITS; and

(c) the merging UCITS cease to exist on the entry into effect of the merger.

2. A merger effected in accordance with point (p)(ii) of Article 2(1) shall have the following consequences:

(a) all the assets and liabilities of the merging UCITS are transferred to the newly constituted receiving UCITS or, where applicable, to the depositary of the receiving UCITS;

(b) the unit-holders of the merging UCITS become unit-holders of the newly constituted receiving UCITS and, where applicable, they are entitled to a cash payment not exceeding 10 % of the net asset value of their units in the merging UCITS; and

(c) the merging UCITS cease to exist on the entry into effect of the merger.

3. A merger effected in accordance with point (p)(iii) of Article 2(1) shall have the following consequences:

(a) the net assets of the merging UCITS are transferred to the receiving UCITS or, where applicable, the depositary of the receiving UCITS;

(b) the unit-holders of the merging UCITS become unit-holders of the receiving UCITS; and

(c) the merging UCITS continues to exist until the liabilities have been discharged.

- *Recital 28 of UCITS IV – p. 8*

4. Member States shall provide for the establishment of a procedure whereby the management company of the receiving UCITS confirms to the depositary of the receiving UCITS that transfer of assets and, where applicable, liabilities is complete. Where the receiving UCITS has not designated a management company, it shall give that confirmation to the depositary of the receiving UCITS.

CHAPTER VII
OBLIGATIONS CONCERNING THE INVESTMENT POLICIES OF UCITS

Article 49

Where UCITS comprise more than one investment compartment, each compartment shall be regarded as a separate UCITS for the purposes of this Chapter.

Article 50

1. The investments of a UCITS shall comprise only one or more of the following:

(a) transferable securities and money market instruments admitted to or dealt in on a regulated market as defined in Article 4(1)(14) of Directive 2004/39/EC;

- *Recitals 35 to 37 of UCITS IV – p. 10*

(b) transferable securities and money market instruments dealt in on another regulated market in a Member State, which operates regularly and is recognised and open to the public;

- *Recitals 35 and 36 of UCITS IV – p. 10*

(c) transferable securities and money market instruments admitted to official listing on a stock exchange in a third country or dealt in on another regulated market in a third country which operates regularly and is recognised and open to the public provided that the choice of stock exchange or market has been approved by the competent authorities or is provided for in law or the fund rules or the instruments of incorporation of the investment company;

- *Recitals 35 and 36 of UCITS IV – p. 10*

(d) recently issued transferable securities, provided that:

(i) the terms of issue include an undertaking that an application will be made for admission to official listing on a stock exchange or to another regulated market which operates regularly and is recognised and open to the public, provided that the choice of stock exchange or market has been approved by the competent authorities or is provided for in law or the fund rules or the instruments of incorporation of the investment company; and

(ii) the admission referred to in point (i) is secured within a year of issue;

- *Recital 35 of UCITS IV – p. 10*

(e) units of UCITS authorised according to this Directive or other collective investment undertakings within the meaning of Article 1(2)(a) and (b), whether or not established in a Member State, provided that:

(i) such other collective investment undertakings are authorised under laws which provide that they are subject to supervision considered by the competent authorities of the UCITS home Member State to be equivalent to that laid down in Community law, and that cooperation between authorities is sufficiently ensured;

(ii) the level of protection for unit-holders in the other collective investment undertakings is equivalent to that provided for unit-holders in a UCITS, and in particular that the rules on asset segregation, borrowing, lending, and uncovered sales of transferable securities and money market instruments are equivalent to the requirements of this Directive;

(iii) the business of the other collective investment undertakings is reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period; and

(iv) no more than 10 % of the assets of the UCITS or of the other collective investment undertakings, whose acquisition is contemplated, can, according to their fund rules or instruments of incorporation, be invested in aggregate in units of other UCITS or other collective investment undertakings;

- *Recitals 38 and 39 of UCITS IV – p. 10*

(f) deposits with credit institutions which are repayable on demand or have the right to be withdrawn, and maturing in no more than 12 months, provided that the credit institution has its registered office in a Member State or, if the credit institution has its registered office in a third country, provided that it is subject to prudential rules considered by the competent authorities of the UCITS home Member State as equivalent to those laid down in Community law;

- *Recitals 40 and 41 of UCITS IV – p. 11*

(g) financial derivative instruments, including equivalent cash-settled instruments, dealt in on a regulated market referred to in points (a), (b) and (c) or financial derivative instruments dealt in over-the-counter (OTC) derivatives, provided that:

(i) the underlying of the derivative consists of instruments covered by this paragraph, financial indices, interest rates, foreign exchange rates or currencies, in which the UCITS may invest according to its investment objectives as stated in its fund rules or instruments of incorporation;

(ii) the counterparties to OTC derivative transactions are institutions subject to prudential supervision, and belonging to the categories approved by the competent authorities of the UCITS home Member State; and

(iii) the OTC derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the UCITS' initiative; or

- *Recitals 43, 45 and 46 of UCITS IV – p. 11*

(h) money market instruments other than those dealt in on a regulated market, which fall under Article 2(1)(o), if the issue or issuer of such instruments is itself regulated for the purpose of protecting investors and savings, provided that they are:

(i) issued or guaranteed by a central, regional or local authority or central bank of a Member State, the European Central Bank, the Community or the European Investment Bank, a third country or, in the case of a Federal State, by one of the members making up the federation, or by a public international body to which one or more Member States belong;

(ii) issued by an undertaking any securities of which are dealt in on regulated markets referred to in points (a), (b) or (c);

(iii) issued or guaranteed by an establishment subject to prudential supervision, in accordance with criteria defined by Community law, or by an establishment which is subject to and complies with prudential rules considered by the competent authorities to be at least as stringent as those laid down by Community law; or

(iv) issued by other bodies belonging to the categories approved by the competent authorities of the UCITS home Member State provided that investments in such instruments are subject to investor protection equivalent to that laid down in points (i), (ii) or (iii) and provided that the issuer is a company whose capital and reserves amount to at least EUR 10 000 000 and which presents and publishes its annual accounts in accordance with Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies [1], is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.

- *Recital 36 of UCITS IV – p. 10*

2. A UCITS shall not, however:

(a) invest more than 10 % of its assets in transferable securities or money market instruments other than those referred to in paragraph 1; or

(b) acquire either precious metals or certificates representing them.

UCITS may hold ancillary liquid assets.

- *Recital 41 of UCITS IV – p. 11*

3. An investment company may acquire movable or immovable property which is essential for the direct pursuit of its business.

4. In order to ensure consistent harmonisation of this Article ESMA may develop draft regulatory technical standards to specify the provisions concerning the categories of assets in which UCITS can invest in accordance with this Article and with delegated acts adopted by the Commission which relate to such provisions.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

[1] OJ L 222, 14.8.1978, p. 11.

Article 50a

(Article 1(20) of UCITS V)

In order to ensure cross-sectoral consistency and to remove misalignment between the interest of firms that repackage loans into tradable securities and other financial instruments (originators) and UCITS that invest in those securities or other financial instruments, the Commission shall adopt, by means of delegated acts in accordance with Article 112a, measures laying down the requirements in the following areas:

(a) the requirements that need to be met by the originator in order for a UCITS to be allowed to invest in securities or other financial instruments of this type issued after 1 January 2011, including requirements that ensure that the originator retains a net economic interest of not less than 5 %;

(b) qualitative requirements that must be met by UCITS which invest in those securities or other financial instruments.

Article 51

1. A management or investment company shall employ a risk-management process which enables it to monitor and measure at any time the risk of the positions and their contribution to the overall risk profile of the portfolio of a UCITS. In particular, it shall not solely or mechanistically rely on credit ratings issued by credit rating agencies as defined in Article 3(1)(b) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies[1], for assessing the creditworthiness of the UCITS' assets.

   It shall employ a process for accurate and independent assessment of the value of OTC derivatives.

- *Recitals 45 and 46 of UCITS IV – p. 12*

   It shall communicate to the competent authorities of its home Member State regularly in regard to the types of derivative instruments, the underlying risks, the quantitative limits and the methods which are chosen in order to estimate the risks associated with transactions in derivative instruments regarding each managed UCITS.

   Competent authorities shall ensure that all information received under the third paragraph aggregated in respect of all the management or investment companies they supervise is accessible to ESMA in accordance with Article 35 of the Regulation (EU) No 1095/2010, and the European Systemic Risk Board (the 'ESRB') established by Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board in accordance[2] with Article 15 of that Regulation for the purpose of monitoring systemic risks at Union level.

[1] OJ L 302, 17.11.2009, p. 1.

[2] OJ L 331, 15.12.2010, p. 1.

2. Member States may authorise UCITS to employ techniques and instruments relating to transferable securities and money market instruments under the conditions and within the limits which they lay down provided that such techniques and instruments are used for the purpose of efficient portfolio management.

When those operations concern the use of derivative instruments, the conditions and limits shall conform to the provisions laid down in this Directive.

Under no circumstances shall those operations cause the UCITS to diverge from its investment objectives as laid down in the UCITS' fund rules, instruments of incorporation or prospectus.

3. A UCITS shall ensure that its global exposure relating to derivative instruments does not exceed the total net value of its portfolio.

The exposure is calculated taking into account the current value of the underlying assets, the counterparty risk, future market movements and the time available to liquidate the positions. This shall also apply to the third and fourth subparagraphs.

A UCITS may invest, as a part of its investment policy and within the limit laid down in Article 52(5), in financial derivative instruments provided that the exposure to the underlying assets does not exceed in aggregate the investment limits laid down in Article 52. Member States may provide that, when a UCITS invests in index-based financial derivative instruments, those investments are not required to be combined for the purposes of the limits laid down in Article 52.

When transferable securities or money market instruments embed a derivative, the derivative shall be taken into account when complying with the requirements of this Article.

- *Recitals 43 to 46 of UCITS IV – pp. 11 to 12*

3a. Taking into account the nature, scale and complexity of the UCITS' activities, the competent authorities shall' monitor the adequacy of the credit assessment processes of the management or investment companies, assess the use of references to credit ratings, as referred to in the first subparagraph of paragraph 1, in the UCITS' investment policies and, where appropriate, encourage mitigation of the impact of such references, with a view to reducing sole and mechanistic reliance on such credit ratings.

(Article 1(19) of UCITS V)

4. Without prejudice to Article 116, the Commission shall adopt, by means of delegated acts in accordance with Article 112a, measures specifying the following:

(a) criteria for assessing the adequacy of the risk-management process employed by the management or investment company in accordance with the first subparagraph of paragraph 1;

(b) detailed rules regarding the accurate and independent assessment of the value of OTC derivatives; and

(c) detailed rules regarding the content of and procedure to be followed for communicating the information referred to in the third subparagraph of paragraph

1 to the competent authorities of the management company's home Member State.

The criteria referred to in point (a) of the first subparagraph shall ensure that the management or investment company is prevented from relying solely or mechanistically on credit ratings, as referred to in the first subparagraph of paragraph 1, for assessing the creditworthiness of the UCITS' assets.

5. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of application of the delegated acts adopted by the Commission regarding the criteria and rules referred to in paragraph 4.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 52

1. A UCITS shall invest no more than:

(a) 5 % of its assets in transferable securities or money market instruments issued by the same body; or

(b) 20 % of its assets in deposits made with the same body.

The risk exposure to a counterparty of the UCITS in an OTC derivative transaction shall not exceed either:

(a) 10 % of its assets when the counterparty is a credit institution referred to in Article 50(1)(f); or

(b) 5 % of its assets, in other cases.

2. Member States may raise the 5 % limit laid down in the first subparagraph of paragraph 1 to a maximum of 10 %. If they do so, however, the total value of the transferable securities and the money market instruments held by the UCITS in the issuing bodies in each of which it invests more than 5 % of its assets shall not exceed 40 % of the value of its assets. That limitation shall not apply to deposits or OTC derivative transactions made with financial institutions subject to prudential supervision.

Notwithstanding the individual limits laid down in paragraph 1, a UCITS shall not combine, where this would lead to investment of more than 20 % of its assets in a single body, any of the following:

(a) investments in transferable securities or money market instruments issued by that body;

(b) deposits made with that body; or

(c) exposures arising from OTC derivative transactions undertaken with that body.

3. Member States may raise the 5 % limit laid down in the first subparagraph of paragraph 1 to a maximum of 35 % if the transferable securities or money market instruments are

issued or guaranteed by a Member State, by its local authorities, by a third country or by a public international body to which one or more Member States belong.

- *Recital 42 of UCITS IV – p. 11*

4. Member States may raise the 5 % limit laid down in the first subparagraph of paragraph 1 to a maximum of 25 % where bonds are issued by a credit institution which has its registered office in a Member State and is subject by law to special public supervision designed to protect bond-holders. In particular, sums deriving from the issue of those bonds shall be invested in accordance with the law in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

   Where a UCITS invests more than 5 % of its assets in the bonds referred to in the first subparagraph which are issued by a single issuer, the total value of these investments shall not exceed 80 % of the value of the assets of the UCITS.

(Article 1(21) of UCITS V)

   Member States shall send to ESMA and to the Commission a list of the categories of bonds referred to in the first subparagraph together with the categories of issuers authorised, in accordance with the laws and supervisory arrangements mentioned in that subparagraph, to issue bonds complying with the criteria set out in this Article. A notice specifying the status of the guarantees offered shall be attached to those lists. The Commission and ESMA shall immediately forward that information to the other Member States together with any comments they consider appropriate and shall make the information available to the public on their website. Such communications may be the subject of exchanges of views within the European Securities Committee referred to in Article 112.

- *Recital 49 of UCITS IV – p. 13*

5. The transferable securities and money market instruments referred to in paragraphs 3 and 4 shall not be taken into account for the purpose of applying the limit of 40 % referred to in paragraph 2.

   The limits provided for in paragraphs 1 to 4 shall not be combined, and thus investments in transferable securities or money market instruments issued by the same body or in deposits or derivative instruments made with this body carried out in accordance with paragraphs 1 to 4 shall not exceed in total 35 % of the assets of the UCITS.

   Companies which are included in the same group for the purposes of consolidated accounts, as defined in Directive 83/349/EEC or in accordance with recognised international accounting rules, shall be regarded as a single body for the purpose of calculating the limits contained in this Article.

   Member States may allow cumulative investment in transferable securities and money market instruments within the same group up to a limit of 20 %.

- *Recital 42 of UCITS IV – p. 11*

Article 53

1. Without prejudice to the limits laid down in Article 56, Member States may raise the limits laid down in Article 52 to a maximum of 20 % for investment in shares or debt securities issued by the same body when, according to the fund rules or instruments of incorporation, the aim of the UCITS' investment policy is to replicate the composition of a certain stock or debt securities index which is recognised by the competent authorities, on the following basis:

   (a) its composition is sufficiently diversified;

   (b) the index represents an adequate benchmark for the market to which it refers; and

   (c) it is published in an appropriate manner.

2. Member States may raise the limit laid down in paragraph 1 to a maximum of 35 % where that proves to be justified by exceptional market conditions in particular in regulated markets where certain transferable securities or money market instruments are highly dominant. The investment up to that limit shall be permitted only for a single issuer.

▪ *Recital 47 of UCITS IV – p. 12*

Article 54

1. By way of derogation from Article 52, Member States may authorise UCITS to invest in accordance with the principle of risk-spreading up to 100 % of their assets in different transferable securities and money market instruments issued or guaranteed by a Member State, one or more of its local authorities, a third country, or a public international body to which one or more Member States belong.

   The competent authorities of the UCITS home Member State shall grant such a derogation only if they consider that unit-holders in the UCITS have protection equivalent to that of unit-holders in UCITS complying with the limits laid down in Article 52.

   Such a UCITS shall hold securities from at least six different issues, but securities from any single issue shall not account for more than 30 % of its total assets.

2. The UCITS referred to in paragraph 1 shall make express mention in the fund rules or in the instruments of incorporation of the investment company of the Member States, local authorities, or public international bodies issuing or guaranteeing securities in which they intend to invest more than 35 % of their assets.

   Such fund rules or instruments of incorporation shall be approved by the competent authorities.

3. Each UCITS referred to in paragraph 1 shall include a prominent statement in its prospectus and marketing communications drawing attention to such authorisation and indicating the Member States, local authorities, or public international bodies in the securities of which it intends to invest or has invested more than 35 % of its assets.

- *Recitals 34 and 42 of UCITS IV – pp. 10 and 11*

Article 55

1. A UCITS may acquire the units of UCITS or other collective investment undertakings referred to in Article 50(1)(e), provided that no more than 10 % of its assets are invested in units of a single UCITS or other collective investment undertaking. Member States may raise that limit to a maximum of 20 %.

2. Investments made in units of collective investment undertakings other than UCITS shall not exceed, in aggregate, 30 % of the assets of the UCITS.

   Member States may, where a UCITS has acquired units of another UCITS or collective investment undertakings, provide that the assets of the respective UCITS or other collective investment undertakings are not required to be combined for the purposes of the limits laid down in Article 52.

3. Where a UCITS invests in the units of other UCITS or collective investment undertakings that are managed, directly or by delegation, by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding, that management company or other company shall not charge subscription or redemption fees on account of the UCITS' investment in the units of such other UCITS or collective investment undertakings.

   A UCITS that invests a substantial proportion of its assets in other UCITS or collective investment undertakings shall disclose in its prospectus the maximum level of the management fees that may be charged both to the UCITS itself and to the other UCITS or collective investment undertakings in which it intends to invest. It shall indicate in its annual report the maximum proportion of management fees charged both to the UCITS itself and to the other UCITS or collective investment undertaking in which it invests.

- *Recitals 38, 39 and 42 of UCITS IV – p. 10*

Article 56

1. An investment company or a management company acting in connection with all of the common funds which it manages and which fall within the scope of this Directive shall not acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body.

   Pending further coordination, Member States shall take account of existing rules defining the principle stated in the first subparagraph in the law of other Member States.

2. A UCITS may acquire no more than:

   (a) 10 % of the non-voting shares of a single issuing body;

   (b) 10 % of the debt securities of a single issuing body;

(c) 25 % of the units of a single UCITS or other collective investment undertaking within the meaning of Article 1(2)(a) and (b); or

(d) 10 % of the money market instruments of a single issuing body.

The limits laid down in points (b), (c) and (d) may be disregarded at the time of acquisition if at that time the gross amount of the debt securities or of the money market instruments, or the net amount of the securities in issue, cannot be calculated.

3. A Member State may waive the application of paragraphs 1 and 2 as regards:

(a) transferable securities and money market instruments issued or guaranteed by a Member State or its local authorities;

(b) transferable securities and money market instruments issued or guaranteed by a third country;

(c) transferable securities and money market instruments issued by a public international body to which one or more Member States belong;

(d) shares held by a UCITS in the capital of a company incorporated in a third country investing its assets mainly in the securities of issuing bodies having their registered offices in that country, where under the legislation of that country such a holding represents the only way in which the UCITS can invest in the securities of issuing bodies of that country; or

(e) shares held by an investment company or investment companies in the capital of subsidiary companies pursuing only the business of management, advice or marketing in the country where the subsidiary is established, in regard to the repurchase of units at unit-holders' request exclusively on its or their behalf.

The derogation referred to in point (d) of the first subparagraph of this paragraph shall apply only if in its investment policy the company from the third country complies with the limits laid down in Articles 52 and 55 and in paragraphs 1 and 2 of this Article. Where the limits set in Articles 52 and 55 are exceeded, Article 57 shall apply *mutatis mutandis*.

- *Recitals 42 and 48 of UCITS IV – pp. 11 and 12*

Article 57

1. UCITS are not required to comply with the limits laid down in this Chapter when exercising subscription rights attaching to transferable securities or money market instruments which form part of their assets.

While ensuring observance of the principle of risk spreading, Member States may allow recently authorised UCITS to derogate from Articles 52 to 55 for six months following the date of their authorisation.

2. If the limits referred to in paragraph 1 are exceeded for reasons beyond the control of a UCITS or as a result of the exercise of subscription rights, that UCITS shall adopt as a priority objective for its sales transactions the remedying of that situation, taking due account of the interests of its unit-holders.

CHAPTER VIII
MASTER-FEEDER STRUCTURES

SECTION 1
Scope and approval

Article 58

1. A feeder UCITS is a UCITS, or an investment compartment thereof, which has been approved to invest, by way of derogation from Article 1(2)(a), Articles 50, 52 and 55, and Article 56(2)(c), at least 85 % of its assets in units of another UCITS or investment compartment thereof (the master UCITS).

- *Recital 50 of UCITS IV – p. 13*

2. A feeder UCITS may hold up to 15 % of its assets in one or more of the following:

   (a) ancillary liquid assets in accordance with the second subparagraph of Article 50(2);

   (b) financial derivative instruments, which may be used only for hedging purposes, in accordance with Article 50(1)(g) and Article 51(2) and (3);

   (c) movable and immovable property which is essential for the direct pursuit of the business, if the feeder UCITS is an investment company.

   For the purposes of compliance with Article 51(3), the feeder UCITS shall calculate its global exposure related to financial derivative instruments by combining its own direct exposure under point (b) of the first subparagraph with either:

   (a) the master UCITS' actual exposure to financial derivative instruments in proportion to the feeder UCITS' investment into the master UCITS; or

   (b) the master UCITS' potential maximum global exposure to financial derivative instruments provided for in the master UCITS' fund rules or instruments of incorporation in proportion to the feeder UCITS investment into the master UCITS.

3. A master UCITS is a UCITS, or an investment compartment thereof, which:

   (a) has, among its unit-holders, at least one feeder UCITS;

   (b) is not itself a feeder UCITS; and

   (c) does not hold units of a feeder UCITS.

4. The following derogations for a master UCITS shall apply:

   (a) if a master UCITS has at least two feeder UCITS as unit-holders, Article 1(2)(a) and Article 3(b) shall not apply, giving the master UCITS the choice whether or not to raise capital from other investors;

(b) If a master UCITS does not raise capital from the public in a Member State other than that in which it is established, but only has one or more feeder UCITS in that Member State, Chapter XI and the second subparagraph of Article 108(1) shall not apply.

Article 59

1. Member States shall ensure that the investment of a feeder UCITS into a given master UCITS which exceeds the limit applicable under Article 55(1) for investments into other UCITS be subject to prior approval by the competent authorities of the feeder UCITS home Member State.

2. The feeder UCITS shall be informed within 15 working days following the submission of a complete file, whether or not the competent authorities have approved the feeder UCITS' investment into the master UCITS.

3. The competent authorities of the feeder UCITS home Member State shall grant approval if the feeder UCITS, its depositary and its auditor, as well as the master UCITS, comply with all the requirements set out in this Chapter. For such purposes, the feeder UCITS shall provide to the competent authorities of its home Member State the following documents:

   (a) the fund rules or instruments of incorporation of the feeder UCITS and the master UCITS;

   (b) the prospectus and the key investor information referred to in Article 78 of the feeder and the master UCITS;

   (c) the agreement between the feeder and the master UCITS or the internal conduct of business rules referred to in Article 60(1);

   (d) where applicable, the information to be provided to unit-holders referred to in Article 64(1);

   (e) if the master UCITS and the feeder UCITS have different depositaries, the information-sharing agreement referred to in Article 61(1) between their respective depositaries; and

   (f) if the master UCITS and the feeder UCITS have different auditors, the information-sharing agreement referred to in Article 62(1) between their respective auditors.

   Where the feeder UCITS is established in a Member State other than the master UCITS home Member State, the feeder UCITS shall also provide an attestation by the competent authorities of the master UCITS home Member State that the master UCITS is a UCITS, or an investment compartment thereof, which fulfils the conditions set out in Article 58(3)(b) and (c). Documents shall be provided by the feeder UCITS in the official language, or one of the official languages, of the feeder UCITS home Member State or in a language approved by its competent authorities.

▪ *Recital 52 of UCITS IV – p. 13*

SECTION 2

Common provisions for feeder and master UCITS

Article 60

1. Member States shall require that the master UCITS provide the feeder UCITS with all documents and information necessary for the latter to meet the requirements laid down in this Directive. For this purpose, the feeder UCITS shall enter into an agreement with the master UCITS.

   The feeder UCITS shall not invest in excess of the limit applicable under Article 55(1) in units of that master UCITS until the agreement referred to in the first subparagraph has become effective. That agreement shall be made available, on request and free of charge, to all unit-holders.

   In the event that both master and feeder UCITS are managed by the same management company, the agreement may be replaced by internal conduct of business rules ensuring compliance with the requirements set out in this paragraph.

- *Recital 53 of UCITS IV – p. 13*

- *Recitals 6 to 12 of Commission Directive 2010/42 – pp. 218 to 219*
- *Articles 8 to 19 of Commission Directive 2010/42 – pp. 225 to 231*

2. The master and the feeder UCITS shall take appropriate measures to coordinate the timing of their net asset value calculation and publication in order to avoid market timing in their units, preventing arbitrage opportunities.

- *Article 10 of Commission Directive 2010/42 – p. 227*

3. Without prejudice to Article 84, if a master UCITS temporarily suspends the repurchase, redemption or subscription of its units, whether at its own initiative or at the request of its competent authorities, each of its feeder UCITS is entitled to suspend the repurchase, redemption or subscription of its units notwithstanding the conditions laid down in Article 84(2) within the same period of time as the master UCITS.

4. If a master UCITS is liquidated, the feeder UCITS shall also be liquidated, unless the competent authorities of its home Member State approve:

   (a) the investment of at least 85 % of the assets of the feeder UCITS in units of another master UCITS; or

   (b) the amendment of its fund rules or instruments of incorporation in order to enable the feeder UCITS to convert into a UCITS which is not a feeder UCITS.

   Without prejudice to specific national provisions regarding compulsory liquidation, the liquidation of a master UCITS shall take place no sooner than three months after the master UCITS has informed all of its unit-holders and the competent authorities of the feeder UCITS home Member State of the binding decision to liquidate.

- *Recitals 13 and 14 of Commission Directive 2010/42 – pp. 219*

- *Articles 20 and 21 of Commission Directive 2010/42 – pp. 231 and 232*

5. If a master UCITS merges with another UCITS or is divided into two or more UCITS, the feeder UCITS shall be liquidated, unless the competent authorities of the feeder UCITS home Member State grant approval to the feeder UCITS to:

   (a) continue to be a feeder UCITS of the master UCITS or another UCITS resulting from the merger or division of the master UCITS;

   (b) invest at least 85 % of its assets in units of another master UCITS not resulting from the merger or the division; or

   (c) amend its fund rules or its instruments of incorporation in order to convert into a UCITS which is not a feeder UCITS.

   No merger or division of a master UCITS shall become effective, unless the master UCITS has provided all of its unit-holders and the competent authorities of its feeder UCITS home Member States with the information referred to, or comparable with that referred to, in Article 43 by 60 days before the proposed effective date.

   Unless the competent authorities of the feeder UCITS home Member State has granted approval pursuant to point (a) of the first subparagraph, the master UCITS shall enable the feeder UCITS to repurchase or redeem all units in the master UCITS before the merger or division of the master UCITS becomes effective.

- *Recitals 13 and 14 of Commission Directive 2010/42 – p. 219*
- *Articles 22 and 23 of Commission Directive 2010/42 – p. 233 to 235*

(Article 1(19) of UCITS V)

6. The Commission may adopt, by means of delegated acts in accordance with Article 112a, measures specifying:

   (a) the content of the agreement or of the internal conduct of business rules referred to in paragraph 1;

   (b) which measures referred to in paragraph 2 are deemed appropriate; and

   (c) the procedures for the required approvals pursuant to paragraphs 4 and 5 in the event of a liquidation, merger or division of a master UCITS.

- *Recital 87 of UCITS IV – p. 19*

- *Articles 20 to 23 of Commission Directive 2010/42 – pp. 233 ff.*

7. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of application of the delegated acts adopted by the Commission regarding the agreement, measures and procedures referred to in paragraph 6.

   Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the Article 15 of Regulation (EU) No 1095/2010.

SECTION 3
Depositaries and auditors

Article 61

1. Member States shall require that, if the master and the feeder UCITS have different depositaries, those depositaries enter into an information-sharing agreement in order to ensure the fulfilment of the duties of both depositaries.

   The feeder UCITS shall not invest in units of the master UCITS until such agreement has become effective.

   Where they comply with the requirements laid down in this Chapter, neither the depositary of the master UCITS nor that of the feeder UCITS shall be found to be in breach of any rules that restrict the disclosure of information or relate to data protection where such rules are provided for in a contract or in a law, regulation or administrative provision. Such compliance shall not give rise to any liability on the part of such depositary or any person acting on its behalf.

   Member States shall require that the feeder UCITS or, when applicable, the management company of the feeder UCITS be in charge of communicating to the depositary of the feeder UCITS any information about the master UCITS which is required for the completion of the duties of the depositary of the feeder UCITS.

2. The depositary of the master UCITS shall immediately inform the competent authorities of the master UCITS home Member State, the feeder UCITS or, where applicable, the management company and the depositary of the feeder UCITS about any irregularities it detects with regard to the master UCITS which are deemed to have a negative impact on the feeder UCITS.

- *Recital 53 of UCITS IV – p. 13*

- *Recitals 15 and 16 of Commission Directive 2010/42 – p. 220*
- *Articles 24 to 26 of Commission Directive 2010/42 – pp. 236 to 237*

(Article 1(19) of UCITS V)

3. The Commission may adopt, by means of delegated acts in accordance with Article 112a, measures further specifying the following:

   (a) the particulars that need to be included in the agreement referred to in paragraph 1; and

   (b) the types of irregularities referred to in paragraph 2 which are deemed to have a negative impact on the feeder UCITS.

- *Recital 87 of UCITS IV – p. 19*

4. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of application of the delegated acts adopted by the Commission regarding the agreement, measures and types of irregularities referred to in paragraph 3.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 62

1. Member States shall require that if the master and the feeder UCITS have different auditors, those auditors enter into an information-sharing agreement in order to ensure the fulfilment of the duties of both auditors, including the arrangements taken to comply with the requirements of paragraph 2.

   The feeder UCITS shall not invest in units of the master UCITS until such agreement has become effective.

2. In its audit report, the auditor of the feeder UCITS shall take into account the audit report of the master UCITS. If the feeder and the master UCITS have different accounting years, the auditor of the master UCITS shall make an ad hoc report on the closing date of the feeder UCITS.

   The auditor of the feeder UCITS shall, in particular, report on any irregularities revealed in the audit report of the master UCITS and on their impact on the feeder UCITS.

3. Where they comply with the requirements laid down in this Chapter, neither the auditor of the master UCITS nor that of the feeder UCITS shall be found to be in breach of any rules that restrict the disclosure of information or relate to data protection where such rules are provided for in a contract or in a law, regulation or administrative provision. Such compliance shall not give rise to any liability on the part of such auditor or any person acting on its behalf.

- *Recital 53 of UCITS IV – p. 13*

- *Recital 17 of Commission Directive 2010/42 – p. 220*
- *Articles 27 and 28 of Commission Directive 2010/42 – pp. 238 and 239*

(Article 1(19) of UCITS V)

4. The Commission may adopt, by means of delegated acts in accordance with Article 112a, measures specifying the content of the agreement referred to in the first subparagraph of paragraph 1.

- *Recital 87 of UCITS IV – p. 19*

SECTION 4

Compulsory information and marketing communications by the feeder UCITS

Article 63

1. Member States shall require that, in addition to the information provided for in Schedule A of Annex I, the prospectus of the feeder UCITS contains the following information:

(a) a declaration that the feeder UCITS is a feeder of a particular master UCITS and as such permanently invests 85 % or more of its assets in units of that master UCITS;

(b) the investment objective and policy, including the risk profile and whether the performance of the feeder and the master UCITS are identical, or to what extent and for which reasons they differ, including a description of investment made in accordance with Article 58(2);

(c) a brief description of the master UCITS, its organisation, its investment objective and policy, including the risk profile, and an indication of how the prospectus of the master UCITS may be obtained;

(d) a summary of the agreement entered into between the feeder UCITS and the master UCITS or of the internal conduct of business rules pursuant to Article 60(1);

(e) how the unit-holders may obtain further information on the master UCITS and the agreement entered into between the feeder UCITS and the master UCITS pursuant to Article 60(1);

(f) a description of all remuneration or reimbursement of costs payable by the feeder UCITS by virtue of its investment in units of the master UCITS, as well as of the aggregate charges of the feeder UCITS and the master UCITS; and

(g) a description of the tax implications of the investment into the master UCITS for the feeder UCITS.

2. In addition to the information provided for in Schedule B of Annex I, the annual report of the feeder UCITS shall include a statement on the aggregate charges of the feeder UCITS and the master UCITS.

   The annual and the half-yearly reports of the feeder UCITS shall indicate how the annual and the half-yearly report of the master UCITS can be obtained.

3. In addition to the requirements laid down in Articles 74 and 82, the feeder UCITS shall send the prospectus, the key investor information referred to in Article 78 and any amendment thereto, as well as the annual and half-yearly reports of the master UCITS, to the competent authorities of its home Member State.

4. A feeder UCITS shall disclose in any relevant marketing communications that it permanently invests 85 % or more of its assets in units of such master UCITS.

5. A paper copy of the prospectus, and the annual and half-yearly reports of the master UCITS shall be delivered by the feeder UCITS to investors on request and free of charge.

- *Recitals 54 and 55 of UCITS IV – p. 14*

SECTION 5

Conversion of existing UCITS into feeder UCITS and change of master UCITS

Article 64

1. Member States shall require that a feeder UCITS which already pursues activities as a UCITS, including those of a feeder UCITS of a different master UCITS, shall provide the following information to its unit-holders:

   (a) a statement that the competent authorities of the feeder UCITS home Member State approved the investment of the feeder UCITS in units of such master UCITS;

   (b) the key investor information referred to in Article 78 concerning the feeder and the master UCITS;

   (c) the date when the feeder UCITS is to start to invest in the master UCITS or, if it has already invested therein, the date when its investment will exceed the limit applicable under Article 55(1); and

   (d) a statement that the unit-holders have the right to request within 30 days the repurchase or redemption of their units without any charges other than those retained by the UCITS to cover disinvestment costs; that right shall become effective from the moment the feeder UCITS has provided the information referred to in this paragraph.

   That information shall be provided at least 30 days before the date referred to in point (c) of the first subparagraph.

- *Article 29 of Commission Directive 2010/42 referring to article 7 of Commission Directive 2010/42 p. 239 and 225*

2. In the event that the feeder UCITS has been notified in accordance with Article 93, the information referred to in paragraph 1 shall be provided in the official language, or one of the official languages, of the feeder UCITS host Member State or in a language approved by its competent authorities. The feeder UCITS shall be responsible for producing the translation. That translation shall faithfully reflect the content of the original.

3. Member States shall ensure that the feeder UCITS does not invest into the units of the given master UCITS in excess of the limit applicable under Article 55(1) before the period of 30 days referred to in the second subparagraph of paragraph 1 has elapsed.

- *Recital 56 of UCITS IV – p. 14*

(Article 1(19) of UCITS V)

4. The Commission may adopt, by means of delegated acts in accordance with Article 112a, measures specifying:

   (a) the format and the manner in which to provide the information referred to in paragraph 1; or

(b) in the event that the feeder UCITS transfers all or parts of its assets to the master UCITS in exchange for units, the procedure for valuing and auditing such a contribution in kind and the role of the depositary of the feeder UCITS in that process.

- *Recital 87 of UCITS IV – p. 19*

5. In order to ensure uniform conditions of application in which the information is provided, ESMA may develop draft implementing technical standards to determine the conditions of application of the delegated acts adopted by the Commission regarding the format and the manner of the information provided and procedure referred to in paragraph 4.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

SECTION 6
Obligations and competent authorities

Article 65

1. The feeder UCITS shall monitor effectively the activity of the master UCITS. In performing that obligation, the feeder UCITS may rely on information and documents received from the master UCITS or, where applicable, its management company, depositary and auditor, unless there is reason to doubt their accuracy.

- *Recital 53 of UCITS IV – p. 13*

2. Where, in connection with an investment in the units of the master UCITS, a distribution fee, commission or other monetary benefit is received by the feeder UCITS, its management company, or any person acting on behalf of either the feeder UCITS or the management company of the feeder UCITS, the fee, commission or other monetary benefit shall be paid into the assets of the feeder UCITS.

- *Recital 55 of UCITS IV – p. 14*

Article 66

1. The master UCITS shall immediately inform the competent authorities of its home Member State of the identity of each feeder UCITS which invests in its units. If the master UCITS and the feeder UCITS are established in different Member States, the competent authorities of the master UCITS home Member State shall immediately inform those of the feeder UCITS home Member State of such investment.

2. The master UCITS shall not charge subscription or redemption fees for the investment of the feeder UCITS into its units or the divestment thereof.

- *Recital 55 of UCITS IV – p. 14*

3. The master UCITS shall ensure the timely availability of all information that is required in accordance with this Directive, other Community law, the applicable national law, the fund rules or the instruments of incorporation to the feeder UCITS or, where applicable, its management company, and to the competent authorities, the depositary and the auditor of the feeder UCITS.

Article 67

1. If the master UCITS and the feeder UCITS are established in the same Member State, the competent authorities shall immediately inform the feeder UCITS of any decision, measure, observation of non-compliance with the conditions of this Chapter or of any information reported pursuant to Article 106(1) with regard to the master UCITS or, where applicable, its management company, depositary or auditor.

2. If the master UCITS and the feeder UCITS are established in different Member States, the competent authorities of the master UCITS home Member State shall immediately communicate any decision, measure, observation of non-compliance with the conditions of this Chapter or information reported pursuant to Article 106(1) with regard to the master UCITS or, where applicable, its management company, depositary or auditor, to the competent authorities of the feeder UCITS home Member State. The latter shall then immediately inform the feeder UCITS.

▪ *Recital 57 of UCITS IV – p. 14*

CHAPTER IX
OBLIGATIONS CONCERNING INFORMATION TO BE PROVIDED TO INVESTORS

SECTION 1
Publication of a prospectus and periodical reports

Article 68

1. An investment company and, for each of the common funds it manages, a management company, shall publish the following:

   (a) a prospectus;

   (b) an annual report for each financial year; and

   (c) a half-yearly report covering the first six months of the financial year.

2. The annual and half-yearly reports shall be published within the following time limits, with effect from the end of the period to which they relate:

   (a) four months in the case of the annual report; or

   (b) two months in the case of the half-yearly report.

- *Recital 58 of UCITS IV – p. 14*

Article 69

1. The prospectus shall include the information necessary for investors to be able to make an informed judgement of the investment proposed to them, and, in particular, of the risks attached thereto.

   The prospectus shall include, independent of the instruments invested in, a clear and easily understandable explanation of the fund's risk profile.

(Article 1(13)(a) of UCITS V)

The prospectus shall include either:

(a) the details of the up-to-date remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identities of persons responsible for awarding the remuneration and benefits including the composition of the remuneration committee, where such a committee exists; or

(b) a summary of the remuneration policy and a statement to the effect that the details of the up-to-date remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identity of persons responsible for awarding the remuneration and benefits, including the composition of the remuneration committee where such a committee exists, are available by means of a website – including a reference to that website – and that a paper copy will be made available free of charge upon request.

2. The prospectus shall contain at least the information provided for in Schedule A of Annex I, in so far as that information does not already appear in the fund rules or instruments of incorporation annexed to the prospectus in accordance with Article 71(1).

3. The annual report shall include a balance-sheet or a statement of assets and liabilities, a detailed income and expenditure account for the financial year, a report on the activities of the financial year and the other information provided for in Schedule B of Annex I as well as any significant information which will enable investors to make an informed judgement on the development of the activities of the UCITS and its results.

(Article 1(13)(b) of UCITS V)

The annual report shall also include:

(a) the total amount of remuneration for the financial year, split into fixed and variable remuneration paid by the management company and by the investment company to its staff, and the number of beneficiaries, and where relevant, any amount paid directly by the UCITS itself, including any performance fee;

(b) the aggregate amount of remuneration broken down by categories of employees or other members of staff as referred to in Article 14a(3);

(c) a description of how the remuneration and the benefits have been calculated;

(d) the outcome of the reviews referred to in points (c) and (d) of Article 14b(1) including any irregularities that have occurred;

(e) material changes to the adopted remuneration policy.

4. The half-yearly report shall include at least the information provided for in Sections I to IV of Schedule B of Annex I. Where a UCITS has paid or proposes to pay an interim dividend, the figures must indicate the results after tax for the half-year concerned and the interim dividend paid or proposed.

- *Recital 15 of UCITS IV – p. 6*

5. In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify the provisions concerning the content of the prospectus, the annual report and the half-yearly report as laid down in Annex I, and the format of those documents.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

- *Recital 9 of UCITS V: In order to promote supervisory convergence in the assessment of remuneration policies and practices, the European Supervisory Authority (European Securities and Markets Authority) ('ESMA'), established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council, should ensure the existence of guidelines on sound remuneration policies and practices in the asset management sector. The European Supervisory Authority (European Banking Authority) ('EBA'), established by Regulation (EU) No 1093/2010 of the European Parliament and of the Council, should assist ESMA in the elaboration of such guidelines. In order to prevent circumvention of the provisions on remuneration, those guidelines should also provide further guidance on the persons to whom remuneration policies and practices apply and on the adaptation of the remuneration principles to the size of the management company or the investment company, the size of the UCITS that they manage, their internal organisation and the nature, scope and complexity of their activities. ESMA's guidelines on remuneration policies and practices should, where appropriate, be aligned, to the extent possible, with those for funds regulated under Directive 2011/61/EU of the European Parliament and of the Council.*

- *Recital 88 of UCITS IV – p. 19*

Article 70

1. The prospectus shall indicate in which categories of assets a UCITS is authorised to invest. It shall mention if transactions in financial derivative instruments are authorised, in which case it shall include a prominent statement indicating whether those operations may be carried out for the purpose of hedging or with the aim of meeting investment goals, and the possible outcome of the use of financial derivative instruments on the risk profile.

2. Where a UCITS invests principally in any category of assets defined in Article 50 other than transferable securities or money market instruments, or where a UCITS replicates a stock or debt securities index in accordance with Article 53, its prospectus and, where necessary, marketing communications shall include a prominent statement drawing attention to the investment policy.

3. Where the net asset value of a UCITS is likely to have a high volatility due to its portfolio composition or the portfolio management techniques that may be used, its prospectus and, where necessary, marketing communications shall include a prominent statement drawing attention to that characteristic.

4. Upon request of an investor, the management company shall also provide supplementary information relating to the quantitative limits that apply in the risk management of the UCITS, to the methods chosen to this end and to the recent evolution of the main risks and yields of the instrument categories.

▪ *Recital 15 of UCITS IV – p. 6*

Article 71

1. The fund rules or instruments of incorporation of an investment company shall form an integral part of the prospectus and shall be annexed thereto.

2. The documents referred to in paragraph 1 are not, however, required to be annexed to the prospectus provided that the investor is informed that, on request, he or she will be sent those documents or be apprised of the place where, in each Member State in which the units are marketed, he or she may consult them.

Article 72

The essential elements of the prospectus shall be kept up to date.

Article 73

The accounting information given in the annual report shall be audited by one or more persons empowered by law to audit accounts in accordance with Directive 2006/43/EC. The auditor's report, including any qualifications, shall be reproduced in full in the annual report.

Article 74

UCITS shall send their prospectus and any amendments thereto, as well as their annual and half-yearly reports, to the competent authorities of the UCITS home Member State. UCITS shall provide that documentation to the competent authorities of the management company's home Member State on request.

▪ *Recital 70 of UCITS IV – p. 16*

Article 75

1. The prospectus and the latest published annual and half-yearly reports shall be provided to investors on request and free of charge.

2. The prospectus may be provided in a durable medium or by means of a website. A paper copy shall be delivered to the investors on request and free of charge.

3. The annual and half-yearly reports shall be available to investors in the manner specified in the prospectus and in the key investor information referred to in Article 78. A paper copy of the annual and half-yearly reports shall be delivered to the investors on request and free of charge.

(Article 1(19) of UCITS V)

4. The Commission may adopt, by means of delegated acts in accordance with Article 112a, measures which define the specific conditions which need to be met when providing the prospectus in a durable medium other than paper or by means of a website which does not constitute a durable medium.

▪ *Recital 88 of UCITS IV – p. 19*

SECTION 2
Publication of other information

Article 76

A UCITS shall make public in an appropriate manner the issue, sale, repurchase or redemption price of its units each time it issues, sells, repurchases or redeems them, and at least twice a month.

The competent authorities may, however, permit a UCITS to reduce the frequency to once a month on condition that such derogation does not prejudice the interests of the unit-holders.

Article 77

All marketing communications to investors shall be clearly identifiable as such. They shall be fair, clear and not misleading. In particular, any marketing communication comprising an invitation to purchase units of UCITS that contains specific information about a UCITS shall make no statement that contradicts or diminishes the significance of the information contained in the prospectus and the key investor information referred to in Article 78. It shall indicate that a prospectus exists and that the key investor information referred to in Article 78 is available. It shall specify where and in which language such information or documents may be obtained by investors or potential investors or how they may obtain access to them.

▪ *Recital 64 of UCITS IV – p. 15*

SECTION 3
Key investor information

Article 78

1. Member States shall require that an investment company and, for each of the common funds it manages, a management company draw up a short document containing key information for investors. That document shall be referred to as 'key investor information' in this Directive. The words 'key investor information' shall be clearly stated in that document, in one of the languages referred to in Article 94(1)(b).

- *Recital 58 of UCITS IV – p. 14*
- *Article 94(1)(b) of the consolidated UCITS Directive – p. 110*

- *Articles 4 and 5 of Commission Regulation 583/2010 – pp. 248 and 250*

2. Key investor information shall include appropriate information about the essential characteristics of the UCITS concerned, which is to be provided to investors so that they are reasonably able to understand the nature and the risks of the investment product that is being offered to them and, consequently, to take investment decisions on an informed basis.

- *Cf. CESR's template for the KIID (CESR/10-1321) – pp. 343 ff.*

3. Key investor information shall provide information on the following essential elements in respect of the UCITS concerned:

(Article 1(14)(a) of UCITS V)

(a) identification of the UCITS and of the competent authority of the UCITS;

(b) a short description of its investment objectives and investment policy;

- *Recital 5 of Commission Regulation 583/2010 – p. 244*
- *Article 7 of Commission Regulation 583/2010 – p. 251*

(c) past-performance presentation or, where relevant, performance scenarios;

- *Recital 9 of Commission Regulation 583/2010 – p. 245*
- *Articles 15 to 19 of Commission Regulation 583/2010 – pp. 256 to 257*
- *Annex III of Commission Regulation 583/2010 – p. 269*

(d) costs and associated charges; and

- *Recital 8 of Commission Regulation 583/2010 – p. 245*
- *Articles 10 to 14 of Commission Regulation 583/2010 - pp. 254 to 256*
- *Annex II of Commission Regulation 583/2010 – p. 268*

- *CESR's guidelines on the methodology for the calculation of the ongoing charges figure (CESR/10-674) – pp. 347 ff.*

(e) risk/reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the relevant UCITS.

- *Recitals 6 and 7 of Commission Regulation 583/2010 – p. 244*
- *Articles 8 and 9 of Commission Regulation 583/2010 – pp. 252 and 254*
- *Annex I of Commission Regulation 583/2010 – p. 267*

- *CESR's guidelines on the methodology for the calculation of the SRRI (CESR/10-673) – pp. 353 ff.*

Those essential elements shall be comprehensible to the investor without any reference to other documents.

4. Key investor information shall clearly specify where and how to obtain additional information relating to the proposed investment, including but not limited to where and how the prospectus and the annual and half-yearly report can be obtained on request and free of charge at any time, and the language in which such information is available to investors.

(Article 1(14)(b) of UCITS V)

Key investor information shall also include a statement to the effect that the details of the up-to-date remuneration policy, including, but not limited to, a description of how remuneration and benefits are calculated, the identity of persons responsible for awarding the remuneration and benefits including the composition of the remuneration committee, where such a committee exists, are available by means of a website – including a reference to that website – and that a paper copy will be made available free of charge upon request.

5. Key investor information shall be written in a concise manner and in non-technical language. It shall be drawn up in a common format, allowing for comparison, and shall be presented in a way that is likely to be understood by retail investors.

- *Recital 59 of UCITS IV – p. 14*

- *Articles 4 to 6 of Commission Regulation 583/2010 – pp. 248 to 250*

- *CESR's guide to clear language and layout of the KIID (CESR/10-1320) – pp. 331 ff.*

6. Key investor information shall be used without alterations or supplements, except translation, in all Member States where the UCITS is notified to market its units in accordance with Article 93.

- *Recital 66 of UCITS IV – p. 16*

(Article 1(19) of UCITS V)

7. The Commission shall adopt, by means of delegated acts in accordance with Article 112a, measures which define the following:

(a) the detailed and exhaustive content of the key investor information to be provided to investors as referred to in paragraphs 2, 3 and 4;

- *Articles 4 to 24 of Commission Regulation 583/2010 – pp. 248 to 260*

(b) the detailed and exhaustive content of the key investor information to be provided to investors in the following specific cases:

(i) for UCITS having different investment compartments, the key investor information to be provided to investors subscribing to a specific investment compartment, including how to pass from one investment compartment into another and the costs related thereto,

- *Article 25 of Commission Regulation 583/2010 – p. 260*

(ii) for UCITS offering different share classes, the key investor information to be provided to investors subscribing to a specific share class,

- *Recital 13 of Commission Regulation 583/2010 – p. 246*
- *Articles 26 and 27 of Commission Regulation 583/2010 – pp. 261*

(iii) for fund of funds structures, the key investor information to be provided to investors subscribing to a UCITS, which invests itself in other UCITS or other collective investment undertakings referred to in Article 50(1)(e),

- *Recital 14 of Commission Regulation 583/2010 – p. 246*
- *Articles 28 to 30 of Commission Regulation 583/2010 – pp. 262 to 262*

(iv) for master-feeder structures, the key investor information to be provided to investors subscribing to a feeder UCITS,

- *Recital 15 of Commission Regulation 583/2010 – p. 246*
- *Articles 31 to 35 of Commission Regulation 583/2010 – pp. 262 to 264*

(v) for structured, capital protected and other comparable UCITS, the key investor information to be provided to investors in relation to the special characteristics of such UCITS; and

- *Recital 16 of Commission Regulation 583/2010 – p. 246*
- *Articles 36 and 37 of Commission Regulation 583/2010 – pp. 264 and 265*

(c) the specific details of the format and presentation of the key investor information to be provided to investors as referred to in paragraph 5.

- *Recital 88 of UCITS IV – p. 19*

8. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of application of the delegated acts adopted by the Commission in accordance with paragraph 7 regarding the information referred to in paragraph 3.

   Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 79

1. Key investor information shall constitute pre-contractual information. It shall be fair, clear and not misleading. It shall be consistent with the relevant parts of the prospectus.

- *Article 3 of Commission Regulation 583/2010 – p. 248*

2. Member States shall ensure that a person does not incur civil liability solely on the basis of the key investor information, including any translation thereof, unless it is misleading, inaccurate or inconsistent with the relevant parts of the prospectus. Key investor information shall contain a clear warning in this respect.

- *Recital 59 of UCITS IV – p. 14*

Article 80

1. Member States shall require that an investment company and, for each of the common funds it manages, a management company, which sells UCITS directly or through another natural or legal person who acts on its behalf and under its full and unconditional responsibility provides investors with key investor information on such UCITS in good time before their proposed subscription of units in such UCITS.

2. Member States shall require that an investment company and, for each of the common funds it manages, a management company, which does not sell UCITS directly or through another natural or legal person who acts on its behalf and under its full and unconditional responsibility to investors provides key investor information to product manufacturers and intermediaries selling or advising investors on potential investments in such UCITS or in products offering exposure to such UCITS upon their request. Member States shall require that the intermediaries selling or advising investors on potential investments in UCITS, provide key investor information to their clients or potential clients.

- *Recital 61 of UCITS IV – p. 15*

3. Key investor information shall be provided to investors free of charge.

- *Recital 59 of UCITS IV – p. 14*

Article 81

1. Member States shall allow investment companies and, for each of the common funds they manage, management companies, to provide key investor information in a durable medium or by means of a website. A paper copy shall be delivered to the investor on request and free of charge.

   In addition, an up-to-date version of the key investor information shall be made available on the website of the investment company or management company.

(Article 1(19) of UCITS V)

2. The Commission may adopt, by means of delegated acts in accordance with Article 112a, measures which define the specific conditions which need to be met when providing key investor information in a durable medium other than on paper or by means of a website which does not constitute a durable medium.

- *Recital 88 of UCITS IV – p. 19*

- *Recital 17 of Commission Regulation 583/2010 – p. 246*
- *Article 38 of Commission Regulation 583/2010 – p. 265*

Article 82

1. UCITS shall send their key investor information and any amendments thereto, to the competent authorities of their home Member State.

2. The essential elements of key investor information shall be kept up to date.

- *Recital 60 of UCITS IV – p. 15*

CHAPTER X
GENERAL OBLIGATIONS OF UCITS

Article 83

1. The following shall not borrow:

   (a) an investment company;

   (b) a management company or depositary acting on behalf of a common fund.

   A UCITS may, however, acquire foreign currency by means of a 'back-to-back' loan.

2. By way of derogation from paragraph 1, a Member State may authorise a UCITS to borrow provided that such borrowing is:

   (a) on a temporary basis and represents:

– in the case of an investment company, no more than 10 % of its assets, or

– in the case of a common fund, no more than 10 % of the value of the fund; or

(b) to enable the acquisition of immovable property essential for the direct pursuit of its business and represents, in the case of an investment company, no more than 10 % of its assets.

Where a UCITS is authorised to borrow under points (a) and (b), such borrowing shall not exceed 15 % of its assets in total.

3. In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify the requirements of this Article relating to borrowing.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 84

1. A UCITS shall repurchase or redeem its units at the request of any unit-holder.

- *Recital 63 of UCITS IV – p. 15*

2. By way of derogation from paragraph 1:

(a) a UCITS may, in accordance with the applicable national law, the fund rules or the instruments of incorporation of the investment company, temporarily suspend the repurchase or redemption of its units;

(b) a UCITS home Member State may allow its competent authorities to require the suspension of the repurchase or redemption of units in the interest of the unit-holders or of the public.

The temporary suspension referred to in point (a) of the first subparagraph shall be provided for only in exceptional cases where circumstances so require and where suspension is justified having regard to the interests of the unit-holders.

- *Recital 41 of UCITS IV – p. 11*

3. In the event of a temporary suspension under paragraph 2(a), a UCITS shall, without delay, communicate its decision to its home Member State competent authorities and to the competent authorities of all Member States in which it markets its units.

4. In order to ensure consistent harmonisation of this Article, ESMA may develop draft regulatory technical standards to specify the conditions which need to be met by the UCITS after the adoption of the temporary suspension of the re-purchase or redemption of the units of the UCITS as referred to in paragraph 2(a), once the suspension has been decided.

Power is delegated to the Commission to adopt the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1095/2010.

Article 85

The rules for the valuation of assets and the rules for calculating the sale or issue price and the repurchase or redemption price of the units of a UCITS shall be laid down in the applicable national law, in the fund rules or in the instruments of incorporation of the investment company.

Article 86

The distribution or reinvestment of the income of a UCITS shall be effected in accordance with the law and with the fund rules or the instruments of incorporation of the investment company.

Article 87

A UCITS unit shall not be issued unless the equivalent of the net issue price is paid into the assets of the UCITS within the usual time limits. This shall not preclude the distribution of bonus units.

Article 88

1. Without prejudice to the application of Articles 50 and 51, the following shall not grant loans or act as a guarantor on behalf of third parties:

   (a) an investment company;

   (b) a management company or depositary acting on behalf of a common fund.

2. Paragraph 1 shall not prevent the undertakings referred to therein from acquiring transferable securities, money market instruments or other financial instruments referred to in points (e), (g) and (h) of Article 50(1) which are not fully paid.

Article 89

The following shall not carry out uncovered sales of transferable securities, money market instruments or other financial instruments referred to in points (e), (g) and (h) of Article 50(1):

(a) an investment company;

(b) a management company or depositary acting on behalf of a common fund.

Article 90

The law of the UCITS home Member State or the fund rules shall prescribe the remuneration and the expenditure which a management company is empowered to charge to a common fund and the method of calculation of such remuneration.

The law or the instruments of incorporation of an investment company shall prescribe the nature of the cost to be borne by the company.

CHAPTER XI
SPECIAL PROVISIONS APPLICABLE TO UCITS WHICH MARKET THEIR UNITS IN MEMBER STATES OTHER THAN THOSE IN WHICH THEY ARE ESTABLISHED

Article 91

1. UCITS host Member States shall ensure that UCITS are able to market their units within their territories upon notification in accordance with Article 93.

2. UCITS host Member States shall not impose any additional requirements or administrative procedures on UCITS as referred to in paragraph 1 in respect of the field governed by this Directive.

- *Recital 62 of UCITS IV – p. 15*

3. Member States shall ensure that complete information on the laws, regulations and administrative provisions which do not fall within the field governed by this Directive and which are specifically relevant to the arrangements made for the marketing of units of UCITS, established in another Member State within their territories, is easily accessible from a distance and by electronic means. Member States shall ensure that that information is available in a language customary in the sphere of international finance, is provided in a clear and unambiguous manner and is kept up to date.

- *Recital 65 of UCITS IV – p. 16*

4. For the purposes of this Chapter, a UCITS shall include investment compartments thereof.

Article 92

UCITS shall, in accordance with the laws, regulations and administrative provisions in force in the Member State where their units are marketed, take the measures necessary to ensure that facilities are available in that Member State for making payments to unit-holders, repurchasing or redeeming units and making available the information which UCITS are required to provide.

- *Recital 63 of UCITS IV – p. 15*

Article 93

1. If a UCITS proposes to market its units in a Member State other than its home Member State, it shall first submit a notification letter to the competent authorities of its home Member State.

   The notification letter shall include information on arrangements made for marketing units of the UCITS in the host Member State, including, where relevant, in respect of share classes. In the context of Article 16(1), it shall include an indication that the UCITS is marketed by the management company that manages the UCITS.

- *Recital 62 of UCITS IV – p. 15*

- *Article 30 of Commission Directive 2010/42 – p. 239*
- *Cf. Commission Regulation 584/2010 – pp. 271 ff.*

2. A UCITS shall enclose with the notification letter, as referred to in paragraph 1, the latest version of the following:

   (a) its fund rules or its instruments of incorporation, its prospectus and, where appropriate, its latest annual report and any subsequent half-yearly report translated in accordance with the provisions of Article 94(1)(c) and (d); and

   (b) its key investor information referred to in Article 78, translated in accordance with Article 94(1)(b) and (d).

3. The competent authorities of the UCITS home Member State shall verify whether the documentation submitted by the UCITS in accordance with paragraphs 1 and 2 is complete.

   The competent authorities of the UCITS home Member State shall transmit the complete documentation referred to in paragraphs 1 and 2 to the competent authorities of the Member State in which the UCITS proposes to market its units, no later than 10 working days of the date of receipt of the notification letter accompanied by the complete documentation provided for in paragraph 2. They shall enclose with the documentation an attestation that the UCITS fulfils the conditions imposed by this Directive.

   Upon the transmission of the documentation, the competent authorities of the UCITS home Member State shall immediately notify the UCITS about the transmission. The UCITS may access the market of the UCITS host Member State as from the date of that notification.

- *Recitals 62 and 64 of UCITS IV – pp. 15 to 15*

4. Member States shall ensure that the notification letter referred to in paragraph 1 and the attestation referred to in paragraph 3 are provided in a language customary in the sphere of international finance, unless the UCITS home and host Member States agree to that notification letter and that attestation being provided in an official language of both Member States.

5. Member States shall ensure that the electronic transmission and filing of the documents referred to in paragraph 3 is accepted by their competent authorities.

- *Recitals 62 and 71 of UCITS IV – pp. 15 and 17*

6. For the purpose of the notification procedure set out in this Article, the competent authorities of the Member State in which a UCITS proposes to market its units shall not request any additional documents, certificates or information other than those provided for in this Article.

- *Recital 62 of UCITS IV – p. 15*

7. The UCITS home Member State shall ensure that the competent authorities of the UCITS host Member State have access, by electronic means, to the documents referred to in paragraph 2 and, if applicable, to any translations thereof. It shall ensure that the UCITS keeps those documents and translations up to date. The UCITS shall notify any amendments to the documents referred to in paragraph 2 to the competent authorities of the UCITS host Member State and shall indicate where those documents can be obtained electronically.

8. In the event of a change in the information regarding the arrangements made for marketing communicated in the notification letter in accordance with paragraph 1, or a change regarding share classes to be marketed, the UCITS shall give written notice thereof to the competent authorities of the host Member State before implementing the change.

Article 94

1. Where a UCITS markets its units in a UCITS host Member State, it shall provide to investors within the territory of such Member State all information and documents which it is required pursuant to Chapter IX to provide to investors in its home Member State.

   Such information and documents shall be provided to investors in compliance with the following provisions:

   (a) without prejudice to the provisions of Chapter IX, such information or documents shall be provided to investors in the way prescribed by the laws, regulations or administrative provisions of the UCITS host Member State;

   (b) key investor information referred to in Article 78 shall be translated into the official language, or one of the official languages, of the UCITS host Member State or into a language approved by the competent authorities of that Member State;

- *Article 78 of the consolidated UCITS Directive – p. 101*

   (c) information or documents other than key investor information referred to in Article 78 shall be translated, at the choice of the UCITS, into the official language, or one of the official languages, of the UCITS host Member State, into a language approved by the competent authorities of that Member State or into a language customary in the sphere of international finance; and

   (d) translations of information or documents under points (b) and (c) shall be produced under the responsibility of the UCITS and shall faithfully reflect the content of the original information.

2. The requirements set out in paragraph 1 shall also be applicable to any changes to the information and documents referred therein.

- *Recitals 63 and 66 of UCITS IV – p. 15 and 16*

3. The frequency of the publication of the issue, sale, repurchase or redemption price of units of UCITS according to Article 76 shall be subject to the laws, regulations and administrative provisions of the UCITS home Member State.

- *Recital 62 of UCITS IV – p. 15*

Article 95

(Article 1(19) of UCITS V)

1. The Commission may adopt, by means of delegated acts in accordance with Article 112a, measures specifying:

   (a) the scope of the information referred to in Article 91(3);

   (b) the facilitation of access for the competent authorities of the UCITS host Member States to the information or documents referred to in Article 93(1), (2) and (3) in accordance with Article 93(7).

- *Recital 89 of UCITS IV – p. 20*

2. In order to ensure uniform conditions of application of Article 93, ESMA may develop draft implementing technical standards to determine:

   (a) the form and contents of a standard model notification letter to be used by a UCITS for the purpose of notification referred to in Article 93(1), including an indication as to which documents the translations refer to;

   (b) the form and contents of a standard model attestation to be used by competent authorities of Member States referred to in Article 93(3);

   (c) the procedure for the exchange of information and the use of electronic communication between competent authorities for the purpose of notification under Article 93.

   Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 96

For the purpose of pursuing its activities, a UCITS may use the same reference to its legal form (such as investment company or common fund) in its designation in a UCITS host Member State as it uses in its home Member State.

CHAPTER XII

PROVISIONS CONCERNING THE AUTHORITIES RESPONSIBLE FOR AUTHORISATION AND SUPERVISION

Article 97

1. Member States shall designate the competent authorities which are to carry out the duties provided for in this Directive. They shall inform ESMA and the Commission thereof, indicating any division of duties.

2. The competent authorities shall be public authorities or bodies appointed by public authorities.

3. The authorities of the UCITS home Member State shall be competent to supervise that UCITS including, where relevant, pursuant to Article 19. However, the authorities of the UCITS host Member State shall be competent to supervise compliance with the provisions falling outside the field governed by this Directive and requirements set out in Articles 92 and 94.

- *Recital 71 of UCITS IV – p. 17*

Article 98

1. The competent authorities shall be given all supervisory and investigatory powers that are necessary for the exercise of their functions. Such powers shall be exercised:

   (a) directly;

   (b) in collaboration with other authorities;

   (c) under the responsibility of the competent authorities, by delegation to entities to which tasks have been delegated; or

   (d) by application to the competent judicial authorities.

- *Recitals 69 and 70 of UCITS IV – p. 16*

- *Recital 33 of UCITS V: While this Directive specifies a minimum set of powers that competent authorities should have, those powers are to be exercised within a complete system of national law which guarantees respect for fundamental rights, including the right to privacy. For the exercise of those powers, which may amount to serious interferences with the right to respect for private and family life, home and communications, Member States should have in place adequate and effective safeguards against any abuse, including, where appropriate, prior authorisation from the judicial authorities of a Member State concerned. Member States should allow competent authorities to exercise such intrusive powers to the extent necessary for the proper investigation of serious cases where there are no equivalent means for effectively achieving the same result.*

- *Recital 35 of UCITS V: A sound prudential and conduct of business framework for the financial sector should rest on strong supervisory, investigatory and sanctions regimes. To that end, competent authorities should be equipped with sufficient powers to act and should be able to rely on equal, strong and deterrent penalties regimes for the infringements of this Directive. A review of existing powers to impose sanctions and their practical application aimed at promoting*

convergence of sanctions across the range of supervisory activities was carried out in Commission Communication of 8 December 2010 on reinforcing sanctioning regimes in the financial services sector. Competent authorities should be empowered to impose pecuniary penalties which are sufficiently high to be effective, dissuasive and proportionate, in order to offset expected benefits from behaviour which infringes the requirements laid down in this Directive.

- *Recital 40 of UCITS V: Competent authorities should be entrusted with the necessary investigatory powers, and should establish effective mechanisms to encourage reporting of potential or actual infringements. Information on potential and actual infringements should also contribute to the effective performance of ESMA's tasks in accordance with Regulation (EU) No 1095/2010. Communication channels for the reporting of those potential and actual infringements should therefore also be established by ESMA. Information on potential and actual infringements communicated to ESMA should be used only for the performance of ESMA's tasks in accordance with Regulation (EU) No 1095/2010.*

2. Under paragraph 1, competent authorities shall have the power, at least, to:

(a) access any document in any form and receive a copy thereof;

(b) require any person to provide information and, if necessary, to summon and question a person with a view to obtaining information;

(c) carry out on-site inspections;

(Article 1(15) of UCITS V)

(d) require:

(i) in so far as permitted by national law, existing data traffic records held by a telecommunications operator, where there is a reasonable suspicion of an infringement and where such records may be relevant to an investigation into infringements of this Directive;

(ii) existing recordings of telephone conversations or electronic communications or other data traffic records held by UCITS, management companies, investment companies, depositaries or any other entities regulated by this Directive;

- *Recital 34 of UCITS V: Existing recordings of telephone conversations and data traffic records from a UCITS, management companies, investment companies, depositaries or any other entities regulated by this Directive, as well as existing telephone and data traffic records from telecommunications operators, constitute crucial, and sometimes the only, evidence to detect and prove the existence of infringements of the national law transposing this Directive, as well as to verify compliance by the UCITS, management companies, investment companies, depositaries or any other entities regulated by this Directive with investor protection requirements and other requirements laid down in this Directive and the implementing measures adopted pursuant hereto. Therefore, competent authorities should be able to require existing recordings of telephone conversations, electronic communications and data traffic records held by a UCITS, management companies, investment companies, depositaries or any other entities regulated by this Directive.*

  Access to telephone records and data is necessary for the detection of, and imposition of sanctions for, infringements of the requirements of this Directive or its implementing measures. In order to introduce a level playing field in the Union in relation to access to telephone and existing data traffic records held by a telecommunications operator or the existing recordings of telephone conversations and data traffic held by UCITS, management companies, investment companies, depositaries or any other entities regulated by this Directive, competent authorities should, in accordance with national law, be able to require existing telephone and existing data traffic records held by a telecommunications operator, in so far as permitted under national law, and

existing recordings of telephone conversations as well as data traffic held by UCITS, management companies, investment companies, depositaries or any other entities regulated by this Directive, in those cases where a reasonable suspicion exists that such records relating to the subject-matter of the inspection or investigation may be relevant to prove infringements of the requirements laid down in this Directive or its implementing measures. Access to telephone and data traffic records held by a telecommunications operator should not encompass the content of voice communications by telephone.

(e) require the cessation of any practice that is contrary to the provisions adopted in the implementation of this Directive;

(f) request the freezing or the sequestration of assets;

(g) request the temporary prohibition of professional activity;

(h) require authorised investment companies, management companies or depositaries to provide information;

(i) adopt any type of measure to ensure that investment companies, management companies or depositaries continue to comply with the requirements of this Directive;

(j) require the suspension of the issue, repurchase or redemption of units in the interest of the unit-holders or of the public;

(k) withdraw the authorisation granted to a UCITS, a management company or a depositary;

(l) refer matters for criminal prosecution; and

(m) allow auditors or experts to carry out verifications or investigations.

- *Recital 23 of UCITS IV – p. 7*

- *Recital 35 of UCITS V: A sound prudential and conduct of business framework for the financial sector should rest on strong supervisory, investigatory and sanctions regimes. To that end, competent authorities should be equipped with sufficient powers to act and should be able to rely on equal, strong and deterrent penalties regimes for the infringements of this Directive. A review of existing powers to impose sanctions and their practical application aimed at promoting convergence of sanctions across the range of supervisory activities was carried out in Commission Communication of 8 December 2010 on reinforcing sanctioning regimes in the financial services sector. Competent authorities should be empowered to impose pecuniary penalties which are sufficiently high to be effective, dissuasive and proportionate, in order to offset expected benefits from behaviour which infringes the requirements laid down in this Directive.*

- *Recital 37 of UCITS V: In order to ensure a consistent application across Member States, when determining the type of administrative penalties or measures and the level of administrative pecuniary penalties, Member States should be required to ensure that their competent authorities take into account all relevant circumstances.*

(Article 1(16) of UCITS V)

Article 99

1. Without prejudice to the supervisory powers of competent authorities referred to in Article 98 and the right of Member States to provide for and impose criminal sanctions, Member States shall lay down rules on administrative sanctions and other administrative measures to be imposed on companies and persons in respect of infringements of national provisions transposing this Directive and shall take all measures necessary to ensure that they are implemented.

   Where Member States decide not to lay down rules for administrative sanctions for infringements which are subject to national criminal law, they shall communicate to the Commission the relevant criminal law provisions.

   Administrative sanctions and other administrative measures shall be effective, proportionate and dissuasive.

   By 18 March 2016, Member States shall notify the laws, regulations and administrative provisions transposing this Article, including any relevant criminal law provisions, to the Commission and ESMA. Member States shall notify the Commission and ESMA without undue delay of any subsequent amendments thereto.

- *Recital 36 of UCITS V: Even though nothing prevents Member States from laying down rules for administrative and criminal sanctions for the same infringements, Member States should not be required to lay down rules for administrative sanctions for the infringements of this Directive where they are subject to national criminal law. In accordance with national law, Member States should not be obliged to impose both administrative and criminal sanctions for the same offence, but they could do so if their national law so permits. However, the maintenance of criminal rather than administrative sanctions for infringements of this Directive should not reduce or otherwise affect the ability of competent authorities, for the purposes of this Directive, to cooperate with competent authorities in other Member States or to access or exchange information with those competent authorities in a timely manner, including after any referral of the relevant infringements to the competent judicial authorities for criminal prosecution. Member States should be able to decide not to lay down rules for administrative sanctions for infringements which are subject to national criminal law. The option for Member States to impose criminal sanctions rather than, or in addition to, administrative sanctions should not be used to circumvent the sanctions regime in this Directive.*

- *Recital 44 of UCITS V: In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.*

2. Where Member States have chosen, in accordance with paragraph 1, to lay down criminal sanctions for infringements of the provisions referred to in that paragraph, they shall ensure that appropriate measures are in place so that competent authorities have all the necessary powers to liaise with judicial authorities within their jurisdiction to receive specific information relating to criminal investigations or proceedings commenced for possible infringements of this Directive and provide the same to other competent authorities and ESMA in order to fulfil their obligation to cooperate with each other and ESMA for the purposes of this Directive.

Competent authorities may also cooperate with competent authorities of other Member States with respect to facilitating the recovery of pecuniary sanctions.

- *Recital 70 of UCITS IV – p. 16*

3. As part of its overall review of the functioning of this Directive, the Commission shall review, not later than 18 September 2017, the application of the administrative and criminal sanctions, and in particular the need to further harmonise the administrative sanctions laid down for infringements of the requirements laid down in this Directive.

4. A competent authority may refuse to act on a request for information or a request to cooperate with an investigation only in the following exceptional circumstances, namely where:

   (a) communication of relevant information might adversely affect the security of the Member State addressed, in particular the fight against terrorism and other serious crimes;

   (b) compliance with the request is likely to affect adversely its own investigation, enforcement activities or, where applicable, a criminal investigation;

   (c) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed; or

   (d) a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed.

5. Member States shall ensure that where obligations apply to UCITS, management companies, investment companies or depositaries, in the event of an infringement of national provisions transposing this Directive, administrative penalties or other administrative measures may be applied, in accordance with national law, to the members of the management body and to other natural persons who are responsible, under national law, for the infringement.

6. In accordance with national law, Member States shall ensure that, in all cases referred to in paragraph 1, the administrative penalties and other administrative measures that may be applied include at least the following:

   (a) a public statement which identifies the person responsible and the nature of the infringement;

- *Recital 38 of UCITS V: In order to strengthen their dissuasive effect on the public at large and to inform them about infringements which may be detrimental to investor protection, sanctions should be published, save in certain well-defined circumstances. In order to ensure compliance with the principle of proportionality, sanctions should be published on an anonymous basis where publication would cause a disproportionate damage to the parties involved.*

   (b) an order requiring the person responsible to cease the conduct and to desist from a repetition of that conduct;

   (c) in the case of a UCITS or a management company, suspension or withdrawal of the authorisation of the UCITS or the management company;

(d) a temporary or, for repeated serious infringements, a permanent ban against a member of the management body of the management company or investment company or against any other natural person who is held responsible, from exercising management functions in those or in other such companies;

(e) in the case of a legal person, maximum administrative pecuniary sanctions of at least EUR 5 000 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 September 2014, or 10 % of the total annual turnover of the legal person according to the last available accounts approved by the management body; where the legal person is a parent undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with Directive 2013/34/EU of the European Parliament and of the Council[1], the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant Union law in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;

(f) in the case of a natural person, maximum administrative pecuniary sanctions of at least EUR 5 000 000 or, in the Member States whose currency is not the euro, the corresponding value in the national currency on 17 September 2014;

(g) as an alternative to points (e) and (f), maximum administrative pecuniary sanctions of at least twice the amount of the benefit derived from the infringement where that benefit can be determined, even if that exceeds the maximum amounts in points (e) and (f).

7. Member States may empower competent authorities, under national law, to impose types of penalty in addition to those referred to in paragraph 6 or to impose pecuniary penalties exceeding the amounts referred to in points (e), (f) and (g) of paragraph 6.

- *Recital 69 of UCITS IV – p. 16*

- *Recital 37 of UCITS V: In order to ensure a consistent application across Member States, when determining the type of administrative penalties or measures and the level of administrative pecuniary penalties, Member States should be required to ensure that their competent authorities take into account all relevant circumstances.*

(Article 1(17) of UCITS V)

Article 99a

Member States shall ensure that their laws, regulations or administrative provisions transposing this Directive provide for penalties, in particular when:

[1] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

(a) the activities of UCITS are pursued without obtaining authorisation, thus infringing Article 5;

(b) the business of a management company is carried out without obtaining prior authorisation, thus infringing Article 6;

(c) the business of an investment company is carried out without obtaining prior authorisation, thus infringing Article 27;

(d) a qualifying holding in a management company is acquired, directly or indirectly, or such a qualifying holding in a management company is further increased so that the proportion of the voting rights or of the capital held would reach or exceed 20 %, 30 % or 50 % or so that the management company would become its subsidiary ('the proposed acquisition'), without notifying in writing the competent authorities of the management company in which the acquirer is seeking to acquire or increase a qualifying holding, thus infringing Article 11(1);

(e) a qualifying holding in a management company is disposed of, directly or indirectly, or reduced so that the proportion of the voting rights or of the capital held would fall below 20 %, 30 % or 50 % or so that the management company would cease to be a subsidiary, without notifying in writing the competent authorities, thus infringing Article 11(1);

(f) a management company has obtained an authorisation through false statements or any other irregular means, thus infringing point (b) of Article 7(5);

(g) an investment company has obtained an authorisation through false statements or any other irregular means, thus infringing point (b) of Article 29(4);

(h) a management company, on becoming aware of any acquisition or disposal of holdings in their capital that cause holdings to exceed or fall below one of the thresholds referred to in Article 11(1) of Directive 2014/65/EU fails to inform the competent authorities of those acquisitions or disposals, thus infringing Article 11(1) of this Directive;

(i) a management company fails to inform the competent authority, at least once a year, of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings, thus infringing Article 11(1);

(j) a management company fails to comply with procedures and arrangements imposed in accordance with the national provisions transposing point (a) of Article 12(1);

(k) a management company fails to comply with structural and organisational requirements imposed in accordance with the national provisions transposing point (b) of Article 12(1);

(l) an investment company fails to comply with procedures and arrangements imposed in accordance with the national provisions transposing Article 31;

(m) a management company or an investment company fails to comply with requirements related to delegation of its functions to third parties imposed in accordance with the national provisions transposing Articles 13 and 30;

(n) a management company or an investment company fails to comply with rules of conduct imposed in accordance with the national provisions transposing Articles 14 and 30;

(o) a depositary fails to perform its tasks in accordance with national provisions transposing Article 22(3) to (7);

(p) an investment company or, for each of the common funds that it manages, a management company, repeatedly fails to comply with obligations concerning the investment policies of UCITS laid down in national provisions transposing Chapter VII;

(q) a management company or an investment company fails to employ a risk-management process or a process for accurate and independent assessment of the value of OTC derivatives as laid down in national provisions transposing Article 51(1);

(r) an investment company or, for each of the common funds that it manages, a management company, repeatedly fails to comply with obligations concerning information to be provided to investors imposed in accordance with the national provisions transposing Articles 68 to 82;

(s) a management company or an investment company marketing units of UCITS that it manages in a Member State other than the UCITS home Member State fails to comply with the notification requirement laid down in Article 93(1).

Article 99b

1. Member States shall ensure that competent authorities publish any decision against which there is no appeal imposing an administrative sanction or measure for infringements of the national provisions transposing this Directive on their official websites without undue delay after the person on whom the sanction or measure was imposed has been informed of that decision. The publication shall include at least information on the type and nature of the infringement and the identity of the persons responsible. That obligation does not apply to decisions imposing measures that are of an investigatory nature.

   However, where the publication of the identity of the legal persons or of the personal data of the natural persons is considered by the competent authority to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where publication jeopardises the stability of financial markets or an ongoing investigation, Member States shall ensure that competent authorities do one of the following:

   (a) defer the publication of the decision to impose the sanction or measure until the reasons for non-publication cease to exist;

   (b) publish the decision to impose the sanction or measure on an anonymous basis in a manner which complies with national law, if such anonymous publication ensures effective protection of the personal data concerned; or

   (c) not publish the decision to impose a sanction or measure in the event that the options laid down in points (a) and (b) are considered to be insufficient to ensure:

      (i) that the stability of the financial markets would not be put in jeopardy;

      (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

In the case of a decision to publish a sanction or measure on an anonymous basis, the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication shall cease to exist.

- Recital 38 of UCITS V: *In order to strengthen their dissuasive effect on the public at large and to inform them about infringements which may be detrimental to investor protection, sanctions should be published, save in certain well-defined circumstances. In order to ensure compliance with the principle of proportionality, sanctions should be published on an anonymous basis where publication would cause a disproportionate damage to the parties involved.*

2. Competent authorities shall inform ESMA of all administrative sanctions imposed but not published in accordance with point (c) of the second subparagraph of paragraph 1 including any appeal in relation thereto and the outcome of such an appeal. Member States shall ensure that competent authorities receive information and the final judgement in relation to any criminal sanction imposed and submit it to ESMA. ESMA shall maintain a central database of sanctions communicated to it solely for the purpose of exchanging information between competent authorities. That database shall be accessible only to competent authorities and it shall be updated on the basis of the information provided by the competent authorities.

- *Recital 39 of UCITS V: In order to enable ESMA to strengthen consistency in supervisory outcomes further in accordance with Regulation (EU) No 1095/2010, all publicly disclosed sanctions should be simultaneously reported to ESMA, which should also publish an annual report on all sanctions imposed.*

3. Where the decision to impose a sanction or measure is subject to appeal before the relevant judicial or other authorities, competent authorities shall also publish immediately on their official website such information and any subsequent information on the outcome of such an appeal. Any decision annulling a previous decision to impose a sanction or a measure shall also be published.

4. Competent authorities shall ensure that any publication in accordance with this Article shall remain on their official website for a period of at least five years from its publication. Personal data contained in the publication shall be kept on the official website of the competent authority only for the period which is necessary in accordance with the applicable data protection rules.

- *Recital 38 of UCITS V: In order to strengthen their dissuasive effect on the public at large and to inform them about infringements which may be detrimental to investor protection, sanctions should be published, save in certain well-defined circumstances. In order to ensure compliance with the principle of proportionality, sanctions should be published on an anonymous basis where publication would cause a disproportionate damage to the parties involved.*

Article 99c

1. Member States shall ensure that when determining the type of administrative penalties or measures and the level of administrative pecuniary penalties, the competent authorities ensure that they are effective, proportionate and dissuasive and take into account all relevant circumstances, including, where appropriate:

   (a) the gravity and the duration of the infringement;

   (b) the degree of responsibility of the person responsible for the infringement;

(c) the financial strength of the person responsible for the infringement, as indicated, for example, by its total turnover in the case of a legal person or the annual income in the case of a natural person;

(d) the importance of the profits gained or losses avoided by the person responsible for the infringement, the damage to other persons and, where applicable, the damage to the functioning of markets or the wider economy, in so far as they can be determined;

(e) the level of cooperation with the competent authority of the person responsible for the infringement;

(f) previous infringements by the person responsible for the infringement;

(g) measures taken after the infringement by the person responsible for the infringement to prevent its repetition.

- *Recital 37 of UCITS V: In order to ensure a consistent application across Member States, when determining the type of administrative penalties or measures and the level of administrative pecuniary penalties, Member States should be required to ensure that their competent authorities take into account all relevant circumstances.*

2. In the exercise of their powers to impose penalties under Article 99, competent authorities shall cooperate closely to ensure that the supervisory and investigative powers and administrative penalties produce the results pursued by this Directive. They shall also coordinate their actions in order to avoid possible duplication and overlap when applying supervisory and investigative powers and administrative penalties and measures to cross-border cases in accordance with Article 101.

- *Recital 70 of UCITS IV – p. 16*

Article 99d

1. Member States shall establish effective and reliable mechanisms to encourage the reporting of potential or actual infringements of national provisions transposing this Directive to competent authorities, including secure communication channels for reporting such infringements.

2. The mechanisms referred to in paragraph 1 shall include at least:

(a) specific procedures for the receipt of reports on infringements and their follow-up;

(b) appropriate protection for employees of investment companies, management companies and depositaries, who report infringements committed within those entities, at least against retaliation, discrimination and other types of unfair treatment;

(c) protection of personal data concerning both the person who reports the infringements and the natural person who is allegedly responsible for an

infringement, in accordance with Directive 95/46/EC of the European Parliament and of the Council[1];

(d) clear rules that ensure that confidentiality is guaranteed in all cases in relation to the person who reports an infringement, unless disclosure is required by national law in the context of further investigations or subsequent judicial proceedings.

3. ESMA shall provide one or more secure communication channels for reporting infringements of the national provisions transposing this Directive. ESMA shall ensure that those communication channels comply with points (a) to (d) of paragraph 2.

4. Member States shall ensure that the reporting by employees of investment companies, management companies and depositaries referred to in paragraphs 1 and 3 shall not be considered to be an infringement of any restriction on disclosure of information imposed by contract or by any law, regulation or administrative provision, and shall not subject the person reporting to liability of any kind relating to such reporting.

5. Member States shall require management companies, investment companies and depositaries to have in place appropriate procedures for their employees to report infringements internally through a specific, independent and autonomous channel.

- *Recital 40 of UCITS V: Competent authorities should be entrusted with the necessary investigatory powers, and should establish effective mechanisms to encourage reporting of potential or actual infringements. Information on potential and actual infringements should also contribute to the effective performance of ESMA's tasks in accordance with Regulation (EU) No 1095/2010. Communication channels for the reporting of those potential and actual infringements should therefore also be established by ESMA. Information on potential and actual infringements communicated to ESMA should be used only for the performance of ESMA's tasks in accordance with Regulation (EU) No 1095/2010.*

Article 99e

1. Competent authorities shall provide ESMA annually with aggregated information regarding all penalties and measures imposed in accordance with Article 99. ESMA shall publish that information in an annual report.

2. Where the competent authority has disclosed administrative penalties or measures to the public, it shall simultaneously report those administrative penalties or measures to ESMA. Where a published penalty or measure relates to a management company or investment company, ESMA shall add a reference to the published penalty or measure in the list of management companies published under Article 6(1).

3. ESMA shall develop draft implementing technical standards to determine the procedures and forms for submitting information as referred to in this Article.

ESMA shall submit those draft implementing technical standards to the Commission by 18 September 2015.

[1] Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

- *Recital 39 of UCITS V: In order to enable ESMA to strengthen consistency in supervisory outcomes further in accordance with Regulation (EU) No 1095/2010, all publicly disclosed sanctions should be simultaneously reported to ESMA, which should also publish an annual report on all sanctions imposed.*

Article 100

1. Member States shall ensure that efficient and effective complaints and redress procedures are in place for the out-of-court settlement of consumer disputes concerning the activity of UCITS using existing bodies where appropriate.

2. Member States shall ensure that the bodies referred to in paragraph 1 are not prevented by legal or regulatory provisions from cooperating effectively in the resolution of cross-border disputes.

Article 101

1. The competent authorities of the Member States shall cooperate with each other whenever necessary for the purpose of carrying out their duties under this Directive or of exercising their powers under this Directive or under national law.

   Member States shall take the necessary administrative and organisational measures to facilitate the cooperation provided for in this paragraph.

   Competent authorities shall use their powers for the purpose of cooperation, even in cases where the conduct under investigation does not constitute an infringement of any regulation in force in their Member State.

- *Recital 75 of UCITS IV – p. 17*

2. The competent authorities of the Member States shall immediately provide each other with the information required for the purposes of carrying out their duties under this Directive.

- *Recital 70 of UCITS IV – p. 16*

2a. The competent authorities shall cooperate with ESMA for the purposes of this Directive, in accordance with Regulation (EU) No 1095/2010.

   The competent authorities shall without delay provide ESMA with all information necessary to carry out its duties, in accordance with Article 35 of Regulation (EU) No 1095/2010.

3. Where a competent authority of one Member State has good reason to suspect that acts contrary to the provisions of this Directive, are being or have been carried out by entities not subject to that competent authority's supervision on the territory of another Member State, it shall notify the competent authorities of the other Member State

thereof in as specific a manner as possible. The recipient authorities shall take appropriate action, shall inform the notifying competent authority of the outcome of that action and, to the extent possible, of significant interim developments. This paragraph shall be without prejudice to the competences of the notifying competent authority.

4. The competent authorities of one Member State may request the cooperation of the competent authorities of another Member State in a supervisory activity or for an on-the-spot verification or in an investigation on the territory of the latter within the framework of their powers pursuant to this Directive. Where a competent authority receives a request with respect to an on-the-spot verification or investigation, it shall:

   (a) carry out the verification or investigation itself;

   (b) allow the requesting authority to carry out the verification or investigation; or

   (c) allow auditors or experts to carry out the verification or investigation.

5. If the verification or investigation is carried out on the territory of one Member State by a competent authority of the same Member State, the competent authority of the Member State which has requested cooperation may request that its own officials accompany the officials carrying out the verification or investigation. The verification or investigation shall, however, be subject to the overall control of the Member State on whose territory it is conducted.

   If the verification or investigation is carried out on the territory of one Member State by a competent authority of another Member State, the competent authority of the Member State on whose territory the verification or investigation is carried out may request that its own officials accompany the officials carrying out the verification or investigation.

- *Recital 70 of UCITS IV – p. 16*

6. The competent authorities of the Member State where the verification or investigation is carried out may refuse to exchange information as provided for in paragraph 2 or to act on a request for cooperation in carrying out an investigation or on-the-spot verification as provided for in paragraph 4, only where:

   (a) such an investigation, on-the-spot verification or exchange of information might adversely affect the sovereignty, security or public policy of that Member State;

   (b) judicial proceedings have already been initiated in respect of the same persons and the same actions before the authorities of that Member State;

   (c) final judgment in respect of the same persons and the same actions has already been delivered in that Member State.

7. The competent authorities shall notify the requesting competent authorities of any decision taken under paragraph 6. That notification shall contain information about the motives of their decision.

8. The competent authorities may refer to ESMA situations where a request:

   (a) to exchange information as provided for in Article 109 has been rejected or has not been acted upon within a reasonable time;

(b) to carry out an investigation or on-the-spot verification as provided for in Article 110 has been rejected or has not been acted upon within a reasonable time; or

(c) for authorisation for its officials to accompany those of the competent authority of the other Member State has been rejected or has not been acted upon within a reasonable time.

Without prejudice to Article 258 of the Treaty of on the Functioning of the European Union (TFEU), ESMA may, in situations referred to in the first subparagraph, act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010, without prejudice to the possibilities for refusing to act on a request for information or for an investigation provided for in paragraph 6 of this Article and to the ability of ESMA to act in accordance with Article 17 of that Regulation in those cases.

9. In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to establish common procedures for competent authorities to cooperate in on-the-spot verifications and investigations as referred to in paragraphs 4 and 5.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 102

1. Member States shall provide that all persons who work or who have worked for the competent authorities, as well as auditors and experts instructed by the competent authorities, be bound by the obligation of professional secrecy. Such obligation implies that no confidential information which those persons receive in the course of their duties shall be divulged to any person or authority whatsoever, save in summary or aggregate form such that UCITS, management companies and depositaries (undertakings contributing towards UCITS' business activity) cannot be individually identified, without prejudice to cases covered by criminal law.

However, when a UCITS or an undertaking contributing towards its business activity has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in rescue attempts may be divulged in the course of civil or commercial proceedings.

- *Recitals 79 to 82 of UCITS IV – p. 18 and 18*

2. Paragraph 1 shall not prevent the competent authorities of the Member States from exchanging information in accordance with this Directive or other Union legislation applicable to UCITS or to undertakings contributing towards their business activity or from transmitting it to ESMA in accordance with Regulation (EU) No 1095/2010 or the ESRB. That information shall be subject to the conditions of professional secrecy laid down in paragraph 1.

The competent authorities exchanging information with other competent authorities under this Directive may indicate at the time of communication that such information must not be disclosed without their express consent, in which case such information may be exchanged solely for the purposes for which those authorities gave their consent.

- *Recital 77 of UCITS IV – p.17*

3. Member States may conclude cooperation agreements providing for exchange of information with the competent authorities of third countries, or with authorities or bodies of third countries, as determined in paragraph 5 of this Article and Article 103(1) only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such exchange of information shall be intended for the performance of the supervisory task of those authorities or bodies.

   Where the information originates in another Member State, it shall not be disclosed without the express consent of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their consent.

- *Recital 68 of UCITS IV – p. 16*

4. The competent authorities receiving confidential information under paragraphs 1 or 2 may use the information only in the course of their duties for the purposes of:

   (a) checking that the conditions governing the taking-up of business of UCITS or of undertakings contributing towards their business activity are met and facilitating the monitoring of the conduct of that business, administrative and accounting procedures and internal-control mechanisms;

   (b) imposing penalties;

   (c) conducting administrative appeals against decisions by the competent authorities; and

   (d) pursuing court proceedings initiated under Article 107(2).

5. Paragraphs 1 and 4 shall not preclude the exchange of information within a Member State or between Member States, where that exchange is to take place between a competent authority and:

   (a) authorities with public responsibility for the supervision of credit institutions, investment undertakings, insurance undertakings or other financial organisations, or authorities responsible for the supervision of financial markets;

- *Recitals 75 and 76 of UCITS IV – p. 17*

   (b) bodies involved in the liquidation or bankruptcy of UCITS or undertakings contributing towards their business activity, or bodies involved in similar procedures; or

   (c) persons responsible for carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment undertakings or other financial institutions;

   (d) ESMA, the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1093/2010 of the European Parliament and of

the Council[1], the European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council[2] and the ESRB.

In particular, paragraphs 1 and 4 shall not preclude the performance by the competent authorities listed above of their supervisory functions, or the disclosure to bodies which administer compensation schemes of information necessary for the performance of their functions.

Information exchanged pursuant to the first subparagraph shall be subject to the conditions of professional secrecy imposed in paragraph 1.

Article 103

1. Notwithstanding Article 102(1) to (4), Member States may authorise exchanges of information between a competent authority and:

   (a) authorities responsible for overseeing bodies involved in the liquidation and bankruptcy of UCITS or undertakings contributing towards their business activity, or bodies involved in similar procedures;

   (b) authorities responsible for overseeing persons responsible for carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms or other financial institutions.

2. Member States which have recourse to the derogation provided for in paragraph 1 shall require that at least the following conditions are met:

   (a) the information is used for the purpose of performing the task of overseeing referred to in paragraph 1;

   (b) the information received is subject to the conditions of professional secrecy imposed in Article 102(1); and

   (c) where the information originates in another Member State, it is not disclosed without the express consent of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their consent.

3. Member States shall communicate to ESMA, to the Commission and to the other Member States the names of the authorities which may receive information pursuant to paragraph 1.

4. Notwithstanding Article 102(1) to (4), Member States may, with the aim of strengthening the stability, including the integrity, of the financial system, authorise the exchange of information between the competent authorities and the authorities or

[1] OJ L 331, 15.12.2010, p. 12.

[2] OJ L 331, 15.12.2010, p. 48.

bodies responsible under the law for the detection and investigation of breaches of company law.

- *Recitals 74 and 75 of UCITS IV – p. 17*

5. Member States which have recourse to the derogation provided for in paragraph 4 shall require that at least the following conditions are met:

   (a) the information is used for the purpose of performing the task referred to in paragraph 4;

   (b) the information received is subject to the conditions of professional secrecy provided for in Article 102(1); and

   (c) where the information originates in another Member State, it is not disclosed without the express consent of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their consent.

   For the purposes of point (c), the authorities or bodies referred to in paragraph 4 shall communicate to the competent authorities which have disclosed the information the names and precise responsibilities of the persons to whom it is to be sent.

6. Where, in a Member State, the authorities or bodies referred to in paragraph 4 perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector the possibility of exchanging information provided for in that paragraph may be extended to such persons under the conditions stipulated in paragraph 5.

- *Recital 76 of UCITS IV – p. 17*

7. Member States shall communicate to ESMA, to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to paragraph 4.

Article 104

1. Articles 102 and 103 shall not prevent a competent authority from transmitting to central banks and other bodies with a similar function in their capacity as monetary authorities information intended for the performance of their tasks, nor shall those articles prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of Article 102(4). Information received in this context shall be subject to the conditions of professional secrecy imposed in Article 102(1).

2. Articles 102 and 103 shall not prevent the competent authorities from communicating the information referred to in Article 102(1) to (4) to a clearing house or other similar body recognised under national law for the provision of clearing or settlement services for one of their Member State's markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants.

The information received in this context shall be subject to the conditions of professional secrecy imposed in Article 102(1).

Member States shall, however, ensure that information received under Article 102(2) is not disclosed in the circumstances referred to in the first subparagraph of this paragraph without the express consent of the competent authorities which disclosed it.

- *Recital 78 of UCITS IV – p. 18*

3. Notwithstanding Article 102(1) and (4), Member States may, by virtue of provisions laid down by law, authorise the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of UCITS and of undertakings contributing towards their business activity, credit institutions, financial institutions, investment undertakings and insurance undertakings and to inspectors instructed by those departments.

   Such disclosures may, however, be made only where necessary for reasons of prudential control.

   Member States shall, however, provide that information received under Article 102(2) and (5) is never disclosed in the circumstances referred to in this paragraph except with the express consent of the competent authorities which disclosed the information.

- *Recital 79 of UCITS IV – p. 18*

(Article 1(18) of UCITS V)

Article 104a

1. Member States shall apply Directive 95/46/EC to the processing of personal data carried out in the Member States pursuant to this Directive.

2. Regulation (EC) No 45/2001 of the European Parliament and of the Council [1] shall apply to the processing of personal data carried out by ESMA pursuant to this Directive.

- *Recital 46 of UCITS V: The European Data Protection Supervisor has been consulted in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council and delivered an opinion on 23 November 2012.*

Article 105

In order to ensure uniform conditions of application of the provisions in this Directive concerning the exchange of information, ESMA may develop draft implementing technical

[1] Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

standards to determine the conditions of application with regard to the procedures for exchange of information between competent authorities and between the competent authorities and ESMA.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.

Article 106

1. Member States shall provide at least that any person approved in accordance with Directive 2006/43/EC, performing in a UCITS, or in an undertaking contributing towards its business activity, the statutory audit referred to in Article 51 of Directive 78/660/EEC, Article 37 of Directive 83/349/EEC or Article 73 of this Directive or any other statutory task, shall have a duty to report promptly to the competent authorities any fact or decision concerning that undertaking of which he has become aware while carrying out that task and which is liable to bring about any of the following:

   (a) a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorisation or which specifically govern pursuit of the activities of UCITS or undertakings contributing towards their business activity;

   (b) the impairment of the continuous functioning of the UCITS or an undertaking contributing towards its business activity; or

   (c) a refusal to certify the accounts or the expression of reservations.

   That person shall have a duty to report any facts and decisions of which he becomes aware in the course of carrying out a task as described in point (a) in an undertaking having close links resulting from a control relationship with the UCITS or an undertaking contributing towards its business activity, within which he is carrying out that task.

- *Recitals 80 to 82 of UCITS IV – pp. 18 and 18*

2. The disclosure in good faith to the competent authorities, by persons approved in accordance with Directive 2006/43/EC of any fact or decision referred to in paragraph 1 shall not constitute a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative provision and shall not subject such persons to liability of any kind.

Article 107

1. The competent authorities shall give written reasons for any decision to refuse authorisation, or any negative decision taken in the implementation of the general measures adopted in application of this Directive, and communicate them to applicants.

2. Member States shall provide that any decision taken under the laws, regulations or administrative provisions adopted in accordance with this Directive is properly reasoned and subject to a right of appeal in the courts, including where no decision is

taken within six months of submission of an application for authorisation which provides all the information required.

3. Member States shall provide that one or more of the following bodies, as determined by national law, may, in the interests of consumers and in accordance with national law, take action before the courts or competent administrative bodies to ensure that the national provisions for the implementation of this Directive are applied:

   (a) public bodies or their representatives;

   (b) consumer organisations having a legitimate interest in protecting consumers; or

   (c) professional organisations having a legitimate interest in protecting their members.

Article 108

1. Only the authorities of the UCITS home Member State shall have the power to take action against that UCITS if it infringes any law, regulation or administrative provision or any regulation laid down in the fund rules or in the instruments of incorporation of the investment company.

   However, the authorities of the UCITS host Member State may take action against that UCITS if it infringes the laws, regulations and administrative provisions in force in that Member State that fall outside the scope of this Directive or the requirements set out in Articles 92 and 94.

- *Recitals 23 and 71 of UCITS IV – pp. 7 and 17*

2. Any decision to withdraw authorisation, or any other serious measure taken against a UCITS, or any suspension of the issue, repurchase or redemption of its units imposed upon it, shall be communicated without delay by the authorities of the UCITS home Member State to the authorities of the UCITS host Member States and, if the management company of a UCITS is established in another Member State, to the competent authorities of the management company's home Member State.

- *Recital 70 of UCITS IV – p. 16*

3. The competent authorities of the management company's home Member State or those of the UCITS home Member State may take action against the management company if it infringes rules under their respective responsibility.

- *Recital 23 of UCITS IV – p. 7*

4. In the event that the competent authorities of the UCITS host Member State have clear and demonstrable grounds for believing that a UCITS, the units of which are marketed within the territory of that Member State is in breach of the obligations arising from the provisions adopted pursuant to this Directive which do not confer powers on the competent authorities of the UCITS host Member State, they shall refer those findings to the competent authorities of the UCITS home Member State, which shall take the appropriate measures.

- *Recital 72 of UCITS IV – p. 17*

5. If, despite the measures taken by the competent authorities of the UCITS home Member State or because such measures prove to be inadequate, or because the UCITS home Member State fails to act within a reasonable timeframe, the UCITS persists in acting in a manner that is clearly prejudicial to the interests of the UCITS host Member State's investors, the competent authorities of the UCITS host Member State, may, as a consequence, take either of the following actions:

   (a) after informing the competent authorities of the UCITS home Member State, take all the appropriate measures needed in order to protect investors, including the possibility of preventing the UCITS concerned from carrying out any further marketing of its units within the territory of the UCITS host Member State; or

   (b) if necessary, refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

   The Commission and ESMA shall be informed without delay of any measure taken pursuant to point (a) of the first subparagraph.

6. Member States shall ensure that within their territories it is legally possible to serve the legal documents necessary for the measures which may be taken by the UCITS host Member State in regard to UCITS pursuant to paragraphs 2 to 5.

Article 109

1. Where, through the provision of services or by the establishment of branches, a management company operates in one or more management company's host Member States, the competent authorities of all the Member States concerned shall collaborate closely.

   They shall supply one another on request with all the information concerning the management and ownership of such management companies that is likely to facilitate their supervision and all information likely to facilitate the monitoring of such companies. In particular, the authorities of the management company's home Member State shall cooperate to ensure that the authorities of the management company's host Member State collect the particulars referred to in Article 21(2).

2. In so far as it is necessary for the purpose of exercising the powers of supervision of the home Member State, the competent authorities of the management company's host Member State shall inform the competent authorities of the management company's home Member State of any measures taken by the management company's host Member State pursuant to Article 21(5) which involve measures or penalties imposed on a management company or restrictions on a management company's activities.

3. The competent authorities of the management company's home Member State shall, without delay, notify the competent authorities of the UCITS home Member State of any problem identified at the level of the management company which may materially affect the ability of the management company to perform its duties properly with respect to the UCITS or of any breach of the requirements under Chapter III.

4. The competent authorities of the UCITS home Member State shall, without delay, notify the competent authorities of the management company's home Member State of any

problem identified at the level of the UCITS which may materially affect the ability of the management company to perform its duties properly or to comply with the requirements of this Directive which fall under the responsibility of the UCITS home Member State.

- *Recital 70 of UCITS IV – p. 16*

Article 110

1. Each management company's host Member State shall ensure that where a management company authorised in another Member State pursues business within its territory through a branch the competent authorities of the management company's home Member State may, after informing the competent authorities of the management company's host Member State, themselves or through the intermediary they instruct for the purpose, carry out on-the-spot verification of the information referred to in Article 109.

2. Paragraph 1 shall not affect the right of the competent authorities of the management company's host Member State, in discharging their responsibilities under this Directive, to carry out on-the-spot verifications of branches established within the territory of that Member State.

CHAPTER XIII
DELEGATED ACTS AND POWERS OF EXECUTION

Article 111

The Commission may adopt technical amendments to this Directive in the following areas:

(a) clarification of the definitions in order to ensure consistent harmonisation and uniform application of this Directive throughout the Union; or

(b) alignment of terminology and the framing of definitions in accordance with subsequent acts on UCITS and related matters.

(Article 1(19) of UCITS V)

The measures referred to in the first subparagraph shall be adopted by means of delegated acts in accordance with Article 112a.

(Article 1(22) of UCITS V)

Article 112

The Commission shall be assisted by the European Securities Committee established by Commission Decision 2001/528/EC[1].

(Article 1(23) of UCITS V)

Article 112a

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt the delegated acts referred to in Articles 12, 14, 43, 60, 61, 62, 64, 75, 78, 81, 95 and 111 shall be conferred on the Commission for a period of four years from 4 January 2011.

   The power to adopt the delegated acts referred to in Article 26b shall be conferred on the Commission for a period of four years from 17 September 2014.

   The power to adopt the delegated acts referred to in Article 50a shall be conferred on the Commission for a period of four years from 21 July 2011.

   The power to adopt the delegated acts referred to in Article 51 is conferred on the Commission for a period of four years from 20 June 2013.

   The Commission shall draw up a report in respect of delegated power not later than six months before the end of the four-year periods. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

3. The delegation of power referred to in Articles 12, 14, 26b, 43, 50a, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Articles 12, 14, 26b, 43, 50a, 51, 60, 61, 62, 64, 75, 78, 81, 95 and 111 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of three months of

[1] Commission Decision 2001/528/EC of 6 June 2001 establishing the European Securities Committee (OJ L 191, 13.7.2001, p. 45).

notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by three months at the initiative of the European Parliament or of the Council.

- *Recital 42 of UCITS V: In order to ensure that the objectives of this Directive are attained, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission. In particular, the Commission should be empowered to adopt delegated acts to specify the particulars that need to be included in the standard agreement between the depositary and the management company or the investment company, the conditions for performing depositary functions, including the type of financial instruments that should be included in the scope of the depositary's custody duties, the conditions subject to which the depositary may exercise its custody duties over financial instruments registered with a central depository and the conditions subject to which the depositary should safekeep the financial instruments issued in a nominative form and registered with an issuer or a registrar, the due diligence duties of depositaries, the segregation obligation, the conditions subject to and circumstances in which financial instruments held in custody should be considered to be lost, and what is to be understood by external events beyond reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary. The level of investor protection provided by those delegated acts should be at least as high as that provided by delegated acts adopted under Directive 2011/61/EU. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.*

CHAPTER XIV
DEROGATIONS, TRANSITIONAL AND FINAL PROVISIONS

SECTION 1
Derogations

Article 113

1. Solely for the purpose of Danish UCITS, *pantebreve* issued in Denmark shall be treated as equivalent to the transferable securities referred to in Article 50(1)(b).

2. By way of derogation from Articles 22(1) and 32(1), the competent authorities may authorise those UCITS which, on 20 December 1985, had two or more depositaries in accordance with their national law to maintain that number of depositaries if those authorities have guarantees that the functions to be performed under Article 22(3) and Article 32(3) will be performed in practice.

3. By way of derogation from Article 16, the Member States may authorise management companies to issue bearer certificates representing the registered securities of other companies.

Article 114

1. Investment firms, as defined in Article 4(1)(1) of Directive 2004/39/EC, authorised to carry out only the services provided for in Section A(4) and (5) of the Annex to that

Directive, may obtain authorisation under this Directive to manage UCITS as management companies. In that case, such investment firms shall give up the authorisation obtained under Directive 2004/39/EC.

2. Management companies already authorised before 13 February 2004 in their home Member State under Directive 85/611/EEC to manage UCITS shall be deemed to be authorised for the purposes of this Article if the laws of that Member State provide that to take up such activity they must comply with conditions equivalent to those imposed in Articles 7 and 8.

SECTION 2
Transitional and final provisions

Article 115

By 1 July 2013, the Commission shall submit to the European Parliament and to the Council a report on the application of this Directive.

Article 116

1. Member States shall adopt and publish by 30 June 2011, the laws, regulations and administrative provisions necessary to comply with the second subparagraph of Article 1(2), Article 1(3)(b), points (e), (m), (p), (q) and (r) of Article 2(1), Article 2(5), Article 4, Article 5(1) to (4), (6) and (7), Article 6(1), Article 12(1), the introductory phase of Article 13(1), Article 13(1)(a) and (i), Article 15, Article 16(1), Article 16(3), Article 17(1), Article 17(2)(b), the first and third subparagraphs of Article 17(3), Article 17(4) to (7), the second subparagraph of Article 17(9), the introductory part of Article 18(1), Article 18(1)(b), the third and fourth subparagraphs of Article 18(2), Article 18(3) and (4), Articles 19 and 20, Article 21(2) to (6), (8) and (9), Article 22(1), points (a), (d) and (e) of Article 22(3), Article 23(1), (2), (4), and (5), the third paragraph of Article 27, Article 29(2), Article 33(2), (4), and (5), Articles 37 to 42, Article 43(1) to (5), Articles 44 to 49, the introductory phrase of Article 50(1), Article 50(3), the third subparagraph of Article 51(1), Article 54(3), Article 56(1), the introductory phrase of the first subparagraph of Article 56(2), Articles 58 and 59, Article 60(1) to (5), Article 61(1) and (2), Article 62(1), (2) and (3), Article 63, Article 64(1), (2) and (3), Articles 65, 66 and 67, the introductory phrase and Article 68(1)(a), Article 69(1) and (2), Article 70(2) and (3), Articles 71, 72 and 74, Article 75(1), (2) and (3), Articles 77 to 82, Article 83(1)(b), the second indent of Article 83(2)(a), Article 86, Article 88(1)(b), Article 89(b), Articles 90 to 94, Articles 96 to 100, Article 101(1) to (8), the second subparagraph of Article 102(2), Article 102(5), Articles 107 and 108, Article 109(2), (3) and (4), Article 110 and Annex I. They shall forthwith inform the Commission thereof.

They shall apply those measures from 1 July 2011.

When Member States adopt those measures, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. They shall also include a statement that references in existing laws, regulations and administrative provisions to Directive 85/611/EEC shall be construed as references to this Directive. Member States shall determine how such reference is to be made and how that statement is to be formulated.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 117

Directive 85/611/EEC, as amended by the Directives listed in Annex III, Part A, is repealed with effect from 1 July 2011, without prejudice to the obligations of the Member States relating to the time limits for transposition into national law and application of the Directives set out in Annex III, Part B.

▪ *Recital 94 of UCITS IV – p. 20*

References to the repealed Directive shall be construed as references to this Directive and shall be read in accordance with the correlation table in Annex IV.

References to the simplified prospectus shall be construed as references to the key investor information referred to in Article 78.

Article 118

1. This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

   Article 1(1), the first subparagraph of Article 1(2), Article 1(3)(a), Article 1(4) to (7), points (a) to (d), (f) to (l), (n) and (o) of Article 2(1), Article 2(2), (3) and (4), Article 2(6) and (7), Article 3, Article 5(5), Article 6(2), (3) and (4), Articles 7 to 11, Article 12(2), Article 13(1)(b) to (h), Article 13(2), Article 14(1), Article 16(2), points (a), (c) and (d) of Article 17(2), the second subparagraph of Article 17(3), Article 17(8), the first subparagraph of Article 17(9), Article 18(1) except the introductory phrase and point (a), the first and second subparagraphs of Article 18(2), Article 21(1)and (7), Article 22(2), Article 22(3)(b) and (c), Article 23(3), Article 24, Articles 25 and 26, the first and second paragraphs of Article 27, Article 28, Article 29(1), (3), and (4), Articles 30, 31 and 32, Article 33(1) and (3), Articles 34, 35 and 36, Article 50(1)(a) to (h), Article 50(2), the first and second subparagraphs of Article 51(1), Article 51(2) and (3), Articles 52 and 53, Article 54(1) and (2), Article 55, the first subparagraph of Article 56(2), the second subparagraph of Article 56(2), Article 56(3), Article 57, Article 68(2), Article 69(3) and (4), Article 70(1) and (4), Articles 73 and 76, Article 83(1) except point (b), Article 83(2)(a) except the second indent, Articles 84, 85 and 87, Article 88(1) except point (b), Article 88(2), Article 89 except point (b), Article 102(1), the first subparagraph of Article 102(2), Article 102(3) and (4), Articles 103 to 106, Article 109(1), Articles 111, 112, 113, and 117 and Annexes II, III and IV shall apply from 1 July 2011.

2. Member States shall ensure that UCITS replace their simplified prospectus drawn up in accordance with the provisions of Directive 85/611/EEC with key investor information drawn up in accordance with Article 78 as soon as possible and in any event no later than 12 months after the deadline for implementing, in national law, all the implementing measures referred to in Article 78(7) has expired. During that period, the competent authorities of the UCITS host Member States shall continue to accept the simplified prospectus for UCITS marketed on the territory of those Member States.

Article 119

This Directive is addressed to the Member States.

ANNEX I

SCHEDULE A

1. Information concerning the common fund	1. Information concerning the management company including an indication whether the management company is established in a Member State other than the UCITS home Member State	1. Information concerning the investment company
1.1. Name	1.1. Name or style, form in law, registered office and head office if different from the registered office.	1.1. Name or style, form in law, registered office and head office if different from the registered office.
1.2. Date of establishment of the common fund. Indication of duration, if limited.	1.2. Date of incorporation of the company. Indication of duration, if limited.	1.2. Date of incorporation of the company. Indication of duration, if limited.
	1.3. If the company manages other common funds, indication of those other funds.	1.3. In the case of investment companies having different investment compartments, the indication of the compartments.
1.4. Statement of the place where the fund rules, if they are not annexed, and periodic reports may be obtained.		1.4. Statement of the place where the instruments of incorporation, if they are not annexed, and periodical reports may be obtained.
1.5. Brief indications relevant to unit-holders of the tax system applicable to the common fund. Details of whether deductions are made at source from the income and capital gains paid by the common fund to unit-holders.		1.5. Brief indications relevant to unit-holders of the tax system applicable to the company. Details of whether deductions are made at source from the income and capital gains paid by the company to unit-holders.
1.6. Accounting and distribution dates		1.6. Accounting and distribution dates.
1.7. Names of the persons responsible for auditing the accounting information referred to in Article 73.		1.7. Names of the persons responsible for auditing the accounting information referred to in Article 73.
	1.8. Names and positions in the company of the members of the administrative, management and supervisory bodies. Details of their main activities outside the company where	1.8. Names and positions in the company of the members of the administrative, management and supervisory bodies. Details of their main activities outside the company where

			these are of significance with respect to that company.		these are of significance with respect to that company.
		1.9.	Amount of the subscribed capital with an indication of the capital paid-up	1.9.	Capital
1.10.	Details of the types and main characteristics of the units and in particular: – the nature of the right (real, personal or other) represented by the unit, – characteristics of the units: registered or bearer. Indication of any denominations which may be provided for, – original securities or certificates providing evidence of title; entry in a register or in an account, – indication of unit-holders' voting rights if these exist, – circumstances in which winding-up of the common fund can be decided on and winding-up procedure, in particular as regards the rights of unit-holders.			1.10.	Details of the types and main characteristics of the units and in particular: – original securities or certificates providing evidence of title; entry in a register or in an account, – characteristics of the units: registered or bearer. Indication of any denominations which may be provided for, – indication of unit-holders' voting rights, – circumstances in which winding-up of the investment company can be decided on and winding-up procedure, in particular as regards the rights of unit-holders.
1.11.	Where applicable, indication of stock exchanges or markets where the units are listed or dealt in.			1.11.	Where applicable, indication of stock exchanges or markets where the units are listed or dealt in.
1.12.	Procedures and conditions of issue and sale of units.			1.12.	Procedures and conditions of issue and sale of units.
1.13.	Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption may be suspended.			1.13.	Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption may be suspended. In the case of investment companies having different investment compartments, information on how a unit-holder may pass from one compartment into another and the charges applicable in such cases.
1.14.	Description of rules for determining and applying			1.14.	Description of rules for determining and applying

	income.		income.
1.15.	Description of the common fund's investment objectives, including its financial objectives (e.g. capital growth or income), investment policy (e.g. specialisation in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and instruments or borrowing powers which may be used in the management of the common fund.		1.15. Description of the company's investment objectives, including its financial objectives (e.g. capital growth or income), investment policy (e.g. specialisation in geographical or industrial sectors), any limitations on that investment policy and an indication of any techniques and instruments or borrowing powers which may be used in the management of the company.
1.16.	Rules for the valuation of assets.		1.16. Rules for the valuation of assets.
1.17.	Determination of the sale or issue price and the repurchase or redemption price of units, in particular: – the method and frequency of the calculation of those prices, – information concerning the charges relating to the sale or issue and the repurchase or redemption of units, – the means, places and frequency of the publication of those prices.		1.17. Determination of the sale or issue price and the repurchase or redemption price of units, in particular: – the method and frequency of the calculation of those prices, – information concerning the charges relating to the sale or issue and the repurchase or redemption of units, – the means, places and frequency of the publication of those prices ([1]).
1.18.	Information concerning the manner, amount and calculation of remuneration payable by the common fund to the management company, the depositary or third parties, and reimbursement of costs by the common fund to the management company, to the depositary or to third parties.		1.18. Information concerning the manner, amount and calculation of remuneration payable by the company to its directors, and members of the administrative, management and supervisory bodies, to the depositary, or to third parties, and reimbursement of costs by the company to its directors, to the depositary or to third parties.

([1]) Investment companies within the meaning of Article 32(5) of this Directive shall also indicate:
- The method and frequency of calculation of the net asset value of units,
- The means, place and frequency of the publication of that value,
- The stock exchange in the country of marketing the price on which determines the price of transactions effected out with stock exchanges in that country.

(Article 1(25) of UCITS V)

2. Information concerning the depositary:

   2.1. the identity of the depositary of the UCITS and a description of its duties and of conflicts of interest that may arise;

   2.2. a description of any safekeeping functions delegated by the depositary, the list of delegates and sub-delegates and any conflicts of interest that may arise from such a delegation;

   2.3. a statement to the effect that up-to-date information regarding points 2.1 and 2.2 will be made available to investors on request.

3. Information concerning the advisory firms or external investment advisers who give advice under contract which is paid for out of the assets of the UCITS:

   3.1. Name or style of the firm or name of the adviser;

   3.2. Material provisions of the contract with the management company or the investment company which may be relevant to the unit-holders, excluding those relating to remuneration;

   3.3. Other significant activities.

4. Information concerning the arrangements for making payments to unit-holders, repurchasing or redeeming units and making available information concerning the UCITS. Such information must in any case be given in the Member State in which the UCITS is established. In addition, where units are marketed in another Member State, such information shall be given in respect of that Member State in the prospectus published there.

5. Other investment information:

   5.1. Historical performance of the UCITS (where applicable) — such information may be either included in or attached to the prospectus;

   5.2. Profile of the typical investor for whom the UCITS is designed.

6. Economic information:

   6.1. Possible expenses or fees, other than the charges mentioned in point 1.17, distinguishing between those to be paid by the unit-holder and those to be paid out of the assets of the UCITS.

SCHEDULE B

Information to be included in the periodic reports

I. Statement of assets and liabilities:

- transferable securities,
- bank balances,
- other assets,
- total assets,
- liabilities,
- net asset value.

II. Number of units in circulation

III. Net asset value per unit

IV. Portfolio, distinguishing between:

(a) transferable securities admitted to official stock exchange listing;

(c) transferable securities dealt in on another regulated market;

(d) recently issued transferable securities of the type referred to in Article 50(1)(d);

(e) other transferable securities of the type referred to in Article 50(2)(a);

and analysed in accordance with the most appropriate criteria in the light of the investment policy of the UCITS (e.g. in accordance with economic, geographical or currency criteria) as a percentage of net assets; for each of the above investments the proportion it represents of the total assets of the UCITS.

Statement of changes in the composition of the portfolio during the reference period.

V. Statement of the developments concerning the assets of the UCITS during the reference period including the following:

- income from investments,
- other income,
- management charges,
- depositary's charges,
- other charges and taxes,
- net income,

- distributions and income reinvested,
- changes in capital account,
- appreciation or depreciation of investments,
- any other changes affecting the assets and liabilities of the UCITS,
- transaction costs, which are costs incurred by a UCITS in connection with transactions on its portfolio.

VI. A comparative table covering the last three financial years and including, for each financial year, at the end of the financial year:

- the total net asset value,
- the net asset value per unit.

VII. *Details, by category of transaction within the meaning of Article 51 carried out by the UCITS during the reference period, of the resulting amount of commitments.*

ANNEX II

Functions included in the activity of collective portfolio management:

- Investment management.
- Administration:
  - (a) legal and fund management accounting services;
  - (b) customer inquiries;
  - (c) valuation and pricing (including tax returns);
  - (d) regulatory compliance monitoring;
  - (e) maintenance of unit-holder register;
  - (f) distribution of income;
  - (g) unit issues and redemptions;
  - (h) contract settlements (including certificate dispatch);
  - (i) record keeping.
- Marketing.

ANNEX III

PART A

Repealed Directive with list of its successive amendments

(referred to in Article 117)

[Table of repealed directives]

PART B

List of time limits for transposition into national law and application

(referred to in Article 117)

[Table of time limits]

ANNEX IV

Correlation table

[Correlation table]

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Level 2

- Commission Delegated Regulation (EU) 2016/438 of 17 December 2015 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to obligations of depositaries (**Commission Delegated Regulation 2016/438**)

- Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company (**Commission Directive 2010/43**)

- Commission Directive 2010/42/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure (**Commission Directive 2010/42**)

- Commission Regulation (EU) No. 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards, key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website (**Commission Regulation 583/2010**)

- Commission Regulation (EU) No.584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities (**Commission Regulation 584/2010**)

COMMISSION DELEGATED REGULATION (EU) 2016/438

of 17 December 2015

supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to obligations of depositaries

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard o Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)[1], and in particular Article 26b thereof,

Whereas:

(1) It is important to ensure that the objectives of Directive 2009/65/EC are achieved uniformly throughout the Member States to enhance the integrity of the internal market and offer legal certainty for its participants, including retail and institutional investors, competent authorities and other stakeholders. The form of a Regulation ensures a coherent framework for all market operators and is the best possible guarantee for a level playing field, uniform conditions of competition and the common appropriate standard of investor protection. Furthermore, it ensures the direct applicability of detailed uniform rules concerning the operation of undertakings for collective investment in transferable securities (UCITS) and depositaries, which by their nature are directly applicable and therefore require no further transposition at national level. Adopting a Regulation also ensures that the relevant amendments to Directive 2009/65/EC, as introduced by Directive 2014/91/EU of the European Parliament and of the Council[2], may all be applied from the same date in all Member States.

(2) Directive 2009/65/EC lays down an extensive set of requirements regarding depositaries' duties, delegation arrangements, and the liability regime for UCITS assets under custody in order to ensure a high standard of investor protection, that takes into account that UCITS is a retail investment scheme. Specific rights and obligations of the

[1] OJ L 302, 17.11.2009, p. 32.

[2] Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions (OJ L 257, 28.8.2014, p. 186).

depositary, the management company and the investment company should therefore be set out clearly. The written contract should comprise all details necessary for the appropriate safe-keeping of all UCITS' assets by the depositary or a third party to whom safekeeping functions are delegated in accordance with Directive 2009/65/EC for the depositary to properly fulfil its oversight and control functions.

⇧ (Article 22(2) consolidated UCITS Directive) ⇧ (Article 1 ff. Commission Delegated Regulation 2016/438)

(3) In order to allow the depositary to assess and monitor custody and insolvency risk, the written contract should provide sufficient detail on the categories of financial instruments in which the UCITS may invest and cover the geographical regions in which the UCITS plans to invest. The contract should also contain details of an escalation procedure in order to specify the circumstances, notification obligations and the steps to be taken by a depositary's staff member, at any level of its organisational structure, in relation to any detected discrepancies, including notification to the management company or the investment company or/and competent authorities, as required by this Regulation. Therefore, the depositary should alert the management company or the investment company of any material risk identified in a particular market's settlement system. The termination of the contract should reflect the fact that it represents the depositary's last resort when not satisfied that assets are sufficiently protected. It should also prevent moral hazard whereby the UCITS would make investment decisions irrespective of custody risks on the basis that the depositary would be liable. In order to maintain a high standard of investor protection, the requirement laying down the details for the monitoring of third parties should be applied in relation to the whole custody chain.

⇧ (Article 22(2) consolidated UCITS Directive) ⇧ (Article 1 ff. Commission Delegated Regulation 2016/438)

(4) In order to ensure that the depositary is able to conduct its duties, it is necessary to clarify the tasks provided for in Article 22(3) of Directive 2009/65/EC, and in particular the second layer controls to be undertaken by the depositary. Such tasks should not prevent the depositary from conducting ex-ante verifications in agreement with the UCITS where it deems appropriate. In order to ensure that it is able to conduct its duties, the depositary should establish its own escalation procedure to address situations where discrepancies have been detected. That procedure should ensure the notification of the competent authorities of any material breaches. The oversight responsibilities of the depositary towards third parties should be without prejudice to the responsibilities incumbent on the UCITS under Directive 2009/65/EC.

⇧ (Article 22(3) consolidated UCITS Directive)

(5) The depositary should check that there is consistency between the number of units issued and the subscription proceeds received. Moreover, to ensure that payments made by investors upon subscription have been received, the depositary should further ensure that another reconciliation is conducted between the subscription orders and the subscription proceeds. The same reconciliation should be performed with regard to redemption orders. The depositary should also verify that the number of units in the UCITS' accounts matches the number of outstanding units in the UCITS' register. The depositary should adapt its procedures accordingly, taking into account the flow of subscriptions and redemptions.

⇧ (Article 22(3)(a) consolidated UCITS Directive) ⇧ (Article 2(2)(h) Commission Delegated Regulation 2016/438) ⇧ (Article 4(3) Commission Delegated Regulation 2016/438)

(6) The depositary should take all necessary steps to ensure that appropriate valuation policies and procedures for the assets of the UCITS are effectively implemented, through the performance of sample checks or by comparing the consistency of the change in the net asset value (NAV) calculation over time with that of a benchmark. When setting up its procedures, the depositary should have a clear understanding of the valuation methodologies used by the UCITS to value the UCITS' assets. The frequency of such checks should be consistent with the frequency of the UCITS' asset valuation.

⇧ (Article 22(3)(b) consolidated UCITS Directive) ⇧ (Article 5(3) Commission Delegated Regulation 2016/438)

(7) By virtue of its obligation of oversight under Directive 2009/65/EC, the depositary should set up a procedure to verify on an ex post basis the UCITS' compliance with applicable law and regulations and its rules and instruments of incorporation. This should cover areas such as checking that the UCITS' investments are consistent with its investment strategies as described in the UCITS' rules and offering documents and ensuring that the UCITS does not breach its investment restrictions. The depositary should monitor the UCITS' transactions and investigate any unusual transaction. If the limits or restrictions set out in the applicable law or regulations or the UCITS rules and instruments of incorporation are breached, the depositary should act promptly to reverse the transaction that is in breach of those laws, regulations or rules.

⇧ (Article 22(3)(c) consolidated UCITS Directive) ⇧ (Article 6(b) Commission Delegated Regulation 2016/438)

(8) The depositary should ensure that the income of the UCITS is calculated accurately in accordance with Directive 2009/65/EC. In order to achieve this, the depositary has to ensure that the income calculation and distribution is appropriate and, where it identifies an error, that the UCITS takes appropriate remedial action. Once the depositary has ensured this, it should verify the completeness and accuracy of the income distribution.

⇧ (Article 22(3)(e) consolidated UCITS Directive) ⇧ (Article 8(2) Commission Delegated Regulation 2016/438)

(9) In order for the depositary to have a clear overview of all inflows and outflows of cash of the UCITS in all instances, the UCITS should ensure that the depositary receives without undue delay accurate information related to all cash flows, including from any third party with which an UCITS' cash account is opened.

⇧ (Article 22(4) consolidated UCITS Directive) ⇧ (Article 2(2)(l) Commission Delegated Regulation 2016/438) ⇧ (Article 9(3) Commission Delegated Regulation 2016/438) ⇧ (Article 10(2) Commission Delegated Regulation 2016/438)

(10) In order for the UCITS' cash flows to be properly monitored, the depositary should ensure that there are procedures in place and that they are effectively implemented to appropriately monitor the UCITS' cash flows and that those procedures are periodically reviewed. In particular, the depositary should look into the reconciliation procedure to satisfy itself that the procedure is suitable for the UCITS and performed at appropriate intervals taking into account the nature, scale and complexity of the UCITS. Such a procedure should for example compare one by one each cash flow as reported in the bank account statements with the cash flows recorded in the UCITS' accounts. Where reconciliations are performed on a daily basis as for most UCITS, the depositary should perform its reconciliation also on a daily basis. The depositary should in particular monitor the discrepancies highlighted by the reconciliation procedures and the

corrective measures taken in order to notify without undue delay the UCITS of any anomaly which has not been remedied and to conduct a full review of the reconciliation procedures. Such a review should be performed at least once a year. The depositary should also identify on a timely basis significant cash flows and in particular those which could be inconsistent with the UCITS' operations, such as changes in positions in UCITS' assets or subscriptions and redemptions, and it should receive periodically cash account statements and check the consistency of its own records of cash positions with those of the UCITS. The depositary should keep its record up to date in accordance with Article 22(5)(b) of Directive 2009/65/EC.

(11) The depositary has to ensure that all payments made by or on behalf of investors upon the subscription of shares or units of an UCITS have been received and booked in one or more cash accounts in accordance with Directive 2009/65/EC. The UCITS should therefore ensure that the depositary is provided with the relevant information it needs to properly monitor the receipt of investors' payments. The UCITS has to ensure that the depositary obtains this information without undue delay when the third party receives an order to redeem or issue units of an UCITS. The information should therefore be transmitted at the close of the business day from the entity which is responsible for the subscription and redemption of units of an UCITS to the depositary in order to avoid any misuse of investors' payments.

⇧ (Article 22(4)(c) consolidated UCITS Directive) ⇧ (Article 2(2)(l) Commission Delegated Regulation 2016/438) ⇧ (Article 10(2) Commission Delegated Regulation 2016/438) ⇧ (Article 11 Commission Delegated Regulation 2016/438)

(12) The depositary should hold in custody all financial instruments of the UCITS that could be registered or held in an account directly or indirectly in the name of the depositary or a third party to whom safekeeping functions are delegated, notably at the level of the central securities depositary. In addition the depositary should hold in custody those financial instruments that are only directly registered with the issuer itself or its agent in the name of the depositary or a third party to whom safekeeping functions are delegated. Those financial instruments that in accordance with applicable national law are only registered in the name of the UCITS with the issuer or its agent should not be held in custody. All financial instruments which could be physically delivered to the depositary should be held in custody. Provided that the conditions on which financial instruments are to be held in custody are fulfilled, financial instruments which are provided as collateral to a third party or are provided by a third party for the benefit of the UCITS have to be held in custody too by the depositary itself or by a third party to whom safekeeping functions are delegated as long as they are owned by the UCITS.

⇧ (Article 22(5)(a)(ii) consolidated UCITS Directive) ⇧ (Article 12(3) Commission Delegated Regulation 2016/438) ⇧ (Article 13(2) Commission Delegated Regulation 2016/438)

(13) Financial instruments which are held in custody should be subject to due care and protection at all times. To ensure that the custody risk is properly assessed, in exercising due care, clear obligations should be established for the depositary, which should in particular know what third parties constitute the custody chain ensure that the due-diligence and segregation obligations have been maintained throughout the whole custody chain, ensure that it has an appropriate right of access to the books and records of third parties to whom safekeeping functions are delegated, ensure compliance with the requirements of due-diligence and segregation, with the documents and make those documents available to the management company or the investment company.

⇧ (Article 22a (5)(a)(ii) consolidated UCITS Directive) ⇧ (Article 12(3) Commission Delegated Regulation 2016/438) ⇧ (Article 13(2) Commission Delegated Regulation 2016/438)

(14) The depositary should at all times have a comprehensive overview of all assets that are not financial instruments to be held in custody. Those assets would be subject to the obligation to verify the ownership and maintain a record under Directive 2009/65/EC. Examples of such assets are physical assets which do not qualify as financial instruments under Directive 2009/65/EC or could not be physically delivered to the depositary, financial contracts such as certain derivatives and cash deposits.

⇧ (Article 22(5) consolidated UCITS Directive) ⇧ (Article 22(6) consolidated UCITS Directive) ⇧ (Article 2(2)(f) Commission Delegated Regulation 2016/438) ⇧ (Article 14(4) Commission Delegated Regulation 2016/438)

(15) To ensure a sufficient degree of certainty that the UCITS is indeed the owner of the assets, the depositary should make sure it receives all information it deems necessary to be satisfied that the UCITS holds the ownership right over the asset. That information could be a copy of an official document evidencing that the UCITS is the owner of the asset or any formal and reliable evidence that the depositary considers appropriate. If necessary, the depositary should request additional evidence from the UCITS or as the case may be from a third party.

(16) The depositary should also keep a record of all assets for which it is satisfied that the UCITS holds ownership. It may set up a procedure to receive information from third parties, whereby procedures which ensure that the assets could not be transferred without the depositary or the third party to whom safekeeping functions are delegated having been informed of such transactions.

⇧ (Article 22(5) consolidated UCITS Directive) ⇧ (Article 22(6) consolidated UCITS Directive) ⇧ (Article 2(2)(f) Commission Delegated Regulation 2016/438) ⇧ (Article 14(4), Commission Delegated Regulation 2016/438)

(17) When delegating safekeeping functions to a third party in accordance with Article 22a of Directive 2009/65/EC, the depositary is required to implement and apply an appropriate and documented procedure to ensure that the delegate complies with the requirements of Article 22a(3) of that Directive at all times. In order to ensure a sufficient level of protection of assets, it is necessary to set out certain principles that should be applied in relation to the delegation of safekeeping functions.

⇧ (Article 22a(2)(c) consolidated UCITS Directive) ⇧ (Article 15(9) Commission Delegated Regulation 2016/438)

(18) Those principles should not be taken to be exhaustive, either in terms of setting out all details of the depositary's exercise of due skill, care and diligence, or in terms of setting out all the steps that a depositary should take in relation to those principles themselves. The obligation to monitor on an ongoing basis the third party, to whom safekeeping functions have been delegated should consist of verifying that the third party correctly performs all the delegated functions and complies with the delegation contract and other legal requirements such as independence requirements and prohibition of reuse. The depositary should also review elements assessed during the selection and appointment process and compare them with the development of the market. The depositary should at all times be in a position to appropriately assess the risks related to the decision to entrust assets to the third party. The frequency of the review should be adapted so as to always remain consistent with market conditions and associated risks. For the depositary to effectively respond to a possible insolvency of the third

party, it should undertake contingency planning, including the possible selection of alternative providers as may be relevant. While such measures may reduce the custody risk faced by a depositary, they do not alter reduce the obligation to return the financial instruments or pay the corresponding amount should they be lost, which depends on whether or not the requirements of Article 24 of Directive 2009/65/EC are fulfilled.

⇧ (Article 22a(2)(c) consolidated UCITS Directive) ⇧ (Article 15(9) Commission Delegated Regulation 2016/438)

(19) In order to be satisfied that UCITS assets and UCITS rights are protected against a third party insolvency, the depositary has to understand the insolvency law of the third country where a third party is located and ensure the enforceability of their contractual relation. Before delegating the safekeeping functions to a third party located outside of the Union, the depositary has to receive an independent legal opinion on the enforceability of the contractual arrangement with the third party under the applicable insolvency law and case law of the country the third party is located in, in order to ensure that the contractual arrangement is enforceable also in case of insolvency of the third party. A depositary's duty to assess the regulatory and legal framework of the third country also includes the reception of the independent legal opinion assessing insolvency law and case law of the third country where that third party is located. Those opinions may be combined, as the case may be, or issued for each jurisdiction by relevant industry federations or law firms for the benefit of several depositaries.

⇧ (Article 22(8) consolidated UCITS Directive) ⇧ (Article 22a(3) consolidated UCITS Directive) ⇧ (Article 17(4) Commission Delegated Regulation 2016/438)

(20) The contractual arrangement with the selected third party to whom the safekeeping functions are delegated should contain an early termination clause, as it is necessary for the depositary to be in position to terminate that contractual relationship in cases where the law or case law of a third country changes in such a way that the protection of the UCITS' assets is no longer ensured. In those cases the depositary has to notify the management company or the investment company thereof. The management company or the investment company has to notify its competent authorities and take all necessary measures which are in the best interest of the UCITS and its investors. The notification of the competent authorities about the increased custody and insolvency risk to UCITS' assets in a third country should not discharge the depositary or the management company or the investment company from their duties and obligations laid down in Directive 2009/65/EC.

(21) When delegating safekeeping functions, the depositary should ensure that the requirements of Article 22a(3)(c) of Directive 2009/65/EC are fulfilled and that the assets of the UCITS clients of the depositary are properly segregated. This obligation should particularly ensure that assets of the UCITS are not lost due to insolvency of the third party to whom safekeeping functions are delegated and that assets of UCITS are not reused by the third party on its own account. Furthermore, the depositary should be allowed to prohibit temporary deficits in client assets, use buffers or put in place arrangements prohibiting the use of a debit balance for one client to offset a credit balance for another. While such measures may reduce the custody risk faced by a depositary when delegating safekeeping functions, they do not alter the obligation to return the financial instruments or pay the corresponding amount where these are lost, which depends on whether or not the requirements of Directive 2009/65/EC are fulfilled.

⇧ (article 22a(3)(c) consolidated UCITS Directive) ⇧ (Article 16(2) Commission Delegated Regulation 2016/438)

(22) Before and during the delegation of safekeeping functions, the depositary should ensure, by means of its pre- contractual and contractual arrangements, that the third party takes measures and puts in place arrangements to ensure that the UCITS assets are protected from distribution among or realisation for the benefit of creditors of the third party itself. Directive 2009/65/EC requires all Member States to bring their relevant insolvency laws in line with this requirement. It is therefore necessary that the depositary obtain independent information about the applicable insolvency laws and case law of a third country where the UCITS' assets are required to be held.

⇧ (Article 22(8) consolidated UCITS Directive) ⇧ (Article 22a(3) consolidated UCITS Directive) ⇧ (Article 17(4) Commission Delegated Regulation 2016/438)

(23) The depositary's liability under the second subparagraph of Article 24(1) of Directive 2009/65/EC is triggered in the event of the loss of a financial instrument held in custody by the depositary itself or by a third party to whom the safekeeping has been delegated, provided that the depositary does not demonstrate that the loss results from an external event beyond reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary. That loss should be distinguished from an investment loss for investors resulting from a decrease in the value of assets as a consequence of an investment decision.

⇧ (Article 24(1) consolidated UCITS Directive) ⇧ (Article 18(5) Commission Delegated Regulation 2016/438)

(24) For a loss to give rise to a depositary's liability, it has to be definitive, without prospect of recovering the financial asset. Thus, situations where a financial instrument is only temporarily unavailable or frozen should not count as losses within the meaning of Article 24 of Directive 2009/65/EC. In contrast, three types of situations can be identified where the loss should be deemed to be definitive: where the financial instrument no longer exists or never existed; where the financial instrument exists but the UCITS has definitively lost its right of ownership over it; and where the UCITS has the ownership right but can no longer transfer title of or create limited property rights in the financial instrument on a permanent basis.

(25) A financial instrument is deemed no longer to exist for instance when it has disappeared following an accounting error that cannot be corrected, or if it never existed, when the UCITS' ownership was registered on the basis of falsified documents. Situations where the loss of financial instruments is caused by fraudulent conduct should be deemed a loss.

(26) No loss can be ascertained when the financial instrument has been substituted by or converted into another financial instrument, in situations where shares are cancelled and replaced by the issue of new shares in a company reorganisation. The UCITS should not be considered as permanently deprived of its right of ownership over the financial instrument if it has legitimately transferred ownership to a third party. Consequently, where there is a distinction between the legal ownership and the beneficial ownership of assets, the definition of loss should refer to loss of the beneficial ownership right.

(27) Only in the case of an external event beyond the control of the depositary, the consequences of which are unavoidable despite all reasonable efforts to the contrary, may the depositary avoid to be held liable under Article 24 of Directive 2009/65/EC. The cumulative fulfilment of those conditions should be proven by the depositary in order for it to be discharged of liability, and a procedure should be laid down to be followed for that purpose.

(28) It should first be determined whether the event which led to the loss was external. The depositary's liability should not be affected by the delegation of safekeeping functions and therefore an event should be deemed external if it does not occur as a result of any act or omission of the depositary or the third party to whom the safekeeping of financial instruments held in custody has been delegated. Then, it should be assessed whether the event is beyond the depositary's control, by verifying that there was nothing a prudent depositary could reasonably have done to prevent the occurrence of the event. Under these steps both natural events and acts of a public authority may be considered as external events beyond reasonable control. In contrast, a loss caused by failure to apply the segregation requirements laid down in Article 21(11)(d)(iii) of Directive 2009/65/EC or the loss of assets because of disruption in the third party's activity in relation to its insolvency cannot be seen as being external events beyond reasonable control.

(29) Finally, the depositary should prove that the loss could not have been avoided despite all reasonable efforts to the contrary. In this context, the depositary should inform the management company or the investment company and take appropriate action depending on the circumstances. For instance, in a situation where the depositary believes the only appropriate action is to dispose of the financial instruments, the depositary should duly inform the management company or the investment company, which must in turn instruct the depositary in writing whether to continue holding the financial instruments or to dispose of them. Any instruction to the depositary to continue holding the assets should be reported to the UCITS' investors without undue delay. The management company or the investment company should give due consideration to the depositary's recommendations. Depending on the circumstances, if the depositary remains concerned that the standard of protection of the financial instrument is not sufficient, despite repeated warnings, it should consider further possible action, such as termination of the contract provided the UCITS is given a period of time to find another depositary in accordance with national law.

⇧ (Article 24(1) consolidated UCITS Directive) ⇧ (Article 18(5) Commission Delegated Regulation 2016/438)

(30) Investor protection safeguards within the depositary regime need to take into account possible interconnections between the depositary and the management or the investment company such as those arising from common or affiliated management or cross-shareholdings. Those interconnections, where and to the extent permitted under national law, could give rise to the conflict of interests represented by risk of fraud (unreported irregularities to the competent authorities to avoid bad reputation), legal recourse risk (reluctance or avoidance to take legal steps against the depositary), selection bias (the choice of the depositary not based on quality and price), insolvency risk (lower standards in asset segregation or attention to the depositary's solvency) or single group exposure risk (intragroup investments).

⇧ (Article 22(1) consolidated UCITS Directive)

(31) The operational independence of the management company or of the investment company and the depositary, including situations where safekeeping functions have been delegated, provides additional safeguards that ensure investor protection without undue costs by raising behavioural standards of the entities that belong to the same group or that are otherwise linked. The requirements for operational independence should address material elements such as identity or personal links of managers, employees or persons discharging supervisory functions towards other entities or companies in the group, including situations where such persons are affiliated.

⇧ (Article 25(1) consolidated UCITS Directive) ⇧ (Article 25(2) consolidated UCITS Directive) ⇧ (Article 20 Commission Delegated Regulation 2016/438) ⇧ (Article 23(b) Commission Delegated Regulation 2016/438)

(32) To ensure proportionate treatment, where the management company or the investment company and depositary belong to the same group, at least one third of the members or two persons on the bodies in charge of the supervisory functions or on the management bodies which are also in charge of the supervisory functions, whichever is lower, should be independent.

⇧ (Article 22(1) consolidated UCITS Directive) ⇧ (Article 20 Commission Delegated Regulation 2016/438)

(33) As regards corporate governance, the specific features of both one-tier system, where a company is governed by one corporate body that undertakes both the management and supervisory functions, and two-tier system, where the board of directors and the supervisory board exist side by side, should be reflected.

⇧ (Article 25 consolidated UCITS Directive)

(34) In order to allow competent authorities, UCITS and depositaries to adapt to the new provisions contained in this Regulation so that those provisions can be applied in an efficient and effective manner, it is appropriate to defer the date of application of this Regulation by 6 months from its date of entry into force.

(35) The measures provided for in this Regulation are in accordance with the opinion of the expert group of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

CHAPTER 1
DEFINITIONS AND DETAILS OF THE WRITTEN CONTRACT

(Article 22(2) of Directive 2009/65/EC)

- *Article 22(2) of the consolidated UCITS Directive – p. 53*

- *Recitals 2 and 3 of Commission Delegated Regulation 2016/438 – p. 149*

Article 1
Definitions

For the purpose of this Regulation, the following definitions shall apply:

(a) ‘link’ means a situation in which two and more natural or legal persons are either linked by a direct or indirect holding in an undertaking which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the undertaking in which that holding subsists;

(b) ‘group link’ means a situation in which two or more undertakings or entities belong to the same group within the meaning of Article 2(11) of Directive 2013/34/EU of the European Parliament and of the Council[1] or international accounting standards adopted in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council[2].

Article 2

Contract for the appointment of a depositary

- *Article 22(2) to (4) of the consolidated UCITS Directive – p. 53 ff.*

1. The contract evidencing the appointment of the depositary in accordance with Article 22(2) of Directive 2009/65/EC shall be drawn up between, on the one hand, the depositary and, on the other hand, the investment company or the management company for each of the common funds that the management company manages.

2. The contract shall include at least the following elements:

(a) a description of the services to be provided by the depositary and the procedures to be adopted by the depositary for each type of assets in which the UCITS may invest and which are entrusted to the depositary;

(b) a description of the way in which the safekeeping and oversight functions are to be performed depending on the types of assets and the geographical regions in which the UCITS plans to invest, including in respect to the safekeeping duties, country lists and procedures for adding or withdrawing countries from the lists. This shall be consistent with the information provided in the UCITS rules, instruments of incorporation and offering documents regarding the assets in which the UCITS may invest;

(c) the period of validity and the conditions for amendment and termination of the contract, including the situations which could lead to the termination of the contract and details regarding the termination procedure and the procedures by which the depositary send all relevant information to its successor;

(d) the confidentiality obligations applicable to the parties in accordance with relevant laws and regulations. Those obligations shall not impair the ability of competent authorities to have access to the relevant documents and information;

(e) the means and procedures by which the depositary transmits to the management company or the investment company all relevant information that it needs in order to perform its duties, including the exercise of any rights attached to assets, and to allow

[1] Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

[2] Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1).

the management company or the investment company to have a timely and accurate overview of the accounts of the UCITS;

(f) the means and procedures by which the management company or the investment company transmits all relevant information or ensures the depositary has access to all the information it needs to fulfil its duties, including the procedures ensuring that the depositary will receive information from other parties appointed by the management company or the investment company;

- *Article 22(2) and (6) of the consolidated UCITS Directive – p. 53*

- *Recital 14 to 16 of Commission Delegated Regulation 2016/438 – p. 153*

(g) the procedures to be followed when an amendment to the UCITS rules, instruments of incorporation or offering documents is being considered, detailing the situations in which the depositary is to be informed, or where the prior agreement of the depositary is needed to proceed with the amendment;

(h) all necessary information that needs to be exchanged between the investment company or the management company, or a third party acting on behalf of the UCITS on the one hand, and the depositary, on the other hand, related to the sale, subscription, redemption, issue, cancellation and re-purchase of units of the UCITS;

- *Recital 5 of Commission Delegated Regulation 2016/438 – p. 150*
- *Article 4 of Commission Delegated Regulation 2016/438 – p. 161*

(i) all necessary information that needs to be exchanged between the investment company or the management company, or a third party acting on behalf of the UCITS and the depositary related to the performance of the depositary's duties;

(j) where parties to the contract envisage appointing third parties to carry out parts of their respective duties, a commitment to provide, on a regular basis, details of any third party appointed and, upon request, information on the criteria used to select the third party and the steps envisaged to monitor the activities carried out by the selected third party;

(k) information on the tasks and responsibilities of the parties to the contract in respect of obligations relating to the prevention of money laundering and the financing of terrorism;

(l) information on all cash accounts opened in the name of the investment company or of the management company acting on behalf of the UCITS and the procedures ensuring that the depositary will be informed when any new account is opened;

- *Recital 9 to 11 of Commission Delegated Regulation 2016/438 – p. 151*
- *Articles 9 and 10 of Commission Delegated Regulation 2016/438 – p. 164*

(m) details regarding the depositary's escalation procedures, including the identification of the persons to be contacted within the management company or the investment company by the depositary when it launches such a procedure;

(n) a commitment by the depositary to notify that the segregation of assets is no longer sufficient to ensure protection from insolvency of a third party, to whom safekeeping

has been delegated in accordance with Article 22a of Directive 2009/65/EC in a specific jurisdiction;

▪ *Article 13 of Commission Delegated Regulation 2016/438 – p. 166*

(o) the procedures ensuring that the depositary, in respect of its duties, has the ability to enquire into the conduct of the management company or the investment company and to assess the quality of information received, including by way of having access to the books of the management company or the investment company and by way of on- site visits;

(p) the procedures ensuring that the management company or the investment company are enabled to review the performance of the depositary in respect of the depositary's duties.

The details of the means and procedures set out in points (a) to (p) shall be described in the contract appointing the depositary and any subsequent amendment to the contract.

3. The parties may agree to transmit all or part of the information that flows between them electronically provided that proper recording of such information is ensured.

4. Unless otherwise provided by national law, there shall be no obligation to enter into a specific written contract for each common fund.

The management company and the depositary may enter into a single contract agreement listing the common funds managed by that management company to which the contract applies.

5. The contract evidencing the appointment of the depositary and any subsequent agreement shall indicate the law applicable to the contract.

CHAPTER 2
DEPOSITARY FUNCTIONS, DUE DILIGENCE DUTIES, SEGREGATION OBLIGATION AND INSOLVENCY PROTECTION

(Article 22(3), (4) and (5) and Article 22a(2)(c) and (d) of Directive 2009/65/EC)

▪ *Articles 22 and 22a of the consolidated UCITS Directive – p. 53 and 57*

Article 3
Oversight duties — general requirements

1. At the time of its appointment, a depositary shall assess the risks associated with the nature, scale and complexity of the investment policy and strategy of the UCITS' and with the organisation of the management company or the investment company. On the basis of that assessment, the depositary shall devise oversight procedures which are appropriate to the UCITS and the assets in which it invests and which are then implemented and applied. Those procedures shall be regularly updated.

2. In performing its oversight duties under Article 22(3) of Directive 2009/65/EC, a depositary shall perform ex post controls and verifications of processes and procedures that

are under the responsibility of the management company or the investment company or an appointed third party. The depositary shall in all circumstances ensure that an appropriate verification and reconciliation procedure exists which is implemented and applied and frequently reviewed. The management company or the investment company shall ensure that all instructions related to the UCITS' assets and operations are sent to the depositary, so that the depositary is able to perform its own verification or reconciliation procedure.

3. A depositary shall establish a clear and comprehensive escalation procedure to deal with situations where potential discrepancies are detected in the course of its oversight duties, the details of which shall be made available to the competent authorities of the management company or the investment company upon request.

4. The management company or the investment company shall provide the depositary, upon commencement of its duties and on an ongoing basis thereafter, with all the relevant information it needs in order to comply with its obligations pursuant to Article 22(3) of Directive 2009/65/EC including information to be provided to the depositary by third parties.

The management company or the investment company shall particularly ensure that the depositary is able to have access to the books and perform on-site visits on premises of the management company or the investment company and of any service provider appointed by the management company or the investment company, or to review reports and statements of recognised external certifications by qualified independent auditors or other experts in order to ensure the adequacy and relevance of the procedures in place.

▪ *Article 22(3) of the consolidated UCITS Directive – p. 53*

Article 4
Duties regarding subscription and redemptions

1. A depositary shall be deemed to comply with the requirements set out in point (a) of Article 22(3) of Directive 2009/65/EC where it ensures that the management company or the investment company has established, implements and applies an appropriate and consistent procedure to:

(a) reconcile the subscription orders with the subscription proceeds, and the number of units issued with the subscription proceeds received by the UCITS;

(b) reconcile the redemption orders with the redemptions paid, and the number of units cancelled with the redemptions paid by the UCITS;

(c) verify on a regular basis that the reconciliation procedure is appropriate.

For the purpose of points (a), (b) and (c), the depositary shall in particular regularly check that there is consistency between the total number of units in the UCITS' accounts and the total number of outstanding units that appear in the UCITS' register.

2. A depositary shall ensure and regularly check that the procedures regarding the sale, issue, repurchase, redemption and cancellation of units of the UCITS comply with the applicable national law and with the UCITS rules or instruments of incorporation and verify that those procedures are effectively implemented.

3. The frequency of the depositary's checks shall be consistent with the flow of subscriptions and redemptions.

- *Article 22(3) of the consolidated UCITS Directive – p. 53*

- *Recital 5 of Commission Delegated Regulation 2016/438 – p. 150*
- *Article 2(2)(h) of Commission Delegated Regulation 2016/438 – p. 158*

Article 5
Duties regarding the valuation of units

1. A depositary shall be deemed to comply with the requirements set out in point (b) of Article 22(3) of Directive 2009/65/EC where it puts in place procedures to:

(a) verify on an ongoing basis that appropriate and consistent procedures are established and applied for the valuation of the assets of the UCITS in compliance with the applicable national law as laid down in Article 85 of Directive 2009/65/EC and with the UCITS rules or instruments of incorporation;

(b) ensure that the valuation policies and procedures are effectively implemented and periodically reviewed.

2. The depositary, shall conduct the verifications referred to in paragraph 1 at a frequency consistent with the frequency of the UCITS' valuation policy as defined in the national law adopted in accordance with Article 85 of Directive 2009/65/EC, and with the UCITS rules or instruments of incorporation.

3. Where a depositary considers that the calculation of the value of the units of the UCITS has not been performed in compliance with applicable law or the UCITS rules or with instruments of incorporation, it shall notify the management company or the investment company and ensure that timely remedial action is taken in the best interest of the investors in the UCITS.

- *Article 22(3) of the consolidated UCITS Directive – p. 53*

- *Recital 6 of Commission Delegated Regulation 2016/438 – p. 151*

Article 6
Duties regarding the carrying out of the UCITS' instructions

A depositary shall be deemed to comply with the requirements set out in point (c) of Article 22(3) of Directive 2009/65/EC where it establishes and implements at least:

(a) appropriate procedures to verify that instructions of the management company or the investment company comply with applicable laws and regulations and with the UCITS' rules and instruments of incorporation;

(b) an escalation procedure where the UCITS has breached one of the limits or restrictions referred to in second subparagraph.

For the purposes of point (a), the depositary shall in particular monitor the UCITS' compliance with investment restrictions and leverage limits to which the UCITS is subject.

The procedures referred to in point (a) shall be proportionate to the nature, scale and complexity of the UCITS.

- *Article 22(3) of the consolidated UCITS Directive – p. 53*

- *Recital 7 of Commission Delegated Regulation 2016/438 – p. 151*

Article 7

Duties regarding the timely settlement of transactions

1. A depositary shall be deemed to comply with the requirements set out in point (d) of Article 22(3) of Directive 2009/65/EC where it establishes a procedure to detect any situation where consideration in transactions involving the assets of the UCITS is not remitted to the UCITS within the usual time limits, to notify the management company or the investment company accordingly and, where the situation has not been remedied, to request the restitution of the assets from the counterparty where possible.

2. Where transactions do not take place on a regulated market, the depositary shall carry out its duties pursuant to paragraph 1 taking into account the conditions attached to these transactions.

- *Article 22(3) of the consolidated UCITS Directive – p. 53*

Article 8

Duties related to the UCITS' income calculation and distribution

1. A depositary shall be deemed to comply with the requirements set out in point (e) of Article 22(3) of Directive 2009/65/EC where it:

(a) ensures that the net income calculation is applied in accordance with the UCITS rules, instruments of incorporation and applicable national law every time income is to be distributed;

(b) ensures that appropriate measures are taken where the UCITS' auditors have expressed reserves on the annual financial statements. The management company or the investment company shall provide the depositary with all information on reserves expressed on the financial statements;

(c) checks the completeness and accuracy of dividend payments, every time income is to be distributed.

2. Where a depositary considers that the income calculation has not been applied in compliance with applicable law or with the UCITS rules or instruments of incorporation, it shall notify the management company or the investment company and ensure that timely remedial action has been taken in the best interest of the UCITS' investors.

- *Article 22(3) of the consolidated UCITS Directive – p. 53*

- *Recital 8 of Commission Delegated Regulation 2016/438 – p. 151*

Article 9

Cash monitoring — general requirements

1. Where a cash account is maintained or opened at an entity referred to in point (b) of Article 22(4) of Directive 2009/65/EC in the name of the investment company or of the management company acting on behalf of the UCITS, the management company or the investment company shall ensure that the depositary is provided, upon commencement of its duties and on an ongoing basis, with all relevant information necessary for having a clear overview of all UCITS' cash flows so that the depositary is able to comply with its obligations.

2. Upon the depositary's appointment the investment company or the management company shall inform the depositary of all existing cash accounts opened in the name of the investment company, or the management company acting on behalf of the UCITS.

3. The investment company or the management company shall ensure that the depositary is provided with all information related to the opening of any new cash account by the investment company, or the management company acting on behalf of the UCITS.

- *Article 22(4) of the consolidated UCITS Directive – p. 53*

- *Recitals 9 to 11 of Commission Delegated Regulation 2016/438 – p. 151*
- *Article 2(2)(l) of Commission Delegated Regulation 2016/438 – p. 158*

Article 10

Monitoring of the UCITS' cash flows

1. A depositary shall be deemed to comply with the requirements set out in Article 22(4) of Directive 2009/65/EC where it ensures effective and proper monitoring of the UCITS' cash flows and, in particular, it at least:

(a) ensures that all cash of the UCITS is booked in accounts opened with either a central bank or a credit institution authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council[1] or a credit institution authorised in a third country, where cash accounts are required for the purposes of the UCITS' operations, provided that the prudential supervisory and regulatory requirements applied to credit institutions in that third country are considered by the competent authority of the UCITS home Member State as at least equivalent to those applied in the Union;

(b) implements effective and proper procedures to reconcile all cash flow movements and performs such reconciliations on a daily basis, or, in case of infrequent cash movements, when such cash flow movements occur;

[1] Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

(c) implements appropriate procedures to identify at the close of each business day significant cash flows and cash flows which could be inconsistent with UCITS' operations;

(d) reviews periodically the adequacy of those procedures, including through a full review of the reconciliation process at least once a year, and ensures that the cash accounts opened in the name of the investment company or in the name of the management company acting on behalf of the UCITS or in the name of the depositary acting on behalf of the UCITS are included in the reconciliation process;

(e) monitors on an ongoing basis the outcomes of the reconciliations and the actions taken as a result of any discrepancies identified by the reconciliation procedures, and notifies the management company or the investment company if a discrepancy has not been corrected without undue delay and also the competent authorities if the situation cannot be corrected;

(f) checks that there is consistency between its own records of cash positions and those of the UCITS.

For the purposes of assessing the equivalence of prudential supervisory and regulatory requirements applied to credit institutions of a third country referred to in point (a), competent authorities shall take into account the implementing acts adopted by the Commission pursuant to Article 107(4) of Regulation (EU) No 575/2013 of the European Parliament and of the Council[1].

2. The management company or the investment company shall ensure that all instructions and information related to a cash account opened with a third party are sent to the depositary, to enable the depositary to perform its own reconciliation procedure.

- *Article 22(4) of the consolidated UCITS Directive – p. 53*

- *Recitals 9 to 11 of Commission Delegated Regulation 2016/438 – p. 151*
- *Article 2(2)(l) of Commission Delegated Regulation 2016/438 – p. 158*

Article 11
Duties regarding payments upon the subscriptions

A management company or an investment company shall ensure that the depositary is provided with information about payments made by or on behalf of investors upon the subscription of units of an UCITS at the close of each business day on which the investment company or the management company acting on behalf of the UCITS, or a party acting on behalf of UCITS, such as a transfer agent, receives such payments or an order from the investor. The management company or the investment company shall ensure that the depositary receives all other relevant information it needs to make sure that the payments

[1] Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

are booked in cash accounts opened in the name of the investment company or in the name of the management company acting on behalf of the UCITS or in the name of the depositary in accordance with Article 22(4) of Directive 2009/65/EC.

- *Article 22(4) of the consolidated UCITS Directive – p. 53*

- *Recital 11 of Commission Delegated Regulation 2016/438 – p. 152*

Article 12
Financial instruments to be held in custody

1. Financial instruments belonging to the UCITS which are not able to be physically delivered to the depositary shall be included in the scope of the custody duties of the depositary where all of the following requirements are met:

(a) they are financial instruments referred to in points (a) to (e) and (h) of Article 50(1) of Directive 2009/65/EC or transferable securities which embed derivatives as referred to in the fourth subparagraph of Article 51(3) of Directive 2009/65/EC;

(b) they are capable of being registered or held in a securities account directly or indirectly in the name of the depositary.

2. Financial instruments which, in accordance with applicable national law, are only directly registered in the name of the UCITS with the issuer itself or its agent, such as a registrar or a transfer agent, shall not be held in custody.

3. Financial instruments belonging to the UCITS which are able to be physically delivered to the depositary shall in all cases be included in the scope of the custody duties of the depositary.

- *Article 22(5)(a) of the consolidated UCITS Directive – p. 53*

- *Recitals 12 and 13 of Commission Delegated Regulation 2016/438 – p. 152*

Article 13
Safekeeping duties with regard to assets held in custody

1. A depositary shall be deemed to comply with the requirements set out in point (a) of Article 22(5) of Directive 2009/65/EC with respect to financial instruments to be held in custody where it ensures that:

(a) the financial instruments are properly registered in accordance with Article 22(5)(a)(ii) of Directive 2009/65/EC;

(b) records and segregated accounts are maintained in a way that ensures their accuracy, and in particular record the correspondence with the financial instruments and cash held for UCITS;

(c) reconciliations are conducted on a regular basis between the depositary's internal accounts and records and those of any third party to whom safekeeping has been delegated in accordance with Article 22a of Directive 2009/65/EC;

(d) due care is exercised in relation to the financial instruments held in custody in order to ensure a high standard of investor protection;

(e) all relevant custody risks throughout the custody chain are assessed and monitored and the management company or the investment company is informed of any material risk identified;

(f) adequate organisational arrangements are introduced to minimise the risk of loss or diminution of the financial instruments, or of rights in connection with those financial instruments as a result of fraud, poor administration, inadequate registering or negligence;

(g) the UCITS's ownership right or the ownership right of the management company acting on behalf of the UCITS over the assets is verified.

2. Where a depositary has delegated its safekeeping functions, with regard to assets held in custody, to a third party in accordance with Article 22a of Directive 2009/65/EC, it shall remain subject to the requirements of points (b) to (e) of paragraph 1 of this Article. The depositary shall also ensure that the third party complies with the requirements of points (b) to (g) of paragraph 1 of this Article.

- *Article 22(5)(a) of the consolidated UCITS Directive – p. 53*

- *Recitals 12 and 13 of Commission Delegated Regulation 2016/438 – p. 152*
- *Article 2(2)(n) of Commission Delegated Regulation 2016/438 – p. 158*

Article 14

Safekeeping duties regarding ownership verification and record keeping

1. The management company or the investment company shall provide the depositary, upon commencement of its duties and on an ongoing basis thereafter, with all relevant information it needs to comply with its obligations pursuant to point (b) of Article 22(5) of Directive 2009/65/EC, and ensure that the depositary is provided with all relevant information by third parties.

2. A depositary shall be deemed to comply with the requirements set out in point (b) of Article 22(5) of Directive 2009/65/EC where it at least:

(a) has access without undue delay to all relevant information it needs in order to perform its ownership verification and record-keeping duties, including relevant information to be provided to the depositary by third parties;

(b) possesses sufficient and reliable information for it to be satisfied of the UCITS' ownership right over the assets;

(c) maintains a record of those assets for which it is satisfied that the UCITS holds the ownership by:

(i) registers in its records, in the name of the UCITS, assets, including their respective notional amounts, for which it is satisfied that the UCITS holds the ownership;

(ii) is able to provide at any time a comprehensive and up-to-date inventory of the UCITS' assets, including their respective notional amounts.

For the purposes of point (c)(ii) of this paragraph, the depositary shall ensure it has procedures in place so that registered assets cannot be assigned, transferred, exchanged or delivered without the depositary or the third party to whom the safekeeping has been delegated in accordance with Article 22a of Directive 2009/65/EC having been informed of such transactions. The depositary shall have access without undue delay to documentary evidence of each transaction and position from the relevant third party. The management company or the investment company shall ensure that the relevant third party provides the depositary without undue delay with certificates or other documentary evidence every time there is a sale or acquisition of assets or a corporate action resulting in the issue of financial instruments and at least once a year.

3. A depositary shall ensure that the management company or the investment company has and implements appropriate procedures to verify that the assets acquired by the UCITS are appropriately registered in the name of the UCITS, and shall check the consistency between the positions in the UCITS records and the assets for which the depositary is satisfied that the UCITS holds ownership. The management company or the investment company shall ensure that all instructions and relevant information related to the UCITS' assets are sent to the depositary to enable the depositary to perform its own verification or reconciliation procedure.

4. A depositary shall set up and implement an escalation procedure for situations where a discrepancy is detected including notification of the management company or the investment company and of the competent authorities if the situation cannot be corrected.

- *Article 22(5)(b) of the consolidated UCITS Directive – p. 53*

- *Recitals 14 to 16 of Commission Delegated Regulation 2016/438 – p. 153*

Article 15
Due diligence

1. A depositary shall be deemed to comply with the requirements set out in point (c) of Article 22a(2) of Directive 2009/65/EC where it implements and applies an appropriate documented due diligence procedure for the selection and ongoing monitoring of the third party, to whom safekeeping functions are to be or have been delegated in accordance with Article 22a of that Directive. That procedure shall be reviewed regularly and, at least, once a year.

2. When selecting and appointing a third party to whom safekeeping functions are to be delegated in accordance with Article 22a of Directive 2009/65/EC, a depositary shall exercise all due skill, care and diligence to ensure that entrusting financial instruments to that third party provides an adequate standard of protection. The depositary shall at least:

(a) assess the regulatory and legal framework, including country risk, custody risk and the enforceability of the contract entered into with that third party. That assessment shall in particular enable the depositary to determine the implications of a potential insolvency of the third party for the assets and rights of the UCITS;

(b) ensure that the assessment of the enforceability of the contractual provisions referred to in point (a), where the third party is located in a third country, is based on the legal advice of a natural or legal person independent from the depositary or that third party;

(c) assess whether the third party's practice, procedures and internal controls are adequate to ensure that the assets of the UCITS are subject to a high standard of care and protection;

(d) assess whether the third party's financial strength and reputation are consistent with the tasks delegated. That assessment shall be based on information provided by the potential third party as well as other data and information;

(e) ensure that the third party has the operational and technological capabilities to perform the delegated safekeeping tasks with a high degree of protection and security.

3. A depositary shall exercise all due skill, care and diligence in the periodic review and ongoing monitoring to ensure that the third party continues to comply with the criteria provided for in paragraph 2 and the conditions set out in points (a) to (e) of paragraph 3 of Article 22a of Directive 2009/65/EC, and shall at least:

(a) monitor the third party's performance and its compliance with the depositary's standards;

(b) ensure that the third party exercises a high standard of care, prudence and diligence in the performance of its safekeeping tasks and in particular that it effectively segregates the financial instruments in line with the requirements of Article 16 of this Regulation;

(c) review the custody risks associated with the decision to entrust the assets to the third party and without undue delay notify the management company, or the investment company of any change in those risks. That assessment shall be based on information provided by the third party and other data and information. During market turmoil or when a risk has been identified, the frequency and the scope of the review shall be increased;

(d) monitor compliance with the prohibition laid down in paragraph 7 of Article 22 of Directive 2009/65/EC;

(e) monitor compliance with the prohibition laid down in Article 25 of the Directive 2009/65/EC and the requirements laid down in Articles 21 to 24 of this Regulation.

4. Paragraphs 1, 2 and 3 shall apply *mutatis mutandis* when the third party to whom safekeeping functions are delegated in accordance with Article 22a of Directive 2009/65/EC has decided to sub-delegate all or part its safekeeping functions to another third party pursuant to the third subparagraph of Article 22a(3) of Directive 2009/65/EC.

5. A depositary shall devise contingency plans for each market in which it appoints a third party to whom safekeeping functions are delegated in accordance with Article 22a of Directive 2009/65/EC. A contingency plan shall include the identification of an alternative provider, if any.

6. A depositary shall take measures, including termination of the contract, which are in the best interest of the UCITS and its investors where the third party to whom safekeeping has been delegated in accordance with Article 22a of Directive 2009/65/EC no longer complies with the requirements of this Regulation.

7. Where the depositary has delegated its safekeeping functions in accordance with Article 22a of Directive 2009/65/EC to a third party located in a third country, it shall ensure that the agreement with the third party allows for an early termination, taking into account the need to act in the best interest of UCITS and its investors, in case the applicable insolvency laws and case law no longer recognises the segregation of the UCITS's assets in the event of insolvency or the third party or the conditions laid down in law and case law are no longer fulfilled.

8. Where the applicable insolvency law and case law no longer recognise the segregation of the UCITS' assets in the event of insolvency of the third party to whom safekeeping functions have been delegated in accordance with Article 22a of Directive 2009/65/EC or no longer ensure that the assets of the depositary's UCITS clients do not form part of the third party's estate in case of insolvency and are unavailable for distribution among, or realisation for the benefit of, creditors of the third party to whom safekeeping functions are delegated pursuant to Article 22a of Directive 2009/65/EC, the depositary shall immediately inform the management company or the investment company.

9. On receipt of the information referred to under paragraph 8, the management company or the investment company shall immediately notify its competent authority of such information and consider all the appropriate measures in relation to the relevant assets of the UCITS, including their disposal taking into account the need to act in the best interest of the UCITS and its investors.

- *Article 22a of the consolidated UCITS Directive – p. 57*

- *Recitals 17 to 18 of Commission Delegated Regulation 2016/438 – p. 153 and 153*

Article 16
Segregation obligation

1. Where safekeeping functions have been delegated wholly or partly to a third party, a depositary shall ensure that the third party to whom safekeeping functions are delegated pursuant to Article 22a of Directive 2009/65/EC acts in accordance with the segregation obligation laid down in point (c) of Article 22a(3) of Directive 2009/65/EC by verifying that the third party:

(a) keeps all necessary records and accounts to enable the depositary at any time and without delay to distinguish assets of the depositary's UCITS clients from its own assets, assets of its other clients, assets held by the depositary for its own account and assets held for clients of the depositary which are not UCITS;

(b) maintains records and accounts in a way that ensures their accuracy, and in particular their correspondence to the assets safe-kept for the depositary's clients;

(c) conducts, on a regular basis, reconciliations between the depositary's internal accounts and records and those of the third party to whom it has sub-delegated safekeeping functions in accordance with the third subparagraph of Article 22a(3) of Directive 2009/65/EC;

(d) introduces adequate organisational arrangements to minimise the risk of loss or diminution of financial instruments or of rights in connection with those financial instruments as a result of misuse of the financial instruments, fraud, poor administration, inadequate record-keeping or negligence;

(e) holds the UCITS' cash in an account or accounts with a central bank of a third country or a credit institution authorised in a third country, provided that the prudential supervisory and regulatory requirements applied to credit institutions in that third country are considered by the competent authorities of the UCITS home Member States as at least equivalent to those applied in the Union, in accordance with point (c) of Article 22(4) of Directive 2009/65/EC.

2. Paragraph 1 shall apply *mutatis mutandis* when the third party, to whom safekeeping functions are delegated in accordance with Article 22a of Directive 2009/65/EC, has decided to sub-delegate all or part of its safekeeping functions to another third party pursuant to the third subparagraph of Article 22a(3) of Directive 2009/65/EC.

- *Article 22(3)(c) of the consolidated UCITS Directive – p. 53*
- *Article 22a(3)(d) of the consolidated UCITS Directive – p. 57*

- *Recital 21 of Commission Delegated Regulation 2016/438 – p. 154*

Article 17

Insolvency protection of UCITS assets when delegating custody functions

1. A depositary shall ensure that a third party located in a third country, to whom custody functions are to be or have been delegated in accordance with Article 22a of Directive 2009/65/EC takes all necessary steps in order to ensure that in the event of an insolvency of the third party, assets of a UCITS held by the third party in custody are unavailable for distribution among, or realisation for the benefit of, creditors of that third party.

2. A depository shall ensure that the third party takes the following steps:

(a) receives legal advice from an independent natural or legal person confirming that the applicable insolvency law recognises the segregation of the assets of the depositary's UCITS clients from its own assets and from the assets of its other clients, from the assets held for the depositary's own account and from the assets held for clients of the depositary which are not UCITS as referred to in Article 16 of this Regulation and that the assets of the depositary's UCITS clients do not form part of the third party's estate in case of insolvency and are unavailable for distribution among, or realisation for the benefit of, creditors of the third party to whom safekeeping functions have been delegated in accordance with Article 22a of Directive 2009/65/EC;

(b) ensures that the conditions laid down in the applicable insolvency laws and case law of that third country recognise that the assets of the depositary's UCITS clients are segregated and unavailable for distribution among, or realisation for the benefit of creditors, as referred to in point (a), are met when concluding the delegation agreement with the depositary as well as on an ongoing basis for the entire duration of the delegation;

(c) immediately informs the depositary where any of the conditions referred to in point (b) is no longer met;

(d) maintains accurate and up-to-date records and accounts of the UCITS' assets on the basis of which the depositary can at any time establish the precise nature, location and ownership status of those assets;

(e) provides a statement to the depositary, on a regular basis, and in any case whenever a change occurs, detailing the assets of the depositary's UCITS clients;

(f) informs the depositary about the changes of applicable insolvency law and of its effective application.

3. Where the depositary has delegated its safekeeping functions in accordance with Article 22a of Directive 2009/65/EC to a third party located in the Union, that third party shall provide a statement to the depositary, on a regular basis, and in any case whenever a change occurs, detailing the assets of the depositary's UCITS clients.

4. The depositary shall ensure that duties laid down in paragraphs 1 and 2 shall apply mutatis mutandis when the third party, to whom safekeeping functions are delegated pursuant to Article 22a of Directive 2009/65/EC, has decided to sub-delegate all or part of its safekeeping functions to another third party pursuant to the third subparagraph of Article 22a(3) of Directive 2009/65/EC.

- *Article 22(8) of the consolidated UCITS Directive – p. 53*
- *Article 22a(3) of the consolidated UCITS Directive – p. 57*

- *Recitals 19 to 22 of Commission Delegated Regulation 2016/438 – p. 154 to 155*

CHAPTER 3
LOSS OF FINANCIAL INSTRUMENTS AND LIABILITY DISCHARGE

(Article 24(1) of Directive 2009/65/EC)

Article 18
Loss of a financial instrument held in custody

1. The loss of a financial instrument held in custody within the meaning of the second subparagraph of Article 24(1) of Directive 2009/65/EC shall be deemed to have taken place where, in relation to a financial instrument held in custody by the depositary or by a third party to whom the safekeeping of financial instruments has been delegated in accordance with Article 22a of Directive 2009/65/EC, any of the following conditions is met:

(a) a stated right of ownership of the UCITS is demonstrated not to be valid because it either ceased to exist or never existed;

(b) the UCITS has been definitively deprived of its right of ownership over the financial instrument;

(c) the UCITS is definitively unable to directly or indirectly dispose of the financial instrument.

2. The ascertainment by the management or the investment company of the loss of a financial instrument shall follow a documented process readily available to the competent authorities. Once a loss is ascertained, it shall be notified immediately to investors in a durable medium.

3. A financial instrument held in custody shall not be deemed to be lost within the meaning of the second subparagraph of Article 24(1) of Directive 2009/65/EC where an UCITS is definitively deprived of its right of ownership in respect of a particular instrument, as long as that instrument is substituted by or converted into another financial instrument or instruments.

4. In the event of insolvency of the third party to whom the safekeeping of financial instruments has been delegated in accordance with Article 22a of Directive 2009/65/EC, the loss of a financial instrument held in custody shall be ascertained by the management company or the investment company as soon as one of the conditions listed in paragraph 1 is met with certainty.

There shall be certainty as to whether any of the conditions set out in paragraph 1 is fulfilled at the latest at the end of the insolvency proceedings. The management company or the investment company and the depositary shall monitor closely the insolvency proceedings to determine whether all or some of the financial instruments entrusted to the third party to whom the safekeeping of financial instruments has been delegated in accordance with Article 22a of Directive 2009/65/EC are effectively lost.

5. A loss of a financial instrument held in custody shall be ascertained irrespective of whether the conditions set out in paragraph 1 are the result of fraud, negligence or other intentional or non-intentional behaviour.

- *Article 24 of the consolidated UCITS Directive – p. 61*

- *Recitals 23 to 29 of Commission Delegated Regulation 2016/438 – p. 155 to 156*

Article 19
Liability discharge

1. A depositary's liability under the second subparagraph of Article 24(1) of Directive 2009/65/EC shall not be triggered provided the depositary can prove that all the following conditions are met:

(a) the event which led to the loss is not the result of any act or omission of the depositary or of a third party to whom the safekeeping of financial instruments held in custody in accordance with point (a) of Article 22(5) of Directive 2009/65/EC has been delegated;

(b) the depositary could not have reasonably prevented the occurrence of the event which led to the loss despite adopting all precautions incumbent on a diligent depositary as reflected in common industry practice;

(c) the depositary could not have prevented the loss despite rigorous and comprehensive due diligence as documented by:

  (i) establishing, implementing, applying and maintaining structures and procedures and insuring expertise that are adequate and proportionate to the nature and complexity of the assets of the UCITS in order to identify in a timely manner and monitor on an ongoing basis external events which may result in loss of a financial instrument held in custody;

  (ii) assessing on an ongoing basis whether any of the events identified under point (i) presents a significant risk of loss of a financial instrument held in custody;

(iii) informing the management company or the investment company of the significant risks identified and taking appropriate actions, if any, to prevent or mitigate the loss of financial instruments held in custody, where actual or potential external events have been identified which are believed to present a significant risk of loss of a financial instrument held in custody.

2. The requirements referred to in points (a) and (b) of paragraph 1 may be deemed to be fulfilled in the following circumstances:

(a) natural events beyond human control or influence;

(b) the adoption of any law, decree, regulation, decision or order by any government or governmental body, including any court or tribunal, which impacts the financial instruments held in custody;

(c) war, riots or other major upheavals.

3. The requirements referred to in points (a) and (b) of paragraph 1 shall not be deemed to be fulfilled in cases such as an accounting error, operational failure, fraud, failure to apply the segregation requirements at the level of the depositary or a third party to whom the safekeeping of financial instruments held in custody in accordance with point (a) of Article 22(5) of Directive 2009/65/EC has been delegated.

CHAPTER 4
INDEPENDENCE REQUIREMENTS AND FINAL PROVISIONS

(Article 25 of Directive 2009/65/EC)

Article 20
Management body

For the purposes of this Chapter 'management body of the management company' shall include the management body of the management company or the management body of the investment company.

- *Articles 22(1) and 25 of the consolidated UCITS Directive – p. 53 and 63*

- *Recitals 31 and 32 of Commission Delegated Regulation 2016/438 – p. 156*

Article 21
Common management

The management company or the investment company and the depositary shall at all times comply with all of the following requirements:

(a) no person may at the same time be both a member of the management body of the management company and a member of the management body of the depositary;

(b) no person may at the same time be both a member of the management body of the management company and an employee of the depositary;

(c) no person may at the same time be both a member of the management body of the depositary and an employee of the management company or the investment company;

(d) where the management body of the management company is not in charge of the supervisory functions within the company, no more than one third of the members of its body in charge of the supervisory functions shall consist of members who are at the same time members of the management body, the body in charge of the supervisory functions or employees of the depositary;

(e) where the management body of the depositary is not in charge of the supervisory functions within the depositary, no more than one third of the members of its body in charge of the supervisory functions shall consist of members who are at the same time members of the management body of the management company, or the body in charge of the supervisory functions of the management company or of the investment company or employees of the management company or of the investment company.

Article 22

Appointment of depositary and delegation of safekeeping

1. The management company or the investment company shall have in place a decision-making process for choosing and appointing the depositary, which shall be based on objective pre-defined criteria and meet the sole interest of the UCITS and the investors of the UCITS.

2. Where the management company or the investment company appoints a depositary to which it has a link or a group link, it shall keep documentary evidence of the following:

(a) an assessment comparing the merits of appointing a depositary with a link or a group link with the merits of appointing a depositary which has no link or no group link with the management company or the investment company, taking into account at least the costs, the expertise, financial standing and the quality of services provided by all depositaries assessed;

(b) a report, based on the assessment referred to in point (a), describing the way in which the appointment meets the objective pre-defined criteria referred to in paragraph 1 and is made in the sole interest of the UCITS and the investors of the UCITS.

3. The management company or the investment company shall demonstrate to the competent authority of the UCITS home Member State that it is satisfied with the appointment of the depositary and that the appointment is in the sole interest of the UCITS and the investors of the UCITS. The management company or the investment company shall make the documentary evidence referred to in paragraph 1 available to the competent authority of the UCITS home Member State.

4. The management company or the investment company shall justify to investors of the UCITS, upon request, the choice of the depositary.

5. The depositary shall have in place a decision-making process for choosing third parties to whom it may delegate the safekeeping functions in accordance with Article 22a of Directive 2009/65/EC, which shall be based on objective pre-defined criteria and meet the sole interest of the UCITS and the investors of the UCITS.

Article 23
Conflicts of interest

Where a link or a group link exists between them, the management company or the investment company and the depositary, shall put in place policies and procedures ensuring that they:

(a) identify all conflicts of interest arising from that link;

(b) take all reasonable steps to avoid those conflicts of interest.

Where a conflict of interest referred to in the first subparagraph cannot be avoided, the management company or the investment company and the depositary shall manage, monitor and disclose that conflict of interest in order to prevent adverse effects on the interests of the UCITS and of the investors of the UCITS.

- *Article 25(2) of the UCITS Directive – p. 63*

- *Recital 31 of Commission Delegated Regulation 2016/438 – p. 156*

Article 24
Independence of management boards and supervisory functions

1. Where a group link exists between them, the management company or the investment company and the depositary shall ensure that:

(a) where the management body of the management company and the management body of the depositary are also in charge of the supervisory functions within the respective companies, at least one third of the members or two persons, whichever is lower, on the management body of the management company and on the management body of the depositary shall be independent;

(b) where the management body of the management company and the management body of the depositary are not in charge of the supervisory functions within the respective companies, at least one third of the members or two persons, whichever is lower, on the body in charge of the supervisory functions within the management company and within the depositary shall be independent.

2. For the purposes of the first paragraph, members of the management body of the management company, members of the management body of the depositary or members of the body in charge of the supervisory functions of the above companies shall be deemed independent as long as they are neither members of the management body or the body in charge of the supervisory functions nor employees of any of the other undertakings between which a group link exists and are free of any business, family or other relationship with the management company or the investment company, the depositary and any other undertaking within the group that gives rise to a conflict of interest such as to impair their judgment.

Article 25
Entry into force and application

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

It shall apply from 13 October 2016.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

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COMMISSION DIRECTIVE 2010/43/EU

of 1 July 2010

implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)[1], and in particular Article 12(3), Article 14(2), Article 23(6), Article 33(6) and Article 51(4) thereof,

Whereas:

(1) The rules and terminology on the organisational requirements, conflicts of interest and conduct of business should be aligned to the greatest possible extent with the standards introduced in the financial services area by Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC[2] and Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive[3]. Such alignment, while taking due account of the specificities of the collective portfolio management business, would allow the achievement of equal standards not only between different financial services sectors but also within asset management business more widely, where certain requirements of Directive 2006/73/EC have already been extended by some Member States to UCITS management companies.

(2) It is appropriate to adopt these rules in the form of a Directive in order to enable the implementing provisions to be adjusted to the specificities of the particular market and

[1] OJ L 302, 17.11.2009, p. 32.

[2] OJ L 145, 30.4.2004, p. 1.

[3] OJ L 241, 2.9.2006, p. 26.

legal system in each Member State. A directive will also enable a maximum level of consistency with the regime created by Directive 2006/73/EC.

(3) Even though the principles laid down in this Directive have general relevance for all management companies, they are flexible enough to ensure that their application and the supervision of such application by competent authorities is proportionate and takes into account the nature, scale and complexity of a management company's business and the diversity of the companies falling within the scope of application of Directive 2009/65/EC, and the varied nature of the different UCITS that may be managed by a management company.

(4) As far as allowed by national law, management companies should be able to make arrangements for third parties to carry out some of their activities. The implementing rules should be read accordingly. The management company should in particular perform due diligence in order to determine whether, having regard to the nature of the functions to be carried out by third parties, the undertaking performing those activities can be considered as qualified and capable of undertaking the functions in question. The third party should therefore fulfil all the organisational and conflicts of interest requirements in relation to the activity to be carried out. It also follows that the management company should verify that the third party has taken the appropriate measures in order to comply with the said requirements and should monitor effectively the compliance by the third party with these requirements. Where the delegatee is responsible for applying the rules governing the delegated activities, equivalent organisational and conflict of interests requirements should apply to the activity of monitoring the delegated activities. The management company should be able to take into account in the due diligence process the fact that the third party to whom activities are delegated will often be subject to Directive 2004/39/EC.

⇧ (Article 13 consolidated UCITS Directive)

(5) To avoid the application of different standards to management companies and investment companies which have not designated a management company, the latter should be subject to the same rules of conduct and provisions regarding conflicts of interest and risk management as management companies. Therefore, the rules of this Directive on administrative procedures and internal control mechanism should, as a matter of good practice, apply both to management companies and investment companies that have not designated a management company, taking into account the principle of proportionality.

(6) Directive 2009/65/EC requires management companies to have sound administrative procedures. In order to comply with this requirement management companies should establish a well-documented organisational structure that clearly assigns responsibilities and ensures good flows of information between all parties involved. Management companies should also establish systems to safeguard information and ensure business continuity and which are sufficient to allow them to discharge their obligations in cases where their activities are performed by third parties.

(7) Management companies should also maintain the necessary resources, in particular, to employ personnel with the right skills, knowledge and experience in order to be able to fulfil their duties.

(8) With respect to safe data processing procedures and the obligation to reconstruct all transactions involving the UCITS the management company should have arrangements in place which permit a timely and proper recording of each transaction carried out on behalf of the UCITS.

⇧ (Article 7(2) Commission Directive 2010/43)

(9) Accounting is one of the key areas of UCITS administration. It is therefore of paramount importance that the accounting procedures are further specified in the implementing legislation. This Directive should therefore uphold the principles that all assets and liabilities of a UCITS or of its investment compartments can be directly identified, and that accounts should be separate. In addition, where different share classes exist depending on, for example, the level of management fees, it should be possible to extract directly from the accounting the net asset value of those different classes.

⇧ (Article 8(3) Commission Directive 2010/43)

(10) The clear allocation of the responsibilities of senior management and the supervisory function are central for the implementation of appropriate internal control mechanisms as required by Directive 2009/65/EC. This entails that the senior management should be responsible for the implementation of the general investment policy as referred to in the Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website[1]. Senior management should also maintain the responsibility for the investment strategies which are the general indications concerning the strategic asset allocation of the UCITS and the investment techniques which are needed to adequately and effectively implement the investment policy. The clear division of responsibilities should also ensure that adequate control exists so as to ensure the assets of the UCITS are invested according to the fund rules or the instruments of incorporation and the applicable legal provisions and that risk limits of each UCITS are complied with. The allocation of responsibilities should be consistent with the role and responsibilities of the senior management and the supervisory function under applicable national law and corporate governance codes. It is possible that senior management includes several or all members of the board of directors.

⇧ (Article 9(6) Commission Directive 2010/43) ⇧ (Article 11(2)(d) Commission Directive 2010/43)

(11) To ensure that a management company has an adequate control mechanism, a permanent compliance function and an internal audit function are necessary. The compliance function should be designed in such a way as to ensure that it may detect any risk of failure by the management company to comply with its obligations under Directive 2009/65/EC. The audit function should aim at verifying and evaluating the different control procedures and administrative arrangements the management company has put in place.

⇧ (Article 10 Commission Directive 2010/43)

(12) It is necessary to allow management companies some flexibility in structuring the organisation of their risk management. Where it is not appropriate or proportionate to have a separate risk management function, the management company should

[1] See page 1 of this Official Journal [OJ L 176, 10.7.2010, p. 1]

nevertheless be able to demonstrate that specific safeguards against conflicts of interest allow for an independent performance of risk management activities.

⇧ (Article 12 Commission Directive 2010/43)

(13) Directive 2009/65/EC obliges management companies to put rules in place on personal transactions. In accordance with Directive 2006/73/EC, management companies should prevent their employees who are subject to conflicts of interest or in possession of insider information, within the meaning of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)[1], from entering into personal transactions that are the consequence of a misuse of information they have acquired through their professional activity.

⇧ (Article 13 Commission Directive 2010/43)

(14) Directive 2009/65/EC requires that management companies ensure that each portfolio transaction involving the UCITS can be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was executed. Therefore, it is necessary to lay down requirements for recording of portfolio transactions and of subscription and redemption orders.

⇧ (Article 14(2)(i) Commission Directive 2010/43) ⇧ (Article 15(2)(k) Commission Directive 2010/43)

(15) Directive 2009/65/EC requires UCITS management companies to have appropriate mechanisms in place to ensure fair treatment of UCITS in cases of unavoidable conflicts of interest. Therefore, management companies should make sure that in these cases senior management or other competent internal body of the management company are promptly informed, in order to for them to take any necessary decision to ensure the fair treatment of the UCITS and of its unit-holders.

⇧ (Article 22(1) Commission Directive 2010/43)

(16) Management companies should be requested to adopt, apply and maintain an effective and adequate strategy for the exercise of voting rights attached to the financial instruments held by the UCITS they manage, with a view to ensuring that such rights are exercised to the exclusive benefit of UCITS. Information related to the strategy and its application should be freely available to investors, including via a website. As the case may be, the decision not to exercise voting rights could be considered in certain circumstances as being to the exclusive benefit of the UCITS depending upon its investment strategy. However the possibility for an investment company to vote itself or to give specific voting instructions to its management company should not be excluded.

(17) The obligation to inform senior management or other competent internal body of the management company in order for them to take necessary decisions should not limit the duty of the management companies and the UCITS to report on situations where the organisational or administrative arrangements for conflicts of interest were not sufficient to ensure, with reasonable confidence, the prevention of the risk of damage, for instance in their periodic reports. Such reporting should explain and give rea- sons

[1] OJ L 96, 12.4.2003, p. 16

for the decision taken by the management company, even where a decision is taken not to act, taking into account the internal policies and procedures adopted to identify, prevent and manage conflicts of interest.

(18) Directive 2009/65/EC obliges management companies to act in the best interest of the UCITS they manage and the integrity of the market. Certain behaviour, such as market timing and late trading, may have detrimental effects on unit-holders and may undermine the functioning of the market. Therefore, management companies should have appropriate procedures in place to prevent malpractices. Furthermore, management companies should put in place appropriate procedures to guard against unreasonable charges and activities such as excessive trading, taking into account the UCITS investment objectives and policy.

⇧ (Article 22(1) Commission Directive 2010/43)

(19) Management companies should also act in the best interest of the UCITS when directly executing orders to deal on behalf of the UCITS they manage or by transmitting them to third parties. When executing orders on behalf of the UCITS, management companies should take all reasonable steps to obtain the best possible result for the UCITS on a consistent basis, taking into account price, costs, speed, likelihood of execution and settlement, size and nature of the order or any other consideration relevant to the execution of the order.

(20) In order to ensure that management companies act with due skill, care and diligence in the best interests of the UCITS they manage as required by 2009/65/EC Directive, it is necessary to lay down rules on order handling.

⇧ (Articles 22 ff. Commission Directive 2010/43)

(21) Certain fees, commissions or non-monetary benefits which may be paid to or by a management company should not be permitted as they could have an impact on the observance of the requirements laid down in 2009/65/EC Directive that the management company should act honestly, fairly and professionally in accordance with the best interests of the UCITS. Therefore, it is necessary to set out clear rules specifying where the payments of fees, commissions and non-monetary benefits are not considered a violation of those principles.

⇧ (Article 29(2) Commission Directive 2010/43)

(22) The cross-border activities of the management company create new challenges for the relationship between the management company and the UCITS' depositary. To ensure the necessary legal certainty, the main elements of the agreement between the UCITS' depositary and the management company, where that management company is established in a Member State other than the UCITS' home Member State, should be specified in this Directive. Given the need to ensure that this agreement properly serves its purpose it is necessary to provide for conflict of law rules which derogate from Articles 3 and 4 of the Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)[1] in such a way that the applicable law to this agreement should be the law of the UCITS' home Member State.

[1] OJ L 177, 4.7.2008, p. 6.

(23) Directive 2009/65/EC contains an obligation to specify the criteria for assessing the adequacy of a management company's risk management process. Such criteria focus on the establishment of an adequate and documented risk management policy to be employed by management companies. This policy should enable the management companies to assess the risks of the positions taken within the portfolios they manage and the contributions of these individual risks to the overall risk profile of the portfolio. The organisation of the risk management policy should be adequate and proportionate to the nature, scale and complexity of the management company's activities and of the UCITS it manages.

⇧ (Articles 22 ff. Commission Directive 2010/43)

(24) The periodical assessment, monitoring and review of the risk management policy by management companies are also a criterion to assess the adequacy of the risk management process. This criterion also includes the review of the effectiveness of measures taken to address any deficiencies in the performance of the risk management process.

(25) As an essential element in the criteria for assessing the adequacy of risk management processes, proportionate and effective risk measurement techniques should be adopted by management companies in order to measure at any time the risks which the UCITS they manage are or might be exposed to. These requirements are based on common practices agreed by competent authorities of Member States. They include both quantitative measures, as regards quantifiable risks, and qualitative methods. Electronic data processing systems and tools used for the computation of quantitative measures should be integrated with one another or with the front-office and accounting applications. Risk measurement techniques should allow for an adequate measurement of risks in periods of increased market turbulence and be reviewed whenever necessary in the interest of unit-holders. They should also allow adequate assessment of the concentration and inter- action of relevant risks at the portfolio level.

⇧ (Articles 22 ff. Commission Directive 2010/43)

(26) It is the objective of a functioning risk management system that the investment limits set by Directive 2009/65/EC such as limits on global exposure and exposure to counterparty risk are respected by the management companies. Therefore criteria should be laid down as to how the global exposure should be calculated and how counterparty risk should be calculated.

⇧ (Article 41 Commission Directive 2010/43)

(27) It is necessary in laying down such criteria that this Directive clarifies how the global exposure can be calculated, including by using the commitment approach, the value at risk approach or advanced risk measurement methodologies. It should also lay down the main elements of the methodology according to which the management company should calculate the counterparty risk. In applying those rules, account should be taken of the conditions under which those methodologies are used, including the principles to be applied to such collateral arrangements to reduce the UCITS' exposure to counterparty risk as well as the use of the hedging and netting arrangements, as developed by competent authorities working within the Committee of European Securities Regulators.

⇧ (Article 41 Commission Directive 2010/43)

(28) According to Directive 2009/65/EC, management companies are obliged to employ a process for the accurate and independent assessment of the value of over-the-counter

(OTC) derivatives. This Directive therefore lays down detailed rules for that process in accordance with Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions[1]. As a matter of good practice, management companies should apply those requirements to instruments which expose UCITS to valuation risks equivalent to those raised by OTC derivatives, such as those relating to product illiquidity and/or the complexity of the pay-off structure. Accordingly, management companies should adopt arrangements and procedures consistent with the requirements set out in Article 44 for the valuation of less liquid or complex transferable securities and money market instruments which require the use of model-based valuation methods.

⇧ (Article 44 Commission Directive 2010/43)

(29) Directive 2009/65/EC obliges a management company to provide the relevant competent authorities with information with regard to the types of derivative instruments in which a UCITS has been invested, the underlying risks posed, applicable quantitative limits and methods chosen for estimating the risks associated with such transactions. The content and the procedure to be followed by a management company when discharging this obligation should be specified.

(30) The Committee of European Securities Regulators, established by Commission Decision 2009/77/EC[2] has been consulted for technical advice.

(31) The measures provided for in this Directive are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I
SUBJECT-MATTER, SCOPE AND DEFINITIONS

Article 1
Subject matter

This Directive lays down rules implementing Directive 2009/65/EC:

1. specifying the procedures and arrangements as referred to under point (a) of the second subparagraph of Article 12(1), and the structures and organisational requirements to minimise conflicts of interests as referred to under point (b) of the second subparagraph of Article 12(1);

[1] OJ L 79, 20.3.2007, p. 11.

[2] OJ L 25, 29.1.2009, p. 18.

2. establishing criteria for acting honestly and fairly and with due skill, care and diligence in the best interests of the UCITS and the criteria for determining the types of conflict of interests, specifying the principles required to ensure that the resources are employed effectively, defining the steps that should be taken to identify, prevent, manage or disclose conflicts of interests referred to in Article 14(1) and (2);

3. concerning the particulars that need to be included in the agreements between the depository and management company in accordance with Articles 23(5) and 33(5); and

4. concerning the risk management process referred to in Article 51(1), in particular criteria for assessing the adequacy of the risk management process employed by the management company and the risk management policy and processes and the arrangements, processes and techniques for risk measurement and management relating to such criteria.

Article 2
Scope

1. This Directive shall apply to management companies pursuing the activity of management of an undertaking for collective investment in transferable securities (UCITS) as referred to in Article 6(2) of Directive 2009/65/EC.

Chapter V of this Directive shall also apply to depositaries carrying out their functions according to the provisions of Chapter IV and Section 3 of Chapter V of Directive 2009/65/EC.

2. The provisions of this Chapter, Article 12 of Chapter II and Chapters III, IV and VI shall apply mutatis mutandis to investment companies that have not designated a management company authorised pursuant to Directive 2009/65/EC.

In those cases 'management company' shall be understood as 'investment company'.

Article 3
Definitions

For the purposes of this Directive, the following definitions shall apply in addition to the definitions set out in Directive 2009/65/EC:

1. 'client' means any natural or legal person, or any other undertaking including a UCITS, to whom a management company provides a service of collective portfolio management or services pursuant to Article 6(3) of Directive 2009/65/EC;

2. 'unit-holder' means any natural or legal person holding one or more units in a UCITS;

3. 'relevant person' in relation to a management company, means any of the following:

   (a) a director, partner or equivalent, or manager of the management company;

   (b) an employee of the management company, as well as any other natural person whose services are placed at the disposal and under the control of the management company and who is involved in the provision by the management company of collective portfolio management;

(c) a natural person who is directly involved in the provision of services to the management company under a delegation arrangement to third parties for the purpose of the provision by the management company of collective portfolio management;

4. ‘senior management’ means the person or persons who effectively conduct the business of a management company in accordance with Article 7(1)(b) of Directive 2009/65/EC;

5. ‘board of directors’ means the board of directors of the management company;

6. ‘supervisory function’ means the relevant persons or body or bodies responsible for the supervision of its senior management and for the assessment and periodical review of the adequacy and effectiveness of the risk management process and of the policies, arrangements and procedures put in place to comply with the obligations under Directive 2009/65/EC;

7. ‘counterparty risk’ means the risk of loss for the UCITS resulting from the fact that the counterparty to a transaction may default on its obligations prior to the final settlement of the transaction’s cash flow;

8. ‘liquidity risk’ means the risk that a position in the UCITS portfolio cannot be sold, liquidated or closed at limited cost in an adequately short time frame and that the ability of the UCITS to comply at any time with Article 84(1) of Directive2009/65/EC is thereby compromised;

9. ‘market risk’ means the risk of loss for the UCITS resulting from fluctuation in the market value of positions in the UCITS’ portfolio attributable to changes in market variables, such as interest rates, foreign exchange rates, equity and commodity prices or an issuer’s credit worthiness;

10. ‘operational risk’ means the risk of loss for the UCITS resulting from inadequate internal processes and failures in relation to people and systems of the management company or from external events, and includes legal and documentation risk and risk resulting from the trading, settlement and valuation procedures operated on behalf of the UCITS.

The term ‘board of directors’ defined in point 5 of the first paragraph shall not comprise the supervisory board where management companies have a dual structure composed of a board of directors and a supervisory board.

Chapter II
ADMINISTRATIVE PROCEDURES AND CONTROL MECHANISM

(Article 12(1)(a) and Article 14(1)(c) of Directive 2009/65/EC)

SECTION 1
General principles

Article 4
General requirements on procedures and organisation

1. Member States shall require management companies to comply with the following requirements:

(a) to establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;

(b) to ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;

(c) to establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the management company;

(d) to establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the management company as well as effective information flows with any third party involved;

(e) to maintain adequate and orderly records of their business and internal organisation.

Member States shall ensure that management companies take into account the nature, scale and complexity of the business of the management company, and the nature and range of services and activities undertaken in the course of that business.

2. Member States shall require management companies to establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

3. Member States shall require management companies to establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their services and activities.

4. Member States shall require management companies to establish, implement and maintain accounting policies and procedures that enable them, at the request of the competent authority, to deliver in a timely manner to the competent authority financial reports which reflect a true and fair view of their financial position and which comply with all applicable accounting standards and rules.

5. Member States shall require management companies to monitor and, on a regular basis, evaluate the adequacy and effectiveness of their systems, internal control mechanisms and arrangements established in accordance with paragraphs 1 to 4, and to take appropriate measures to address any deficiencies.

- *Articles 12 and 14 of the consolidated UCITS Directive – pp. 33 and 36*

Article 5
Resources

1. Member States shall require management companies to employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

2. Member States shall ensure that management companies retain the necessary resources and expertise so as to effectively monitor the activities carried out by third parties on the basis of an arrangement with the management company, especially with regard to the management of the risk associated with those arrangements.

3. Member States shall require management companies to ensure that the performance of multiple functions by relevant per- sons does not and is not likely to prevent those relevant persons from discharging any particular function soundly, honestly, and professionally.

4. Member States shall ensure that for the purposes laid down in paragraphs 1, 2 and 3, management companies take into account the nature, scale and complexity of the business of the management company, and the nature and range of services and activities undertaken in the course of that business.

SECTION 2
Administrative and accounting procedures

Article 6
Complaints handling

1. Member States shall require management companies to establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints received from investors.

2. Member States shall require management companies to ensure that each complaint and the measures taken for its resolution are recorded.

3. Investors shall be able to file complaints free of charge. The information regarding procedures referred to in paragraph 1 shall be made available to investors free of charge.

- *Article 15 of the consolidated UCITS Directive – p. 44*

Article 7
Electronic data processing

1. Member States shall require management companies to make appropriate arrangements for suitable electronic systems so as to permit a timely and proper recording of each portfolio transaction or subscription or redemption order in order to be able to comply with Articles 14 and 15.

2. Member States shall require management companies to ensure a high level of security during the electronic data processing as well as integrity and confidentiality of the recorded information, as appropriate.

▪ *Recital 8 of Commission Directive 2010/43 – p. 180*

Article 8
Accounting procedures

1. Member States shall require management companies to ensure the employment of accounting policies and procedures as referred to in Article 4(4) so as to ensure the protection of unit-holders.

UCITS accounting shall be kept in such a way that all assets and liabilities of the UCITS can be directly identified at all time.

If a UCITS has different investment compartments, separate accounts shall be maintained for those investment compartments.

2. Member States shall require management companies to have accounting policies and procedures established, implemented and maintained, in accordance with the accounting rules of the UCITS' home Member States, so as to ensure that the calculation of the net asset value of each UCITS is accurately effected, on the basis of the accounting, and that subscription and redemption orders can be properly executed at that net asset value.

3. Member States shall require management companies to establish appropriate procedures to ensure the proper and accurate valuation of the assets and liabilities of the UCITS, as consistent with the applicable rules referred to in Article 85 of Directive 2009/65/EC.

▪ *Recital 9 of Commission Directive 2010/43 – p. 181*

SECTION 3
Internal control mechanisms

Article 9
Control by senior management and supervisory function

1. Member States shall require management companies, when allocating functions internally, to ensure that senior management and, where appropriate, the supervisory

function, are responsible for the management company's compliance with its obligations under Directive 2009/65/EC.

2. The management company shall ensure that its senior management:

(a) is responsible for the implementation of the general investment policy for each managed UCITS, as defined, where relevant, in the prospectus, the fund rules or the instruments of incorporation of the investment company;

(b) oversees the approval of investment strategies for each managed UCITS;

(c) is responsible for ensuring that the management company has a permanent and effective compliance function, as referred to in Article 10, even if this function is performed by a third party;

(d) ensures and verifies on a periodic basis that the general investment policy, the investment strategies and the risk limits of each managed UCITS are properly and effectively implemented and complied with, even if the risk management function is performed by third parties;

(e) approves and reviews on a periodic basis the adequacy of the internal procedures for undertaking investment decisions for each managed UCITS, so as to ensure that such decisions are consistent with the approved investment strategies;

(f) approves and reviews on a periodic basis the risk management policy and arrangements, processes and techniques for implementing that policy, as referred to in Article 38, including the risk limit system for each managed UCITS.

3. The management company shall also ensure that its senior management and, where appropriate, its supervisory function shall:

(a) assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations in Directive 2009/65/EC;

(b) take appropriate measures to address any deficiencies.

4. Member States shall require management companies to ensure that their senior management receives on a frequent basis, and at least annually, written reports on matters of compliance, internal audit and risk management indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies.

5. Member States shall require management companies to ensure that their senior management receives on a regular basis reports on the implementation of investment strategies and of the internal procedures for taking investment decisions referred to in points (b) to (e) of the paragraph 2.

6. Member States shall require management companies to ensure that the supervisory function, if any, receives on a regular basis written reports on the matters referred to in paragraph 4.

- *Recital 10 of Commission Directive 2010/43 – p. 181*

Article 10
Permanent compliance function

1. Member States shall ensure that management companies establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the management company to comply with its obligations under Directive 2009/65/EC, as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the competent authorities to exercise their powers effectively under that Directive.

Member States shall ensure that management companies take into account the nature, scale and complexity of the business of the company, and the nature and range of services and activities undertaken in the course of that business.

2. Member States shall require management companies to establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:

(a) to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures, policies and procedures put in place in accordance with paragraph 1, and the actions taken to address any deficiencies in the management company's compliance with its obligations;

(b) to advise and assist the relevant persons responsible for carrying out services and activities to comply with the management company's obligations under Directive 2009/65/EC.

3. In order to enable the compliance function referred to in paragraph 2 to discharge its responsibilities properly and independently, management companies shall ensure that the following conditions are satisfied:

(a) the compliance function must have the necessary authority, resources, expertise and access to all relevant information;

(b) a compliance officer must be appointed and must be responsible for the compliance function and for any reporting on a frequent basis, and at least annually, to the senior management on matters of compliance, indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies;

(c) the relevant persons involved in the compliance function must not be involved in the performance of services or activities they monitor;

(d) the method of determining the remuneration of the relevant persons involved in the compliance function must not com- promise their objectivity and must not be likely to do so.

However, a management company shall not be required to comply with point (c) or point (d) of the first subparagraph where it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of its services and activities, that requirement is not proportionate and that its compliance function continues to be effective.

- *Recital 11 of Commission Directive 2010/43 – p. 181*

Article 11
Permanent internal audit function

1. Member States shall require management companies, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of collective portfolio management activities undertaken in the course of that business, to establish and maintain an internal audit function which is separate and independent from the other functions and activities of the management company.

2. The internal audit function referred to in paragraph 1 shall have the following responsibilities:

(a) to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the management company's systems, internal control mechanisms and arrangements;

(b) to issue recommendations based on the result of work carried out in accordance with point (a);

(c) to verify compliance with the recommendations referred to in point (b);

(d) to report in relation to internal audit matters in accordance with Article 9(4).

▪ *Recital 10 of Commission Directive 2010/43 – p. 181*

Article 12
Permanent risk management function

1. Member States shall require management companies to establish and maintain a permanent risk management function.

2. The permanent risk management function referred to in paragraph 1 shall be hierarchically and functionally independent from operating units.

However, Member States may allow management companies to derogate from that obligation where the derogation is appropriate and proportionate in view of the nature, scale and complexity of the management company's business and of the UCITS it manages.

A management company shall be able to demonstrate that appropriate safeguards against conflicts of interest have been adopted so as to allow an independent performance of risk management activities and that its risk management process satisfies the requirements of Article 51 of Directive 2009/65/EC.

▪ *Article 51 of the consolidated UCITS Directive – p. 80*

3. The permanent risk management function shall:

(a) implement the risk management policy and procedures;

(b) ensure compliance with the UCITS risk limit system, including statutory limits concerning global exposure and counterparty risk in accordance with Articles 41, 42 and 43;

▪ *Articles 41, 42 and 43 of the consolidated UCITS Directive – p. 72 ff.*

(c) provide advice to the board of directors as regards the identification of the risk profile of each managed UCITS;

(d) provide regular reports to the board of directors and, where it exists, the supervisory function, on:

(i) the consistency between the current levels of risk incurred by each managed UCITS and the risk profile agreed for that UCITS;

(ii) the compliance of each managed UCITS with relevant risk limit systems;

(iii) the adequacy and effectiveness of the risk management process, indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies;

(e) provide regular reports to the senior management outlining the current level of risk incurred by each managed UCITS and any actual or foreseeable breaches to their limits, so as to ensure that prompt and appropriate action can be taken;

(f) review and support, where appropriate, the arrangements and procedures for the valuation of OTC derivatives as referred to in Article 44.

▪ *Article 44 of the consolidated UCITS Directive – p. 74*

4. The permanent risk management function shall have the necessary authority and access to all relevant information necessary to fulfil the tasks set out in paragraph 3.

▪ *Recital 12 of Commission Directive 2010/43 – p. 181*

Article 13
Personal transactions

1. Member States shall require management companies to establish, implement and maintain adequate arrangements aimed at preventing the following activities in the case of any relevant person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information within the meaning of Article 1(1) of Directive 2003/6/EC or to other confidential information relating to UCITS or transactions with or for UCITS by virtue of an activity carried out by him on behalf of the management company:

(a) entering into a personal transaction which fulfils at least one of the following criteria:

(i) that person is prohibited from entering into that personal transaction within the meaning of Directive 2003/6/EC;

(ii) it involves the misuse or improper disclosure of confidential information;

(iii) it conflicts or is likely to conflict with an obligation of the management company under Directive 2009/65/EC or under Directive 2004/39/EC;

(b) advising or procuring, other than in the proper course of his employment or contract for services, any other person to enter into a transaction in financial instruments which, if a

personal transaction of the relevant person, would be covered by point (a) of this paragraph or by points (a) or (b) of Article 25(2) of Directive 2006/73/EC, or would otherwise constitute a misuse of information relating to pending orders;

(c) disclosing, other than in the normal course of his employment or contract for services and without prejudice to Article 3(a) of Directive 2003/6/EC, any information or opinion to any other person if the relevant person knows, or reasonably ought to know, that as a result of that disclosure that other person will or would be likely to take either of the following steps:

(i) to enter into a transaction in financial instruments which, where a personal transaction of the relevant person would be covered by point (a) of this paragraph or by points (a) or (b) of Article 25(2) of Directive 2006/73/EC, or would otherwise constitute a misuse of information relating to pending orders;

(ii) to advise or procure another person to enter into such a transaction.

2. The arrangements required under paragraph 1 shall in particular be designed to ensure that:

(a) each relevant person covered by paragraph 1 is aware of the restrictions on personal transactions, and of the measures established by the management company in connection with personal transactions and disclosure, in accordance with paragraph 1;

(b) the management company is informed promptly of any personal transaction entered into by a relevant person, either by notification of that transaction or by other procedures enabling the management company to identify such transactions;

(c) a record is kept of the personal transaction notified to the management company or identified by it, including any authorisation or prohibition in connection with such a transaction.

For the purposes of point (b) of the first subparagraph, where certain activities are performed by third parties, the management company shall ensure that the entity performing the activity maintains a record of personal transactions entered into by any relevant person and provides that information to the management company promptly on request.

3. Paragraphs 1 and 2 shall not apply to the following kinds of personal transactions:

(a) personal transactions effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or other person for whose account the transaction is executed;

(b) personal transactions in UCITS or units in collective undertakings that are subject to supervision under the law of a Member State which requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transactions are effected are not involved in the management of that undertaking.

4. For the purposes of paragraphs 1, 2 and 3 of this Article, 'personal transaction' shall have the same meaning as in Article 11 of Directive 2006/73/EC.

▪ *Recital 13 of Commission Directive 2010/43 – p. 182*

Article 14
Recording of portfolio transactions

1. Member States shall require management companies to ensure, for each portfolio transaction relating to UCITS, that a record of information which is sufficient to reconstruct the details of the order and the executed transaction is produced without delay.

2. The record referred to in paragraph 1 shall include:

(a) the name or other designation of the UCITS and of the person acting on account of the UCITS;

(b) the details necessary to identify the instrument in question;

(c) the quantity;

(d) the type of the order or transaction;

(e) the price;

(f) for orders, the date and exact time of the transmission of the order and name or other designation of the person to whom the order was transmitted, or for transactions, the date and exact time of the decision to deal and execution of the transaction;

(g) the name of the person transmitting the order or executing the transaction;

(h) where applicable, the reasons for the revocation of an order;

(i) for executed transactions, the counterparty and execution venue identification.

For the purposes of point (i) of the first subparagraph, an 'execution venue' shall mean a regulated market as referred to under Article 4(1)(14) of Directive 2004/39/EC, a multilateral trading facility as referred to in Article 4(1)(15) of that Directive, a systematic internaliser as referred to in Article 4(1)(7) of that Directive, or a market maker or other liquidity provider or an entity that performs a similar function in a third country to the functions performed by any of the foregoing.

▪ *Recital 14 of Commission Directive 2010/43 – p. 182*

Article 15
Recording of subscription and redemption orders

1. Member States shall require management companies to take all reasonable steps to ensure that the received UCITS subscription and redemption orders are centralised and recorded immediately after receipt of any such order.

2. That record shall include information on the following:

(a) the relevant UCITS;

(b) the person giving or transmitting the order;

(c) the person receiving the order;

(d) the date and time of the order;

(e) the terms and means of payment;

(f) the type of the order;

(g) the date of execution of the order;

(h) the number of units subscribed or redeemed;

(i) the subscription or redemption price for each unit;

(j) the total subscription or redemption value of the units;

(k) the gross value of the order including charges for subscription or net amount after charges for redemption.

▪ *Recital 14 of Commission Directive 2010/43 – p. 182*

Article 16
Recordkeeping requirements

1. Member States shall require management companies to ensure the retention of the records referred to in Articles 14 and 15 for a period of at least 5 years.

However, competent authorities may, in exceptional circumstances, require management companies to retain any or all of those records for a longer period, determined by the nature of the instrument or portfolio transaction, where it is necessary to enable the authority to exercise its supervisory functions under Directive 2009/65/EC.

2. Following the termination of the authorisation of a management company, Member States or competent authorities may require the management company to retain records referred to in paragraph 1 for the outstanding term of the 5-year period.

Where the management company transfers its responsibilities in relation to the UCITS to another management company, Member States or competent authorities may require that arrangements are made that such records for the past 5 years are accessible to that company.

3. The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority, and in such a form and manner that the following conditions are met:

(a) the competent authority must be able to access them readily and to reconstitute each key stage of the processing of each portfolio transaction;

(b) it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;

(c) it must not be possible for the records to be otherwise manipulated or altered.

CHAPTER III
CONFLICT OF INTERESTS

(Article 12(1)(b) and Article 14(1)(d) and (2)(c) of Directive 2009/65/EC)

Article 17
Criteria for the identification of conflicts of interest

1. Member States shall ensure that, for the purposes of identifying the types of conflict of interest that arise in the course of providing services and activities and whose existence may damage the interests of a UCITS, management companies take into account, by way of minimum criteria, the question of whether the management company or a relevant person, or a person directly or indirectly linked by way of control to the management company, is in any of the following situations, whether as a result of providing collective portfolio management activities or otherwise:

(a) the management company or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the UCITS;

(b) the management company or that person has an interest in the outcome of a service or an activity provided to the UCITS or another client or of a transaction carried out on behalf of the UCITS or another client, which is distinct from the UCITS interest in that outcome;

(c) the management company or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the UCITS;

(d) the management company or that person carries on the same activities for the UCITS and for another client or clients which are not UCITS;

(e) the management company or that person receives or will receive from a person other than the UCITS an inducement in relation to collective portfolio management activities provided to the UCITS, in the form of monies, goods or services, other than the standard commission or fee for that service.

2. Member States shall require management companies, when identifying the types of conflict of interests, to take into account:

(a) the interests of the management company, including those deriving from its belonging to a group or from the performance of services and activities, the interests of the clients and the duty of the management company towards the UCITS;

(b) the interests of two or more managed UCITS.

▪ *Articles 12 and 14 of the consolidated UCITS Directive – p. 33 and 36*

Article 18
Conflicts of interest policy

1. Member States shall require management companies to establish, implement and maintain an effective conflicts of interest policy. That policy shall be set out in writing and

shall be appropriate to the size and organisation of the management company and the nature, scale and complexity of its business.

Where the management company is a member of a group, the policy shall also take into account any circumstances of which the company is or should be aware which may give rise to a conflict of interest resulting from the structure and business activities of other members of the group.

2. The conflicts of interest policy established in accordance with paragraph 1 shall include the following:

(a) the identification of, with reference to the collective portfolio management activities carried out by or on behalf of the management company, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of the UCITS or one or more other clients;

(b) procedures to be followed and measures to be adopted in order to manage such conflicts.

Article 19
Independence in conflicts management

1. Member States shall ensure that the procedures and measures provided for in Article 18(2)(b) are designed to ensure that relevant persons engaged in different business activities involving a conflict of interest carry on those activities at a level of independence appropriate to the size and activities of the management company and of the group to which it belongs and to the materiality of the risk of damage to the interests of clients.

2. The procedures to be followed and measures to be adopted in accordance with Article 18(2)(b) shall include the following where necessary and appropriate for the management company to ensure the requisite degree of independence:

(a) effective procedures to prevent or control the exchange of information between relevant persons engaged in collective portfolio management activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;

(b) the separate supervision of relevant persons whose principal functions involve carrying out collective portfolio management activities on behalf of, or providing services to, clients or to investors whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the management company;

(c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

(d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out collective portfolio management activities;

(e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate collective portfolio management activities where such involvement may impair the proper management of conflicts of interest.

Where the adoption or the practice of one or more of those measures and procedures does not ensure the requisite degree of independence, Member States shall require management companies to adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.

Article 20

Management of activities giving rise to detrimental conflict of interest

1. Member States shall require management companies to keep and regularly update a record of the types of collective portfolio management activities undertaken by or on behalf of the management company in which a conflict of interest entailing a material risk of damage to the interests of one or more UCITS or other clients has arisen or, in the case of an ongoing collective portfolio management activity, may arise.

2. Member States shall require that, where the organisational or administrative arrangements made by the management company for the management of conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of UCITS or of its unit-holders will be prevented, the senior management or other competent internal body of the management company is promptly informed in order for them to take any necessary decision to ensure that in any case the management company acts in the best interests of the UCITS and of its unit-holders.

3. The management company shall report situations referred to in paragraph 2 to investors by any appropriate durable medium and give reasons for its decision.

Article 21

Strategies for the exercise of voting rights

1. Member States shall require management companies to develop adequate and effective strategies for determining when and how voting rights attached to instruments held in the managed portfolios are to be exercised, to the exclusive benefit of the UCITS concerned.

2. The strategy referred to in paragraph 1 shall determine mea-sures and procedures for:

(a) monitoring relevant corporate events;

(b) ensuring that the exercise of voting rights is in accordance with the investment objectives and policy of the relevant UCITS;

(c) preventing or managing any conflicts of interest arising from the exercise of voting rights.

3. A summary description of the strategies referred to in paragraph 1 shall be made available to investors.

Details of the actions taken on the basis of those strategies shall be made available to the unit-holders free of charge and on their request.

CHAPTER IV
RULES OF CONDUCT

(Article 14(1)(a), (b) and (2)(a), (b) of Directive 2009/65/EC)

SECTION 1
General principles

Article 22
Duty to act in the best interests of UCITS and their unit-holders

1. Member States shall require management companies to ensure that unit-holders of managed UCITS are treated fairly.

Management companies shall refrain from placing the interests of any group of unit-holders above the interests of any other group of unit-holders.

▪ *Recitals 15 and 18 to 20 of Commission Directive 2010/43 – p. 182 and 183*

2. Member States shall require management companies to apply appropriate policies and procedures for preventing malpractices that might reasonably be expected to affect the stability and integrity of the market.

3. Without prejudice to requirements under national law, Member States shall require management companies to ensure that fair, correct and transparent pricing models and valuation systems are used for the UCITS they manage, in order to comply with the duty to act in the best interests of the unit-holders. Management companies must be able to demonstrate that the UCITS portfolios have been accurately valued.

4. Member States shall require management companies to act in such a way as to prevent undue costs being charged to the UCITS and its unit-holders.

▪ *Article 14 of the consolidated UCITS Directive – p. 36*

Article 23
Due diligence requirements

1. Member States shall require management companies to ensure a high level of diligence in the selection and ongoing monitoring of investments, in the best interests of UCITS and the integrity of the market.

2. Member States shall require management companies to ensure they have adequate knowledge and understanding of the assets in which the UCITS are invested.

3. Member States shall require management companies to establish written policies and procedures on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of the UCITS are carried out in compliance with the objectives, investment strategy and risk limits of the UCITS.

4. Member States shall require management companies when implementing their risk management policy, and where it is appropriate after taking into account the nature of a foreseen investment, to formulate forecasts and perform analyses concerning the investment's contribution to the UCITS portfolio composition, liquidity and risk and reward profile before carrying out the investment. The analyses must only be carried out on the basis of reliable and up-to-date information, both in quantitative and qualitative terms.

Management companies shall exercise due skill, care and diligence when entering into, managing or terminating any arrangements with third parties in relation to the performance of risk management activities. Before entering into such arrangements, management companies shall take the necessary steps in order to verify that the third party has the ability and capacity to perform the risk management activities reliably, professionally and effectively. The management company shall establish methods for the on-going assessment of the standard of performance of the third party.

SECTION 2
Handling of subscription and redemption orders

Article 24
Reporting obligations in respect of execution of subscription and redemption orders

1. Member States shall ensure that where management companies have carried out a subscription or redemption order from a unit-holder, they must notify the unit-holder, by means of a durable medium, confirming execution of the order as soon as possible, and no later than the first business day following execution or, where the confirmation is received by the management company from a third party, no later than the first business day following receipt of the confirmation from the third party.

However, the first subparagraph shall not apply where the notice would contain the same information as a confirmation that is to be promptly dispatched to the unit-holder by another person.

2. The notice referred to in paragraph 1 shall, where applicable, include the following information:

(a) the management company identification;

(b) the name or other designation of the unit-holder;

(c) the date and time of receipt of the order and method of payment;

(d) the date of execution;

(e) the UCITS identification;

(f) the nature of the order (subscription or redemption);

(g) the number of units involved;

(h) the unit value at which the units were subscribed or redeemed;

(i) the reference value date;

(j) the gross value of the order including charges for subscription or net amount after charges for redemptions;

(k) a total sum of the commissions and expenses charged and, where the investor so requests, an itemised breakdown.

3. Where orders for a unit-holder which are executed periodically, management companies shall either take the action specified in paragraph 1 or provide the unit-holder, at least once every 6 months, with the information listed in paragraph 2 in respect of those transactions.

4. Management companies shall supply the unit-holder, upon request, with information about the status of his order.

▪ *Recital 20 of Commission Directive 2010/43 – p. 183*

SECTION 3
Best execution

Article 25
Execution of decisions to deal on behalf of the managed UCITS

1. Member States shall require management companies to act in the best interests of the UCITS they manage when executing decisions to deal on behalf of the managed UCITS in the context of the management of their portfolios.

2. For the purposes of paragraph 1, Member States shall ensure that management companies take all reasonable steps to obtain the best possible result for the UCITS, taking into account price, costs, speed, likelihood of execution and settlement, order size and nature, or any other consideration relevant to the execution of the order. The relative importance of such factors shall be determined by reference to the following criteria:

(a) the objectives, investment policy and risks specific to the UCITS, as indicated in the prospectus or as the case may be in the fund rules or articles of association of the UCITS;

(b) the characteristics of the order;

(c) the characteristics of the financial instruments that are the subject of that order;

(d) the characteristics of the execution venues to which that order can be directed.

3. Member States shall require management companies to establish and implement effective arrangements for complying with the obligation referred to in paragraph 2. In particular, management companies shall establish and implement a policy to allow them to obtain, for UCITS orders, the best possible result in accordance with paragraph 2.

Management companies shall obtain the prior consent of the investment company on the execution policy. The management company shall make available appropriate information to unit- holders on the policy established in accordance with this Article and on any material changes to their policy.

4. Management companies shall monitor on a regular basis the effectiveness of their arrangements and policy for the execution of orders in order to identify and, where appropriate, correct any deficiencies.

In addition, management companies shall review the execution policy on an annual basis. A review shall also be carried out whenever a material change occurs that affects the management company's ability to continue to obtain the best possible result for the managed UCITS.

5. Management companies shall be able to demonstrate that they have executed orders on behalf of the UCITS in accordance with the management company's execution policy.

▪ *Article 14(1)(e) of the consolidated UCITS Directive – p. 36*

Article 26

Placing orders to deal on behalf of UCITS with other entities for execution

1. Member States shall require management companies to act in the best interests of the UCITS they manage when placing orders to deal on behalf of the managed UCITS with other entities for execution, in the context of the management of their portfolios.

2. Member States shall ensure that management companies take all reasonable steps to obtain the best possible result for the UCITS taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. The relative importance of such factors shall be determined by reference to Article 25(2).

For those purposes, management companies shall establish and implement a policy to enable them to comply with the obligation referred to in the first subparagraph. The policy shall identify, in respect of each class of instruments, the entities with which the orders may be placed. The management company shall only enter into arrangements for execution where such arrangements are consistent with obligations laid down in this Article. Management companies shall make available to unit-holders appropriate information on the policy established in accordance with this paragraph and on any material changes to this policy.

3. Management companies shall monitor on a regular basis the effectiveness of the policy established in accordance with paragraph 2 and, in particular, the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies.

In addition, management companies shall review the policy on an annual basis. Such a review shall also be carried out whenever a material change occurs that affects the management company's ability to continue to obtain the best possible result for the managed UCITS.

4. Management companies shall be able to demonstrate that they have placed orders on behalf of the UCITS in accordance with the policy established in accordance with paragraph 2.

▪ *Article 14(1)(e) of the consolidated UCITS Directive – p. 36*

SECTION 4
Handling of orders

Article 27
General principles

1. Member States shall require management companies to establish and implement procedures and arrangements which provide for the prompt, fair and expeditious execution of portfolio transactions on behalf of the UCITS.

The procedures and arrangements implemented by management companies shall satisfy the following conditions:

(a) ensure that orders executed on behalf of UCITS are promptly and accurately recorded and allocated;

(b) execute otherwise comparable UCITS orders sequentially and promptly unless the characteristics of the order or prevailing market conditions make this impracticable, or the interests of the UCITS require otherwise.

Financial instruments or sums of money, received in settlement of the executed orders shall be promptly and correctly delivered to the account of the appropriate UCITS.

2. A management company shall not misuse information relating to pending UCITS orders, and shall take all reasonable steps to prevent the misuse of such information by any of its relevant persons.

Article 28
Aggregation and allocation of trading orders

1. Member States shall not permit management companies to carry out a UCITS order in aggregate with an order of another UCITS or another client or with an order on their own account, unless the following conditions are met:

(a) it must be unlikely that the aggregation of orders will work overall to the disadvantage of any UCITS or clients whose order is to be aggregated;

(b) an order allocation policy must be established and implemented, providing in sufficiently precise terms for the fair allocation of aggregated orders, including how the volume and price of orders determines allocations and the treatment of partial executions.

2. Member States shall ensure that where a management company aggregates a UCITS order with one or more orders of other UCITS or clients and the aggregated order is partially executed, it allocates the related trades in accordance with its order allocation policy.

3. Member States shall ensure that management companies which have aggregated transactions for own account with one or more UCITS or other clients' orders do not allocate the related trades in a way that is detrimental to the UCITS or another client.

4. Member States shall require that, where a management company aggregates an order of a UCITS or another client with a transaction for own account and the aggregated order is partially executed, it allocates the related trades to the UCITS or other client in priority over those for own account.

However, if the management company is able to demonstrate to the UCITS or its other client on reasonable grounds that it would not have been able to carry out the order on such advantageous terms without aggregation, or at all, it may allocate the transaction for own account proportionally, in accordance with the policy as referred to in paragraph 1(b).

SECTION 5
Inducements

Article 29
Safeguarding the best interests of UCITS

1. Member States shall ensure that management companies are not regarded as acting honestly, fairly and professionally in accordance with the best interests of the UCITS if, in relation to the activities of investment management and administration to the UCITS, they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit, other than the following:

(a) a fee, commission or non-monetary benefit paid or provided to or by the UCITS or a person on behalf of the UCITS;

(b) a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, where the following conditions are satisfied:

  (i) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the UCITS in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant service;

  (ii) the payment of the fee or commission, or the provision of the non-monetary benefit must be designed to enhance the quality of the relevant service and not impair compliance with the management company's duty to act in the best interests of the UCITS;

(c) proper fees which enable or are necessary for the provision of the relevant service, including custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the management company's duties to act honestly, fairly and professionally in accordance with the best interests of the UCITS.

2. Member States shall permit a management company, for the purposes of paragraph 1(b)(i), to disclose the essential terms of the arrangements relating to the fee, commission or non-monetary benefit in summary form, provided that the management company undertakes

to disclose further details at the request of the unit-holder and provided that it honours that undertaking.

- *Article 14(1)(e) of the consolidated UCITS Directive – p. 36*

- *Recital 21 of Commission Directive 2010/43 – p. 183*

CHAPTER V
PARTICULARS OF THE STANDARD AGREEMENT BETWEEN A DEPOSITARY AND A MANAGEMENT COMPANY

(Article 23(5) and Article 33(5) of Directive 2009/65/EC)

- *NOTE: Article 23(5) and Article 33(5) of the UCITS Directive have been revised, respectively deleted by UCITS V.*

Article 30
Elements related to the procedures to be followed by the parties to the agreement

Member States shall require the depositary and the management company, referred to in this Chapter as the 'parties to the agreement', to include in the written agreement referred to in either Articles 23(5) or Article 33(5) of Directive 2009/65/EC at least the following particulars related to the services provided by and procedures to be followed by the parties to the agreement:

(a) a description of the procedures, including those related to the safe-keeping, to be adopted for each type of asset of the UCITS entrusted to the depositary;

(b) a description of the procedures to be followed where the management company envisages a modification of the fund rules or prospectus of the UCITS, and identifying when the depositary should be informed, or where a prior agreement from the depositary is needed to proceed with the modification;

(c) a description of the means and procedures by which the depositary will transmit to the management company all relevant information that the management company needs to perform its duties including a description of the means and procedures related to the exercise of any rights attached to financial instruments, and the means and procedures applied in order to allow the management company and the UCITS to have timely and accurate access to information relating to the accounts of the UCITS;

(d) a description of the means and procedures by which the depositary will have access to all relevant information it needs to perform its duties;

(e) a description of the procedures by which the depositary has the ability to enquire into the conduct of the management company and to assess the quality of information transmitted, including by way of on-site visits;

(f) a description of the procedures by which the management company can review the performance of the depositary in respect of the depositary's contractual obligations.

Article 31

Elements related to the exchange of information and to obligations on confidentiality and money-laundering

1. Member States shall require parties to the agreement referred to in either Article 23(5) or Article 33(5) of Directive 2009/65/EC to include at least the following elements related to the exchange of information and obligations on confidentiality and money laundering in that agreement:

(a) a list of all the information that needs to be exchanged between the UCITS, its management company and the depositary related to the subscription, redemption, issue, cancellation and repurchase of units of the UCITS;

(b) the confidentiality obligations applicable to the parties to the agreement;

(c) information on the tasks and responsibilities of the parties to the agreement in respect of obligations relating to the prevention of money laundering and the financing of terrorism, where applicable.

2. The obligations referred to in paragraph 1(b) shall be drawn up so as not to impair the ability of either the competent authorities of a management company's home Member State or the competent authorities of the UCITS home Member State in gaining access to relevant documents and information.

Article 32

Elements related to the appointment of third parties

Where the depositary or the management company envisage appointing third parties to carry out their respective duties, Member States shall require both parties to the agreement referred to either in Article 23(5) or Article 33(5) of Directive 2009/65/EC to include at least the following particulars in that agreement:

(a) an undertaking by both parties to the agreement to provide details, on a regular basis, of any third parties appointed by the depositary or the management company to carry out their respective duties;

(b) an undertaking that, upon request by one of the parties, the other party will provide information on the criteria used for selecting the third party and the steps taken to monitor the activities carried out by the selected third party;

(c) a statement that a depositary's liability as referred to in Article 24 or Article 34 of Directive 2009/65/EC shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safe-keeping.

Article 33

Elements related to potential amendments and the termination of the agreement

Member States shall require the parties to the agreement referred to in either Article 23(5) or Article 33(5) of Directive 2009/65/EC to include at least the following particulars related to amendments and the termination of the agreement in that agreement:

(a) the period of validity of the agreement;

(b) the conditions under which the agreement may be amended or terminated;

(c) the conditions which are necessary to facilitate transition to another depositary and, in case of such transition the procedure by which the depositary shall send all relevant information to the other depositary.

Article 34
Applicable law

Member States shall require the parties to the agreement referred to either in Articles 23(5) or Article 33(5) of Directive 2009/65/EC to specify that the law of the UCITS' home Member State applies to that agreement.

Article 35
Electronic transmission of information

In cases where the parties to the agreement referred to in either Article 23(5) or Article 33(5) of Directive 2009/65/EC agree to that flows between them, Member States shall require that such agreement contains provisions ensuring that a record is kept of such information.

Article 36
Scope of the agreement

Member States may allow that the agreement referred to in either Article 23(5) or Article 33(5) of Directive 2009/65/EC cover more than one UCITS managed by the management company. In such case, the agreement shall list the UCITS covered.

Article 37
Service level agreement

Member States shall allow parties to the agreement to either include details of means and procedures referred to in Article 30(c) and (d) in the agreement referred to in either Article 23(5) or Article 33(5) of Directive 2009/65/EC or in a separate written agreement.

CHAPTER VI
RISK MANAGEMENT

(Article 51(1) of Directive 2009/65/EC)

- *Article 51 of the consolidate UCITS Directive – p. 80*
- *Recitals 23 to 25 of Commission Directive 2010/43 – p. 184*

SECTION 1
Risk management policy and risk measurement

Article 38
Risk management policy

1. Member States shall require management companies to establish, implement and maintain an adequate and documented risk management policy which identifies the risks the UCITS they manage are or might be exposed to.

The risk management policy shall comprise such procedures as are necessary to enable the management company to assess for each UCITS it manages the exposure of that UCITS to market, liquidity and counterparty risks, and the exposure of the UCITS to all other risks, including operational risks, which may be material for each UCITS it manages.

Member States shall require management companies to address at least the following elements in the risk management policy:

(a) the techniques, tools and arrangements that enable them to comply with the obligations set out in Articles 40 and 41;

(b) the allocation of responsibilities within the management company pertaining to risk management.

2. Member States shall require management companies to ensure that the risk management policy referred to in paragraph 1 states the terms, contents and frequency of reporting of the risk management function referred to in Article 12 to the board of directors and to senior management and, where appropriate, to the supervisory function.

3. For the purposes of paragraphs 1 and 2, Member States shall ensure that management companies take into account the nature, scale and complexity of their business and of the UCITS they manage.

Article 39
Assessment, monitoring and review of risk management policy

1. Member States shall require management companies to assess, monitor and periodically review:

(a) the adequacy and effectiveness of the risk management policy and of the arrangements, processes and techniques referred to in Articles 40 and 41;

(b) the level of compliance by the management company with the risk management policy and with arrangements, pro- cesses and techniques referred to in Articles 40 and 41;

(c) the adequacy and effectiveness of measures taken to address any deficiencies in the performance of the risk management process.

2. Member States shall require management companies to notify to competent authorities of their home Member State any material changes to the risk management process.

3. Members States shall ensure that requirements laid down in paragraph 1 are subject to review by the competent authorities of the management company's home Member State on an on-going basis and accordingly when granting authorisation.

SECTION 2
Risk management processes, Counterparty risk exposure and issuer concentration

Article 40
Measurement and management of risk

1. Member States shall require management companies to adopt adequate and effective arrangements, processes and techniques in order to:

(a) measure and manage at any time the risks which the UCITS they manage are or might be exposed to;

(b) ensure compliance with limits concerning global exposure and counterparty risk, in accordance with Articles 41 and 43.

Those arrangements, processes and techniques shall be proportionate to the nature, scale and complexity of the business of the management companies and of the UCITS they manage and be consistent with the UCITS risk profile.

2. For the purposes of paragraph 1, Member States shall require management companies to take the following actions for each UCITS they manage:

(a) put in place such risk measurement arrangements, processes and techniques as are necessary to ensure that the risks of taken positions and their contribution to the overall risk pro- file are accurately measured on the basis of sound and reliable data and that the risk measurement arrangements, processes and techniques are adequately documented;

(b) conduct, where appropriate, periodic back-tests in order to review the validity of risk measurement arrangements which include model-based forecasts and estimates;

(c) conduct, where appropriate, periodic stress tests and scenario analyses to address risks arising from potential changes in market conditions that might adversely impact the UCITS;

(d) establish, implement and maintain a documented system of internal limits concerning the measures used to manage and control the relevant risks for each UCITS taking into account all risks which may be material to the UCITS as referred to in Article 38 and ensuring consistency with the UCITS risk-profile;

(e) ensure that the current level of risk complies with the risk limit system as set out in point (d) for each UCITS;

(f) establish, implement and maintain adequate procedures that, in the event of actual or anticipated breaches to the risk limit system of the UCITS, result in timely remedial actions in the best interests of unit-holders.

3. Member States shall ensure that management companies employ an appropriate liquidity risk management process in order to ensure that each UCITS they manage is able to comply at any time with Article 84(1) of Directive 2009/65/EC.

Where appropriate, management companies shall conduct stress tests which enable assessment of the liquidity risk of the UCITS under exceptional circumstances.

4. Member States shall require management companies to ensure that for each UCITS they manage the liquidity profile of the investments of the UCITS is appropriate to the redemption policy laid down in the fund rules or the instruments of incorporation or the prospectus.

Article 41
Calculation of global exposure

1. Member States shall require management companies to calculate the global exposure of a managed UCITS as referred to in Article 51(3) of Directive 2009/65/EC as either of the following:

(a) the incremental exposure and leverage generated by the managed UCITS through the use of financial derivative instruments including embedded derivatives pursuant to the fourth subparagraph of Article 51(3) of Directive 2009/65/EC, which may not exceed the total of the UCITS net asset value;

(b) the market risk of the UCITS portfolio.

- *Article 51(3) of the consolidated UCITS Directive – p. 80*

- *Recitals 26 and 27 of Commission Directive 2010/43 – p. 184*

2. Member States shall require management companies to calculate the UCITS global exposure on at least a daily basis.

3. Member States may allow management companies to calculate global exposure by using the commitment approach, the value at risk approach or other advanced risk measurement methodologies as may be appropriate. For the purposes of this provision, 'value at risk' shall mean a measure of the maximum expected loss at a given confidence level over a specific time period.

Member States shall require management companies to ensure that the method selected to measure global exposure is appropriate, taking into account the investment strategy pursued by the UCITS and the types and complexities of the financial derivative instruments used, and the proportion of the UCITS portfolio which comprises financial derivative instruments.

4. Where a UCITS in accordance with Article 51(2) of Directive 2009/65/EC employs techniques and instruments including repurchase agreements or securities lending

transactions in order to generate additional leverage or exposure to market risk, Member States shall require management companies to take these transactions into consideration when calculating global exposure.

Article 42
Commitment approach

1. Where the commitment approach is used for the calculation of global exposure, Member States shall require management companies to apply this approach to all financial derivative instrument positions including embedded derivatives as referred to in the fourth subparagraph of Article 51(3) of Directive 2009/65/EC, whether used as part of the UCITS general investment policy, for purposes of risk reduction or for the purposes of efficient portfolio management as referred to in Article 51(2) of that Directive.

2. Where the commitment approach is used for the calculation of global exposure, Member States shall require management companies to convert each financial derivative instrument position into the market value of an equivalent position in the underlying asset of that derivative (standard commitment approach).

Member States may allow management companies to apply other calculation methods which are equivalent to the standard commitment approach.

3. Member States may allow a management company to take account of netting and hedging arrangements when calculating global exposure, where these arrangements do not disregard obvious and material risks and result in a clear reduction in risk exposure.

4. Where the use of financial derivative instruments does not generate incremental exposure for the UCITS, the underlying exposure need not be included in the commitment calculation.

5. Where the commitment approach is used, temporary borrowing arrangements entered into on behalf of the UCITS in accordance with Article 83 of Directive 2009/65/EC need not be included in the global exposure calculation.

Article 43
Counterparty risk and issuer concentration

1. Member States shall require management companies to ensure that counterparty risk arising from an over-the-counter (OTC) financial derivative instrument is subject to the limits set out in Article 52 of Directive 2009/65/EC.

2. When calculating the UCITS exposure to a counterparty in accordance with the limits as referred to in Article 52(1) of Directive 2009/65/EC, management companies shall use the positive mark-to-market value of the OTC derivative contract with that counterparty.

Management companies may net the derivative positions of a UCITS with the same counterparty, provided that they are able to legally enforce netting agreements with the counterparty on behalf of the UCITS. Netting shall only be permissible with respect to OTC derivative instruments with the same counterparty and not in relation to any other exposures the UCITS may have with that same counterparty.

3. Member States may allow management companies to reduce the UCITS exposure to a counterparty of an OTC derivative transaction through the receipt of collateral. Collateral received shall be sufficiently liquid so that it can be sold quickly at a price that is close to its pre-sale valuation.

4. Member States shall require management companies to take collateral into account in calculating exposure to counterparty risk as referred to in Article 52(1) of Directive 2009/65/EC when the management company passes collateral to OTC counterparty on behalf of the UCITS. Collateral passed may be taken into account on a net basis only if the management company is able to legally enforce netting arrangements with this counterparty on behalf of the UCITS.

5. Member States shall require management companies to calculate issuer concentration limits as referred to in Article 52 of Directive 2009/65/EC on the basis of the underlying exposure created through the use of financial derivative instruments pursuant to the commitment approach.

6. With respect to the exposure arising from OTC derivatives transactions as referred to in Article 52(2) of Directive 2009/65/EC, Member States shall require management companies to include in the calculation any exposure to OTC derivative counterparty risk.

SECTION 3
Procedures for the valuation of the OTC derivatives

- *Article 51(1) paragraph 2 of the consolidated UCITS Directive – p. 80*

- *Recital 28 of Commission Directive 2010/43 – p. 184*

Article 44
Procedures for the assessment of the value of OTC derivatives

1. Member States shall require management companies to verify that UCITS exposures to OTC derivatives are assigned fair values that do not rely only on market quotations by the counterparties of the OTC transactions and which fulfil the criteria set out in Article 8(4) of Directive 2007/16/EC.

2. For the purposes of paragraph 1, management companies shall establish, implement and maintain arrangements and procedures which ensure appropriate, transparent and fair valuation of UCITS exposures to OTC derivatives.

Member States shall require management companies to ensure that the fair value of OTC derivatives is subject to adequate, accurate and independent assessment.

The valuation arrangements and procedures shall be adequate and proportionate to the nature and complexity of the OTC derivatives concerned.

Management companies shall comply with the requirements set out in Article 5(2) and in the second subparagraph of Article 23(4) when arrangements and procedures concerning the valuation of OTC derivatives involve the performance of certain activities by third parties.

3. For the purposes of paragraphs 1 and 2, the risk management function shall be appointed with specific duties and responsibilities.

4. The valuation arrangements and procedures referred to in paragraph 2 shall be adequately documented.

SECTION 4
Transmission of information on derivative instruments

Article 45
Reports on derivative instruments

1. Member States shall require management companies to deliver to the competent authorities of their home Member State, at least on an annual basis, reports containing information which reflects a true and fair view of the types of derivative instruments used for each managed UCITS, the underlying risks, the quantitative limits and the methods which are chosen to estimate the risks associated with the derivative transactions.

2. Member States shall ensure that the competent authorities of the management company's home Member State review the regularity and completeness of information referred to in paragraph 1 and that they have an opportunity to intervene where appropriate.

CHAPTER VII
FINAL PROVISIONS

Article 46
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2011 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 47
Entry into force

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

Article 48
Addressees

This Directive is addressed to the Member States.

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COMMISSION DIRECTIVE 2010/42/EU

of 1 July 2010

implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)[1], and in particular Article 43(5), Article 60(6)(a) and (c), Articles 61(3) and 62(4), Article 64(4)(a) and Article 95(1) thereof,

Whereas:

(1) The information to be provided to unit-holders pursuant to Article 43(1) of Directive 2009/65/EC in the case of a merger should reflect the different needs of the unit-holders of the merging and receiving UCITS and assist their understanding.

⇧ (Article 43(1) consolidated UCITS Directive) ⇧ (Articles 3 ff. Commission Directive 2010/42)

(2) The merging UCITS or the receiving UCITS should not be required to include information other than that referred to in Article 43(3) of Directive 2009/65/EC and Articles 3 to 5 of this Directive in the information document. The merging UCITS or the receiving UCITS may however add other information of relevance in the context of the pro- posed merger.

(3) Where the information document pursuant to Article 43(1) of Directive 2009/65/EC is supplemented by a summary, it should not relieve the UCITS of the obligation to avoid the use of long or technical explanations in the rest of the information document.

(4) The information to be provided to the unit-holders of the receiving UCITS pursuant to Article 43(1) of Directive 2009/65/EC should assume that those unit-holders are already reasonably familiar with the features of the receiving UCITS, the rights they enjoy in relation to it, and the manner of its operation. It should therefore focus on the operation of the merger and its potential impact on the receiving UCITS.

[1] OJ L 302, 17.11.2009, p. 32.

(5) The way the information pursuant to Articles 43 and 64 of Directive 2009/65/EC is provided to unit-holders should be harmonised. That information aims to enable unit-holders to make an informed judgement about whether they want to continue investing or request redemption, where a UCITS is either part of a merger, converts into a feeder UCITS or changes the master UCITS. Unit-holders should be aware of the aforementioned major change the UCITS is undergoing and be in a position to read the information. For that reason the information should be personally addressed to unit-holders either on paper or in another durable medium such as electronic mail (e-mail). The use of electronic means should allow UCITS to provide the information in a cost-efficient way. This Directive should not require UCITS to directly inform their unit-holders, but should take due account of the specificities in certain Member States in which UCITS or their management companies, for legal or practical reasons, are unable to directly contact unit-holders. UCITS should also be able to provide the information by passing it on to the depositary or to intermediaries provided that it is ensured that all unit- holders receive the information in due course. This Directive should only harmonise the manner in which the information pursuant to Articles 43 and 64 of Directive 2009/65/EC is provided to unit-holders. Member States may regulate the provision of other types of information to unit-holders by national rules.

⇧ (Article 43(1) consolidated UCITS Directive) ⇧ (Articles 3 ff. Commission Directive 2010/42)

(6) The agreement between the master UCITS and the feeder UCITS should take account of the specific needs of the feeder UCITS, which invests at least 85 % of its assets in the master UCITS, while at the same time remaining subject to all obligations as a UCITS. The agreement should therefore ensure that the master UCITS provides the feeder UCITS with all necessary information in due course to allow the feeder UCITS to comply with its own obligations. It should also stipulate the other rights and duties of both parties.

⇧ (Article 60 consolidated UCITS Directive) ⇧ (Articles 8 ff. Commission Directive 2010/42)

(7) Member States should not require the agreement between master and feeder UCITS pursuant to the first subparagraph of Article 60(1) to cover elements other than those referred to in Chapter VIII of Directive 2009/65/EC and Articles 8 to 14 of this Directive. The agreement may however cover other elements, if the master UCITS and the feeder UCITS so stipulate.

(8) Where the dealing arrangements between master UCITS and feeder UCITS do not differ from those applying to all non-feeder unit-holders of the master UCITS and where those arrangements are laid down in the prospectus of the master UCITS, the agreement between master UCITS and feeder UCITS should not have to replicate those standard dealing arrangements, but may cross-refer to the relevant parts of the prospectus of the master UCITS in order to help industry to save costs and reduce the administrative burden.

(9) The agreement between master UCITS and feeder UCITS should include appropriate procedures for the handling of enquiries and complaints from unit-holders with a view to dealing with correspondence which has mistakenly been sent to the master UCITS instead of the feeder UCITS or vice versa.

(10) In order to save transaction costs and to avoid negative tax implications, the master UCITS and the feeder UCITS may wish to agree on a transfer of assets in kind, unless this is prohibited under national law or incompatible with the fund rules or instruments of incorporation of either the master UCITS or the feeder UCITS. The possibility of

transferring assets in kind to the master UCITS should in particular help those feeder UCITS which have already been carrying on activities as a UCITS, including a feeder UCITS of a different master UCITS, to avoid transaction costs arising from the sale of assets which both the feeder UCITS and the master UCITS have invested in. The feeder UCITS should also be able to receive, if it so wishes, assets in kind from the master UCITS, since this may help to reduce transaction costs and to avoid negative tax implications. A transfer of assets in kind to the feeder UCITS should not be limited to the cases of a liquidation, merger or division of the master UCITS, but should also be available under other circumstances.

(11) In order to preserve the necessary flexibility, while at the same time taking account of the best interests of investors, a feeder UCITS which has received assets through a transfer of assets in kind should be able to either transfer some or all of those assets to its master UCITS where the master UCITS so agrees, or to realise assets for cash in order to invest cash in the master UCITS.

(12) Due to the specificities of the master-feeder structure it is necessary that the agreement between the master and the feeder UCITS provides for conflict of law rules which derogate from Articles 3 and 4 of Regulation (EC) No593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I)[1] in such a way that the applicable law to this agreement should be either the law of the Member State where the feeder UCITS is established, or that of the master UCITS. The parties should be free to assess the advantages and disadvantages of that choice and to take into account whether the master UCITS has several feeder UCITS and whether those feeder UCITS are established in only one or in several Member States.

> ⇧ (Article 60 consolidated UCITS Directive) ⇧ (Articles 8 ff. Commission Directive 2010/42)

(13) In the case of a liquidation, merger or division of the master UCITS in respect of which Directive 2009/65/EC grants unit-holders of the feeder UCITS the right to request redemption, the feeder UCITS should not undermine that right by temporarily suspending repurchase or redemption, unless exceptional circumstances require it to do so to protect the interests of unit-holders or it is directed to do so by its competent authorities.

> ⇧ (Article 60(4)(b) consolidated UCITS Directive) ⇧ (Article 60(5)(c) consolidated UCITS Directive) ⇧ (Articles 8 ff. Commission Directive 2010/42) ⇧ (Articles 22 ff. Commission Directive 2010/42)

(14) Since a merger or division of the master UCITS may become effective within 60 days, the time limit for the feeder UCITS to apply for and obtain approval of its new investment intentions and to grant the unit-holders of the feeder UCITS the right to request repurchase or redemption within 30 days, may in exceptional circumstances be too short to allow the feeder UCITS to know for sure how many of its unit-holders will request redemption. Under such circumstances the feeder UCITS should in principle be obliged to request redemption of all its units in the master UCITS. In order to avoid unnecessary transaction costs, the feeder UCITS should however be able to use other means to ensure that its unit-holders may make use of the right to request redemption,

[1] OJ L 177, 4.7.2008, p. 6.

while allowing it to reduce transaction costs or to avoid other negative impacts. The feeder UCITS should in particular apply for approval as soon as possible. Furthermore, the feeder UCITS should for instance not be obliged to request redemption to the extent its own unit-holders choose not to make use of that facility. Where the feeder UCITS requests redemption from the master UCITS, it should consider whether a redemption in kind might reduce transaction costs and avoid other negative impacts.

⇧ (Article 60(4)(b) consolidated UCITS Directive) ⇧ (Article 60(5)(c) consolidated UCITS Directive) ⇧ (Articles 20 ff. Commission Directive 2010/42)

(15) The information-sharing agreement between the depositaries of the master UCITS and the feeder UCITS should allow the depositary of the feeder UCITS to receive all relevant information and documents which it needs in order to be able to perform its duties. Given the specificity of this agreement it should provide for the same conflict of law rules as foreseen in the agreement between master and feeder UCITS derogating from Articles 3 and 4 of the Rome I Regulation. The information-sharing agreement should however require neither the depositary of the master UCITS nor of the feeder UCITS to carry out tasks which are for- bidden or not provided for under the national law of their home Member State.

⇧ (Article 61(2) consolidated UICTS Directive) ⇧ (Articles 24 ff. Commission Directive 2010/42)

(16) The reporting of irregularities, which the depositary of the master UCITS detects in the course of carrying out its depositary function under the national law of its home Member State, aims to protect the feeder UCITS. For that reason no reporting should be required when those irregularities do not have a negative impact on the feeder UCITS. Where irregularities with regard to the master UCITS have a negative impact on the feeder UCITS, the latter should also be informed as to whether and how the irregularities have been resolved. The depositary of the master UCITS should therefore inform the depositary of the feeder UCITS of how the master UCITS has resolved or proposes to resolve the irregularity. If the depositary of the feeder UCITS is not satisfied that the resolution is in the interests of the unit-holders of the feeder UCITS, it should promptly report its view to the feeder UCITS.

⇧ (Article 61(2) consolidated UCITS Directive) ⇧ (Articles 24 ff. Commission Directive 2010/42)

(17) The information-sharing agreement between the auditors of the master UCITS and the feeder UCITS should allow the auditor of the feeder UCITS to receive all relevant information and documents which it needs in order to be able to perform its duties. Given the specificity of this agreement it should provide for the same conflict of law rules as fore- seen in the agreement between master and feeder UCITS derogating from Articles 3 and 4 of the Rome I Regulation.

⇧ (Articles 27 ff. Commission Directive 2010/42)

(18) The scope of the information to be made accessible by electronic means in accordance with Article 91(3) of Directive 2009/65/EC should be specified in order to provide for legal certainty as to what categories of information should be included.

(19) In order to provide for a common approach to how the documents referred to in Article 93(2) of Directive 2009/65/EC should be made accessible by electronic means to the competent authorities of the UCITS host Member State, it is necessary to require that each UCITS or its management company designates a website where such documents are made available in an electronic format that is in common use. It is also necessary

to set out a procedure for electronic notification of changes to these documents to the competent authorities of the UCITS host Member State, in accordance with Article 93(7) of that Directive.

(20) In order to allow UCITS and their management companies to adapt to the new requirements on the method and manner to provide information to unit-holders in the cases referred to in Articles 7 and 29, Member States should be granted a longer period for the transposition of those requirements into their national legal systems. This is particularly important in those cases where the UCITS or their management companies are unable for legal or practical reasons to inform the unit-holders directly. UCITS with dematerialised bearer shares should be able to prepare all arrangements necessary to ensure that unit-holders receive the information in the cases specified in Articles 8 and 32. UCITS with materialised bearer shares should be able to convert them into registered shares or dematerialised bearer shares, if they want to be able to merge, convert into a feeder UCITS or change the master UCITS.

(21) The Committee of European Securities Regulators, established by Commission Decision 2009/77/EC[1] has been consulted for technical advice.

(22) The measures provided for in this Directive are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I
GENERAL

Article 1
Subject matter

This Directive lays down detailed rules for the implementation of Article 43(5), Article 60(6)(a) and (c), Articles 61(3) and 62(4), Article 64(4)(a) and Article 95(1) of Directive 2009/65/EC.

Article 2
Definitions

For the purpose of this Directive the following definitions shall apply:

1. ‘rebalancing of the portfolio’ means a significant modification of the composition of the portfolio of a UCITS;

2. ‘synthetic risk and reward indicators’ means synthetic indicators within the meaning of Article 8 of Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor

[1] OJ L 25, 29.1.2009, p. 18.

information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website[1].

CHAPTER II
UCITS MERGERS

SECTION 1
Content of the merger information

- *Article 43(1) of the consolidated UCITS Directive – p. 73*
- *Recitals 1 to 5 of Commission Directive 2010/42 – p. 217*

Article 3

General rules regarding the content of information to be provided to unit-holders

1. Member States shall require that the information to be provided to unit-holders pursuant to Article 43(1) of Directive 2009/65/EC shall be written in a concise manner and in non-technical language that enables unit-holders to make an informed judgement of the impact of the proposed merger on their investment.

In the case of a proposed cross-border merger, the merging UCITS and the receiving UCITS, respectively, shall explain in plain language any terms or procedures relating to the other UCITS which differ from those commonly used in the other Member State.

2. The information to be provided to the unit-holders of the merging UCITS shall meet the needs of investors who have no prior knowledge of the features of the receiving UCITS or of the manner of its operation. It shall draw their attention to the key investor information of the receiving UCITS and emphasise the desirability of reading it.

3. The information to be provided to the unit-holders of the receiving UCITS shall focus on the operation of the merger and its potential impact on the receiving UCITS.

Article 4

Specific rules regarding the content of information to be provided to unit-holders

1. Member States shall require that the information to be provided in accordance with Article 43(3)(b) of Directive 2009/65/EC to the unit-holders of the merging UCITS shall also include:

[1] See page 1 of this Official Journal. [OJ L 176, 10.7.2010, p. 1]

(a) details of any differences in the rights of unit-holders of the merging UCITS before and after the proposed merger takes effect;

(b) if the key investor information of the merging UCITS and the receiving UCITS show synthetic risk and reward indicators in different categories, or identify different material risks in the accompanying narrative, a comparison of those differences;

(c) a comparison of all charges, fees and expenses for both UCITS, based on the amounts disclosed in their respective key investor information;

(d) if the merging UCITS applies a performance-related fee, an explanation of how it will be applied up to the point at which the merger becomes effective;

(e) if the receiving UCITS applies a performance-related fee, how it will subsequently be applied to ensure fair treatment of those unit-holders who previously held units in the merging UCITS;

(f) in cases where Article 46 of Directive 2009/65/EC permits costs associated with the preparation and the completion of the merger to be charged to either the merging or the receiving UCITS or any of their unit-holders, details of how those costs are to be allocated;

(g) an explanation of whether the management or investment company of the merging UCITS intends to undertake any rebalancing of the portfolio before the merger takes effect.

2. Member States shall require that the information to be provided in accordance with Article 43(3)(b) of Directive 2009/65/EC to the unit-holders of the receiving UCITS shall also include an explanation of whether the management or investment company of the receiving UCITS expects the merger to have any material impact on the portfolio of the receiving UCITS, and whether it intends to undertake any rebalancing of the portfolio either before or after the merger takes effect.

3. Member States shall require that the information to be provided in accordance with Article 43(3)(c) of Directive 2009/65/EC shall also include:

(a) details of how any accrued income in the respective UCITS is to be treated;

(b) an indication of how the report of the independent auditor or the depositary referred to in Article 42(3) of Directive 2009/65/EC may be obtained.

4. Member States shall require that if the terms of the proposed merger include provisions for a cash payment in accordance with points (p)(i) and (p)(ii) of Article 2(1) of Directive 2009/65/EC, the information to be provided to the unit-holders of the merging UCITS shall contain details of that proposed payment, including when and how unit-holders of the merging UCITS will receive the cash payment.

5. Member States shall require that the information to be provided in accordance with Article 43(3)(d) shall include:

(a) where relevant under national law for the particular UCITS, the procedure by which unit-holders will be asked to approve the merger proposal, and what arrangements will be made to inform them of the outcome;

(b) the details of any intended suspension of dealing in units to enable the merger to be carried out efficiently;

(c) when the merger will take effect in accordance with Article 47(1) of Directive 2009/65/EC.

6. Member States shall ensure that in cases where, under the national law for the particular UCITS, the merger proposal must be approved by unit-holders, the information may contain a recommendation by the respective management company or board of directors of the investment company as to the course of action.

7. Member States shall require that the information to be provided to the unit-holders of the merging UCITS shall include:

(a) the period during which the unit-holders shall be able to continue making subscriptions and requesting redemptions of units in the merging UCITS;

(b) the time when those unit-holders not making use of their rights granted pursuant to Article 45(1) of Directive 2009/65/EC, within the relevant time limit, shall be able to exercise their rights as unit-holders of the receiving UCITS;

(c) an explanation that in cases where the merger proposal must be approved by the unit-holders of the merging UCITS under national law and the proposal is approved by the necessary majority, those unit-holders who vote against the proposal or who do not vote at all, and who do not make use of their rights granted pursuant to Article 45(1) of Directive 2009/65/EC within the relevant time limit, shall become unit-holders of the receiving UCITS.

8 If a summary of the key points of the merger proposal is provided at the beginning of the information document, it must cross-refer to the parts of the information document where further information is provided.

Article 5
Key investor information

1. Member States shall ensure that an up-to-date version of the key investor information of the receiving UCITS shall be provided to existing unit-holders of the merging UCITS.

2. The key investor information of the receiving UCITS shall be provided to existing unit-holders of the receiving UCITS where it has been amended for the purpose of the proposed merger.

Article 6
New unit-holders

Between the date when the information document pursuant to Article 43(1) of Directive 2009/65/EC is provided to unit-holders and the date when the merger takes effect, the information document and the up-to-date key investor information of the receiving UCITS shall be provided to each person who purchases or subscribes units in either the merging or the receiving UCITS or asks to receive copies of the fund rules or instruments of incorporation, prospectus or key investor information of either UCITS.

SECTION 2
Method of providing the information

Article 7
Method of providing the information to unit-holders

1. Member States shall ensure that the merging and the receiving UCITS provide the information pursuant to Article 43(1) of Directive 2009/65/EC to unit-holders on paper or in another durable medium.

2. Where the information is to be provided to all or certain unit-holders using a durable medium other than paper, the following conditions shall be fulfilled:

(a) the provision of the information is appropriate to the context in which the business between the unit-holder and the merging or receiving UCITS or, where relevant, the respective management company is, or is to be, carried on;

(b) the unit-holder to whom the information is to be provided, when offered the choice between information on paper or in another durable medium, specifically chooses the durable medium other than paper.

3. For the purposes of paragraphs 1 and 2, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the merging and receiving UCITS or their respective management companies and the unit-holder is, or is to be, carried on if there is evidence that the unit-holder has regular access to the Internet. The provision by the unit-holder of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

CHAPTER III
MASTER-FEEDER STRUCTURES

SECTION 1
Agreement and internal conduct of business rules between feeder UCITS and master UCITS

Subsection 1
Content of the agreement between master UCITS and feeder UCITS

Article 8
Access to information

Member States shall require that the agreement between the master UCITS and the feeder UCITS referred to in the first subparagraph of Article 60(1) of Directive 2009/65/EC includes the following with regard to access to information:

(a) how and when the master UCITS provides the feeder UCITS with a copy of its fund rules or instruments of incorporation, prospectus and key investor information or any amendment thereof;

(b) how and when the master UCITS informs the feeder UCITS of a delegation of investment management and risk management functions to third parties in accordance with Article 13 of Directive 2009/65/EC;

(c) where applicable, how and when the master UCITS provides the feeder UCITS with internal operational documents, such as its risk management process and its compliance reports;

(d) what details of breaches by the master UCITS of the law, the fund rules or instruments of incorporation and the agreement between the master UCITS and the feeder UCITS the master UCITS shall notify the feeder UCITS of and the manner and timing thereof;

(e) where the feeder UCITS uses financial derivative instruments for hedging purposes, how and when the master UCITS will provide the feeder UCITS with information about its actual exposure to financial derivative instruments to enable the feeder UCITS to calculate its own global exposure as envisaged by point (a) of the second subparagraph of Article 58(2) of Directive 2009/65/EC;

(f) a statement that the master UCITS informs the feeder UCITs of any other information sharing arrangements entered into with third parties and where applicable, how and when the master UCITS makes those other information-sharing arrangements available to the feeder UCITS.

- *Article 60 of the consolidated UCITS Directive – p. 89*

- *Recitals 6 to 12 of Commission Directive 2010/42 – pp. 218 and 219*

Article 9

Basis of investment and divestment by the feeder UCITS

Member States shall require that the agreement between the master UCITS and the feeder UCITS referred to in the first subparagraph of Article 60(1) of Directive 2009/65/EC includes the following with regard to the basis of investment and divestment by the feeder UCITS:

(a) a statement of which share classes of the master UCITS are available for investment by the feeder UCITS;

(b) the charges and expenses to be borne by the feeder UCITS, and details of any rebate or retrocession of charges or expenses by the master UCITS;

(c) if applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the feeder UCITS to the master UCITS.

- *Article 60 of the consolidated UCITS Directive – p. 89*

Article 10
Standard dealing arrangements

Member States shall require that the agreement between the master UCITS and the feeder UCITS referred to in the first subparagraph of Article 60(1) of Directive 2009/65/EC includes the following with regard to standard dealing arrangements:

(a) coordination of the frequency and timing of the net asset value calculation process and the publication of prices of units;

(b) coordination of transmission of dealing orders by the feeder UCITS, including, where applicable, the role of transfer agents or any other third party;

(c) where applicable, any arrangements necessary to take account of the fact that either or both UCITS are listed or traded on a secondary market;

(d) where necessary, other appropriate measures to ensure compliance with the requirements of Article 60(2) of Directive 2009/65/EC;

(e) where the units of the feeder UCITS and the master UCITS are denominated in different currencies, the basis for conversion of dealing orders;

(f) settlement cycles and payment details for purchases or sub-scriptions and repurchases or redemptions of units of the master UCITS including, where agreed between the parties, the terms on which the master UCITS may settle redemption requests by a transfer of assets in kind to the feeder UCITS, notably in the cases referred to in Article 60(4) and (5) of Directive 2009/65/EC;

(g) procedures to ensure enquiries and complaints from unit-holders are handled appropriately;

(h) where the fund rules or instruments of incorporation and prospectus of the master UCITS give it certain rights or powers in relation to unit-holders, and the master UCITS chooses to limit or forego the exercise of all or any such rights and powers in relation to the feeder UCITS, a statement of the terms on which it does so.

▪ *Article 60 of the consolidated UCITS Directive – p. 89*

Article 11
Events affecting dealing arrangements

Member States shall require that the agreement between the master UCITS and the feeder UCITS referred to in the first subparagraph of Article 60(1) of Directive 2009/65/EC includes the following with regard to events affecting dealing arrangements:

(a) the manner and timing of a notification by either UCITS of the temporary suspension and the resumption of repurchase, redemption, purchase or subscription of units of that UCITS;

(b) arrangements for notifying and resolving pricing errors in the master UCITS.

▪ *Article 60 of the consolidated UCITS Directive – p. 89*

Article 12

Standard arrangements for the audit report

Member States shall require that the agreement between the master UCITS and the feeder UCITS referred to in the first subparagraph of Article 60(1) of Directive 2009/65/EC includes the following with regard to standard arrangements for the audit report:

(a) where the feeder UCITS and the master UCITS have the same accounting years, the coordination of the production of their periodic reports;

(b) where the feeder UCITS and the master UCITS have different accounting years, arrangements for the feeder UCITS to obtain any necessary information from the master UCITS to enable it to produce its periodic reports on time and which ensure that the auditor of the master UCITS is in a position to produce an ad hoc report on the closing date of the feeder UCITS in accordance with the first subparagraph of Article 62(2) of Directive 2009/65/EC.

▪ *Article 60 of the consolidated UCITS Directive – p. 89*

Article 13

Changes to standing arrangements

Member States shall require that the agreement between the master UCITS and the feeder UCITS referred to in the first subparagraph of Article 60(1) of Directive 2009/65/EC includes the following with regard to changes to standing arrangements:

(a) the manner and timing of notice to be given by the master UCITS of proposed and effective amendments to its fund rules or instruments of incorporation, prospectus and key investor information, if these details differ from the standard arrangements for notification of unit-holders laid down in the master UCITS fund rules, instruments of incorporation or prospectus;

(b) the manner and timing of notice by the master UCITS of a planned or proposed liquidation, merger, or division;

(c) the manner and timing of notice by either UCITS that it has ceased or will cease to meet the qualifying conditions to be a feeder UCITS or a master UCITS respectively;

(d) the manner and timing of notice by either UCITS that it intends to replace its management company, its depositary, its auditor or any third party which is mandated to carry out investment management or risk management functions;

(e) the manner and timing of notice of other changes to standing arrangements that the master UCITS undertakes to provide.

▪ *Article 60 of the consolidated UCITS Directive – p. 89*

Article 14
Choice of the applicable law

1. Member States shall ensure that where the feeder UCITS and the master UCITS are established in the same Member State, the agreement between the master UCITS and the feeder UCITS referred to in the first subparagraph of Article 60(1) of Directive 2009/65/EC provides that the law of that Member State shall apply to the agreement and that both parties agree to the exclusive jurisdiction of the courts of that Member State.

2. Member States shall ensure that where the feeder UCITS and the master UCITS are established in different Member States, the agreement between the master UCITS and the feeder UCITS referred to in the first subparagraph of Article 60(1) of Directive 2009/65/EC provides that the applicable law shall be either the law of the Member State in which the feeder UCITS is established or that it shall be that of the Member State in which the master UCITS is established and that both parties agree to the exclusive jurisdiction of the courts of the Member State whose law they have stipulated to be applicable to the agreement.

▪ *Article 60 of the consolidated UCITS Directive – p. 89*

Subsection 2
Content of the internal conduct of business rules

Article 15
Conflicts of interest

Member States shall ensure that the management company's internal conduct of business rules referred to in the third subparagraph of Article 60(1) of Directive 2009/65/EC shall include appropriate measures to mitigate conflicts of interest that may arise between the feeder UCITS and the master UCITS, or between the feeder UCITS and other unit-holders of the master UCITS, to the extent that these are not sufficiently addressed by the measures applied by the management company in order to meet requirements of Articles 12(1)(b) and 14(1)(d) of Directive 2009/65/EC and Chapter III of Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company[1].

▪ *Article 60 of the consolidated UCITS Directive – p. 89*

[1] See page 42 of this Official Journal. [OJ L 176, 10.7.2010, p.1.]

Article 16

Basis of investment and divestment by the feeder UCITS

Member States shall ensure that the management company's internal conduct of business rules referred to in the third subparagraph of Article 60(1) of Directive 2009/65/EC shall include at least the following with regard to the basis of investment and divestment by the feeder UCITS:

(a) a statement of which share classes of the master UCITS are available for investment by the feeder UCITS;

(b) the charges and expenses to be borne by the feeder UCITS, and details of any rebate or retrocession of charges or expenses by the master UCITS;

(c) where applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the feeder UCITS to the master UCITS.

- *Article 60 of the consolidated UCITS Directive – p. 89*

Article 17

Standard dealing arrangements

Member States shall ensure that the management company's internal conduct of business rules referred to in the third subparagraph of Article 60(1) of Directive 2009/65/EC shall include at least the following with regard to standard dealing arrangements:

(a) coordination of the frequency and timing of the net asset value calculation process and the publication of prices of units;

(b) coordination of transmission of dealing orders by the feeder UCITS, including, if applicable, the role of transfer agents or any other third party;

(c) where applicable, any arrangements necessary to take account of the fact that either or both UCITS are listed or traded on a secondary market;

(d) appropriate measures to ensure compliance with the requirements of Article 60(2) of Directive 2009/65/EC;

(e) where the feeder UCITS and the master UCITS are denominated in different currencies, the basis for conversion of dealing orders;

(f) settlement cycles and payment details for purchases and redemptions of units of the master UCITS including, where agreed between the parties, the terms on which the master UCITS may settle redemption requests by a transfer of assets in kind to the feeder UCITS, notably in the cases referred to in Article 60(4) and (5) of Directive 2009/65/EC;

(g) where the fund rules or instruments of incorporation and prospectus of the master UCITS give it certain rights or powers in relation to unit-holders, and the master UCITS chooses to limit or forego the exercise of all or any such rights and powers in relation to the feeder UCITS, a statement of the terms on which it does so.

- *Article 60 of the consolidated UCITS Directive – p. 89*

Article 18
Events affecting dealing arrangements

Member States shall ensure that the management company's internal conduct of business rules referred to in the third subparagraph of Article 60(1) of Directive 2009/65/EC shall include at least the following with regard to events affecting dealing arrangements:

(a) the manner and timing of notification by either UCITS of the temporary suspension and the resumption of the repurchase, redemption or subscription of units of UCITS;

(b) arrangements for notifying and resolving pricing errors in the master UCITS.

- *Article 60 of the consolidated UCITS Directive – p. 89*

Article 19
Standard arrangements for the audit report

Member States shall ensure that the management company's internal conduct of business rules referred to in the third subparagraph of Article 60(1) of Directive 2009/65/EC shall include at least the following with regard to standard arrangements for the audit report:

(a) where the feeder UCITS and the master UCITS have the same accounting years, the coordination of the production of their periodic reports;

(b) where the feeder UCITS and the master UCITS have different accounting years, arrangements for the feeder UCITS to obtain any necessary information from the master UCITS to enable it to produce its periodic reports on time and which ensure that the auditor of the master UCITS is in a position to make an ad hoc report on the closing date of the feeder UCITS in accordance with the first subparagraph of Article 62(2) of Directive 2009/65/EC.

- *Articles 60 and 62(2) of the consolidated UCITS Directive – p. 89 and 92*

SECTION 2
Liquidation, merger or division of the master UCITS

Subsection 1
Procedures in the event of a liquidation

Article 20
Application for approval

1. Member States shall require the feeder UCITS to submit to its competent authorities no later than two months after the date on which the master UCITS informed it of the binding decision to liquidate, the following:

(a) where the feeder UCITS intends to invest at least 85 % of its assets in units of another master UCITS in accordance with Article 60(4)(a) of Directive 2009/65/EC:

(i) its application for approval for that investment;

(ii) its application for approval of the proposed amendments to its fund rules or instrument of incorporation;

(iii) the amendments to its prospectus and its key investor information in accordance with Articles 74 and 82 of Directive 2009/65/EC, respectively;

(iv) the other documents required pursuant to Article 59(3) of Directive 2009/65/EC;

(b) where the feeder UCITS intends to convert into a UCITS that is not a feeder UCITS in accordance with Article 60(4)(b) of Directive 2009/65/EC:

(i) its application for approval of the proposed amendments to its fund rules or instrument of incorporation;

(ii the amendments to its prospectus and its key investor information in accordance with Articles 74 and 82 of Directive 2009/65/EC, respectively;

(c) where the feeder UCITS intends to be liquidated, a notification of that intention.

2. By way of derogation from paragraph 1, where the master UCITS informed the feeder UCITS of its binding decision to liquidate more than five months before the date at which the liquidation will start, the feeder UCITS shall submit to its competent authorities its application or notification in accordance with one of the points (a), (b) or (c) of paragraphe1 at the latest three months before that date.

3. The feeder UCITS shall inform its unit-holders of its intention to be liquidated without undue delay.

- *Article 60(4) and (5) of the consolidated UCITS Directive – p. 89*

- *Recitals 13 and 14 of Commission Directive 2010/42 – p. 219*

Article 21
Approval

1. The feeder UCITS shall be informed within 15 working days following the complete submission of the documents referred to in points (a) or (b) of Article 20(1) respectively, whether the competent authorities have granted the required approvals.

2. On receiving the competent authorities' approval pursuant to paragraph 1, the feeder UCITS shall inform the master UCITS of it.

3. The feeder UCITS shall take necessary measures to comply with the requirements of Article 64 of Directive 2009/65/EC as soon as possible after the competent authorities have granted the necessary approvals pursuant to Article 20(1)(a) of this Directive.

4. Where the payment of liquidation proceeds of the master UCITS is to be executed before the date on which the feeder UCITS is to start to invest in either a different master

UCITS pursuant to Article 20(1)(a) or in accordance with its new investment objectives and policy pursuant to Article 20(1)(b), the competent authorities of the feeder UCITS shall grant approval subject to the following conditions:

(a) the feeder UCITS shall receive the proceeds of the liquidation:

(i) in cash; or

(ii) some or all of the proceeds as a transfer of assets in kind where the feeder UCITS so wishes and where the agreement between the feeder UCITS and master UCITS or the internal conduct of business rules and the binding decision to liquidate provide for it;

(b) any cash held or received in accordance with this paragraph may be re-invested only for the purpose of efficient cash management before the date on which the feeder UCITS is to start to invest either in a different master UCITS or in accordance with its new investment objectives and policy.

Where point (a)(ii) of the first subparagraph applies, the feeder UCITS may realise any part of the assets transferred in kind for cash at any time.

Subsection 2
Procedures in the event of a merger or division

Article 22
Application for approval

1. Member States shall require that the feeder UCITS submits to its competent authorities, no later than one month after the date on which the feeder UCITS received the information of the planned merger or division in accordance with the second sub-paragraph of Article 60(5) of Directive 2009/65/EC, the following:

(a) where the feeder UCITS intends to continue to be a feeder UCITS of the same master UCITS:

(i) its application for approval thereof;

(ii) where applicable, its application for approval of the pro- posed amendments to its fund rules or instrument of incorporation;

(iii) where applicable, the amendments to its prospectus and its key investor information in accordance with Articles 74 and 82 of Directive 2009/65/EC, respectively;

(b) where the feeder UCITS intends to become a feeder UCITS of another master UCITS resulting from the proposed merger or division of the master UCITS or where the feeder UCITS intends to invest at least 85 % of its assets in units of another master UCITS not resulting from the merger or division:

(i) its application for approval of that investment;

(ii) its application for approval of the proposed amendments to its fund rules or instruments of incorporation;

(iii) the amendments to its prospectus and its key investor information in accordance with Articles 74 and 82 of Directive 2009/65/EC, respectively;

(iv) the other documents required pursuant to Article 59(3) of Directive 2009/65/EC;

(c) where the feeder UCITS intends to convert into a UCITS that is not a feeder UCITS in accordance with Article 60(4)(b) of Directive 2009/65/EC:

(i) its application for approval of the proposed amendments to its fund rules or instrument of incorporation;

(ii) the amendments to its prospectus and its key investor information in accordance with Articles 74 and 82 of Directive 2009/65/EC, respectively;

(d) where the feeder UCITS intends to be liquidated, a notification of that intention.

2. For the purpose of the application of points (a) and (b) of paragraph 1 the following should be taken into account:

The expression 'continues to be a feeder UCITS of the same master UCITS' refers to cases where:

(a) the master UCITS is the receiving UCITS in a proposed merger;

(b) the master UCITS is to continue materially unchanged as one of the resulting UCITS in a proposed division.

The expression 'becomes a feeder UCITS of another master UCITS resulting from the merger or division of the master UCITS' refers to cases where:

(a) the master UCITS is the merging UCITS and, due to the merger, the feeder UCITS becomes a unit-holder of the receiving UCITS;

(b) the feeder UCITS becomes a unit-holder of a UCITS resulting from a division that is materially different to the master UCITS.

3. By way of derogation from paragraph 1, in cases where the master UCITS provided the information referred to in or comparable with Article 43 of Directive 2009/65/EC to the feeder UCITS more than four months before the proposed effective date, the feeder UCITS shall submit to its competent authorities its application or notification in accordance with one of the points (a) to (d) of paragraph 1 of this Article at the latest three months before the proposed effective date of the merger or division of the master UCITS.

4. The feeder UCITS shall inform its unit-holders and the master UCITS of its intention to be liquidated without undue delay.

- *Article 60(6)(c) of the consolidated UCITS Directive – p. 89*

- *Recitals 13 and 14 of Commission Directive 2010/42 – p. 219*

Article 23
Approval

1. The feeder UCITS shall be informed within 15 working days following the complete submission of the documents referred to in Article 22(1)(a) to (c) respectively, whether the competent authorities have granted the required approvals.

2. Upon receipt of the information that the competent authorities have granted approval according to paragraph 1, the feeder UCITS shall inform the master UCITS of it.

3. After the feeder UCITS has been informed that the competent authorities have granted the necessary approvals pursuant to Article 22(1)(b) of this Directive, the feeder UCITS shall take the necessary measures to comply with the requirements of Article 64 of Directive 2009/65/EC without undue delay.

4. In the cases of Article 22(1)(b) and (c) of this Directive, the feeder UCITS shall exercise the right to request repurchase and redemption of its units in the master UCITS in accordance with the third subparagraph of Article 60(5) and Article 45(1) of Directive 2009/65/EC, where the competent authorities of the feeder UCITS have not granted the necessary approvals required pursuant to Article 22(1) of this Directive by the working day preceding the last day on which the feeder UCITS can request repurchase and redemption of its units in the master UCITS before the merger or division is effected.

The feeder UCITS shall also exercise this right in order to ensure that the right of its own unit-holders to request repurchase or redemption of their units in the feeder UCITS according to Article 64(1)(d) of Directive 2009/65/EC is not affected.

Before exercising the right referred to in the first subparagraph, the feeder UCITS shall consider available alternative solutions which may help to avoid or reduce transaction costs or other negative impacts for its own unit-holders.

5. Where the feeder UCITS requests repurchase or redemption of its units in the master UCITS, it shall receive one of the following:

(a) the repurchase or redemption proceeds in cash;

(b) some or all of the repurchase or redemption proceeds as a transfer in kind where the feeder UCITS so wishes and where the agreement between the feeder UCITS and the master UCITS provides for it.

Where point (b) of the first subparagraph applies, the feeder UCITS may realise any part of the transferred assets for cash at any time.

6. The competent authorities of the feeder UCITS shall grant approval on the condition that any cash held or received in accordance with paragraph 5 may be re-invested only for the purpose of efficient cash management before the date on which the feeder UCITS is to start to invest either in the new master UCITS or in accordance with its new investment objectives and policy.

SECTION 3
Depositaries and auditors

Subsection 1
Depositaries

Article 24
Content of the information-sharing agreement between depositaries

The information-sharing agreement between the depositary of the master UCITS and the depositary of the feeder UCITS referred to in Article 61(1) of Directive 2009/65/EC shall include the following:

(a) the identification of the documents and categories of information which are to be routinely shared between both depositaries, and whether such information or documents are provided by one depositary to the other or made available on request;

(b) the manner and timing, including any applicable deadlines, of the transmission of information by the depositary of the master UCITS to the depositary of the feeder UCITS;

(c) the coordination of the involvement of both depositaries, to the extent appropriate in view of their respective duties under national law, in relation to operational matters, including:

  (i) the procedure for calculating the net asset value of each UCITS, including any measures appropriate to protect against the activities of market timing in accordance with Article 60(2) of Directive 2009/65/EC;

  (ii) the processing of instructions by the feeder UCITS to purchase, subscribe or request the repurchase or redemption of units in the master UCITS, and the settlement of such transactions, including any arrangement to transfer assets in kind;

(d) the coordination of accounting year-end procedures;

(e) what details of breaches by the master UCITS of the law and the fund rules or instrument of incorporation the depositary of the master UCITS shall provide to the depositary of the feeder UCITS and the manner and timing of their provision;

(f) the procedure for handling ad hoc requests for assistance from one depositary to the other;

(g) identification of particular contingent events which ought to be notified by one depositary to the other on an ad hoc basis, and the manner and timing in which this will be done.

- *Article 61 of the consolidated UCITS Directive – p. 91*
- *Recital (53) of Directive UCITS IV – p. 13*

- *Recitals 15 and 16 of Commission Directive 2010/42 – p. 220*

Article 25
Choice of the applicable law

1. Member States shall ensure that where the feeder UCITS and the master UCITS have concluded an agreement in accordance with Article 60(1) of Directive 2009/65/EC, the agreement between the depositaries of the master UCITS and the feeder UCITS provides that the law of the Member State applying to that agreement in accordance with Article 14 of this Directive shall also apply to the information-sharing agreement between both depositaries and that both depositaries agree to the exclusive juris- diction of the courts of that Member State;

2. Member States shall ensure that where the agreement between the feeder UCITS and the master UCITS has been replaced by internal conduct of business rules in accordance with the third subparagraph of Article 60(1) of Directive 2009/65/EC, the agreement between the depositaries of the master UCITS and the feeder UCITS provides that the law applying to the information-sharing agreement between both depositaries shall be either that of the Member State in which the feeder UCITS is established or, where different, that of the Member State in which the master UCITS is established, and that both depositaries agree to the exclusive jurisdiction of the courts of the Member State whose law is applicable to the information-sharing agreement.

Article 26
Reporting of irregularities by the depositary of the master UCITS

The irregularities referred to in Article 61(2) of Directive 2009/65/EC which the depositary of the master UCITS detects in the course of carrying out its function under the national law and which may have a negative impact on the feeder UCITS shall include, but are not limited to:

(a) errors in the net asset value calculation of the master UCITS;

(b) errors in transactions for or settlement of the purchase, subscription or request to repurchase or redeem units in the master UCITS undertaken by the feeder UCITS;

(c) errors in the payment or capitalisation of income arising from the master UCITS, or in the calculation of any related withholding tax;

(d) breaches of the investment objectives, policy or strategy of the master UCITS, as described in its fund rules or instrument of incorporation, prospectus or key investor information;

(e) breaches of investment and borrowing limits set out in national law or in the fund rules, instruments of incorporation, prospectus or key investor information.

Subsection 2
Auditors

Article 27
Information-sharing agreement between auditors

1. The information-sharing agreement between the auditor of the master UCITS and the auditor of the feeder UCITS referred to in Article 62(1) of Directive 2009/65/EC shall include the following:

(a) the identification of the documents and categories of information which are to be routinely shared between both auditors;

(b) whether the information or documents referred to in point (a) are to be provided by one auditor to the other or made available on request;

(c) the manner and timing, including any applicable deadlines, of the transmission of information by the auditor of the master UCITS to the auditor of the feeder UCITS;

(d) the coordination of the involvement of each auditor in the accounting year-end procedures for the respective UCITS;

(e) identification of matters that shall be treated as irregularities disclosed in the audit report of the auditor of the master UCITS for the purposes of the second subparagraph of Article 62(2) of Directive 2009/65/EC;

(f) the manner and timing for handling ad hoc requests for assistance from one auditor to the other, including a request for further information on irregularities disclosed in the audit report of the auditor of the master UCITS.

2. The agreement referred to in paragraph 1 shall include provisions on the preparation of the audit reports referred to in Article 62(2) and Article 73 of Directive 2009/65/EC and the manner and timing for the provision of the audit report for the master UCITS and drafts of it to the auditor of the feeder UCITS.

3. Where the feeder UCITS and the master UCITS have different accounting year-end dates, the agreement referred to in paragraph 1 shall include the manner and timing by which the auditor of the master UCITS is to make the ad hoc report required by the first subparagraph of Article 62(2) Directive 2009/65/EC and to provide it and drafts of it to the auditor of the feeder UCITS.

- *Article 62 of the consolidated UCITS Directive – p. 92*
- *Recital 53 of Directive UCITS IV – p. 13*

- *Recital 17 of Commission Directive 2010/42 – p. 220*

Article 28
Choice of the applicable law

1. Member State shall ensure that where the feeder UCITS and the master UCITS have concluded an agreement in accordance with Article 60(1) of Directive 2009/65/EC, the agreement between the auditors of the master UCITS and the feeder UCITS provides that the law of the Member State applying to that agreement in accordance with Article 14 of this Directive shall also apply to the information-sharing agreement between both auditors and that both auditors agree to the exclusive jurisdiction of the courts of that Member State.

2. Member States shall ensure that where the agreement between the feeder UCITS and the master UCITS has been replaced by internal conduct of business rules in accordance with the third subparagraph of Article 60(1) of Directive 2009/65/EC, the agreement between the auditors of the master UCITS and the feeder UCITS provides that the law applying to the information-sharing agreement between both auditors shall be either that of the Member State in which the feeder UCITS is established or, where different, that of the Member State in which the master UCITS is established, and that both auditors agree to the exclusive jurisdiction of the courts of the Member State whose law is applicable to the information-sharing agreement.

SECTION 4
Manner of providing the information to unit-holders

Article 29
Manner of providing the information to unit-holders

Member States shall ensure that the feeder UCITS provides the information to unit-holders pursuant to Article 64(1) of Directive 2009/65/EC in the same manner as prescribed by Article 7 of this Directive.

- *Article 64 of the consolidated UCITS Directive – p. 94*

CHAPTER IV
NOTIFICATION PROCEDURE

- *Article 93(1) of the consolidated UCITS Directive – p. 109*

- *Cf. Commission Regulation 584/2010 – pp. 271 ff.*

Article 30
Scope of the information to be made accessible by Member States in accordance with Article 91(3) of Directive 2009/65/EC

1. Member States shall ensure that the following categories of information on the relevant laws, regulations and administrative provisions are made accessible in accordance with Article 91(3) of Directive 2009/65/EC:

(a) the definition of the term ‘marketing of units of UCITS’ or the equivalent legal term either as stated in national legislation or as developed in practice;

(b) requirements for the contents, format and manner of presentation of marketing communications, including all compulsory warnings and restrictions on the use of certain words or phrases;

(c) without prejudice to Chapter IX of Directive 2009/65/EC, details of any additional information required to be disclosed to investors;

(d) details of any exemptions from rules or requirements governing arrangements made for marketing applicable in that Member State for certain UCITS, certain share classes of UCITS or certain categories of investors;

(e) requirements for any reporting or transmission of information to the competent authorities of that Member State, and the procedure for lodging updated versions of required documents;

(f) requirements for any fees or other sums to be paid to the competent authorities or any other statutory body in that Member State, either when marketing commences or periodically thereafter;

(g) requirements in relation to the facilities to be made available to unit-holders as required by Article 92 of Directive2009/65/EC;

(h) conditions for the termination of marketing of units of UCITS in that Member State by a UCITS situated in another Member State;

(i) detailed contents of the information required by a Member State to be included in Part B of the notification letter as referred to in Article 1 of Commission Regulation (EU) No 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities[1];

(j) the e-mail address designated for the purpose of Article 32.

2. Member States shall give the information listed in paragraph 1 in the form of a narrative description, or a combination of a narrative description and a series of references or links to source documents.

Article 31
UCITS host Member State’s access to documents

1. Member States shall require UCITS to ensure that an electronic copy of each document referred to in Article 93(2) of Directive 2009/65/EC is made available on a website of the UCITS, or a website of the management company that manages that UCITS, or on

[1] See page 16 of this Official Journal. [OJ L 176, 10.7.2010, p.16]

another website designated by the UCITS in the notification letter submitted in accordance with Article 93(1) of Directive 2009/65/EC or any updates of it. Any document made available on a website shall be provided in an electronic format in common use.

2. Member States shall require UCITS to ensure that the UCITS host Member State has access to the website referred to in paragraph 1.

Article 32
Updates of documents

1. Competent authorities shall designate an e-mail address for the purpose of receiving notification of updates and amendments to the documents referred to in Article 93(2) of Directive 2009/65/EC, pursuant to Article 93(7) of that Directive.

2. Member States shall allow UCITS to notify any update or amendment to the documents referred to in Article 93(2) of Directive 2009/65/EC, pursuant to Article 93(7) of Directive 2009/65/EC by e-mail to be sent to the e-mail address referred to in paragraph 1.

The e-mail notifying such an update or amendment may either describe the update or the amendment that has been made, or provide a new version of the document as an attachment.

3. Member States shall require that any document attached to the e-mail referred to in paragraph 2, shall be provided by UCITS in a commonly used electronic format.

Article 33
Development of common data processing systems

1 In order to facilitate access by the competent authorities of the UCITS host Member States to the information or documents referred to in Article 93(1), (2) and (3) of Directive 2009/65/EC, for the purpose of Article 93(7) of that Directive, competent authorities of Member States may coordinate the establishment of sophisticated electronic data processing and central storage systems common to all Member States.

2. The coordination between Member States referred to in paragraphe1 shall take place in the Committee of European Securities Regulators.

CHAPTER V
FINAL PROVISIONS

Article 34
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2011 at the latest.

However, they shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 7 and 29 by 31 December 2013 at the latest.

They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 35
Entry into force

This Directive shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

Article 36
Addressees

This Directive is addressed to the Member States.

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COMMISSION REGULATION (EU) No 583/2010

of 1 July 2010

implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to under- takings for collective investment in transferable securities (UCITS)[1], and in particular Article 75(4), Article 78(7), and Article 81(2) thereof,

Whereas:

(1) Directive 2009/65/EC specifies the main principles that should be followed in preparing and providing key investor information, including requirements concerning its format and presentation, its objectives, the main elements of the information that is to be disclosed, who should deliver the information to whom, and the methods that should be used for such delivery. Details on the content and format have been left to be developed further by means of implementing measures, which should be specific enough to ensure that investors receive the information they need in respect to particular fund structures.

(2) The form of a Regulation is justified as this form alone can ensure that the exhaustive content of key investor information is harmonised. Furthermore, a key investor information document will be more efficient where requirements applicable to it are identical in all Member States. All stakeholders should benefit from a harmonised regime on the form and content of the disclosure, which will ensure that information about investment opportunities in the UCITS' market is consistent and comparable.

(3) In some cases, key investor information can be delivered more effectively when the key investor information document is provided to investors through a website, or where the key investor information document is attached to another document when it is given to the potential investor. In these cases, however, the context in which the key investor information document appears should not under- mine the key investor information document, or imply that it is an item of promotional literature or that accompanying items of promotional literature are of equal or greater relevance to the retail investor.

⇧ (Article 3 of Commission Regulation 583/2010)

[1] OJ L 302, 17.11.2009, p.32.

(4) It is necessary to ensure that the content of the information is relevant, the organisation of the information is logical and the language appropriate for retail investors. To address these concerns, this Regulation should ensure that the key investor information document is able to engage investors and aid comparisons through its format, presentation and the quality and nature of the language used. This Regulation aims to ensure consistency in the format of the document, including a common running order with identical headings.

⇧ (Article 5 of Commission Regulation 583/2010)

(5) This Regulation specifies the content of the information on investment objectives and the investment policy of UCITS so that investors can easily see whether or not a fund is likely to be suitable for their needs. For this reason, the information should indicate whether returns can be expected in the form of capital growth, payment of income, or a combination of both. The description of the investment policy should indicate to the investor what the over- all aims of the UCITS are and how these objectives are to be achieved. With regard to the financial instruments in which investments are to be made, only those which may have a material impact on UCITS' performance need to be mentioned, rather than all possible eligible instruments.

⇧ (Article 78(3)(b) consolidated UCITS Directive) ⇧ (Articles 7 ff. of Commission Regulation 583/2010)

(6) This Regulation lays down detailed rules on the presentation of the risk and reward profile of the investment, by requiring use of a synthetic indicator and specifying the content of narrative explanations of the indicator itself and risks which are not captured by the indicator, but which may have a material impact on the risk and reward profile of the UCITS. In applying the rules on the synthetic indicator account should be taken of the methodology for the calculation of the synthetic indicator as developed by competent authorities working within the Committee of European Securities Regulators. The management company should decide on a case-by-case basis which specific risks should be disclosed by analysing the particular characteristics of each fund, bearing in mind the need to avoid over- burdening the document with information that retail investors will find difficult to understand. In addition the narrative explanation of the risk and reward profile should be limited in size in terms of the amount of space it occupies within the key investor information document. It should be possible to have cross-references to the prospectus of the UCITS where full details of its risks are disclosed.

⇧ (Article 78(3)(e) consolidated UCITS Directive) ⇧ (Articles 8 ff. Commission Regulation 583/2010)

(7) Consistency should be ensured between the explanation of risks in the key investor information document and the management company's internal processes related to risk management, established in accordance with Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and the Council as regards organisational requirements, conflicts of interests, conduct of business, risk management and content of the agreement between a depositary and a management company[1]. For instance, so as to ensure consistency, the permanent risk management function should where appropriate be given the opportunity to review and

[1] See page 42 of this Official Journal. [OJ L 176, 10.7.2010, p. 42]

comment on the risk and reward profile section of the key investor information document.

(8) This Regulation specifies the common format for the presentation and explanation of charges, including relevant warnings, so that investors are appropriately informed about the charges they will have to incur and their proportion to the amount of capital actually invested into the fund. In applying these rules, account should be taken of the work on the methodology for the calculation of charges figures as developed by competent authorities working within the Committee of European Securities Regulators.

⇧ (Article 78(3)(d) consolidated UCITS Directive) ⇧ (Articles 10 ff. Commission Regulation 583/2010)

(9) The detailed rules on the presentation of information about past performance are based on the requirements for such information in the Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC[1]. This Regulation supplements the rules of Directive 2004/39/EC by including specific requirements necessary for harmonising the information for the purpose of facilitating comparisons between different key investor information documents. In particular, this Regulation prescribes that only net annual returns shall be shown, through a bar chart format. Certain aspects of the presentation of the bar chart should be regulated, including the limited circumstances in which simulated data might be used.

⇧ (Article 78(3)(c) consolidated UCITS Directive) ⇧ (Articles 15 ff. Commission Regulation 583/2010)

(10) It should be recognised that cross-referring to information might be useful to the investor but it is essential that the key investor information document should contain all information necessary for the investor to understand the essential elements of the UCITS. If cross-references to sources of information other than the prospectus and periodic reports are used, it should be made clear that the prospectus and periodic reports are the primary sources of additional information for investors, and the cross-references should not downplay their significance.

(11) The key investor information document should be reviewed and revised as appropriate and as frequently as is necessary to ensure that it continues to meet the requirements for key investor information specified in Articles 78(2) and 79(1) of Directive 2009/65/EC. As a matter of good practice, management companies should review the key investor information document before entering into any initiative that is likely to result in a significant number of new investors acquiring units in the fund.

(12) The form or content of key investor information may need to be adjusted to specific cases. Consequently, this Regulation tailors the general rules applicable to all UCITS so as to take into account the specific situation of certain types of UCITS, namely those having different investment compartments or share classes, those with fund of funds

[1] OJ L 145, 30.4.2004, p.1.

structures, those with master-feeder structures, and those that are structured, such as capital protected or comparable UCITS.

(13) With regard to UCITS having different share classes, there should be no obligation to produce a separate key investor information document for every such share class, so long as investors' interests are not compromised. The details of two or more classes may be combined into a single key investor information document only where this can be done without making the document too complicated or crowded. Alternatively, a representative class may be selected, but only in cases where there is sufficient similarity between the classes such that information about the representative class is fair, clear and not misleading as regards the represented class. In determining whether the use of a representative class is fair, clear and not misleading, regard should be had to the characteristics of the UCITS, the nature of the differences represented by each class, and the range of choices on offer to each investor or group of investors.

⇧ (Article 78(7)(b)(ii) consolidated UCITS Directive) ⇧ (Articles 26 and 27 of Commission Regulation 583/2010)

(14) In the case of a fund of funds, the right balance is kept between the information on the UCITS that the investor invests in and its underlying collectives. The key investor information document of a fund of funds should therefore be prepared on the basis that the investor does not wish or need to be informed in detail about the individual features of each of the underlying collectives, which in any case are likely to vary from time to time if the UCITS is being actively managed. However, in order for the key investor information document to deliver effective disclosure of the fund of funds' objective and investment policy, risk factors, and charging structure, the characteristics of its underlying funds should be transparent.

⇧ (Article 78 (7)(b)(iii) consolidated UCITS Directive) ⇧ (Articles 28 ff. Commission Regulation 583/2010)

(15) In the case of master-feeder structures, the description of the feeder UCITS' risk and reward profile should not be materially different to that of the corresponding section in the master UCITS' key investor information document so that the feeder can copy information from the key investor information document of the master wherever it is relevant. However, this information should be supplemented by relevant statements or duly adjusted in those cases where ancillary assets held by the feeder might modify the risk profile compared to the master, addressing the risks inherent in these ancillary assets, for instance where derivatives are used. The combined costs of investing in the feeder and the master should be disclosed to investors in the feeder.

⇧ (Article 78(7)(b)(iv) consolidated UCITS Directive) ⇧ (Articles 31 ff. Commission Regulation 583/2010)

(16) With regard to structured UCITS, such as capital protected and other comparable UCITS, the provision of prospective performance scenarios in place of past performance information is required. Prospective performance scenarios involve calculating the expected return of the fund under favourable, adverse, or neutral hypotheses regarding market conditions. These scenarios should be chosen so as to effectively illustrate the full range of possible outcomes according to the formula.

⇧ (Article 78(7)(b)(v) consolidated UCITS Directive) ⇧ (Articles 36 and 37 Commission Regulation 583/2010)

(17) Where the key investor information and the prospectus are to be provided in a durable medium other than paper or by means of a website, additional safety measures are

necessary for investor protection reasons, so as to ensure that investors receive information in a form relevant to their needs, and so as to maintain the integrity of the information provided, prevent alterations that undermine its comprehensibility and effectiveness, and avoid manipulation or modification by unauthorised persons. This Regulation contains a reference to rules on durable medium laid down in the Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive[1] in order to ensure the equal treatment of investors and a level playing field in financial sectors.

⇧ (Article 81(2) consolidated UCITS Directive)

(18) In order to allow management companies and investment companies to adapt to the new requirements contained in this Regulation in an efficient and effective manner, the starting date of application of this Regulation should be aligned with the transposition of Directive 2009/65/EC.

(19) The Committee of European Securities Regulators, established by Commission Decision 2009/77/EC[2], has been consulted for technical advice.

(20) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

CHAPTER I
SUBJECT MATTER AND GENERAL PRINCIPLES

Article 1
Subject matter

This Regulation lays down the detailed rules for the implementation of Articles 75(2), 78(2) to (5) and 81(1) of Directive 2009/65/EC.

Article 2
General principles

1. Requirements laid down in this Regulation shall apply to any management company with regard to each UCITS it manages.

[1] OJ L 241, 2.9.2006, p. 26.

[2] OJ L 25, 29.1.2009, p. 18.

2. This Regulation shall apply to any investment company which has not designated a management company authorised pursuant to Directive 2009/65/EC.

Article 3
Principles regarding the key investor information document

1. This Regulation specifies in an exhaustive manner the form and content of the document containing key investor information (hereinafter referred to as key investor information document). No other information or statements shall be included except where this Regulation states otherwise.

2. The key investor information shall be fair, clear and not misleading.

- *Article 79(1) of the consolidated UCITS Directive – p. 104*

3. The key investor information document shall be provided in such a way as to ensure that investors are able to distinguish it from other material. In particular, it shall not be presented or delivered in a way that is likely to lead investors to consider it less important than other information about the UCITS and its risks and benefits.

- *Recital 3 of Commission Regulation 583/2010 – p. 243*

- *CESR's guide to clear language and layout for the KIID (CESR/10-1320) – pp. 331 ff.*

CHAPTER II
FORM AND PRESENTATION OF KEY INVESTOR INFORMATION

- *CESR's template for the KIID (CESR/10-1321) – pp. 343*

SECTION 1
Title of document, order of contents and headings of sections

Article 4
Title and content of document

- *Article 78(1) of the consolidated UCITS Directive – p. 101*

1. The content of the key investor information document shall be presented in the order as set out in paragraphs 2 to 13.

2. The title 'Key investor information' shall appear prominently at the top of the first page of the key investor information document.

3. An explanatory statement shall appear directly underneath the title. It shall read:

'*This document provides you with key investor information about this fund. It is not marketing material. The information is required by law to help you understand the nature and the risks*

of investing in this fund. You are advised to read it so you can make an informed decision about whether to invest'.

4. The identification of the UCITS, including the share class or investment compartment thereof, shall be stated prominently. In the case of an investment compartment or share class, the name of the UCITS shall follow the compartment or share class name. Where a code number identifying the UCITS, investment compartment or share class exists, it shall form part of the identification of the UCITS.

5. The name of the management company shall be stated.

6. In addition, in cases where the management company forms part of a group of companies for legal, administrative or marketing purposes, the name of that group may be stated. Corporate branding may be included provided it does not hinder an investor in understanding the key elements of the investment or diminish his ability to compare investment products.

7. The section of the key investor information document entitled 'Objectives and investment policy' shall contain the information set out in Section 1 of Chapter III of this Regulation.

8. The section of the key investor information document entitled 'Risk and reward profile' shall contain the information set out in Section 2 of Chapter III of this Regulation.

9. The section of the key investor information document entitled 'Charges' shall contain the information set out in Section 3 of Chapter III of this Regulation.

10. The section of the key investor information document entitled 'Past performance' shall contain the information set out in Section 4 of Chapter III of this Regulation.

11. The section of the key investor information document entitled 'Practical information' shall contain the information set out in Section 5 of Chapter III of this Regulation.

12. Authorisation details shall consist of the following statement:

'This fund is authorised in [name of Member State] and regulated by [identity of competent authority]'.

In cases where the UCITS is managed by a management company exercising rights under Article 16 of Directive 2009/65/EC, an additional statement shall be included:

'[Name of management company] is authorised in [name of Member State] and regulated by [identity of competent authority]'.

13. Information on publication shall consist of the following statement:

'This key investor information is accurate as at [the date of publication]'.

SECTION 2
Language, length and presentation

Article 5
Presentation and language

1. A key investor information document shall be:

(a) presented and laid out in a way that is easy to read, using characters of readable size;

(b) clearly expressed and written in language that communicates in a way that facilitates the investor's understanding of the information being communicated, in particular where:

(i) the language used is clear, succinct and comprehensible;

(ii) the use of jargon is avoided;

(iii) technical terms are avoided when everyday words can be used instead;

(c) focused on the key information that investors need.

2. Where colours are used, they shall not diminish the comprehensibility of the information in the event that the key investor information document is printed or photocopied in black and white.

3. Where the design of the corporate branding of the management company or the group to which it belongs is used, it shall not distract the investor or obscure the text.

- *Article 78(5) of the consolidated UCITS Directive – p. 101*

- *Recital 4 of Regulation 583/2010 – p. 244*

- *CESR's guide to clear language and layout for the KIID – pp. 331 ff.*

Article 6
Length

The key investor information document shall not exceed two pages of A4-sized paper when printed.

CHAPTER III

CONTENT OF SECTIONS OF THE KEY INVESTOR INFORMATION DOCUMENT

SECTION 1

Objectives and investment policy

Article 7

Specific contents of the description

1. The description contained in the 'Objectives and investment policy' section of the key investor information document shall cover those essential features of the UCITS about which an investor should be informed, even if these features do not form part of the description of objectives and investment policy in the prospectus, including:

(a) the main categories of eligible financial instruments that are the object of investment;

(b) the possibility that the investor may redeem units of UCITS on demand, qualifying that statement with an indication as to the frequency of dealing in units;

(c) whether the UCITS has a particular target in relation to any industrial, geographic or other market sectors or specific classes of assets;

(d) whether the UCITS allows for discretionary choices in regards to the particular investments that are to be made, and whether this approach includes or implies a reference to a benchmark and if so, which one;

(e) whether dividend income is distributed or reinvested.

For the purposes of point (d), where a reference to a benchmark is implied, the degree of freedom available in relation to this benchmark shall be indicated, and where the UCITS has an index- tracking objective, this shall be stated.

2. The description referred to in paragraph 1 shall include the following information, so long as it is relevant:

(a) where the UCITS invests in debt securities, an indication of whether they are issued by corporate bodies, governments or other entities, and, if applicable, any minimum rating requirements;

(b) where the UCITS is a structured fund, an explanation in simple terms of all elements necessary for a correct understanding of the pay-off and the factors that are expected to determine performance, including references, if necessary, to the details on the algorithm and its workings which appear in the prospectus;

(c) where the choice of assets is guided by specific criteria, an explanation of those criteria, such as 'growth', 'value' or 'high dividends';

(d) where specific asset management techniques are used, which may include hedging, arbitrage or leverage, an explanation in simple terms of the factors that are expected to determine the performance of the UCITS;

(e) where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the UCITS, a statement that this is the case, making it also clear that portfolio transaction costs are paid from the assets of the fund in addition to the charges set out in Section 3 of this Chapter;

(f) where a minimum recommended term for holding units in the UCITS is stated either in the prospectus or in any marketing documents, or where it is stated that a minimum holding period is an essential element of the investment strategy, a statement with the following wording:

'Recommendation: this fund may not be appropriate for investors who plan to withdraw their money within [period of time]'.

3. Information included under paragraphs 1 and 2 shall distinguish between the broad categories of investments as specified under paragraphs 1(a), (c) and 2(a) and the approach to these investments to be adopted by a management company as specified under paragraphs 1(d) and 2 (b), (c) and (d).

4. The 'Objectives and investment policy' section of the key investor information document may contain elements other than those listed in paragraph 2, including the description of the UCITS' investment strategy, where these elements are necessary to adequately describe the objectives and investment policy of the UCITS.

- *Article 78(3)(b) of the consolidated UCITS Directive – p. 101*

- *Recital 5 of Commission Regulation 583/2010 – p. 244*

- *CESR's template for the KIID (CESR/10-1321) – pp. 343 ff.*

SECTION 2
Risk and reward profile

Article 8
Explanation of potential risks and rewards, including the use of an indicator

1. The 'Risk and reward profile' section of the key investor information document shall contain a synthetic indicator, supplemented by:

(a) a narrative explanation of the indicator and its main limitations;

(b) a narrative explanation of risks which are materially relevant to the UCITS and which are not adequately captured by the synthetic indicator.

2. The synthetic indicator referred to in paragraphe1 shall take the form of a series of categories on a numerical scale with the UCITS assigned to one of the categories. The presentation of the synthetic indicator shall comply with the requirements laid down in Annex I.

3. The computation of the synthetic indicator referred to in paragraph 1, as well as any of its subsequent revisions, shall be adequately documented.

Management companies shall keep records of these computations for a period of not less than five years. This period shall be extended to five years after maturity for the case of structured funds.

4. The narrative explanation referred to in paragraph 1(a) shall include the following information:

(a) a statement that historical data, such as is used in calculating the synthetic indicator, may not be a reliable indication of the future risk profile of the UCITS;

(b) a statement that the risk and reward category shown is not guaranteed to remain unchanged and that the categorisation of the UCITS may shift over time;

(c) a statement that the lowest category does not mean a risk- free investment;

(d) a brief explanation as to why the UCITS is in a specific category;

(e) details of the nature, timing and extent of any capital guarantee or protection offered by the UCITS, including the potential effects of redeeming units outside of the guaranteed or protected period.

5. The narrative explanation referred to in paragraph 1(b) shall include the following categories of risks, where these are material:

(a) credit risk, where a significant level of investment is made in debt securities;

(b) liquidity risk, where a significant level of investment is made in financial instruments, which are by their nature sufficiently liquid, yet which may under certain circumstances have a relatively low level of liquidity, so as to have an impact on the level of liquidity risk of the UCITS as a whole;

(c) counterparty risk, where a fund is backed by a guarantee from a third party, or where its investment exposure is obtained to a material degree through one or more contracts with a counterparty;

(d) operational risks and risks related to safekeeping of assets;

(e) impact of financial techniques as referred to in Article 50(1)(g) of Directive 2009/65/EC such as derivative contracts on the UCITS' risk profile where such techniques are used to obtain, increase or reduce exposure to underlying assets.

- *Article 78(3)(e) of the consolidated UCITS Directive – p. 101*

- *Recitals 6 and 7 of Commission Regulation 583/2010 – p. 244*
- *Annex I of Commission Regulation 583/2010 – p. 267*

- *CESR's guidelines on the methodology for the calculation of the SRRI (CESR/10-673) – p. 353 ff.*

Article 9

Principles governing the identification, explanation and presentation of risks

The identification and explanation of risks referred to in Article 8(1)(b) shall be consistent with the internal process for identifying, measuring and monitoring risk adopted by the UCITS' management company as laid down in Directive 2010/43/EU. Where a management company manages more than one UCITS, the risks shall be identified and explained in a consistent fashion.

SECTION 3

Charges

Article 10

Presentation of charges

1. The 'Charges' section of the key investor information document shall contain a presentation of charges in the form of a table as laid down in Annex II.

2. The table referred to in paragraph 1 shall be completed in accordance with the following requirements:

(a) entry and exit charges shall each be the maximum percentage which might be deducted from the investor's capital commitment to the UCITS;

(b) a single figure shall be shown for charges taken from the UCITS over a year, to be known as the 'ongoing charges,' representing all annual charges and other payments taken from the assets of the UCITS over the defined period, and based on the figures for the preceding year;

(c) the table shall list and explain any charges taken from the UCITS under certain specific conditions, the basis on which the charge is calculated, and when the charge applies.

- *Article 78(3)(d) of the consolidated UCITS Directive – p. 101*

- *Recital 8 of Commission Regulation 583/2010 – p. 245*
- *Annex I of Commission Regulation 583/2010 – p. 267*

- *CESR's guidelines on the methodology for calculation of the ongoing charges figure (CESR/10-674) – pp. 347 ff.*

Article 11

Explanation of charges and a statement about the importance of charges

1. The 'Charges' section shall contain a narrative explanation of each of the charges specified in the table including the following information:

(a) with regard to entry and exit charges:

(i) it shall be made clear that the charges are always maximum figures, as in some cases the investor might pay less;

(ii) a statement shall be included stating that the investor can find out the actual entry and exit charges from their financial adviser or distributor;

(b) with regard to 'ongoing charges', there shall be a statement that the ongoing charges figure is based on the last year's expenses, for the year ending [month/year], and that this figure may vary from year to year where this is the case.

2. The 'Charges' section shall contain a statement about the importance of charges which shall make clear that the charges an investor pays are used to pay the costs of running the UCITS, including the costs of marketing and distributing the UCITS, and that these charges reduce the potential growth of the investment.

Article 12
Additional requirements

1. All of the elements of the charging structure shall be presented as clearly as possible to allow investors to consider the combined impact of the charges.

2. Where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the UCITS, this shall be stated within the 'Objectives and investment policy' section, as indicated in Article 7(2)(e).

3. Performance fees shall be disclosed in accordance with Article 10(2)(c). The amount of the performance fee charged during the UCITS' last financial year shall be included as a percentage figure.

Article 13
Specific cases

1. Where a new UCITS cannot comply with the requirements contained in Article 10(2)(b) and Article 11(1)(b), the ongoing charges shall be estimated, based on the expected total of charges.

2. Paragraph 1 shall not apply in the following cases:

(a) for funds which charge a fixed all-inclusive fee, where instead that figure shall be displayed;

(b) for funds which set a cap or maximum on the amount that can be charged, where instead that figure shall be disclosed so long as the management company gives a commitment to respect the published figure and to absorb any costs that would otherwise cause it to be exceeded.

Article 14
Cross-referencing

The 'Charges' section shall include, where relevant, a cross- reference to those parts of the UCITS prospectus where more detailed information on charges can be found, including information on performance fees and how they are calculated.

SECTION 4
Past performance

Article 15
Presentation of past performance

1. The information about the past performance of the UCITS shall be presented in a bar chart covering the performance of the UCITS for the last 10 years.

The size of the bar chart referred to in the first subparagraph shall allow for legibility, but shall under no circumstances exceed half a page in the key investor information document.

2. UCITS with performance of less than 5 complete calendar years shall use a presentation covering the last 5 years only.

3. For any years for which data is not available, the year shall be shown as blank with no annotation other than the date.

4. For a UCITS which does not yet have performance data for one complete calendar year, a statement shall be included explaining that there is insufficient data to provide a useful indication of past performance to investors.

5. The bar chart layout shall be supplemented by statements which appear prominently and which:

(a) warn about its limited value as a guide to future performance;

(b) indicate briefly which charges and fees have been included or excluded from the calculation of past performance;

(c) indicate the year in which the fund came into existence;

(d) indicate the currency in which past performance has been calculated.

The requirement laid down in point (b) shall not apply to UCITS which do not have entry or exit charges.

6. A key investor information document shall not contain any record of past performance for any part of the current calendar year.

- *Article 78(3)(c) of the consolidated UCITS Directive – p. 101*

- *Recital 9 of Commission Regulation 583/2010 – p. 245*

Article 16
Past performance calculation methodology

The calculation of past performance figures shall be based on the net asset value of the UCITS, and they shall be calculated on the basis that any distributable income of the fund has been reinvested.

Article 17
Impact and treatment of material changes

1. Where a material change occurs to a UCITS' objectives and investment policy during the period displayed in the bar chart referred to in Article 15, the UCITS' past performance prior to that material change shall continue to be shown.

2. The period prior to the material change referred to in paragraph 1 shall be indicated on the bar chart and labelled with a clear warning that the performance was achieved under circumstances that no longer apply.

Article 18
Use of a benchmark alongside the past performance

1. Where the 'Objectives and investment policy' section of the key investor information document makes reference to a benchmark, a bar showing the performance of that benchmark shall be included in the chart alongside each bar showing the UCITS' past performance.

2. For UCITS which do not have past performance data over the required five or 10 years, the benchmark shall not be shown for years in which the UCITS did not exist.

Article 19
Use of 'simulated' data for past performance

1. A simulated performance record for the period before data was available shall only be permitted in the following cases, provided that its use is fair, clear and not misleading:

(a) a new share class of an existing UCITS or investment compartment may simulate its performance by taking the performance of another class, provided the two classes do not differ materially in the extent of their participation in the assets of the UCITS;

(b) a feeder UCITS may simulate its performance by taking the performance of its master UCITS, provided that one of the following conditions are met:

  (i) the feeder's strategy and objectives do not allow it to hold assets other than units of the master and ancillary liquid assets;

  (ii) the feeder's characteristics do not differ materially from those of the master.

2. In all cases where performance has been simulated in accordance with paragraph 1, there shall be prominent disclosure on the bar chart that the performance has been simulated.

3. A UCITS changing its legal status but remaining established in the same Member State shall retain its performance record only where the competent authority of the Member State reasonably assesses that the change of status would not impact the UCITS' performance.

4. In the case of mergers referred to in Article 2(1)(p)(i) and (iii) of Directive 2009/65/EC, only the past performance of the receiving UCITS shall be maintained in the key investor information document.

SECTION 5
Practical information and cross-references

Article 20
Content of 'practical information' section

1. The 'Practical information' section of the key investor information document shall contain the following information relevant to investors in every Member State in which the UCITS is marketed:

(a) the name of the depositary;

(b) where and how to obtain further information about the UCITS, copies of its prospectus and its latest annual report and any subsequent half-yearly report, stating in which language(s) those documents are available, and that they may be obtained free of charge;

(c) where and how to obtain other practical information, including where to find the latest prices of units;

(d) a statement that the tax legislation of the UCITS' home Member State may have an impact on the personal tax position of the investor;

(e) the following statement:

'[Insert name of investment company or management company] may be held liable solely on the basis of any statement contained in this document that is misleading, inaccurate or inconsistent with the relevant parts of the prospectus for the UCITS.'

2. Where the key investor information document is prepared for a UCITS investment compartment, the 'Practical information' section shall include the information specified in Article 25(2) including on investors' rights to switch between compartments.

3. Where applicable, the 'Practical information' section of the key investor information document shall state the information required about available share classes in accordance with Article 26.

Article 21
Use of cross-references to other sources of information

1. Cross-references to other sources of information, including the prospectus and annual or half-yearly reports, may be included in the key investor information document, provided that all information fundamental to the investors' understanding of the essential elements of the investment is included in the key investor information document itself.

Cross-references shall be permitted to the website of the UCITS or the management company, including a part of any such website containing the prospectus and the periodic reports.

2. Cross-references referred to in paragraph 1 shall direct the investor to the specific section of the relevant source of information. Several different cross-references may be used within the key investor information document but they shall be kept to a minimum.

SECTION 6
Review and revision of the key investor information document

Article 22
Review of key investor information

1. A management company or investment company shall ensure that a review of key investor information is carried out at least every twelve months.

2. A review shall be carried out prior to any proposed change to the prospectus, the fund rules or the instrument of incorporation of the investment company where these changes were not subject to review as referred to in paragraph 1.

3. A review shall be carried out prior to or following any changes regarded as material to the information contained in the key investor information document.

- *Article 81 of the consolidated UCITS Directive – p. 105*

- *Recital 11 of Commission Regulation 583/2010 – p. 245*

Article 23
Publication of the revised version

1. Where a review referred to in Article 22 indicates that changes need to be made to the key investor information document, its revised version shall be made available promptly.

2. Where a change to the key investor information document was the expected result of a decision by the management company, including changes to the prospectus, fund rules or the instrument of incorporation of the investment company, the revised version of the key investor information document shall be made available before the change comes into effect.

3. A key investor information document with duly revised presentation of past performance of the UCITS shall be made available no later than 35 business days after 31 December each year.

Article 24
Material changes to the charging structure

1. The information on charges shall properly reflect any change to the charging structure that results in an increase in the maximum permitted amount of any one-off charge payable directly by the investor.

2. Where the 'ongoing charges' calculated in accordance with Article 10(2)(b) are no longer reliable, the management company shall instead estimate a figure for 'ongoing charges' that it believes on reasonable grounds to be indicative of the amount likely to be charged to the UCITS in future.

This change of basis shall be disclosed through the following statement:

'The ongoing charges figure shown here is an estimate of the charges. [Insert short description of why an estimate is being used rather than an ex-post figure.] The UCITS' annual report for each financial year will include detail on the exact charges made.'

CHAPTER IV
PARTICULAR UCITS STRUCTURES

SECTION 1
Investment compartments

Article 25
Investment compartments

1. Where a UCITS consists of two or more investment compartments a separate key investor information document shall be produced for each individual compartment.

2. Each key investor information document referred to in paragraph 1 shall indicate within the 'practical information' section the following information:

(a) that the key investor information document describes a compartment of a UCITS, and, if it is the case, that the prospectus and periodic reports are prepared for the entire UCITS named at the beginning of the key investor information document;

(b) whether or not the assets and liabilities of each compartment are segregated by law and how this might affect the investor;

(c) whether or not the investor has the right to exchange his investment in units in one compartment for units in another compartment, and if so, where to obtain information about how to exercise that right.

3. Where the management company sets a charge for the investor to exchange his investment in accordance with paragraph 2(c), and that charge differs from the standard charge for buying or selling units, that charge shall be stated separately in the 'Charges' section of the key investor information document.

- *Article 78(7)(b)(i) of the consolidated UCITS Directive – p. 101*

SECTION 2
Share classes

Article 26
Key investor information document for share classes

1. Where a UCITS consists of more than one class of units or shares, the key investor information document shall be prepared for each class of units or shares.

2. The key investor information pertinent to two or more classes of the same UCITS may be combined into a single key investor information document, provided that the resulting document fully complies with all requirements as laid down in Section 2 of Chapter II, including as to length.

3. The management company may select a class to represent one or more other classes of the UCITS, provided the choice is fair, clear and not misleading to potential investors in those other classes. In such cases the 'Risk and reward profile' section of the key investor information document shall contain the explanation of material risk applicable to any of the other classes being represented. A key investor information document based on the representative class may be provided to investors in the other classes.

4. Different classes shall not be combined into a composite representative class as referred to in paragraph 3.

5. The management company shall keep a record of which other classes are represented by the representative class referred to in paragraph 3 and the grounds justifying that choice.

- *Article 78(7)(b)(ii) of the consolidated UCITS Directive – p.101*

- *Recital 13 of Commission Regulation 583/2010 – p. 246*

Article 27
Practical information section

If applicable, the 'Practical information' section of the key investor information document shall be supplemented by an indication of which class has been selected as representative, using the term by which it is designated in the UCITS' prospectus.

That section shall also indicate where investors can obtain information about the other classes of the UCITS that are marketed in their own Member State.

SECTION 3
Fund of funds

Article 28
Objectives and investment policy section

Where the UCITS invests a substantial proportion of its assets in other UCITS or other collective investment undertakings as referred to in Article 50(1)(e) of Directive 2009/65/EC, the description of the objectives and investment policy of that UCITS in the key investor information document shall include a brief explanation of how the other collective undertakings are to be selected on an ongoing basis.

- *Article 78(7)(b)(iii) of the consolidated UCITS Directive – p. 101*

- *Recital 14 of Commission Regulation 583/2010 – p. 246*

Article 29
Risk and reward profile

The narrative explanation of risk factors referred to in Article 8(1)(b) shall take account of the risks posed by each underlying collective undertaking, to the extent that these are likely to be material to the UCITS as a whole.

Article 30
Charges section

The description of the charges shall take account of any charges that that UCITS will itself incur as an investor in the underlying collective undertakings. Specifically, any entry and exit charges and ongoing charges levied by the underlying collective undertakings shall be reflected in the UCITS' calculation of its own ongoing charges figure.

SECTION 4
Feeder UCITS

Article 31
Objectives and investment policy section

1. The key investor information document for a feeder UCITS, as defined in Article 58 of Directive 2009/65/EC, shall contain, in the description of objectives and investment policy, information about the proportion of the feeder UCITS' assets which is invested in the master UCITS.

2. There shall also be a description of the master UCITS' objectives and investment policy, supplemented as appropriate by either of the following:

(i) an indication that the feeder UCITS' investment returns will be very similar to those of the master UCITS; or

(ii) an explanation of how and why the investment returns of the feeder and master UCITS may differ.

- *Article 78(7)(b)(iv) of the consolidated UCITS Directive – p. 101*

- *Recital 15 of Commission Regulation 583/2010 – p. 246*

Article 32
Risk and reward profile section

1. Where the risk and reward profile of the feeder UCITS differs in any material respect from that of the master, this fact and the reason for it shall be explained in the 'Risk and reward profile' section of the key investor information document.

2. Any liquidity risk and the relationship between purchase and redemption arrangements for the master and feeder UCITS shall be explained in the 'Risk and reward profile' section of the key investor information document.

Article 33
Charges section

The 'Charges' section of the key investor information document shall cover both the costs of investing in the feeder UCITS and any costs and expenses that the master UCITS may charge to the feeder UCITS.

In addition, it shall combine the costs of both the feeder and the master UCITS in the ongoing charges figure for the feeder UCITS.

Article 34
Practical information section

1. The key investor information document for a feeder UCITS shall contain in the 'Practical information' section information specific to the feeder UCITS.

2. The information referred to in paragraph 1 shall include:

(a) a statement that the master UCITS' prospectus, key investor information document, and periodic reports and accounts are available to investors of the feeder UCITS upon request, how they may be obtained, and in which language(s);

(b) whether the items listed in point (a) are available in paper copies only or in other durable media, and whether any fee is payable for items not subject to free delivery in accordance with Article 63(5) of Directive 2009/65/EC;

(c) where the master UCITS is established in a different Member State to the feeder UCITS, and this may affect the feeder's tax treatment, a statement to this effect.

Article 35
Past performance

1. The past performance presentation in the key investor information document of the feeder UCITS shall be specific to the feeder UCITS, and shall not reproduce the performance record of the master UCITS.

2. Paragraph 1 shall not apply:

(a) where a feeder UCITS shows the past performance of its master UCITS as a benchmark; or

(b) where the feeder was launched as a feeder UCITS at a later date than the master UCITS, and where the conditions of Article 19 are satisfied, and where a simulated performance is shown for the years before the feeder existed, based on the past performance of the master UCITS; or

(c) where the feeder UCITS has a past performance record from before the date on which it began to operate as a feeder, its own record being retained in the bar chart for the relevant years, with the material change labelled as required by Article 17(2).

SECTION 5
Structured UCITS

Article 36
Performance scenarios

1. The key investor information document for structured UCITS shall not contain the 'Past performance' section.

For the purposes of this Section, structured UCITS shall be understood as UCITS which provide investors, at certain predetermined dates, with algorithm-based payoffs that are linked to the performance, or to the realisation of price changes or other conditions, of financial assets, indices or reference portfolios or UCITS with similar features.

2. For structured UCITS, the 'Objectives and investment policy' section of the key investor information document shall include an explanation of how the formula works or how the pay-off is calculated.

3. The explanation referred to in paragraph 2 shall be accompanied by an illustration, showing at least three scenarios of the UCITS' potential performance. Appropriate scenarios shall be chosen to show the circumstances in which the formula may generate a low, a medium or a high return, including, where applicable, a negative return for the investor.

4. The scenarios referred to in paragraph 3 shall enable the investor to understand fully all the effects of the calculation mechanism embedded in the formula.

They shall be presented in a way that is fair, clear and not misleading, and that is likely to be understood by the average retail investor. In particular, they shall not artificially magnify the importance of the final performance of the UCITS.

5. The scenarios referred to in paragraph 3 shall be based on reasonable and conservative assumptions about future market conditions and price movements.

However, whenever the formula exposes investors to the possibility of substantial losses, such as a capital guarantee that functions only under certain circumstances, these losses shall be appropriately illustrated, even if the probability of the corresponding market conditions is low.

6. The scenarios referred to in paragraph 3 shall be accompanied by a statement that they are examples that are included to illustrate the formula, and do not represent a forecast of what might happen. It shall be made clear that the scenarios shown may not have an equal probability of occurrence.

- *Article 78(7)(b)(v) of the consolidated UCITS Directive – p.101*

- *Recital 16 of Commission Regulation 583/2010 – p. 246*

Article 37
Length

The key investor information document for structured UCITS shall not exceed three pages of A4-sized paper when printed.

CHAPTER V
DURABLE MEDIUM

Article 38
Conditions applying to the provision of a key investor information document or a prospectus in a durable medium other than paper or by means of a website

- *Article 81(2) of the consolidated UCITS Directive – p. 105*

1. Where, for the purposes of Directive 2009/65/EC, the key investor information document or prospectus is to be provided to investors using a durable medium other than paper the following conditions shall be met:

(a) the provision of the key investor information document or the prospectus using such a durable medium is appropriate to the context in which the business between the management company and the investor is, or is to be, carried on; and

(b) the person to whom the key investor information document or the prospectus is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses that other medium.

2. Where the key investor information document or the prospectus is to be provided by means of a website and that information is not addressed personally to the investor, the following conditions shall also be satisfied:

(a) the provision of that information in that medium is appropriate to the context in which the business between the management company and the investor is, or is to be, carried on;

(b) the investor must specifically consent to the provision of that information in that form;

(c) the investor must be notified electronically of the address of the website, and the place on the website where the information may be accessed;

(d) the information must be up to date;

(e) the information must be accessible continuously by means of that website for such period of time as the client may reasonably need to inspect it.

3. For the purposes of this Article, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the management company and the investor is, or is to be, carried on if there is evidence that the investor has regular access to the Inter- net. The provision by the investor of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

CHAPTER VI
FINAL PROVISIONS

Article 39
Entry into force

1. This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

2. This Regulation shall apply from 1 July 2011.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX I

REQUIREMENTS RELATED TO THE PRESENTATION OF THE SYNTHETIC INDICATOR

1. The synthetic indicator shall rank the fund on a scale from 1 to 7 on the basis of its volatility record.

2. The scale shall be shown as a sequence of categories denoted by the whole numbers in ascending order from 1 to7 running from left to right, representing levels of risk and reward, from lowest to highest.

3. It shall be made clear on the scale that lower risk entails potentially lower reward and that higher risk entails potentially higher rewards.

4. The category into which the UCITS falls shall be prominently indicated.

5. No colours shall be used for distinguishing between items on the scale.

- *Article 78(3)(e) of the consolidated UCITS Directive p. 101*

- *Article 8 ff. of Commission Regulation 583/2010 – p. 252*

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ANNEX II

PRESENTATION OF CHARGES

The charges shall be presented in a table structured in the following way:

One-off charges taken before or after you invest	
Entry charge **Exit charge**	[ ] % [ ] %
This is the maximum that might be taken out of your money [before it is invested] [before the proceeds of your investment are paid out]	
Charges taken from the fund over a year	
Ongoing charge	[ ] %
Charges taken from the fund under certain specific conditions	
Performance fee	[ ] % a year of any returns the fund achieves above the benchmark for these fees, the [insert name of benchmark]

- A percentage amount shall be indicated for each of these charges.
- In the case of a performance fee, the amount charged in the fund's last financial year shall be included as a percentage figure.

- *Article 78(3)(d) of the consolidated UCITS Directive – p. 101*

- *Article 10 ff. of Commission Regulation 583/2010 – p. 254*

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ANNEX III

PRESENTATION OF THE PAST PERFORMANCE INFORMATION

The bar chart presenting past performance shall comply with the following criteria:

1. the scale of the Y-axis of the bar chart shall be linear, not logarithmic;

2. the scale shall be adapted to the span of the bars shown and shall not compress the bars so as to make fluctuations in returns harder to distinguish;

3. the X-axis shall be set at the level of 0 % performance;

4. a label shall be added to each bar indicating the return in percentage that was achieved;

5. past performance figures shall be rounded to one decimal place.

- *Article 78(3)(c) of the consolidated UCITS Directive – p. 101*

- *Article 15 ff. of Commission Regulation 2010/583 – p. 256*

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COMMISSION REGULATION (EU) No 584/2010

of 1 July 2010

implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)[1], and in particular Article 95(2)(a), (b) and (c), Article 101(9) and Article 105 thereof,

- *Article 93(1) of the consolidated UCITS Directive – p. 109*

- *Articles 30 ff. Commission Directive 2010/42 – pp. 239 ff.*

Whereas:

(1) Directive 2009/65/EC provides the Commission with implementing powers to specify and harmonise certain aspects of the new procedure for notification of marketing of units of UCITS in a host Member State. Such harmonisation should provide competent authorities with the necessary certainty as to how the new requirements will work and help to ensure that the new procedure functions smoothly.

(2) In order to facilitate the notification procedure it is necessary to specify the form and content of the standard model notification letter to be used by a UCITS and the form and content of the attestation to be used by the competent authorities of Member States to confirm that the UCITS fulfils the conditions set out in Directive 2009/65/EC. Member States should be able to communicate both the notification letter and the attestation electronically.

(3) Given the objective of Directive 2009/65/EC to ensure that a UCITS is able to market its units in other Member States subject to a notification procedure based on improved communication between the competent authorities of the Member States, it is necessary to set out a detailed procedure for the electronic transmission of the notification file between competent authorities.

[1] OJ L 302, 17.11.2009, p. 32.

(4) Directive 2009/65/EC requires the competent authorities of the UCITS home Member State to verify if the notification file is complete before they transmit the complete file to the competent authorities of the Member State in which the UCITS proposes to market its units. It also provides a UCITS with the right to access the market of a host Member State immediately after the complete notification file has been transmitted by the competent authorities of the UCITS home Member State to the competent authorities of a Member State where the UCITS proposes to market its units. In order to ensure legal certainty it is necessary to establish when the transmission of the complete notification file is considered to have taken place. Moreover, the procedure for the use of electronic communication shall require competent authorities of the UCITS home Member State to make sure that transmission of the complete documentation has taken place, before they notify a UCITS about the transmission pursuant to Article 93(3) of Directive 2009/65/EC. It is also necessary to set out procedures for dealing with technical problems that occur in the process of the transmission of the notification file between competent authorities of the UCITS home and host Member State.

(5) In order to simplify the transmission of the notification file as well as take into account technical innovations and the feasibility of developing more sophisticated systems for electronic communication, competent authorities may implement cooperative arrangements to improve the electronic communication of the notification file in particular in relation to system security and the use of encryptions mechanisms. Competent authorities should also coordinate arrangements for electronic communication within the Committee of European Securities Regulators.

(6) Directive 2009/65/EC requires that Member States take the necessary administrative and organisational measures to facilitate cooperation. Enhanced cooperation between competent authorities is necessary to ensure that UCITS and management companies managing UCITS comply with Directive 2009/65/EC and to ensure the smooth functioning of the internal market and a high level of investor protection.

(7) Directive 2009/65/EC provides that the competent authorities of one Member State may request the cooperation of the competent authorities of another Member State in a supervisory activity or for an on-the-spot verification or in an investigation on the territory of the latter. In particular, where a UCITS is managed by a management company situated in another Member State, it is essential to establish mechanisms for cooperation between competent authorities and detailed procedures to be applied when a competent authority needs to carry out an investigation or on-the-spot verification of an entity or person situated in another Member State.

(8) A competent authority should have a right to request the cooperation of other competent authorities with respect to matters falling within the scope of its supervisory responsibilities. The requested authority should provide assistance even where the conduct under investigation is not considered an infringement in its own jurisdiction. The requested authority may refuse assistance in the cases listed in Article 101(6) of Directive 2009/65/EC.

(9) Directive 2009/65/EC requires the competent authorities of Member States to immediately provide each other with the information required for the purpose of carrying out their duties. It is therefore appropriate to set out detailed rules on the routine exchange of information and the exchange of information without prior request.

(10) In order to ensure that the obligations set out in Directive 2009/65/EC and in this Regulation apply from the same date, this Regulation should apply from the same date as the national measures transposing Directive 2009/65/EC.

(11) The Committee of European Securities Regulators, established by Commission Decision 2009/77/EC[1] has been consulted for technical advice.

(12) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

CHAPTER I
NOTIFICATION PROCEDURE

Article 1
Form and content of the notification letter

An undertaking for collective investment in transferable securities (UCITS) shall produce the notification letter as referred to in Article 93(1) of Directive 2009/65/EC in accordance with the model set out in Annex I to this Regulation.

Article 2
Form and content of the UCITS attestation

The competent authorities of the UCITS home Member State shall produce the attestation that the UCITS fulfils the conditions imposed by Directive 2009/65/EC as referred to in Article 93(3) of that Directive in accordance with the model set out in Annex II to this Regulation.

Article 3
Designated e-mail address

1. Competent authorities shall designate an e-mail address for the purpose of transmitting the documentation referred to in Article 93(3) of Directive 2009/65/EC and for the purpose of the exchange of information related to the notification procedure set out in that Article.

2. Competent authorities shall inform the competent authorities of other Member States of the designated e-mail address and shall ensure that any modification of that e-mail address is immediately brought to their attention.

3. The competent authorities of the UCITS home Member State shall transmit all documents referred to in the second subparagraph of Article 93(3) of Directive 2009/65/EC to only the designated e-mail address of the competent authorities of the Member State in which the UCITS proposes to market its units.

[1] OJ L 25, 29.1.2009, p. 18.

4. Competent authorities shall establish a procedure to ensure that their designated e-mail address for receiving notifications is checked each working day.

Article 4
Transmission of the notification file

1. Competent authorities of the UCITS home Member State shall transmit the complete documentation referred to in the first and the second subparagraph of Article 93(3) of Directive 2009/65/EC to the competent authorities of a Member State in which the UCITS proposes to market its units, by e-mail.

Any attachment to the notification letter as specified in Annex I shall be listed in the e-mail and shall be provided in a format in common use that is capable of being viewed and printed.

2. The transmission of the complete documentation as referred to in the second subparagraph of Article 93(3) of Directive 2009/65/EC shall not be considered as having taken place only in any of the following cases:

(a) a document that has to be transmitted is missing, incomplete or is in a format other than that specified in paragraph 1;

(b) the competent authorities of the UCITS home Member State do not use the e-mail address designated by the competent authorities of the Member State in which the UCITS proposes to market its units pursuant to Article 3(1);

(c) the competent authorities of the UCITS home Member State have failed to transmit the complete documentation as a result of a technical failure in their electronic system.

3. Competent authorities of the UCITS home Member State shall ensure that the transmission of the complete documentation as referred to in Article 93(3) of Directive 2009/65/EC has taken place before they notify the UCITS about the transmission.

4. If the competent authorities of the UCITS home Member State are informed or become aware that the transmission of the complete documentation has not taken place, they shall immediately take steps to transmit the complete documentation.

5. Competent authorities may agree to replace the means by which the complete documentation referred to in the second sub- paragraph of Article 93(3) of Directive 2009/65/EC is transmitted by a more sophisticated method of electronic communication than e-mail, or to establish additional procedures to enhance the security of e-mails transmitted.

Any alternative method or enhanced procedure shall comply with the notification time limits set out in Chapter XI of Directive 2009/65/EC and shall not impair the ability of the UCITS to access the market of a Member State other than its home Member State.

Article 5
Receipt of the notification file

1. When the competent authorities of a Member State in which a UCITS proposes to market its units receive the documentation to be transmitted to them pursuant to Article 93(3) of Directive 2009/65/EC, they shall confirm to the competent authorities of the UCITS home

Member State as soon as possible, but no later than five working days from the date of the receipt of such documentation whether or not:

(a) all attachments which have to be listed in accordance with Article 4(1) of this Regulation have been received; and

(b) the documentation which have to be transmitted to them can be viewed or printed.

The confirmation may be sent by e-mail to the competent authorities of the UCITS home Member State, using the address designated pursuant to Article 3(1) unless the relevant competent authorities have agreed on a more sophisticated method for the acknowledgement of receipt.

2. Where the competent authorities of the UCITS home Member State have not received confirmation from the competent authorities of a Member State in which the UCITS proposes to market its units within the time limits specified in paragraph 1, they shall contact the competent authorities of the Member State in which the UCITS proposes to market its units and verify that the transmission of the complete documentation has taken place.

CHAPTER II
SUPERVISORY COOPERATION

SECTION 1
Procedure for on-the-spot verifications and investigations

Article 6
Request for assistance for on-the-spot verifications and investigations

1. A competent authority intending to carry out an on-the-spot verification or investigation on the territory of another Member State ('the requesting authority') shall submit a written request to the competent authority of that other Member State ('the requested authority'). The request shall contain the following:

(a) the reasons for the request, including the legal provisions applicable in the jurisdiction of the requesting authority on which the request is based;

(b) the scope of the on-the-spot verification or the investigation;

(c) the actions already undertaken by the requesting authority;

(d) any actions to be taken by the requested authority;

(e) the proposed methodology of the on-the-spot verification or investigation and the requesting authority's reasons for choosing it.

2. The request shall be submitted sufficiently in advance of the on-the-spot verification or investigation.

3. Where a request for assistance for an on-the-spot verification or investigation is urgent, it may be transmitted by e-mail and subsequently confirmed in writing.

4. The requested authority shall acknowledge receipt of the request without undue delay.

5. The requesting authority shall make available any information that has been requested by the requested authority in order to enable the requested authority to provide the necessary assistance.

6. The requested authority shall transmit without undue delay any information and documents that are available to it as are relevant or useful to the requesting authority, in light of the reasons for and scope of the on-the-spot verification or the investigation.

7. The requested authority and the requesting authority shall reassess the necessity of the on-the-spot verification and investigation in light of the documents and information transmitted pursuant to paragraph 5 or 6.

8. The requested authority shall decide whether it carries out the on-the-spot verification or investigation itself or whether it allows the requesting authority to carry out the on-the-spot verification or investigation, or whether it allows auditors or other experts to carry out the on-the-spot verification or investigation.

9. The requested authority and the requesting authority shall agree on issues related to the allocations of costs of on-the-spot verification or investigation.

Article 7

Carrying out of the on-the-spot verification and investigation by the requested authority

1. Where the requested authority has decided to carry out the on-the-spot verification or investigation itself, it shall do so in accordance with the procedure provided for in the law of the Member State on whose territory the on-the-spot verification or investigation is to be conducted.

2. Where the requesting authority has requested that its own officials accompany the officials of the requested authority carrying out the verification or investigation in accordance with Article 101(5) of Directive 2009/65/EC, the requesting authority and the requested authority shall agree on practical arrangements for such participation.

Article 8

Carrying out of the on-the-spot verification and investigation by the requesting authority

1. Where the requested authority has decided to allow the requesting authority to carry out the on-the-spot verification or investigation, such on-the-spot verification or investigation shall be carried out in accordance with the procedure provided for in the law of the Member State on whose territory the on-the-spot verification or investigation is to be conducted.

2. Where the requested authority has decided to allow the requesting authority to carry out the on-the-spot verification or investigation, it shall provide the necessary assistance to facilitate that on-the-spot verification or investigation.

3. If the requesting authority discovers material information relevant for the discharging of duties of the requested authority during its on-the-spot verification or investigation, it shall with- out undue delay transmit this information to the requested authority.

Article 9

Carrying out of the on-the-spot verification and investigation by auditors or experts

1. Where the requested authority has decided to allow auditors or experts to carry out on-the-spot verification or investigation, such on-the-spot verification or investigation shall be carried out in accordance with the procedure provided for in the law of the Member State on whose territory the on-the-spot verification or investigation is to be conducted.

2. Where the requested authority has decided to allow auditors or experts to carry out on-the-spot verification or investigation, it shall provide the necessary assistance to facilitate those auditors or experts in the performance of their tasks.

3. Where the requesting authority proposes to appoint auditors or experts, it shall transmit any relevant information on the identity and professional qualifications of such auditors or experts to the requested authority.

The requested authority shall promptly notify the requesting authority whether it accepts the proposed appointment.

Where the requested authority does not accept the proposed appointment or the requesting authority does not propose the appointment of auditors or experts, the requested authority shall have the right to propose auditors or experts.

4. Where the requested authority and the requesting authority do not agree on the appointment of auditors or experts, the requested authority shall decide whether it carries out the on-the- spot verification or investigation itself or whether it allows the requesting authority to carry out the on-the-spot verification or investigation.

5. Unless the requested authority and the requesting authority otherwise agree, the authority that has proposed the appointed auditors or experts, shall bear the relevant costs.

6. If, whilst carrying out on-the-spot verification or investigation the auditors or experts discover material information relevant for the discharging of duties of the requested authority, they shall transmit this information promptly to the requested authority.

Article 10

Requests for assistance in interviews with persons situated in another Member State

1. Where the requesting authority considers it necessary to conduct interviews with persons situated in the territory of another Member State, it shall submit a written request to the competent authorities of that other Member State.

2. The request shall contain the following:

(a) the reasons for the request, including the legal provisions applicable in the jurisdiction of the requesting authority on which the request is based;

(b) the scope of the interviews;

(c) the actions already undertaken by the requesting authority; (d) any actions to be taken by the requested authority;

(e) the proposed methodology to be used in the interviews and the requesting authority’s reasons for choosing it.

3. The request shall be submitted sufficiently in advance of the interviews.

4. Where a request for assistance for conducting interviews with persons situated in the territory of another Member State is urgent, it may be transmitted by e-mail and subsequently con- firmed in writing.

5. The requested authority shall acknowledge receipt of the request without undue delay.

6. The requesting authority shall make available any information that has been requested by the requested authority in order to enable the requested authority to provide the necessary assistance.

7. The requested authority shall transmit without undue delay any information and documents that are available to it as are relevant or useful to the requesting authority, in light of the reasons for and scope of the interviews.

8. The requested authority and the requesting authority shall reassess the need for conducting interviews in light of the documents and information transmitted pursuant to paragraph 6 or 7.

9. The requested authority shall decide whether it conducts the interviews itself or whether it allows the requesting authority to conduct the interviews.

10. The requested authority and the requesting authority shall agree on issues related to the allocations of costs for conducting the interviews.

11. The requesting authority may take part in the interviews requested in accordance with paragraph 1. Before and during the interviews, the requesting authority may submit questions to be asked.

Article 11

Specific provisions related to on-the-spot verifications and investigations

1. The competent authorities of the management company's home Member State and the competent authorities of the UCITS home Member State shall notify each other of any on-the-spot verifications and investigations to be undertaken with regard to the management company or the UCITS subject to their respective supervision. Upon such notification, the notified competent authority may request without undue delay the notifying competent authority to include in the scope of on-the-spot verification or investigation the matters falling within the scope of supervision of the notified authority.

2. The competent authorities of the management company's home Member State may request the assistance of the competent authority of the UCITS home Member State with regard to the on-the-spot verification and investigation of a depositary of a UCITS where necessary to discharge its supervisory duties with regard to the management company.

3. The competent authorities of the UCITS home Member State and the competent authorities of the management company's home Member State shall agree on the procedures for sharing the results of the on-the-spot verification and investigations carried out with respect to the management company and the UCITS that are subject to their supervision.

4. Where necessary, the competent authorities of the UCITS home Member State and the competent authorities of the management company's home Member State shall agree on

further actions that need to be taken with regard to the on-the-spot verification or investigation.

SECTION 2
Exchange of information

Article 12
Routine exchange of information

1. The competent authorities of the UCITS home Member State shall immediately inform the competent authorities of the UCITS host Member States and, where the UCITS is managed by a management company situated in a Member State other than the UCITS home Member State, the competent authorities of the management company's home Member State of:

(a) any decision to withdraw the authorisation for a UCITS;

(b) any decision imposed upon a UCITS regarding the suspension of the issue, re-purchase or redemption of its units;

(c) any other serious measure taken against a UCITS.

2. Where a UCITS is managed by a management company situated in a Member State other than the UCITS home Member State, the competent authorities of the management company's home Member State shall immediately notify the competent authorities of the UCITS home Member State that the ability of a management company to properly perform its duties with respect to the UCITS it manages may be materially adversely affected or that the management company does not fulfil the requirements set out in Chapter III of Directive 2009/65/EC.

3. Where a UCITS is managed by a management company situated in a Member State other than the UCITS home Member State, the competent authorities of the UCITS home Member State and the management company's home Member State shall facilitate the exchange of information required for the purposes of carrying out their duties under Directive 2009/65/EC, including the establishment of appropriate information flows. This shall include the exchange of information necessitated by:

(a) the procedures for the authorisation of a management company to pursue activities within the territory of another Member State pursuant to Articles 17 and 18 of Directive 2009/65/EC;

(b) the procedures for the authorisation of a management company to manage a UCITS authorised in a Member State other than the management company's home Member State, pursuant to Article 20 of Directive 2009/65/EC;

(c) the on-going supervision of management companies and UCITS.

Article 13
Unsolicited exchange of information

Competent authorities shall communicate all relevant information likely to be of material interest with regard to the discharge of duties under Directive 2009/65/EC to other competent authorities, without prior request and undue delay.

CHAPTER III
FINAL PROVISIONS

Article 14
Entry into force

This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

It shall apply from 1 July 2011.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

ANNEX I
NOTIFICATION LETTER

(Article 1 of Commission Regulation (EU) No 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities (OJ L 176, 10.7.2010, p.16)

NOTIFICATION OF INTENTION TO MARKET UNITS OF UCITS

IN _____

(the host Member State)

PART A

Name of the UCITS: _____

UCITS home Member State: _____

Legal form of the UCITS (please tick appropriate one box):

☐common fund

☐unit trust

☐investment company

Does the UCITS have compartments? Yes/No

Name of the UCITS and/or compartment(s) to be marketed in the host Member State	Name of share class(es) to be marketed in the host Member State (1)	Duration (2)	Code numbers (3)

(1) If the UCITS intends to market only certain share classes, it should list only those classes
(2) If applicable
(3) If applicable {e.g. ISIN)

Name of the management company/self-managed investment company:

_____

Management company's home Member State: _____

Address and registered office/domicile if different from address

_____

_____

Details of management company's website: _____

Details of contact person at the management company

Name/Position: _____

Telephone number: _____

E-mail address: _____

Fax number: _____

Duration of the company,if applicable:_____

Scope of activities of the management company in the UCITS host Member State:

_____

_____

Additional information about the UCITS (if necessary):

_____

_____

_____

_____

Attachments:

(1) The latest version of the fund rules or instruments of incorporation, translated if necessary in accordance with Article 94(1)(c) of Directive 2009/65/EC.

_____

(Title of document or name of electronic file attachment)

(2) The latest version of the prospectus, translated if necessary in accordance with Article 94(1)(c) of Directive 2009/65/EC.

_____

(Title of document or name of electronic file attachment)

(3) The latest version of the key investor information, translated if necessary in accordance with Article 94(1)(b) of Directive 2009/65/EC.

_____

(Title of document or name of electronic file attachment)

(4) The latest published annual report and any subsequent half-yearly report, translated if necessary in accordance with Article 94(1)(c) of Directive 2009/65/EC.

_____

(Title of document or name of electronic file attachment)

Note:

The latest versions of the required documents listed above must be attached to this letter for onward transmission by the competent authorities of the UCITS home Member State, even if copies have previously been provided to that authority. If any of the documents have previously been sent to the competent authorities of the UCITS host Member State and remain valid, the notification letter may refer to that fact.

Indicate where the latest electronic copies of the attachments can be obtained in future:

_____

PART B

The following information is provided in conformity with the national laws and regulations of the UCITS host Member State in relation to the marketing of units of UCITS in that Member State.

UCITS shall refer to the website of the competent authorities of each Member State for details of which items of information shall be provided in this section. A list of relevant website addresses is available at www.cesr.eu

1. Arrangements made for marketing of units of UCITS

Units of the UCITS/UCITS compartments will be marketed by:

☐the management company that manages the UCITS

☐any other management company authorised under Directive 2009/65/EC

☐credit institutions

☐authorised investment firms or advisers

☐other bodies

(1) _____

(2) _____

(3) _____

2. Arrangements for the provision of facilities to unit-holders in accordance with Article 92 of Directive 2009/65/EC:

Details of paying agent (if applicable):

Name: _____

Legal form: _____

Registered office: _____

Address for correspondence (if different): _____

Details of any other person from whom investors may obtain information and documents:

Name:_____

Address: _____

Manner in which the issue, sale, repurchase or redemption price of units of UCITS will be made public:

_____

_____

3. Other information required by the competent authorities of the host Member State in accordance with Article 91(3) of Directive 2009/65/EC

Include (if required by the UCITS host Member State):

☐ details of any additional information to be disclosed to unit-holders or their agents;

☐ in case a UCITS makes use of any exemptions from rules or requirements applicable in the UCITS host Member State in relation to marketing arrangements for the UCITS, a specific share class or any category of investors, details of the use made of such exemptions;

If required by the UCITS host Member State, evidence of payment due to the competent authorities of the host Member State:

_____

PART C

Confirmation by the UCITS

We hereby confirm that the documents attached to this notification letter contain all relevant information as provided for in the Directive 2009/65/EC. The text of each document is the same as that previously submitted to the competent authorities of the home Member State, or is a translation that faithfully reflects that text.

(The notification letter shall be signed by an authorised signatory of the UCITS or a third person empowered by a written mandate to act on behalf of the notifying UCITS, in a manner which the competent authorities of the UCITS home Member State accept for certification of documents. The signatory shall state his/her full name and capacity, and shall ensure the confirmation is dated.)

ANNEX II
UCITS ATTESTATION

(Article 2 of Commission Regulation (EU) No 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities (OJ L 176, 10.7.2010, p.16)

_____ is the competent authority in:

(name of the competent authorities of the UCITS home Member State)

_____

(the UCITS home Member State)

Address: _____

Telephone number: _____

E-mail address: _____

Fax number: _____

that carries out the duties provided for in Article 97(1) of Directive 2009/65/EC.

For the purpose of Article 93(3) of Directive 2009/65/EC,

_____ certifies that

(name of competent authority ,as above)

_____

(name of UCITS, i.e. the name of the common fund, unit trust or investment company)

is established in:(name of its home Member State)

_____

was set up on: (date of approval of the fund rules or instrument of incorporation of the UCITS)

_____

has registry number (if applicable UCITS registry number in its home Member State)

_____

registered with (if applicable name of the authority responsible for the register)

_____

is based at:

_____

(for investment companies only, address of the UCITS' head office)

is: (please tick appropriate one box)

either ☐ a common fund/unit trust

List of all compartments approved in the home Member State, if applicable	
Serial no.	Name
1	
2	
3	
…	

managed by the management company:

_____

_____

(name and address of the management company)

or ☐ an investment company:

List of all compartments approved in the home Member State, if applicable	
Serial no.	Name
1	
2	
3	
…	

that: (please tick appropriate one box)

either ☐ has designated a management company

_____

(name and address of the designated management company)

or ☐ is self-managed

and fulfils the conditions set out in Directive 2009/65/EC

(The attestation shall be signed and dated by a representative of the competent authority of the UCITS home Member State in a manner that is accepted for the certification by that authority. The signatory shall state his or her full name and capacity.)

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Level 3

- ESMA guidelines on sound remuneration policies under the UCITS Directive (**ESMA/2016/411**)

- CESR's guide to clear language and layout for the Key Investor Information Document, 20 December 2010 (**CESR/10-1320**)

- CESR's template for the Key Investor Information Document, 20 December 2010 (**CESR/10-1321**)

- CESR's guidelines on the methodology for calculation of the ongoing charges figure in the Key Investor Information Document, 1 July 2010 (**CESR/10-674**)

- CESR's guidelines on the methodology for the calculation of the synthetic risk and reward indicator in the Key Investor Information Document, 1 July 2010 (**CESR/10-673**)

[Annex III to the Final report on Guidelines on sound remuneration policies under the UCITS Directive and AIFMD, ESMA/2016/411, published 31 March 2016]

ESMA Guidelines on sound remuneration policies under the UCITS Directive

- *Article 14a of the consolidated UCITS Directive – p. 37*

1 Scope

Who?

1. These guidelines apply to management companies as defined under Article 2(1)(b) of the UCITS Directive and competent authorities. They also apply to investment companies that have not designated a management company authorised pursuant to the UCITS Directive.[1]

2. UCITS having designated a management company authorised pursuant to the UCITS Directive are not subject to the remuneration principles established in the UCITS Directive, nor to these guidelines. However, the remuneration principles set out in the *Recommendation* are relevant to those UCITS, to the extent that they fall within the definition of 'financial undertaking' provided in paragraph 2.1 of the *Recommendation*. Annex I of these guidelines provides for a correlation table highlighting those principles of the *Recommendation* which are reflected in the UCITS Directive.

What?

3. These guidelines apply in relation to the remuneration policies and practices for management companies and their *identified staff*. Annex II of these guidelines provides details on which guidelines apply to management companies as a whole and which apply to their *identified staff* only.

When?

4. These guidelines apply from 1 January 2017.

5. Without prejudice to the application of Directive 2014/91/EU by 18 March 2016, the guidance on the rules on variable remuneration provided under Sections 12 (Guidelines on the general requirements on risk alignment) and 13 (Guidelines on the specific requirements on risk alignment) of these guidelines, should first apply for the calculation of payments relating to new awards of variable remuneration to *identified*

[1] The remuneration principles in Article 14a and 14b of the UCITS Directive apply mutatis mutandis to these investment companies, based on the provisions of Article 30 of the UCITS Directive.

staff for the first full performance period after 1 January 2017. For example, a management company whose accounting period ends on 31 December should apply the guidance on the rules on variable remuneration provided in these guidelines to the calculation of payments relating to the 2017 accounting period.

2 Definitions

Unless otherwise specified, terms used in the Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) have the same meaning in these guidelines. In addition, the following definitions apply for the purposes of these guidelines:

Recommendation	Commission Recommendation 2009/384/EC of 30 April 2009 on remuneration policies in the financial services sector.[1]
performance fees	a variable fee linked to the "performance of the UCITS". The "performance of the UCITS" includes capital appreciation as well as any income linked to the UCITS's assets (e.g. dividends). It may be assessed with reference to a target 'performance'. A performance fee can be based on elements such as a share of the capital gains or the capital appreciation of the UCITS' net asset value or any portion of the UCITS' net asset value as compared to an appropriate index of securities or other measure of investment performance. *Performance fees* are performance-related payments made directly by the management company or the UCITS itself for the benefit of *identified staff*.
identified staff	categories of staff, including senior management, risk takers, *control functions* and any employee receiving total remuneration that falls into the *remuneration bracket* of senior management and risk takers, whose professional activities have a material impact on the management company's risk profile or the risk profiles of the UCITS that it manages and categories of staff of the entity(ies) to which investment management activities have been delegated by the management company, whose professional activities have a material impact on the risk profiles of the UCITS that the management company manages.
control functions	staff (other than senior management) responsible for risk management, compliance, internal audit and similar functions within a management company (e.g. the CFO to the extent that he/she is responsible for the preparation of the financial

[1] http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:120:0022:0027:EN:PDF.

	statements).
remuneration bracket	the range of the total remuneration of each of the staff members in senior manager and risk taker categories – from the highest paid to the lowest paid in these categories.
instruments	units or shares of the UCITS managed by the management company, equivalent ownership interests (including – for UCITS issuing only units – unit-linked instruments), subject to the legal structure of the UCITS concerned and its fund rules or instruments of incorporation, or share-linked instruments or equivalent non-cash instruments with equally effective incentives as any of the instruments referred to in this definition.
malus	arrangement that permits the management company to prevent the vesting of all or part of the amount of a deferred remuneration award in relation to risk outcomes or performances of the management company as a whole, the business unit, the UCITS and, where possible, the staff member. Malus is a form of ex-post risk adjustment.
clawback	contractual agreement in which the staff member agrees to return ownership of an amount of remuneration to the management company under certain circumstances. This can be applied to both upfront and deferred variable remuneration. When related to risk outcomes, clawback is a form of ex-post risk adjustment.
supervisory function	the relevant persons or body or bodies responsible for the supervision of the management company's senior management and for the assessment and periodical review of the adequacy and effectiveness of the risk management process and of the policies, arrangements and procedures put in place to comply with the obligations under the UCITS Directive. For those management companies that, given their size, internal organisation and the nature, scope and complexity of their activities or their legal structure, do not have a separate supervisory function, the supervisory function should be understood to be the members of the management body.
retention period	period of time during which variable remuneration that has already vested and paid out in the form of instruments cannot be sold.
accrual period	period during which the performance of the staff member is assessed and measured for the purposes of determining his or her remuneration.
deferral period	the deferral period is the period during which variable remuneration is withheld following the end of the accrual period.
vesting point	an amount of remuneration vests when the staff member receives payment and becomes the legal owner of the remuneration. Once the remuneration vests, no explicit ex-post adjustments can occur apart from clawback clauses.

3 Purpose

6. The purpose of these guidelines is to ensure common, uniform and consistent application of the provisions on remuneration in Articles 14a and 14b of the UCITS Directive.

4 Compliance and reporting obligations

4.1 Status of the guidelines

7. This document contains guidelines issued under Article 16 of the ESMA Regulation. In accordance with Article 16(3) of the ESMA Regulation competent authorities and financial market participants must make every effort to comply with guidelines and recommendations.

8. Competent authorities to whom the guidelines apply should comply by incorporating them into their supervisory practices, including where particular guidelines within the document are directed primarily at financial market participants.

4.2 Reporting requirements

9. Competent authorities to which these guidelines apply must notify ESMA whether they comply or intend to comply with the guidelines, with reasons for non-compliance, within two months of the date of publication by ESMA. In the absence of a response by this deadline, competent authorities will be considered as non-compliant. A template for notifications is available from the ESMA website.

10. Management companies are not required to report to ESMA whether they comply with these guidelines.

5 Guidelines on which remuneration is covered by these guidelines

- *Articles 14a(2) and 14b(3) of the consolidated UCITS Directive – pp. 36 and 39*

11. Solely for the purposes of the guidelines and Article 14b of the UCITS Directive, remuneration consists of one or more of the following:

    (i) all forms of payments or benefits paid by the management company,

    (ii) any amount paid by the UCITS itself, including any portion of performance fees that are paid directly or indirectly for the benefit of *identified staff*, or

    (iii) any transfer of units or shares of the UCITS, in exchange for professional services rendered by the management company's *identified staff*.

    Whenever payments, excluding reimbursements of costs and expenses, are made directly by the UCITS to the management company for the benefit of the relevant categories of staff of the management company, or directly by the UCITS to the relevant categories of staff of the management company, for professional services rendered, which may otherwise result in a circumvention of the relevant remuneration rules, they should be considered remuneration for the purpose of the guidelines and Article 14b of the UCITS Directive.

12. All remuneration can be divided into either fixed remuneration (payments or benefits without consideration of any performance criteria) or variable remuneration (additional payments or benefits depending on performance or, in certain cases, other contractual criteria). Both components of remuneration (fixed and variable) may include monetary payments or benefits (such as cash, shares, options, cancellation of loans to staff members at dismissal, pension contributions) or non (directly) monetary benefits (such as, discounts, fringe benefits or special allowances for car, mobile phone, etc.). Ancillary payments or benefits that are part of a general, non-discretionary, management company-wide policy and pose no incentive effects in terms of risk assumption can be excluded from this definition of remuneration for the purposes of the risk alignment remuneration requirements that are specific to the UCITS Directive.

13. A "retention bonus" is a form of variable remuneration and can only be allowed to the extent that risk alignment provisions are properly applied.

14. Management companies should ensure that variable remuneration is not paid through vehicles or that methods are employed which aim at artificially evading the provisions of the UCITS Directive and these guidelines. The management body of each management company has the primary responsibility for ensuring that the ultimate goal of having sound and prudent remuneration policies and structures is not improperly circumvented. Circumstances and situations that may pose a greater risk under this perspective may be: the conversion of parts of the variable remuneration into benefits that normally pose no incentive effect in respect of risk positions; the outsourcing of professional services to firms that fall outside the scope of the UCITS Directive (unless these firms are subject to regulatory requirements on remuneration that are equally as effective as those applicable under these guidelines, according to the provisions of paragraph 16); the use of tied agents or other persons not considered “employees” from a legal point of view; transactions between the management companies and third parties in which the risk takers have material interests; the setting up of structures or methods through which remuneration is paid in the form of dividends or similar pay outs and non-monetary material benefits awarded as incentive mechanisms linked to the performance.

- *Article 14b(1)(r) of the consolidated UCITS Directive – p. 39*

15. Consideration should also be given to the position of partnerships and similar structures. Dividends or similar distributions that partners receive as owners of a management company are not covered by these guidelines, unless the material outcome of the payment of such dividends results in a circumvention of the relevant remuneration rules, any intention to circumvent such rules being irrelevant for such purpose.

- *Article 14b(1)(r) of the consolidated UCITS Directive – p. 39*

16. When delegating investment management functions (including risk management) according to Article 13 of the UCITS Directive, where the remuneration rules would otherwise be circumvented, management companies should ensure that:

    a) the entities to which investment management activities have been delegated are subject to regulatory requirements on remuneration that are equally as effective as those applicable under these guidelines; or

    b) appropriate contractual arrangements are put in place with entities to which investment management activities have been delegated in order to ensure that there is no circumvention of the remuneration rules set out in the present

guidelines; these contractual arrangements should cover any payments made to the delegates' *identified staff* as compensation for the performance of investment management activities on behalf of the management company.

- *Article 14b(1)(r) of the consolidated UCITS Directive – p. 39*

17. For the purpose of letter a) under the previous paragraph, an entity can be considered subject to regulatory requirements on remuneration that are equally as effective as those applicable under these guidelines, inter alia, where the following conditions are met:

    i) the entity with whom the delegation arrangement is concluded is subject to the remuneration rules under either Directive 2013/36/EU (CRD IV) or Directive 2011/61/EU (AIFMD), and

    ii) the staff of the entity who are *identified staff* for the purpose of these guidelines are subject to the CRD IV or AIFMD rules.

6 Guidelines on how to identify the categories of staff covered by these guidelines

- *Article 14a(3) of the consolidated UCITS Directive – p. 36*

18. Management companies should identify the identified staff, according to these guidelines and any other guidance or criteria provided by competent authorities. Management companies should be able to demonstrate to competent authorities how they have assessed and selected identified staff.

19. The following categories of staff, unless it is demonstrated that they have no material impact on the management company's risk profile or on a UCITS it manages, should be included as the identified staff:

- Executive and non-executive members of the management body of the management company, depending on the local legal structure of the management company, such as: directors, the chief executive officer and executive and non- executive partners.
- Senior management
- Control functions
- Staff responsible for heading the investment management, administration, marketing, human resources
- Other risk takers such as: staff members, whose professional activities – either individually or collectively, as members of a group (e.g. a unit or part of a department) – can exert material influence on the management company's risk profile or on a UCITS it manages, including persons capable of entering into contracts/positions and taking decisions that materially affect the risk positions of the management company or of a UCITS it manages. Such staff can include, for instance, sales persons, individual traders and specific trading desks.

When assessing the materiality of influence on a management company's risk profile or on a UCITS it manages, management companies should define what constitutes materiality within the context of their management companies and the UCITS they manage. Criteria that management companies may follow to check whether they are capturing the correct staff members include an assessment of staff members or a group, whose activities could potentially have a significant impact on the management company's results and/or balance sheet and/or on the performance of the UCITS they manage.

An analysis of job functions and responsibilities at the management company should be undertaken for a proper assessment of those roles that could materially affect the risk profile of the management company or of the UCITS it manages. There could be cases where a staff member does not earn a high amount of total remuneration but could have a material impact on the risk profile of the management company or of the UCITS it manages given the individual's particular job function or responsibilities.

Staff members such as administrative or logistical support staff that, given the nature of their job functions, clearly do not have any connection with the risk profile of the management company or the UCITS, should not be considered risk takers. However, such exclusion only applies to support staff whereas, as mentioned in the fourth bullet point in the present paragraph, staff heading the administration should be included as the *identified staff*.

20. Additionally, if they have a material impact on the risk profile of the management company or of the UCITS it manages, other employees/persons, whose total remuneration falls into the remuneration bracket of senior managers and risk takers should be included as the identified staff, such as: high-earning staff members who are not already in the above categories and who have a material impact on the risk profile of the management company or of the UCITS it manages. It is likely that in some cases, those staff members whose remuneration is as high as or higher than senior executives and risk takers will be exerting material influence in some way on the risk profile of the management company or of the UCITS it manages. In other management companies, this may not be the case.

21. The examples mentioned in paragraphs 19 and 20 above are not definitive. The greater the assumption that there may be risk-takers in certain business units, the more in-depth the risk analysis must be to assess whether a person is to be considered a material risk- taker or not.

7 Guidelines on proportionality

7.1 Proportionality in general

22. According to the Recommendation, when taking measures to implement remuneration principles Member States should take account of the size, nature and scope of financial undertakings' activities. In taking measures to comply with the remuneration principles management companies should comply in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities. In this way Article 14b of the UCITS Directive and the Recommendation envisage that provisions should operate in a way to enable a management company to take a proportionate approach to compliance with a remuneration principle.

- *Article 14b(1) of the consolidated UCITS Directive – p. 39*

23. Not all management companies should have to give substance to the remuneration requirements in the same way and to the same extent. Proportionality should operate both ways: some management companies will need to apply more sophisticated policies or practices in fulfilling the requirements; other management companies can meet the requirements of the UCITS Directive in a simpler or less burdensome way.

24. It is primarily the responsibility of the management company to assess its own characteristics and to develop and implement remuneration policies and practices which appropriately align the risks faced and provide adequate and effective incentives to its staff. Competent authorities should review the ways management companies actually implement proportionality, taking into account the achievement of regulatory objectives and the need to preserve a level playing field among different management companies and jurisdictions.

7.2 Proportionality with respect to the different characteristics of management companies

25. The different risk profiles and characteristics among management companies justify a proportionate implementation of the remuneration principles. Criteria relevant to the application of proportionality are the size of the management company and of the UCITS it manages, its internal organization and the nature, scope and complexity of its activities.

a) Size: the size criterion can relate to the value of the management company capital and to the value of the assets under management (including any assets acquired through the use of leverage) of the UCITS that the management company manages; liabilities or risks exposure of the management company and of the UCITS that it manages; as well as the number of staff, branches or subsidiaries of a management company. The size of a management company and of the UCITS it manages should not be considered in isolation when applying proportionality. A management company might be considered “small” in terms of number of staff or subsidiaries, but be engaged in a high level of risk taking. A management company should adhere strictly to the remuneration principles where the aggregate set of UCITS that it manages - each of them considered “small” - becomes potentially systemically important (e.g. in terms of total assets under management) or leads to complex investment management activities.

   The general obligation to have sound remuneration policies and practices applies to all management companies, regardless of their size or systemic importance.

b) Internal organization: this can relate to the legal structure of the management company or the UCITS it manages, the complexity of the internal governance structure of the management company, the listing on regulated markets of the management company or the UCITS it manages.

   This criterion should be assessed having regard to the entire organisation of the management company including all the UCITS it manages, meaning that for instance the listing of one UCITS should not by itself be sufficient for considering the management company as having a complex internal organisation.

c) Nature, scope and complexity of the activities: in considering this criterion, the underlying risk profiles of the business activities that are carried out, should be taken into account. Relevant elements can be:

- the type of authorized activity (collective portfolio management of UCITS only or also the additional services listed in Article 6(3) of the UCITS Directive);

- the type of investment policies and strategies of the UCITS the management company manages;

- the national or cross-border nature of the business activities (management company managing and/or marketing UCITS in one or more EU or non-EU jurisdictions); and

- the additional management of AIFs.

26. In assessing what is proportionate, the focus should be on the combination of all the mentioned criteria (size, internal organization and the nature, scope and complexity of the activities) and, as this is not an exhaustive list, of any other relevant criteria. For instance, a management company's business may well be small-scale but could still include complex risk-profiles because of the nature of its activities or the complexity of the managed UCITS.

7.3 Proportionality with respect of the different categories of staff

27. Proportionality should also operate within a management company for some of the specific requirements. The categories of staff whose professional activities have a material impact on their risk profile should comply with specific requirements which aim to manage the risks their activities entail. The same criteria of size, internal organisation and the nature, scope and complexity of the activities should apply. In addition, the following non-exhaustive elements should be taken into account, where relevant:

- The size of the obligations into which a risk taker may enter on behalf of the management company;

- The size of the group of persons, who have only collectively a material impact on the risk profile of the management company;

- The structure of the remuneration of the staff members (e.g. fixed salary with a variable remuneration vs. profit sharing arrangements), in particular, the following elements:

  - the amount of variable remuneration;

  - the percentage of variable remuneration over the fixed remuneration.

8 Guidelines for management companies being part of a group

28. These guidelines apply in any case to any management company. In particular, there should be no exception to the application to any of the management companies which are subsidiaries of a credit institution of the sector-specific remuneration principles set out in the UCITS Directive and in the present guidelines.

29. It may be the case that in a group context, non-UCITS sectoral prudential rules applying to group entities may lead certain staff of the UCITS management company

which is part of that group to be 'identified staff' for the purpose of those sectoral remuneration rules.

9 Guidelines on the application of different sectoral rules

- *Article 14b(2) of the consolidated UCITS Directive – p. 39*

9.1 General guidelines

30. Without prejudice to the guidance in paragraphs 28 and 29 of these guidelines, where some employees or other categories of personnel of management companies perform services subject to different sectoral remuneration principles, they should be remunerated either:

    a) based on the activities carried out and on a pro rata basis, to the extent that it is possible to single out an individual activity; or

    b) by applying the sectoral remuneration principles which are deemed more effective for achieving the outcomes of discouraging inappropriate risk taking and aligning the interest of the relevant individuals with those of the investors in the funds or other portfolios they manage.

31. The approach under item a) of paragraph 30 means that, for instance, the remuneration of an individual which performs services subject to the UCITS Directive and services subject to CRD IV and/or the AIFMD, should be determined applying the remuneration principles under the UCITS Directive, CRD IV and AIFMD on a pro rata basis based on objective criteria such as the time spent on each service or the assets under management for each service.

32. The approach under item b) of paragraph 30 means that, for instance, where the remuneration of an individual which performs services for various entities (including management companies and/or AIFMs) that are subsidiaries of a parent company that is subject to the CRD IV, is determined – on a voluntary basis – in compliance with all the remuneration principles under the CRD IV for all the services performed by such an individual, this should be deemed to also satisfy the requirements on remuneration under the UCITS Directive and AIFMD. However, where specific CRD requirements – such as those relating to the payment of variable remuneration in *instruments* – conflict with the requirements under the AIFMD or UCITS Directive, the remuneration of the individual concerned should in any event follow the relevant specific sectoral legislation conflicting with the CRD requirements. This means that, for instance, for individuals performing services subject to the AIFMD or UCITS Directive the variable remuneration should always be paid in the AIF *instruments* or UCITS *instruments* (Annex II (1) (m) of AIFMD and Article 14(b)(m) of UCITS V).

33. For the avoidance of doubt, the guidance under paragraphs 30 to 32 above applies to employees or other categories of personnel of management companies (including, for instance, secondees from parent undertakings subject to different sectoral remuneration rules such as CRD IV). Whenever employees or other categories of personnel of other entities perform investment management activities under delegation according to Article 13 of the UCITS Directive, the guidance under paragraphs 16 and 17 above should apply.

34. For management companies engaging in activities covered by the AIFMD (subject to authorisation under the AIFMD), compliance with the sectoral remuneration principles applying firm-wide – based on the relevant sectoral guidelines issued under the AIFMD and UCITS Directive – should be sufficient to consider that at individual level each of the sectoral remuneration principles are complied with. For example, compliance with the requirement under Article 14b(1)(e) of the UCITS Directive – which applies firm-wide – should at the same time satisfy the equivalent requirement under paragraph 1(e) of Annex II of the AIFMD for management companies engaging in activities covered by the AIFMD.

9.2 Specific guidelines on ancillary services

35. For the performance of ancillary services under Article 6(3) of the UCITS Directive or under Article 6(4) of the AIFMD, personnel of a management company or an AIFM should be subject to (i) the remuneration rules under the UCITS Directive or AIFMD, as applicable and (ii) the relevant MiFID rules, including the ESMA Guidelines on remuneration policies and practices (MiFID) (ESMA/2013/606).

10 Guidelines on the financial situation of the management company

▪ *Article 14b(1)(o) of the consolidated UCITS Directive – p. 39*

36. In order to guarantee ongoing compliance with the requirements of Article 7(1) of the UCITS Directive, management companies should ensure that they maintain a prudent balance between sound financial situation and the award, pay out or vesting of variable remuneration.

37. The management company should ensure that its financial situation will not be adversely affected by:

    1) the overall pool of variable remuneration that will be awarded for that year; and

    2) the amount of variable remuneration that will be paid or vested in that year.

38. The fact that a management company is or risks becoming unable to maintain a sound financial situation, should be a trigger for, inter alia: a) reducing the variable remuneration pool for that year and b) the application of performance adjustment measures (i.e. *malus* or *clawback*) in that financial year[1]. Instead of awarding, paying out the variable remuneration or allowing it to vest, the net profit of the management company for that year and potentially for subsequent years should be used to strengthen its financial situation. The management company should not compensate for this at a later date by awarding, paying out or vesting a greater amount of variable remuneration than it otherwise would have done, unless it becomes evident in subsequent years that the management company's financial results justify such actions.

[1] See also Section XII (Guidelines on the specific requirements on risk alignment).

11 Guidelines on governance of remuneration

39. The general requirements on governance of remuneration should apply to the management company as a whole.

11.1 Management body

11.1.1 Design, approval and oversight of the remuneration policy

- *Article 14(1)(b) and (c) of the consolidated UCITS Directive – p. 39*

40. A management company's remuneration policy should encourage the alignment of the risks taken by its staff with those of the UCITS it manages, the investors of such UCITS and the management company itself; in particular, the remuneration policy should duly take into consideration the need to align risks in terms of risk management and exposure to risk.

41. The *supervisory function* should be responsible for approving and maintaining the remuneration policy of the management company, and overseeing its implementation. The remuneration policy should not be controlled by any executive members of the supervisory function. The *supervisory function* should also approve any subsequent material exemptions or changes to the remuneration policy and carefully consider and monitor their effects. Procedures to determine remuneration should be clear, well-documented and internally transparent. For example, proper documentation should be provided on the decision-making process, the determination of the *identified staff*, the measures used to avoid conflicts of interest, the risk-adjustment mechanisms used etc.

42. In the design and oversight of the management company's remuneration policies, the *supervisory function* should take into account the inputs provided by all competent corporate functions (i.e. risk management, compliance, human resources, strategic planning, etc.). As a result, those functions should be properly involved in the design of the remuneration policy of the management company.

43. Ultimately, the supervisory function should ensure that a management company's remuneration policy is consistent with and promotes sound and effective risk management. The remuneration policy should:

    - be in line with the business strategy, objectives, values and interests of the management company,
    - not encourage excessive risk taking as compared to the investment policy of the UCITS the management company manages, and
    - enable the management company to align the interests of the UCITS and their investors with those of the identified staff that manages such UCITS, and to achieve and maintain a sound financial situation.

44. The supervisory function should ensure that the management company's overall corporate governance principles and structures, as well as their interactions with the remuneration system are considered within the design and implementation of a management company's remuneration policies and practices. The *supervisory function* should ensure that the following elements are taken into account: the clear distinction between operating and *control functions*, the skills and independence requirements of members of the *management body*, the role performed by internal committees,

including the remuneration committee, the safeguards for preventing conflicts of interests and the internal reporting system and the related parties' transactions rules.

11.1.2 Remuneration of members of the management body and supervisory function

45. The remuneration of the members of the *management body* should be consistent with their powers, tasks, expertise and responsibilities.

46. Where appropriate considering the size of the management company, its internal organisation and the nature, scope and complexity of its activities, the *management body* should not determine its own remuneration. The *supervisory function* should determine and oversee the remuneration of the members of the *management body*. To the extent compatible with national law, the *supervisory function* should also specifically approve and oversee the remuneration of senior executives and staff members who receive the highest amounts of total remuneration within the management company.

47. For management companies which have a separate *supervisory function*, in order to properly address conflicts of interests, it may be more appropriate for members of the *supervisory function* to be compensated only with fixed remuneration. When incentive-based mechanisms are in place, they should be strictly tailored to the assigned monitoring and control tasks, reflecting the individual's capabilities and the achieved results. If instruments are granted, appropriate measures should be taken, such as *retention periods* until the end of the mandate, in order to preserve the independence of judgment of those members of the *management body*. For those management companies that given their size, internal organisation and the nature, scope and complexity of their activities do not have a separate *supervisory function*, the principle according to which members of the *supervisory function* may more appropriately be compensated only with fixed remuneration should apply only to the non-executive members of the *management body* that perform the tasks of the *supervisory function*.

11.1.3 Shareholders' involvement

48. The approval of a management company's remuneration policy and decisions relating to the remuneration of members of the *management body*, may be assigned to the meeting of the shareholders of the management company, depending on the management company's characteristics or on the national rules in the jurisdiction in which the management company is established. The shareholders' vote may be either consultative or binding. To this end, shareholders should be provided with adequate information in order that they can make informed decisions.

49. The *supervisory function* remains responsible for the proposals submitted to the meeting of the shareholders of the management company, as well as for the actual implementation and oversight of any changes to the remuneration policies and practices.

11.1.4 Review of the remuneration policy and its implementation

50. The *supervisory function* should ensure that the remuneration policy of the management company and its implementation will be reviewed on an annual basis at a minimum. Such central and independent reviews should assess whether the overall remuneration system:

    - operates as intended (in particular, that all agreed plans/programs are being covered; that the remuneration payouts are appropriate, and that the risk

profile, long-term objectives and goals of the management company are adequately reflected); and

- is compliant with national and international regulations, principles and standards.

▪ *Article 14b(1)(d) of the consolidated UCITS Directive – p. 39*

51. The relevant internal *control functions* (i.e. internal audit, risk management, compliance functions, etc.) as well as other key *supervisory function* committees (i.e. audit, risk, and nominations committees) should be closely involved in reviewing the remuneration system of the management company.

52. Where periodic reviews reveal that the remuneration system does not operate as intended or prescribed, the *supervisory function* should ensure that a timely remedial plan is put in place.

53. The periodic review of the implementation of the remuneration policies and practices may be, partially or totally, externally commissioned when appropriate according to proportionality. Larger and more complex management companies should have sufficient resources to conduct the review internally, though external consultants may complement and support the management company in carrying out such tasks where appropriate. In line with proportionality, smaller and less complex management companies may decide to outsource the entire review. In all cases, the *supervisory function* should remain responsible for the review of remuneration policies and practices and for ensuring that the results of the review are followed up; moreover, the relevant control functions should be closely involved.

11.2 Remuneration committee

11.2.1 Setting up a remuneration committee

54. The setting up of a remuneration committee should be considered, as a matter of good practice, even by those management companies that are not obliged to set up such a committee under Article 14b(4) of the UCITS Directive.

▪ *Article 14b(4) of the consolidated UCITS Directive – p. 39*

55. In order to identify whether a remuneration committee is expected to be set up, the factors mentioned in Section 7 (Guidelines on proportionality) need to be considered. When assessing whether or not a management company is significant, a management company should consider the cumulative presence of all the three factors (i.e. its size or the size of the UCITS it manages, its internal organisation and the nature, scope and complexity of its activities). A management company which is significant only with respect to one or two of the three above factors should not be required to set up a remuneration committee.

56. Without prejudice to the previous paragraph, specific (non-exhaustive) elements to be taken into account when determining whether or not to establish a remuneration committee are:

- whether the management company is listed or not;

- the legal structure of the management company;

- the number of employees of the management company;
- the management company's assets under management;
- whether the management company is also an AIFM;
- the provision of the services mentioned under Article 6(3) of the UCITS Directive.

57. Taking into account the above principles and having regard to all circumstances, the following are examples of management companies which may not need to establish a remuneration committee:

    - management companies for which the value of the portfolios of UCITS that they manage does not exceed EUR 1.25 billion and not having more than 50 employees, including those dedicated to the management of AIFs and the provision of the services mentioned under Article 6(3) of the UCITS Directive;
    - management companies which are part of banking, insurance, investment groups or financial conglomerates within which an entity is obliged to set up a remuneration committee which performs its tasks and duties for the whole group, provided that the rules governing such remuneration committee's composition, role and competences are equivalent to the ones set out in these guidelines and the existing remuneration committee takes responsibility for checking the compliance of the management company with the rules set out in these guidelines.

58. It should also be understood, as mentioned above under paragraph 54, that management companies falling within the examples set out above may choose to set up a remuneration committee at their own initiative as a matter of good practice.

59. Management companies that fall outside the above examples should not be automatically required to set up a remuneration committee. For this purpose, management companies that are above the thresholds set out in paragraph 57 should be considered significant in terms of their size or the size of the UCITS they manage; in order to decide whether or not they need to set up a remuneration committee, however, such management companies should still assess whether or not they are significant in terms of their internal organisation and the nature, the scope and the complexity of their activities.

11.2.2 Composition of the remuneration committee

60. In order to operate independently from senior executives, the remuneration committee should comprise members of the supervisory function who do not perform executive functions, at least the majority of whom qualify as independent.

61. The chairperson of the remuneration committee should be an independent, non-executive member.

62. An appropriate number of the members of the remuneration committee should have sufficient expertise and professional experience concerning risk management and control activities, namely with regard to the mechanism for aligning the remuneration structure to management companies' risk and capital profiles.

63. The remuneration committee should be encouraged to seek expert advice internally (e.g. from risk management) and externally. The chief executive officer should not take part in the remuneration committee meetings which discuss and decide on his/her remuneration.

11.2.3 Role of the remuneration committee

64. The remuneration committee should:

- be responsible for the preparation of recommendations to the *supervisory function*, regarding the remuneration of the members of the *management body* as well as of the highest paid staff members in the management company;
- provide its support and advice to the *supervisory function* on the design of the management company's overall remuneration policy;
- have access to advice, internal and external, that is independent of advice provided by or to senior management;
- review the appointment of external remuneration consultants that the *supervisory function*, may decide to engage for advice or support;
- support the *supervisory function* in overseeing the remuneration system's design and operation on behalf of the *supervisory function*;
- devote specific attention to the assessment of the mechanisms adopted to ensure that:
  - the remuneration system properly takes into account all types of risks and liquidity and assets under management levels, and
  - the overall remuneration policy is consistent with the business strategy, objectives, values and interests of the management company and the UCITS it manages and the investors of such UCITS; and
- formally review a number of possible scenarios to test how the remuneration system will react to future external and internal events, and back test it as well.

65. The remuneration committee itself may be in charge of overseeing the central and independent review of the implementation of the remuneration policies and practices.

11.2.4 Process and reporting lines of the remuneration committee

66. The remuneration committee should:

- have unfettered access to all data and information concerning the decision-making process of the *supervisory function*, on the remuneration system's design and implementation;
- have unfettered access to all information and data from risk management and *control functions*. Such access should not hinder the management company's ordinary activities;
- ensure the proper involvement of the internal control and other competent functions (e.g. human resources and strategic planning). The remuneration

committee should collaborate with other board committees whose activities may have an impact on the design and proper functioning of remuneration policy and practices (e.g. risk audit, and nomination committees); and

- provide adequate information to the *supervisory function*, and, where appropriate, to the management company's shareholders' meeting about the activities performed.

11.3 Control functions

11.3.1 Roles of control functions

67. Management companies should ensure that *control functions* have an active role in the design, ongoing oversight and review of the remuneration policies for other business areas.

68. Working closely with the remuneration committee and the *supervisory function* and *management body*, the control functions should assist in determining the overall remuneration strategy applicable to the management company, having regard to the promotion of effective risk management.

69. The risk management function should assess how the variable remuneration structure affects the risk profile of the management company. It is good practice for the risk management function to validate and assess risk adjustment data, and to attend a meeting of the remuneration committee for this purpose.

70. The compliance function should analyse how the remuneration structure affects the management company's compliance with legislation, regulations and internal policies.

71. The internal audit function should periodically carry out an independent audit of the design, implementation and effects of the management company's remuneration policies.

11.3.2 Remuneration of control functions

- *Article 14b(1)(e) and (f) of the consolidated UCITS Directive – p. 39*

72. The remuneration level of staff in the *control functions* should allow the management company to employ qualified and experienced personnel in these functions.

73. If staff in *control functions* receives variable remuneration, it should be based on function-specific objectives and should not be determined solely by the management company-wide performance criteria.

74. The remuneration structure of control functions personnel should not compromise their independence or create conflicts of interest in their advisory role to the remuneration committee, *supervisory function* and/or *management body*. If remuneration of the *control functions* includes a component based on management company-wide performance criteria, the risk of conflicts of interest increases and, therefore, should be properly addressed.

75. For management companies which are required to have a remuneration committee, the remuneration of the senior staff responsible for heading the *control functions* should not be solely left to the *supervisory function*, but should be directly overseen by the remuneration committee. The remuneration of those staff members in compliance and

risk management functions must be designed in a way that avoids conflict of interests related to the business unit they are overseeing and, therefore, should be appraised and determined independently. The remuneration committee should make recommendations to the *management body* on the remuneration to be paid to the senior officers in the risk management and compliance functions.

76. For management companies which are not required to have a remuneration committee, the remuneration of the senior staff responsible for heading the *control functions* should be overseen by the *supervisory function*.

77. Conflicts of interest which might arise if other business areas had undue influence over the remuneration of staff within *control functions* should be adequately managed. The need to avoid undue influence is particularly important where staff members from the *control functions* are embedded in other business areas. However, the views of other business areas should be sought as an appropriate part of the assessment process.

78. *Control functions* should not be placed in a position where, for example, approving a transaction, making decisions or giving advice on risk and financial control matters could be directly linked to an increase or decrease in their performance-based remuneration.

12 Guidelines on the general requirements on risk alignment

79. The general requirements on risk alignment should be applied by management companies only to the individual remuneration packages of the *identified staff*, but a voluntary management company-wide application is strongly recommended as indicated in Annex II. Management companies should make an assessment on whether these requirements should be applied to the management company as a whole and, if required, be able to demonstrate to competent authorities why they have applied these requirements to the *identified staff* only.

12.1 The general remuneration policy, including the pension policy

- *Article 14b(1)(a), (b) and (p) of the consolidated UCITS Directive – p. 39*

80. The long-term strategy of the management company should include the overall business strategy and quantified risk tolerance levels with a multi-year horizon, as well as other corporate values such as compliance culture, ethics, behaviour towards investors of the UCITS it manages, measures to mitigate conflicts of interest etc. The design of the remuneration systems should be consistent with the risk profiles, rules or instruments of incorporation of the UCITS the management company manages and with the objectives set out in the strategies of the management company and the UCITS it manages and changes that could be decided in the strategies must be taken into account. Management companies should, therefore, ensure that their remuneration systems are well designed and implemented. This includes, in particular, a proper balance of variable to fixed remuneration, the measurement of performance as well as the structure and, where appropriate, the risk-adjustment of the variable remuneration. Even a smaller or less sophisticated management company should ensure it makes the best possible attempt to align its remuneration policy with its interests and the interests of the UCITS it manages and their investors.

81. When developing their remuneration policy, management companies should give due consideration to how remuneration contributes to the prevention of excessive risk-

taking, the efficiency of the management company and the UCITS it manages and the consistency of the remuneration policy with effective risk management.

82. Managers should consider conservative valuation policies and should not ignore concentration risks and risk factors, such as liquidity risk and concentration risk that could place the UCITS that the management company manages under stress at some point in the future. There are strong incentives not to follow such obligations if the variable part of the remuneration consists predominantly of *instruments* that are paid out immediately, without any deferral or ex post risk adjustment mechanisms (*malus* or *clawback*), and/or are based on a formula that links variable remuneration to current year revenues rather than risk-adjusted profit.

83. In order to counterbalance the dangers mentioned, risk management elements should be connected to the remuneration policy. When properly structured and implemented, variable remuneration can be an efficient tool to align the staff's interests with the interests of the UCITS that the management company manages. Having regard to the nature, scale and complexity of a management company, alternative approaches exist for connecting risk management elements to a remuneration policy.

12.2 Discretionary pension benefits

- *Article 14b(1)(p) of the consolidated UCITS Directive – p. 39*

84. Remuneration policy should cover all aspects of remuneration including fixed components, variable components, pension terms and other similar specific benefits. The pension policy (the fixed as well as the variable pension payments) should be aligned with the long term interests of the management company and the UCITS it manages.

85. In case of discretionary pension benefits, as part of the variable remuneration, a staff member should not retire or leave the management company with such benefits vested, with no consideration of the economic situation of the UCITS that the management company manages or risks that have been taken by the staff member in the long term.

86. In order to align this specific kind of pension benefits with the economic situation of the UCITS that the management company manages, discretionary pension benefits, where legally possible according to the relevant pension legislation, should be paid in the form of *instruments*.

87. In the context of a retirement, the discretionary pension benefits vested to the staff member should be subject to a five years *retention period*.

88. Where a staff member leaves the management company before retirement, the discretionary pension benefits should not be vested before a period of five years and should be subject to performance assessment and ex post risk adjustment before pay out.

12.3 Severance pay

- *Article 14b(1)(k) of the consolidated UCITS Directive – p. 39*

89. “Golden parachute” arrangements for staff members who are leaving the management company and which generate large payouts without any performance and risk adjustment should be considered inconsistent with the principle in Article 14b(1)(k) of the UCITS Directive. Any such payments should be related to performance achieved over time and designed in a way that does not reward failure. This should not preclude termination payments in situations such as early termination of the contract due to changes in the strategy of the management company or of the UCITS it manages, or in merger and/or takeover situations.

90. Management companies should set up a framework in which severance pay is determined and approved, in line with the management company’s general governance structures for employment. The framework should ensure that there is no reward for failure.

91. Management companies should be able to explain to competent authorities the criteria they use to determine the amount of severance pay. It is good practice to defer any outstanding variable payments or long-term incentive plans and for these to mirror the original deferral schemes.

12.4 Personal hedging

- *Article 14b(1)(q) of the consolidated UCITS Directive – p. 39*

92. Staff could be considered to have hedged away the risk of a downward adjustment in remuneration if the staff member enters into a contract with a third party which requires the third party to make payments directly or indirectly to the staff member that are linked to or commensurate with the amounts by which the staff member’s variable remuneration has been reduced. The contract could for instance take the form of an option or any other derivative contract or other form of contract which provides any type of hedging for the staff member’s variable remuneration.

93. In order to ensure the effectiveness of risk alignment, staff members should not buy an insurance contract which compensates them in the event of a downward adjustment in remuneration. As a general rule, however, this would not prohibit insurance designed to cover personal payments such as healthcare and mortgage instalments (provided that the mortgage coverage concerns health-related circumstances that would render the staff member unable to work in an equivalent position), although each case should be judged on its merits.

94. The requirement not to use personal hedging strategies or insurance to undermine the risk alignment effects embedded in their remuneration arrangements should apply to deferred and retained variable remuneration. Management companies should maintain effective arrangements to ensure that the staff member complies with this requirement.

13 Guidelines on the specific requirements on risk alignment

95. The specific requirements on risk alignment should be applied by management companies only to the individual remuneration packages of the *identified staff*, but management companies may always consider an management company-wide application (or, at least, a “broader than strictly necessary” application) of all or some of the specific requirements. Annex II indicates the specific requirements for which this voluntary management company-wide application is strongly recommended.

13.1 Fully flexible policy on variable remuneration

96. Having a fully-flexible policy on variable remuneration implies not only that variable remuneration should decrease as a result of negative performance but also, that it can go down to zero in some cases. For its practical implementation, it also implies that the fixed remuneration should be sufficiently high to remunerate the professional services rendered, in line with the level of education, the degree of seniority, the level of expertise and skills required, the constraints and job experience, the relevant business sector and region. Individual levels of fixed remuneration should be indirectly impacted by the basic principle on risk alignment.

- *Article 14b(1)(j) of the consolidated UCITS Directive – p. 39*

13.2 Risk alignment of variable remuneration

13.2.1 Risk alignment process

97. To limit excessive risk taking, variable remuneration should be performance-based and risk adjusted. To achieve this aim, a management company should ensure that incentives to take risks are constrained by incentives to manage risk. A remuneration system should be consistent with effective risk management and governances processes within the management company.

13.2.1.1 Performance and risk measurement process

98. Setting up a remuneration system should start by defining the objectives of the management company, the unit, as well the staff and the investment strategy of the UCITS concerned. These objectives should be derived from the business plan of the management company, if any, and should be in line with the risk appetite of the management company and the investment strategy of the UCITS concerned. The performance criteria, which should be used to assess the staff member's achievement of his/her objectives during the *accrual period*, can be directly derived from these objectives. The right to receive the variable remuneration is earned ("awarded") at the end of the accrual period or during the *accrual period*, which should be at least one year, but it may be longer. In some cases different *accrual periods* may overlap. If properly designed, the performance assessment links the remuneration with the achievement of the investment strategy of the UCITS concerned and the business plan, if any, or the objectives of the management company. On the contrary, performance criteria which are badly designed can be an incentive for taking too much risk. When assessing performance, only the effective results should be taken into account. Risk alignment during performance measurement can be achieved by using risk adjusted performance criteria or by adjusting performance measures for risk afterwards. The risk adjustment may differ according to the activity of the staff member and the business line or UCITS concerned.

13.2.1.2 Award process

99. After the *accrual period*, the management company should use a specified award process in order to translate performance assessment into the variable remuneration component for each staff member. This should usually be carried out through so-called "pools" of variable remuneration that are first determined and later on allocated. As not all performance and risk measures are suitable to be applied at the level of the management company, the business unit and the staff member, the management company should identify the risks at each level and ensure that a risk correction adequately captures the magnitude and the duration of the risk at each level. This so-

called "ex-ante risk adjustment" should adjust remuneration for potential adverse developments in the future.

13.2.1.3 Payout process

100. In order to align the actual payment of remuneration to the holding period recommended to the investors of the UCITS managed by the management company and their investment risks, the variable remuneration should partly be paid upfront (short- term) and partly deferred (long-term). The short-term component should be paid directly after the award and rewards staff for performance delivered in the *accrual period*. The long-term component should be awarded to staff during and after the *deferral period*. It should reward staff for the sustainability of the performance in the long term, which is the result of decisions taken in the past. Before paying out the deferred part, a reassessment of the performance and, if necessary, a risk adjustment should be required in order to align variable remuneration to risks and errors in the performance and risk assessments that have appeared since the staff members were awarded their variable remuneration component. This so-called ex post risk adjustment should always be necessary, because at the time remuneration is awarded, the ultimate performance cannot be assessed with certainty.

13.2.2 Common requirements for the risk alignment process

13.2.2.1 Time horizon

- *Article 14b(1)(h) of the consolidated UCITS Directive – p. 39*

101. Management companies, when assessing risk and performance, should take into account both current and future risks that are taken by the staff member, the business unit, the UCITS concerned or the management company as a whole. For this exercise, management companies should examine what the impact of the staff member's activities could be on the UCITS they manage and management company's short and long term success. To be able to do so, the management company should align the horizon of risk and performance measurement with the holding period recommended to the investors of the UCITS managed by the management company and their investment risks. The requirement of a management company to assess the performance of its staff in a multi- year framework appropriate to the holding period recommended to the investors of the UCITS managed by the management company implies the accrual period and the payout period for short-term and long-term remuneration covering an appropriate period in total.

102. The right balance between accrual and payout periods should depend on the type of UCITS managed by the management company and on the type of business and activity developed by the staff member. However, the use of multi-year accrual periods is more prudent since the assessment of the performance can take into account with certainty more risks that have materialized since the beginning of the accrual period.

13.2.2.2 Levels of risk and performance measurement

- *Article 14b(1)(g) of the consolidated UCITS Directive – p. 39*

103. Performance-related remuneration should include parameters linked to the risks and performance of the UCITS concerned and of the business unit of the management company in addition to the risks and performance of the individual activities. Thus, the amount of variable remuneration a staff member is eligible for should be determined by his/her individual performance, the performance of his/her business line or the UCITS

concerned and the performance of the management company. The relative importance of each level of the performance criteria should be determined beforehand and adequately balanced to take into account the position or responsibilities held by the staff member.

104. To have the greatest impact on staff behaviour, the variables used to measure risk and performance should be linked as closely as possible to the level of the decisions made by the staff member that is subject to the risk adjustment. Performance criteria should include achievable objectives and measures on which the staff member has some direct influence. For example, for senior executives, management companies may design the remuneration policies to include financial measures based on the performance of all the UCITS managed by the management company or the entire management company, or for performance and risks of units, or decisions that were determined by senior executive strategy. In contrast, variables for the manager of a business unit ideally would be for performance and risk of that unit.

13.2.2.3 Quantitative and qualitative measures

- *Article 14b(1)(g) of the consolidated UCITS Directive – p. 39*

105. The risk alignment process should use a mix of quantitative and qualitative approaches (e.g. measurement of performance or risk; setting of the pool and adjustment to risks).

106. Quantitative measures may have some advantages in terms of transparency if they are pre-defined. They can, therefore, influence the behaviour of staff more directly. However, quantitative measures or criteria are not sufficient to measure all risk or performance or to risk adjust remuneration. To complete the measurement and adjustment of risk or performance, management companies should also rely on qualitative approaches.

13.2.2.4 Judgemental measures

- *Article 14b(1)(g) of the consolidated UCITS Directive – p. 39*

107. Whenever judgement is used for a risk and performance measurement or risk adjustment, there should be:

    - a clearly written policy outlining parameters and key considerations on which the judgement will be based;
    - clear and complete documentation of the final decision regarding risk and performance measurement or risk adjustment;
    - involvement of relevant *control functions* experts;
    - appropriate levels of approval obtained, e.g. of the *management body* or *supervisory function*, or of the remuneration committee; and
    - consideration of the personal incentives of the manager making the judgement, e.g. by using scorecards.

108. For both quantitative and qualitative measures, management companies should be prepared to disclose and reproduce any judgmental elements incorporated into their risk alignment process. Management companies should also provide detailed

information to the competent authority if the final outcome after applying judgmental measures is significantly different from the initial outcome using pre-defined measures.

13.2.3 Risk measurement

- *Article 14b(1)(l) of the consolidated UCITS Directive – p. 39*

109. Management companies should take into account all risks, whether on or off balance sheet, differentiating amongst risks affecting the management company, the UCITS it manages, business units and individuals. Risk identification and quantification at the UCITS level can be found in the risk management policy that the management company is required to establish, implement and maintain and which identifies all the relevant risks to which the UCITS they manage are or might be exposed to. Management companies should also determine whether measures they are using for risk adjustment include 'difficult-to-measure' risks, such as reputational and operational risk.

110. In order to take into account all material risks, management companies should use the same risk measurement methods as used in the risk management policy established for the UCITS managed by the management company. Furthermore, management companies should also take into account the risks arising from the additional management of AIFs and from the services provided under Article 6(3) of the UCITS Directive.

111. Taking proportionality into account, the risk management calculations should be transparent and the management companies should be able to demonstrate how the risk calculations can be broken down by UCITS and related to the management company's business units and different types of risk positions throughout the organisation. The quality of methods and models used should influence the extent to which a management company should implement a more sophisticated variable remuneration policy based on performance measurements.

13.2.4 Performance measurement

13.2.4.1 Qualitative/Quantitative measures

- *Article 14b(1)(g) of the consolidated UCITS Directive – p. 39*

112. Management companies should use both quantitative (financial) as well as qualitative (non-financial) criteria for assessing individual performance.

113. The appropriate mix of quantitative and qualitative criteria should depend on the tasks and responsibilities of the staff member. In all cases, the quantitative and qualitative criteria and the balance between them should be specified and clearly documented for each level and category of staff.

114. Quantitative measures should cover a period which is long enough to properly capture the risk of the staff member's actions. Examples of quantitative performance measures used in the asset management sector which fulfil the abovementioned Provisions are the internal rate of return (IPR), earnings before interest, taxes depreciation and amortization (EBITDA), Alpha Ratio, absolute and relative returns, Sharpe Ratio and assets raised.

115. In addition to quantitative performance measures, variable remuneration awards should also be sensitive to the staff's performance with respect to qualitative (non- financial)

measures. Examples are the achievement of strategic targets, investor satisfaction, adherence to risk management policy, compliance with internal and external rules, leadership, management, team work, creativity, motivation and cooperation with others business units and with *control functions*. Such determined qualitative criteria could rely on compliance with risk control measures such as limits and audit results. Negative non-financial performance, in particular unethical or non-compliant behaviour, should override any good financial performance generated by a staff member and should diminish the staff member's variable remuneration.

13.2.4.2 Relative/absolute and internal/external measures

116. Absolute performance measures are measures set by the management company on the basis of its own strategy, which includes the risk profile and risk appetite of the management company and of the UCITS it manages, as further developed down through the chain of business levels. Such measures help to minimize the risk that remuneration is awarded that is not justifiable by the management company's or UCITS' performance. They also tend to create long term incentives. However, it may be difficult to calibrate absolute performance measures, especially for new entrants or for new kinds of financial activities (with difficult-to-measure risks) linked to the management of UCITS.

117. Relative performance measures are measures that compare performance with peers, either 'internal' peers (i.e. within the organization) or 'external' (similar management companies). Relative performance measures are easier to set because the benchmark is readily available. However, such measures pose the risk that variable remuneration that is not supported by long-term success of the business unit or the management company or the UCITS it manages will be paid out anyway. In a period of sector wide positive financial performances, it could lead to 'raising the bid' and/or 'herd' mentality, providing incentives to take on excessive risk. In a downturn economic cycle where most management companies and UCITS may perform poorly, relative measures may nonetheless lead to positive outcomes (and thus to an insufficient contraction of the management company's total variable remuneration) even if absolute performance has deteriorated compared to previous periods.

118. Internal (e.g. profits) and external (e.g. share price) variables come with both advantages and disadvantages that should be balanced carefully. Internal performance measures are able to generate more involvement of the staff members if they can influence the outcome by their own behaviour. This is especially true if the performance measures are fixed at the level of the business unit (rather than on the management company-wide level). Furthermore, it is easier to introduce risk adjustment features for internal measures, because the link with in-house risk management techniques is more readily available. On the other hand, such measures can be manipulated and can create distorted outcomes on a short-term basis. External performance measures are less subject to this danger of manipulation, although attempts to artificially increase the stock price (probably only relevant for top executives) may still occur.

13.3 Award process

13.3.1 Setting and allocation of pools

119. Management companies should adopt a documented policy for the award process and ensure that records of the determination of the overall variable remuneration pool are maintained.

- *Article 14b(1)(l) and (o) of the consolidated UCITS Directive – p. 39*

13.3.2 The risk adjustment in the award process

- *Article 14b(1)(l) and (o) of the consolidated UCITS Directive – p. 39*

120. In determining remuneration pools or individual awards, management companies should consider the full range of current and potential (unexpected) risks associated with the activities undertaken. Performance measures used in setting the remuneration pool may not fully or adequately capture risks undertaken, thus, ex-ante adjustments should be applied to ensure that the variable remuneration is fully aligned with the risks undertaken. Management companies should establish whether the risk adjustment criteria they are using take into consideration severe risks or stressed conditions.

121. Management companies should determine to what level they are able to risk adjust their variable remuneration calculations quantitatively – whether to the business unit level or further down the line such as to a trading desk level, if any, or even to an individual level. Management companies should determine the level of granularity that is suitable for each level.

13.3.2.1 Quantitative ex ante risk adjustment

- *Article 14b(1)(l) and (o) of the consolidated UCITS Directive – p. 39*

122. In order to have a sound and effective remuneration scheme, management companies should use a number of different quantitative measures for their risk adjustment process. Normally, these measures should be based on an overarching risk adjustment framework.

123. When measuring the profitability of the management company and its business units as well as the UCITS it manages, the measurement should be based on net revenue where all direct and indirect costs related to the activity are included. Management companies should not exclude IT costs, research costs, legal fees, marketing costs, and costs for outsourced activities. Management companies should make sure that remuneration pools are not being “back-fitted” to meet remuneration demands.

124. The quantitative ex-ante risk adjustments made by management companies should largely rely on existing measures within the management companies, generally used for other risk management purposes. As a result, the limitations and potential issues related to these measures should also be relevant for the remuneration process. The risk adjustments used should benefit from the experience gained when dealing with these risks in other contexts and should be challenged like any other component of the risk management process.

13.3.2.2 Qualitative measures for ex-ante risk adjustment

- *Article 14b(1)(l) and (o) of the consolidated UCITS Directive – p. 39*

125. Qualitative risk elements should be considered by management companies. Qualitative ex-ante adjustments could take place while setting management company- wide and business unit remuneration pools or when determining or allocating individuals’ remuneration. Qualitative ex-ante risk adjustments are common at pool and individual levels, contrary to quantitative adjustments which tend to be mostly observed only at the pool level.

126. Management companies make qualitative risk adjustments when allocating/determining individuals’ remuneration through assessments that may explicitly include risk and

control considerations such as compliance breaches, risk limit breaches and internal control breakdowns (e.g. based on internal audit results).

13.4 Pay-out process

- *Article 14b(1)(n) of the consolidated UCITS Directive – p. 39*

13.4.1 Non-deferred and deferred remuneration

127. Although remuneration is aligned through ex-ante risk adjustments, due to uncertainty, ex-post risk adjustments should be put in place to keep incentives fully aligned. This can only be done if part of the remuneration has been deferred.

128. A deferral schedule is defined by different components: (a) the time horizon of the deferral, (b) the proportion of the variable remuneration that is being deferred, (c) the speed at which the deferred remuneration vests (*vesting point*), (d) the time span from accrual until the payment of the first deferred amount and (e) the form of the deferred variable remuneration. Management companies can differentiate their deferral schedules by varying these five components. A stricter than necessary application for one component may influence the supervisory scrutiny for another component. In any case, the way in which a management company combines these components should lead to a meaningful deferral schedule, in which the long-term risk alignment incentives are clear.

13.4.1.1 Time horizon and vesting

- *Article 14b(1)(h) and (n) of the consolidated UCITS Directive – p. 39*

129. The *deferral period* always starts at the moment the upfront part of the variable remuneration is paid out and can be coupled either to cash variable remuneration or variable remuneration in *instruments*. It ends when the last variable remuneration has vested. The minimum *deferral period* is three years. Management companies should set the *deferral period* which should be calculated on the basis of the holding period recommended to the investors of the UCITS and depending on the potential impact of the staff on the risk profile of the UCITS. The actual *deferral period* should be further tailored to the responsibilities and tasks performed by the staff and expected fluctuations in the value of the assets of the UCITS, which in many cases will imply longer time horizons. The management company should consider longer *deferral periods* for at least members of the *management body*.

13.4.1.2 Vesting point

- *Article 14b(1)(h) and (n) of the consolidated UCITS Directive – p. 39*

130. Pro rata vesting (or payment) means that for a *deferral period* of, for example, three years one-third of the deferred remuneration vests at the end of each of the years n+1, n+2 and n+3, where ‘n’ is the moment at which performance is measured to determine the variable remuneration. Annex III includes a diagram showing an example of a pro rata spreading for a deferral scheme in which 60% of the variable remuneration is deferred (first diagram).

131. In any case, vesting should not take place more frequently than on a yearly basis (e.g. not every six months).

13.4.1.3 Proportion to be deferred

- *Article 14b(1)(h) and (n) of the consolidated UCITS Directive – p. 39*

132. The proportion of the variable remuneration that should be deferred ranges from 40 to 60 %, depending on the impact the staff member (or category of staff) can have on the risk profile of the UCITS managed by the management company and the responsibilities and tasks performed, and depending on the amount of variable remuneration. If management companies decide to determine the proportion that is being deferred by a cascade of absolute amounts (rather than percentages of the total variable remuneration - e.g. part between 0 and 100: 100% upfront, part between 100 and 200: 50% upfront and rest is deferred, part above 200: 25% upfront and rest is deferred ...), on an average weighted basis, such management companies should respect the 40 to 60 % threshold.

13.4.1.4 Time span between end of accrual and vesting of deferred amount

- *Article 14b(1)(h) and (n) of the consolidated UCITS Directive – p. 39*

133. In order to ensure a proper assessment of the performance outcome and, thus, to undertake a proper ex-post risk adjustment, the first deferred portion should not be paid out too soon after the *accrual period*. For the deferral to be really effective with regard to the staff's incentives, the first amount should not vest sooner than 12 months after the accrual.

13.4.2 Cash vs. instruments

- *Article 14b(1)(m) of the consolidated UCITS Directive – p. 39*

13.4.2.1 Types of instruments

134. Staff should only be remunerated using *instruments* if it does not trigger interest misalignment or encourage risk-taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the relevant UCITS. A misalignment of interests might arise in relation to *identified staff* that are not directly involved in investment management. Rewarding those individuals with *instruments* of UCITS might represent a conflict of interest with their duty to perform independently their functions relating to those UCITS.

135. For management companies managing several UCITS, in order to align the interests of the *identified staff* with those of the relevant UCITS, when possible according to the organisation of the management company and the legal structure of the managed UCITS, the *identified staff* should receive *instruments* related mainly to the UCITS in relation to which they perform their activities, provided that no excessive concentration in the holding of the *instruments* – facilitating an excessive risk-taking by the *identified staff* – is created. E.g. if one member of the staff of a management company which manages three UCITS (x, y and z) performs his/her activities for UCITS x only, in principle that member of the staff should receive *instruments* related mainly to UCITS x; however, should the application of such principle lead to a situation where the *identified staff* has too strong an interest in the UCITS for which they perform their activities, the management company should consider enlarging the spectrum of *instruments* paid in order to prevent an excessive risk-taking from the *identified staff* in relation to the relevant UCITS.

136. The availability of *instruments* is dependent on the legal structure of the UCITS concerned and their fund rules or instruments of incorporation. For UCITS in the legal

form of a corporate fund, shares or share-linked instruments should be able to align the interests of the investors and staff. Share-linked instruments are those whose value is based on a market value appreciation of the stock and that have the share price as a reference point, e.g. stock appreciation rights, types of synthetic shares. Without prejudice to the guidance in paragraphs 135 and 136, where it is appropriate to ensure a better alignment of interest with investors, it may be possible to remunerate the *identified staff* with non-cash instruments whose performance is correlated with the performance of the portfolios they manage, provided that these instruments feature equally effective incentives as any of the instruments referred to in Article 14b(1)(m) of the UCITS Directive.

137. For UCITS which are common funds, *instruments* should consist of units of the UCITS concerned, or equivalent ownership interests; for many of these UCITS, share-linked instruments are not an option due to their legal form.

138. Neither dividends nor interest should be paid on instruments before vesting.

13.4.2.2 Retention policy

139. A retention policy should be determined by the management company in the remuneration policy. The management company should be able to explain how the retention policy relates to other risk alignment measures in the total remuneration policy and should explain whether and how they differentiate between *instruments* paid upfront and deferred *instruments*.

140. *Retention periods*, as the most important element of the retention policy, should be coupled with the vesting of instruments. The *retention period* is independent from the *deferral period*. This means that, in order to meet the requirement of a minimum *deferral period* of three years, the *retention period* counts for nothing. The *retention* period can last for a shorter or longer period than the *deferral period* applied to the *instruments* that are not paid up front.

141. In the case of upfront *instruments*, *retention periods* are the only mechanism available to emphasize the difference between cash paid upfront and *instruments* awarded upfront in order to align incentives with the longer-term interests of the management company and the UCITS it manages and the investors of such UCITS.

142. In the case of deferred *instruments*, the *retention periods* come after every vested portion (the second diagram in Annex III illustrates these concepts). Competent authorities may determine whether the *retention periods* proposed by the management company are sufficient and appropriate.

143. The minimum *retention period* should be sufficient to align incentives with the longer term interests of the management company, of the UCITS it manages and of their investors. Different factors may tend to suggest that this period could be longer or shorter. Longer *retention periods* should be applied for staff with the most material impact on the risk profile of the management company and the UCITS it manages.

144. It is possible that a retention period lasts for a shorter period than the *deferral period* applied to the *instruments* that are not paid up front. However, as an example of proportionality, for their most senior staff, large and complex management companies should consider the use of a *retention period* for upfront paid *instruments* that goes beyond the *deferral period* for the deferred *instruments*.

145. *Instruments* should be valued on the date of the award (at the end of the *accrual period*) of these *instruments*. This value is the basis for the determination of the initial number of *instruments* and for later ex-post adjustments to the number of *instruments*.

146. The upfront payment of *instruments*, even with a minimum *retention period* of, for example, three years, is not equivalent to deferred *instruments*. Deferred *instruments* are subject to an ex-post risk adjustment due to the back-testing of the underlying performance, possibly leading to a reduction in the number of *instruments* that will eventually be paid out (second diagram in Annex III).

13.4.2.3 Minimum portion of instruments and their distribution over time

147. The requirement in Article 14b(1)(m) of the UCITS Directive to apply the minimum of 50% (where applicable) to both the portion of the variable remuneration component that is deferred and the portion of the variable remuneration component not deferred means that the 50% minimum threshold for *instruments* should be applied equally to the non-deferred and the deferred part; in other words, management companies should apply the same chosen ratio between *instruments* and cash for their total variable remuneration to both the upfront and deferred part.

Examples:

- Good practice: For a certain category within its *identified staff*, a management company establishes a 50 *instruments* / 50 cash ratio for the variable remuneration, combined with a 60% deferral schedule (that is, 40% is non-deferred variable remuneration). This results in an upfront payment in *instruments* of 20 (i.e. 50% of 40) and 20 in cash. The deferred part consists of 30 in *instruments* and 30 in cash.

- Good practice: For a certain category within its *identified staff*, a management company establishes a 70 *instruments* / 30 cash ratio for the variable remuneration, combined with a 40% deferral schedule (that is, 60% is non-deferred variable remuneration). This results in an upfront payment in *instruments* of 42 (i.e. 70% of 60) and 18 in cash. The deferred part consists of 28 in *instruments* and 12 in cash.

- Poor practice: If for a certain category within its *identified staff*, a management company were to establish a 50 *instruments* / 50 cash ratio for the variable remuneration, combined with a 40 % deferral scheme, the management company cannot decide to pay 50 in cash up front and 10 in *instruments*, leading to a deferred pay out of 40 in *instruments*.

- Poor practice: If for a certain category within its *identified staff*, a management company were to establish a 70 *instruments* / 30 cash ratio for the variable remuneration, combined with a 50% deferral scheme, the management company cannot decide to pay 50 upfront in *instruments* and 0 in cash, leading to a deferred pay out of 20 in *instruments* and 30 in cash.

148. The second diagram in Annex III provides an example of this equal distribution of *instruments* over the non-deferred and deferred parts of remuneration.

149. For the purposes of the requirement to pay at least 50% of variable remuneration in *instruments* unless the management of UCITS accounts for less than 50% of the total portfolio managed by the management company, the 50% threshold should be based on the total net asset value of all the UCITS managed by the management company.

For the purposes of the same requirement, the total portfolio managed by the management company should be the portfolios collectively and individually managed by the management company under its authorisation under the UCITS Directive and its authorisation under the AIFMD, if any.

13.4.3 Ex post incorporation of risk for variable remuneration

13.4.3.1 Explicit ex-post risk adjustments

- *Article 14b(1)(o) of the consolidated UCITS Directive – p. 39*

150. An “ex-post risk adjustment” should imply that once an initial variable remuneration component has been awarded to the staff member, and an upfront part has already been paid, the management company is still able to adjust, by way of a reduction, the variable remuneration as time goes by and the outcomes of the staff member’s actions materialise.

151. An ex-post risk adjustment is an explicit risk alignment mechanism through which the management company itself adjusts remuneration of the staff member by means of *malus* or *clawback* clauses (e.g. by lowering cash remuneration or by awarding a lower number of *instruments*). Ex-post risk adjustment should always be performance-related: techniques that are, for example, based on the amount of dividends or the evolution of the share price are not sufficient because the link to the performance of a staff member is not sufficiently direct. Therefore, ex-post risk adjustments are frequently also called “performance adjustments” because they are a response to the actual risk outcomes of the staff member's actions. Performance measures taken at this stage should allow the management company to perform an analysis (similar to back testing) as to whether its initial ex-ante risk adjustment was correct. Management companies should ensure there is a link between the initial performance measurement and the back-testing. Thus, the extent to which an ex-post risk adjustment is needed depends on the quality (accuracy) of the ex-ante risk adjustment.

152. The effect of *maluses* should not be inflated by paying out artificially high interest (above market rates) on the cash deferred parts to the staff member. *Maluses* operate by affecting the *vesting point* and cannot operate after the end of the deferral period. Furthermore, *clawback* can be a method for achieving an ex-post risk adjustment on variable remuneration.

153. Management companies may utilize specific criteria whereby *malus* (to both the cash portion and the *instruments* portion of deferred remuneration) and *clawbacks* would apply. Such criteria should, for example, include:

    a. evidence of misbehaviour or serious error by the staff member (e.g. breach of code of conduct, if any, and other internal rules, especially concerning risks);

    b. whether the UCITS and/or the management company and/or the business unit subsequently suffers a significant downturn in its financial performance (specific indicators should be used);

    c. whether the UCITS and/or the management company and/or the business unit in which the staff member works suffers a significant failure of risk management;

d. significant changes in the management company's overall financial situation.

154. A *clawback* should typically operate in the case of established fraud or misleading information. Where applicable, management companies should include *clawback* clauses in addition to these cases e.g. for remuneration received in breach of the UCITS Directive and/or these guidelines.

155. Ex-post risk adjustment could be based on both quantitative measures and informed judgment.

156. To have the greatest impact on staff's incentives, the variables should measure outcomes as close as possible to the level of the decisions made by the staff member that is subject to the ex-post explicit adjustment. For example, variables for senior executives probably should be for outcomes for the management company as a whole, or for outcomes of units or decisions that were determined by senior executive strategy. In contrast, variables for the head responsible for a business unit ideally would reflect outcomes of that unit.

13.4.3.2 Implicit adjustments

- *Article 14b(1)(o) of the UCITS Directive – p. 39*

157. When the variable remuneration takes the form of instruments, the final payout to the staff member will depend partly on market prices due to fluctuations during the *deferral* or *retention period*. This implicit adjustment of remuneration is not related to any explicit decision of the management company, but is inherent to the form that is used for paying out. Under no circumstances should the evolution of the net asset value of the UCITS or, for listed UCITS, the evolution of the share price be considered sufficient as a form of ex- post risk adjustment. There should always be a form of explicit risk adjustment on the initiative of the management company. For non-senior staff in particular, there may be no direct relation between their decisions and the value of the UCITS.

158. A *retention period* on its own can never be sufficient to design an ex-post risk adjustment for *instruments* and should not be a substitute for a longer *deferral* period.

13.4.3.3 Possibility of upward revisions

159. The market price of *instruments* can go up, so implicitly they are subject to movements in their value in both directions.

160. Under no circumstances should the explicit ex- post risk adjustment (both for cash and *instruments*) lead to an increase of the deferred part.

14 Guidelines on disclosure

14.1 External disclosure

14.1.1 Specific and general requirements on disclosure

161. Management companies should consider the additional disclosure on remuneration required under paragraph (8) of the *Recommendation*, to the extent that the latter may

also be relevant to them. Management companies should have the flexibility to disclose the information mentioned in the *Recommendation* through an independent remuneration policy statement, a periodic disclosure in the annual report or any other form. In all cases, however, the management company should ensure that the disclosure is clear and easily understandable and accessible.

162. Without prejudice to the confidentiality and applicable data protection legislation, management companies should disclose detailed information regarding their remuneration policies and practices for members of staff whose professional activities have a material impact on the risk profile of the UCITS the management company manages.

163. The *Recommendation's* remuneration disclosures may be made on a proportionate basis and the overall remuneration proportionality principle will apply to the type and amount of information disclosed. Small or non-complex management companies/UCITS should only be expected to provide some qualitative information and very basic quantitative information where appropriate. In practice, this could mean that such management companies/UCITS are not expected to provide all the information under paragraph (8) of the *Recommendation*. Management companies should disclose how they have applied proportionality.

164. The disclosure should be published on at least an annual basis and as soon as practicable after the information becomes available.

14.1.2 Policy and practices

165. The disclosure report should set out the decision-making process used to determine the remuneration policy for the individuals to which it applies. This may include the governance procedure relating to the development of the remuneration policy and should include information about the bodies (including their composition and mandate), such as the remuneration committee or external consultants, which played a significant role in the development of the remuneration policy. Management companies should outline the role of all relevant stakeholders involved in the determination of the remuneration policy. Additionally, the disclosure should include a description of the regional scope of the management company's remuneration policy, the types of staff considered as material risk takers and the criteria used to determine such staff.

166. The report should include information on how pay and performance are linked. Such information should include a description of the main performance metrics used for: the management company, top-level business lines, and for individuals (i.e. scorecards). Management companies should disclose information relating to the design and structure of remuneration processes, such as the key features and objectives of the remuneration policy and how the management company ensures that staff members in *control functions* are remunerated independently of the businesses they oversee. The report should also include a description of the different forms of variable remuneration used (i.e. cash, equity, options, other capital instruments, and long-term incentive plans) and should include the rationale for using these different forms and for allocating them to different categories of staff. Additionally, the report should include a discussion of the parameters used to allocate deferred and non-deferred remuneration for different staff categories.

167. Disclosure reports should describe how the management company takes into account current and future risks to which they are exposed when implementing remuneration methodologies and what these risks are. Also, management companies should describe the measures used to take account of these risks and the ways in which these

measures affect remuneration. In addition, management companies should disclose the ways in which they seek to adjust remuneration to take account of longer-term performance - as in the management company's policy on deferral, vesting and performance adjustment.

168. The quantitative (financial) as well as qualitative (non-financial) criteria used by management companies for assessing individual performance which are relevant for determining the remuneration policies and practices and are described under Section 13.2.4.1 (Qualitative/Quantitative measures) should also be disclosed in the disclosure reports.

169. The disclosure should be produced and owned by the *management body* that has the ultimate sign-off on remuneration decisions.

14.2 Internal disclosure

170. The remuneration policy of a management company should be accessible to all staff members of that management company. Management companies should ensure that the information regarding the remuneration policy disclosed internally reveals at least the details which are disclosed externally. Therefore, according to the size, internal organisation and the nature, scope and complexity of the activities of the management company, the information provided to staff members might contain some of the elements listed in Section III (Disclosure) of the *Recommendation*. The staff members should know in advance the criteria that will be used to determine their remuneration. The appraisal process should be properly documented and should be transparent to the member of staff concerned. Confidential quantitative aspects of the remuneration of staff members should not be subject to internal disclosure.

Annex I

Correlation table Recommendation/UCITS Directive

	Recommendation	UCITS Directive
1.	Section II, par. 3.1.	Art. 14b(1)(a)
2.	Section II, par. 3.2. and 6.1.	Art. 14b(1)(b)
3.	Section II, par. 6.2.	Art. 14b(1)(c)
4.	Section II, par. 6.5.	Art. 14b(1)(d)
5.	Section II, par. 6.6.	Art. 14b(1)(e)
6.	Section II, par. 5.1. and 5.4.	Art. 14b(1)(g)
7.	Section II, par. 5.2.	Art. 14b(1)(h)
8.	Section II, par. 4.1. and 4.2.	Art. 14b(1)(j)
9.	Section II, par. 4.5.	Art. 14b(1)(k)
10.	Section II, par. 5.3.	Art. 14b(1)(l)
11.	Section II, par. 4.4.	Art. 14b(1)(m)
12.	Section II, par. 4.3.	Art. 14b(1)(n)
13.	Section II, par. 6.4.	Art. 14b(4)

Annex II

Mapping of the remuneration principles included in the UCITS Directive

UCITS Directive requirements - Article 14b		**Paragraphs of these Guidelines relating to the relevant requirement**	**Scope**
Art. 14b(1)(a)	the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the UCITS that the management company manages;	80 – 83	Only to the *identified staff*, but management company-wide strongly recommended and management companies, if required, should be able to demonstrate why the applied the requirement to the *identified staff* only
Art. 14b(1)(b)	the remuneration policy is in line with the business strategy, objectives, values and interests of the management company and the UCITS that it manages and of the investors in such UCITS, and includes measures to avoid conflicts of interest;	80 – 83 40 – 53	Paragraphs 80 – 83 → Only to the *identified staff*, but management company-wide strongly recommended and management companies, if required, should be able to demonstrate why the applied the requirement to the *identified staff* only Paragraphs 40 – 53 → management company-wide obligatory
Art. 14b(1)(c)	the remuneration policy is adopted by the management body of the management company in its supervisory function, and that body adopts, and reviews at least annually, the general principles of the remuneration policy and is responsible for, and oversees, their implementation; the tasks referred to in this point shall be undertaken only by members of the management body who do not perform any executive functions in the management company concerned and who have expertise in risk management and remuneration;	40 – 53	Management company-wide obligatory
Art. 14b(1)(d)	the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration	50 – 53	Management company-wide obligatory

	adopted by the management body in its supervisory function;		
Art. 14b(1)(e)	staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independently of the performance of the business areas that they control;	72 – 78	Management company-wide obligatory
Art. 14b(1)(f)	the remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee, where such a committee exists;	72 – 78	Management company-wide obligatory
Art. 14b(1)(g)	where remuneration is performance-related, the total amount of remuneration is based on a combination of the assessment as to the performance of the individual and of the business unit or UCITS concerned and as to their risks and of the overall results of the management company when assessing individual performance, taking into account financial and non-financial criteria;	103 – 108 112 – 115	Only to the *identified staff*, but management company-wide strongly recommended
Art. 14b(1)(h)	the assessment of performance is set in a multi-year framework appropriate to the holding period recommended to the investors of the UCITS managed by the management company in order to ensure that the assessment process is based on the longer-term performance of the UCITS and its investment risks and that the actual payment of performance-based components of remuneration is spread over the same period;	101 – 103 129 – 133	Only to the *identified staff*, but voluntary management company-wide application is always possible
Art. 14b(1)(i)	guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year of engagement;	None	Management company-wide obligatory
Art. 14b(1)(j)	fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including	96	Only to the *identified staff*, but management company-wide strongly recommended

	the possibility to pay no variable remuneration component;		
Art. 14b(1)(k)	payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;	89 – 91	Only to the *identified staff*, but management company-wide strongly recommended and management companies, if required, should be able to demonstrate why the applied the requirement to the *identified staff* only
Art. 14b(1)(l)	the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;	109 – 111 119 – 126	Only to the *identified staff*, but management company-wide strongly recommended
Art. 14b(1)(m)	subject to the legal structure of the UCITS and its fund rules or instruments of incorporation, a substantial portion, and in any event at least 50 %, of any variable remuneration component consists of units of the UCITS concerned, equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments with equally effective incentives as any of the instruments referred to in this point, unless the management of the UCITS accounts for less than 50 % of the total portfolio managed by the management company, in which case the minimum of 50 % does not apply. The instruments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the interests of the management company and the UCITS that it manages and the investors of such UCITS. Member States or their competent authorities may place restrictions on the types and designs of those instruments or ban certain instruments as appropriate. This point shall be applied to both the portion of the variable remuneration component deferred in line with point (n) and the portion of the variable remuneration component not deferred;	134 – 149	Only to the *identified staff*, but voluntary management company-wide application is always possible

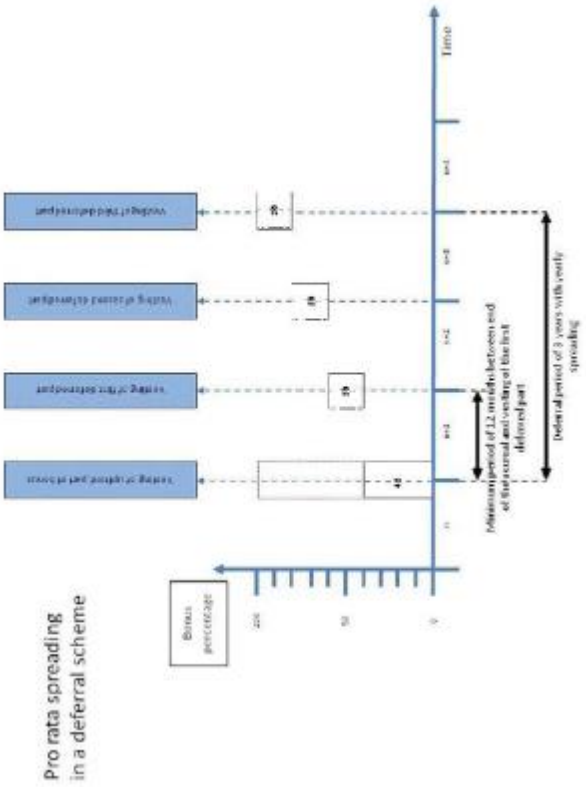
Art. 14b(1)(n)	a substantial portion, and in any event at least 40 %, of the variable remuneration component, is deferred over a period which is appropriate in view of the holding period recommended to the investors of the UCITS concerned and is correctly aligned with the nature of the risks of the UCITS in question. The period referred to in this point shall be at least three years; remuneration payable under deferral arrangements vests no faster than on a pro-rata basis; in the case of a variable remuneration component of a particularly high amount, at least 60 % of the amount shall be deferred;	127 – 133	Only to the *identified staff*, but voluntary management company-wide application is always possible
Art. 14b(1)(o)	the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the management company as a whole, and justified according to the performance of the business unit, the UCITS and the individual concerned. The total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the management company or of the UCITS concerned occurs, taking into account both current compensation and reductions in payouts of amounts previously earned, including through malus or clawback arrangements;	36 – 38 119 – 126 150 – 160	Only to the *identified staff*, but voluntary management company-wide application is always possible
Art. 14b(1)(p)	the pension policy is in line with the business strategy, objectives, values and long-term interests of the management company and the UCITS that it manages. If the employee leaves the management company before retirement, discretionary pension benefits shall be held by the management company for a period of five years in the form of instruments defined in point (m). In the case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments defined in point (m), subject to a five-	80 – 88	Only to the *identified staff*, but management company-wide strongly recommended and management companies, if required, should be able to demonstrate why the applied the requirement to the *identified staff* only

	year retention period;		
Art. 14b(1)(q)	staff are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;	92 – 94	Only to the *identified staff*, but management company-wide strongly recommended and management companies, if required, should be able to demonstrate why the applied the requirement to the *identified staff* only
Art. 14b(1)(r)	variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements laid down in this Directive.	14 – 17	Management company-wide obligatory
Art. 14b(2)	In accordance with Article 35 of Regulation (EU) No 1095/2010, ESMA may request information from competent authorities on the remuneration policies and practices referred to in Article 14a of this Directive. ESMA shall, in close cooperation with EBA, include in its guidelines on remuneration policies provisions on how different sectoral remuneration principles, such as those set out in Directive 2011/61/EU of the European Parliament and of the Council and in Directive 2013/36/EU of the European Parliament and of the Council, are to be applied where employees or other categories of personnel perform services subject to different sectoral remuneration principles.	30 – 35	
Art. 14b(3)	The principles set out in paragraph 1 shall apply to any benefit of any type paid by the management company, to any amount paid directly by the UCITS itself, including performance fees, and to any transfer of units or shares of the UCITS, made for the benefit of those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that falls into the remuneration bracket of senior management and risk takers, whose professional activities have a material impact on their risk profile or the risk profiles of the UCITS that	11 – 21	Management company-wide obligatory

	they manage.		
Art. 14b(4)	Management companies that are significant in terms of their size or of the size of the UCITS they manage, their internal organisation and the nature, scope and complexity of their activities shall establish a remuneration committee. The remuneration committee shall be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk. The remuneration committee that is, where appropriate, set up in accordance with the ESMA guidelines referred to in Article 14a(4) shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the management company or the UCITS concerned and which are to be taken by the management body in its supervisory function. The remuneration committee shall be chaired by a member of the management body who does not perform any executive functions in the management company concerned. The members of the remuneration committee shall be members of the management body who do not perform any executive functions in the management company concerned. If employee representation on the management body is provided for by national law, the remuneration committee shall include one or more employee representatives. When preparing its decisions, the remuneration committee shall take into account the long-term interest of investors and other stakeholders and the public interest.	54 – 66	Management company-wide obligatory

Annex III

Schematic overview of some deferral mechanisms



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CESR's guide to clear language and layout for the Key Investor Information document

- *Article 78(5) of the consolidated UCITS Directive – p. 101*

- *Article 3 of Commission Regulation 583/2010) – p. 248*
- *Article 5(3) of Commission Regulation 583/2010 – p. 250*

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Executive Summary

This guide describes ways of meeting the regulatory objective for Key Investor Information (KII) to achieve the clarity and simplicity of presentation that is required by retail investors. There may be other ways in which UCITS can meet this requirement.

This guide is intended as a statement of good practice. It does not constitute binding guidance on UCITS or their management companies.

Part 1: Introduction

Background and purpose

The Simplified Prospectus (SP) has failed as a consumer communication because the rules have led to long documents. In addition, many have been written in technical or legalistic language and have been poorly structured and designed, resulting in unattractive documents, which are unlikely to be read. The Key Investor Information document (KII) is a radical attempt to address these shortcomings by giving management companies more scope to produce a document that is readily understandable by the average retail investor.

The KII has a prescribed structure and headings. You can include only the information applicable to those headings and not add other information. The limit of two A4 pages (three for structured UCITS) places added emphasis on the requirements that:

- only information necessary for investors to make an informed decision is included; and

- the information selected is lucid and succinct.

You must not seek to bypass the page limit by using dense or small print or by relying on cross- references to other documents to cover information material to understanding of the investment. The KII must be well designed to attract rather than repel the reader. If it is not read it will fail, regardless of the quality of the text.

The rules set a framework which facilitates an effective document, but it is up to management companies to write and design KIIs in a way which makes them understandable. You should not copy any text from a prospectus or a SP unless you have critically reviewed it in the light of this guide. Similarly, do not copy text from the Commission Regulation or CESR guidelines (unless it is mandatory) because this is not normally addressed to the retail investor.

CESR does not believe there is a single right way to write and design a KII; you can meet the objective in many ways. This guide is intended to help you to craft a KII by giving pointers to widely accepted good practice.

The contents and nature of this guide

General good practice guidance about clear language and layout is already available[1] as well as guidance more relevant to investment literature[2]. There are also plain language agencies that can help management companies write and design their KIIs. SPs have failed partly because they have not followed this widely accepted good practice.

CESR endorses this good practice and does not seek to repeat its detailed characteristics. Instead, drawing on experience of the SP, this guide concentrates on those elements of the KII for which CESR believes management companies will find guidance most helpful.

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[1] For example the Oxford Guide to Plain English by Martin Cutts, Oxford University Press.

[2] A Plain English Handbook, How to create clear SEC disclosure documents http://www.sec.gov/pdf/handbook.pdf

National regulators may provide language-specific guidance.

All references to a management company in this guide should be read as applying to an investment company that has not designated a management company.

Who should use this guide?

Everyone involved in the drafting and design of a KII needs to share an understanding both of its aims and of their company's approach to clear language and layout. An effective KII will have a consistent style and not appear to be written by a committee. This may best be achieved if the KII has an "owner" who is responsible for final decisions on its content, language and design. But it will be rare for a single author to have all the knowledge and skills needed to produce an effective KII. It will almost always benefit from input from others provided they share the same objectives.

Do not assume that because you and your colleagues understand what the text means, an investor will understand it in the same way. It is good practice to be guided by research and testing on average retail investors.

As you hone a KII into a precise document, be ready for it to take longer to prepare than a much lengthier SP.

"I didn't have time to write a short letter, so I wrote a long one instead." (Blaise Pascal)

Part 2: Using plain language

Understanding your audience

Most UCITS are marketed to a wide range of consumers with varying levels of financial literacy and experience. Few consumers will be lawyers or industry specialists, and even those who are financially experienced will still welcome clearly designed, well-written documents. It is best to assume that your audience is reading about an investment fund for the first time.

If a document is hard to understand, the aims, risks and charges of an investment may be misunderstood or not understood at all. This will not be in the interests of the management company or the investor.

Your company may already have a 'style guide' for the way it seeks to portray itself in its publications, such as your marketing documents. This is very likely to follow clear language principles. Therefore such a style guide is just as appropriate for KIIs, because they are aimed at the same audience at the same time.

What is meant by plain language?

"Plain language is not just about avoiding jargon. It is about the writing and setting out of essential information in a way that gives a co-operative, motivated person a good chance of understanding it at first reading, and in the same sense that the writer meant it to be understood." *Oxford Guide to Plain English* by Martin Cutts.

Using plain language is not about dumbing-down or avoiding complex concepts. Instead it means:

- writing so that your audience is not alienated by unfamiliar and pompous vocabulary and convoluted construction;

- giving complex information in a clear way.

You should aim to enable an average retail investor to understand each statement at their first reading – they will easily become frustrated if they have to re-read the information.

Writing in plain language may require the 'unlearning' of habits inherited from the traditional formal or legalistic ways of writing fund documents. Nothing is gained by the presumed certainty of legalistic, technical or complex language, if the reader does not understand it or, worse, is misled by it.

Apart from improving clarity clear language techniques have great potential for reducing the word count – an important quality in the context of the page limitation of the KII.

Dealing with jargon

The investment industry is notorious for its use of jargon, specialist language and peculiar expressions (such as negative growth). This results in a style that is likely to be alien to many consumers; as in the following example:

Where, in the Manager's judgement, there is significant uncertainty that a bond holding will be redeemed at par; the amortised capital component for that holding is retained in the fund's capital and not distributed. This has the effect of reducing the estimated redemption, distribution and underlying yields and the actual distribution rate.

You can tackle jargon by:

- trying to avoid jargon altogether e.g. by explaining the feature without naming it. For example, saying that a performance fee includes a feature known as a high watermark does not necessarily help to explain what it is;

- explaining jargon in brackets after its first use;

- explaining jargon in a footnote to the section or the page; or

- cross-referring to a glossary in a supporting document. However, if this would result in numerous cross-references you should question the need for the jargon and your approach to explaining it.

  For cross-references it can be helpful to use a graphic or other indicator to show that the term is so explained.

Words which have different meanings in normal usage

In addition to jargon, the investment industry tends to use many terms which may mean different things to the average retail investor. A dictionary may give a different meaning to the one intended by the management company. The following are examples of terms that might be confusing or misleading.

*Allocation date (*as in income date*), appreciation, denominated, equity, erosion, establishment, expire, exposure, liquid, redemption, repurchase, volatile.*

Other barriers to clear language

Removing jargon or potentially confusing words will not necessarily make a document clear and engaging. There are other barriers to clear language, such as legalistic words and phrases and the use of foreign words when there is an adequate alternative in the native language of the KII. A formal, passive and impersonal style can lead to redundant words and phrases as well as being unengaging to the reader.

Short sentences

Clear language techniques will naturally lead to shorter sentences, but aim to break up any that are over 25 words.

Clear layout

Plain language needs to be supported by a clear layout. Once you have decided what you want to say and how to say it, Part 3 gives guidance on how to present it.

Part 3: Designing a KII

The KII must appear to the average retail investor to be both important and attractive, so as to maximise the likelihood they will read it. This means it must be distinguishable from other documents and appear important and easily readable. When compared to marketing literature, it should not appear to be a legal document like the terms and conditions.

Although the structure and length of a KII are mandated, you should use a combination of good design elements such as those described below. A good design makes a document easier to read and understand. A poor design may mean well-written messages are undermined or not even read.

Typeface (font), line width and line spacing

Use a typeface that is easy to read, such as Arial (or similar sans serif) or Times New Roman (or similar serif).

Type size

Use a legible type size which is balanced with the line width and the line spacing.

- Wide lines of small type are a problem for the eye to follow. It is best to keep to 50-75 characters (including spaces) in a line of 10-point type. You can use ‘newspaper’ columns or wide margins to achieve this.

- Typefaces vary, but when using the full width of A4 paper, aim for at least 11pt for serif fonts and 10pt for sans serif fonts; a slightly smaller type size is legible when narrow columns are used.

- Keep the space between lines in balance with the type size.

Headings

Use a clear hierarchy for the headings and sub-headings. This can be supported by emboldening, shading, colour, different type sizes or by indenting the text.

Page layout

Maximise 'white space' by using:

- small paragraphs
- newspaper columns where appropriate
- bulleted lists, rather than continuous text whenever appropriate
- clear gaps between sections.

Colour and shading

Colour adds visual appeal, and more design options. But remember that the KII may be photocopied or downloaded in black and white. If you use colour, do so sparingly and ensure there is enough contrast between the text and its background – the effect is better if the text is dark and the background pale. It may therefore be better to use shading.

Part 4: Guidance for each section of the KII

a) Title and introductory statements

See Article 4 of Commission Regulation (EU) No 583/2010 for the required content.

Make the title *Key Investor Information* sufficiently prominent for it to catch the eye of the potential investor.

The explanatory wording is mandatory, as well as the name and identification of the UCITS (and investment compartment if the UCITS is an umbrella) by code number and the name of the management company (if applicable).

- *Article 4 of Commission Regulation 583/2010 – p. 248*

b) Heading – Objectives and Investment Policy

See Article 7 of Commission Regulation (EU) No 583/2010 for the required content.

This section of the KII is to tell the average retail investor:
- what the fund aims to do; provide growth, an income or a combination; and
- the main ways it intends to achieve the aim(s). This should enable investors to get a sufficient understanding of how the fund seeks to achieve the objective so that they can make an informed decision. Avoid long, legalistic and technical text, which is unlikely to be read, let alone understood.

You can, if appropriate, describe the objective and the policy in a single paragraph. But if this results in a large block of text, you can split the objectives and investment policy into separate paragraphs or describe them under sub-headings.

Do not copy from the prospectus unless that is in clear language. It may be that some elements of the prospectus wording:
- are immaterial for a summary document like the KII; and

- belong in other sections of the KII. For example information about the riskiness of any of the assets belongs in the Risk and reward profile.

But remember that the regulations require you to give a balanced description of the objectives and investment policy. Where necessary you may go beyond the specific prospectus wording on investment objectives and policy and include elements covered in other sections of the prospectus.

Your approach will depend on the length and complexity of the prospectus wording. Clear language techniques may make a shorter wording possible without removing elements. For example by:

- removing redundant text such as *In order to achieve the investment objective, the Company on behalf of the Fund will enter into…*

- personalising the style; by using *you* instead of *the potential investor* or *the incoming unit holder* and *we* instead of *ABC International Asset Managers Limited* (provided this does not create uncertainty about who is meant by *we*)

- removing unnecessary or self-evident text; such as *to the extent permitted by the regulations*, or *The Fund will generally seek to achieve its investment objective through investing by reference to*...

- avoiding vague statements such as *The Fund aims to deliver attractive positive long term returns*.

If, after following the practices suggested above, the result is still too long, critically assess the need for all of the information. For example, if there is the potential to invest in a wide variety of investment instruments in different markets, analyse their materiality based on past and expected usage.

- *Article 7 of Commission Regulation 583/2010 – p. 251*

Special considerations for structured UCITS

See Articles 7 and 36 of Commission Regulation (EU) No 583/2010 for the required content. Select at least three example performance scenarios as described in CESR's level 3 guidelines on the selection and presentation of performance scenarios in the Key Investor Information document (KII) for structured UCITS (Ref. CESR/10-530).

Structured funds have many and varied formulae for calculating the possible pay-out at the end of the term. Ensure that the formula (or formulae) is presented in a balanced manner without over- emphasis on the potential for positive returns.

When explaining the formula, consider the following, where applicable.

- Make it clear that a fund's structure will alter its risk and reward profile when compared to a direct investment in the same underlying assets.

- Make it clear that a reduced risk is compensated by a reduced potential return. Consequently, avoid using words such as performance or return side by side with words such as security.

- If there is no legally enforceable guarantee the term guarantee may mislead consumers about the security of their investment.

- If there is a risk of capital loss at one of the trigger dates in the formula, clearly describe this risk within the Objectives and investment policy and state that investors' capital is not guaranteed.

- Where less than 100% of an investor's capital is guaranteed or protected, avoid phrases such as partial guarantee applicable to 90% of the invested principal, which could be misunderstood. Clearly state that the capital is not fully guaranteed or, where there is no legally enforceable guarantee, that the capital is not fully protected.

- Where a fund's formula is pegged to the average performance of an index up to 100% or where it is pegged to the index's capped performance, balance the level of indexing with the explanation of the effect of the averaging or the capping.

- Use positive wordings like if the index falls by more than 30% rather than if the index performance is less than-30%.

- Where structured funds are offered in consecutive dated issues, avoid over-use of templated text. For example, instead of using start date and end date state the actual dates.

▪ *Articles 7 and 36 of Commission Regulation 583/2010 – pp. 251 and 264*

c) Heading – Risk and reward profile

See Article 8 of Commission Regulation (EU) No 583/2010 for the required content.

The risk and reward section must give a fair and balanced description of the inherent chance for growth or loss.

Consider what impression the title of the fund may give to an investor. For example, *cautious, balanced* and *total or absolute return* may give the average retail investor an impression of the riskiness of a fund which needs to be balanced by further explanations. Therefore, explain the nature of the investments these funds make (or cross-refer to the *Objectives and investment policy*) so that the information in the *Risk and reward* section can be read in context.

▪ *Article 8 of Commission Regulation 583/2010 – p. 252*

Synthetic risk and reward indicator

CESR's guidelines on the methodology for the calculation of the synthetic risk and reward indicator in the KII (Ref. CESR/10-673) explain the calculation of the indicator for UCITS funds, including structured UCITS.

See Article 8 of Commission Regulation (EU) No 583/2010 for the statements that must support the indicator. These statements include a clear and succinct explanation of the *material* risks that are not, or not fully, reflected by the indicator. This section gives guidance on these statements within the context of the space limit of the KII.

The aim is for the investor to understand the uncertainties – both for loss and for growth – that may affect their investment. There are two main elements:

- the mandated synthetic risk and reward indicator and its explanation; and

- the narrative explanation of risks not captured by the synthetic indicator.

Where applicable, explain that the indicator is not a measure of the risk of capital loss but is a measure of the fund's previous ups and downs in value. For new funds, explain how the indicator has been worked out. For structured funds, explain that the indicator seeks to show the risk of capital loss at the end date.

- *Article 8 of Commission Regulation 583/2010 – p. 252*

Explanations of risks not adequately reflected by the indicator

Firstly be clear about what a risk is.

- *Risk for reward*

  Remember that the section covers both risk and reward and therefore should not be merely a list of bad things that can happen. Briefly explain why a risk is being taken so investors gain a more balanced understanding.

- *Consider risk as uncertainty*

Describe only the *uncertainties* which may affect the value of the fund.

It is not a risk where investors can lose money as a predictable consequence of their own actions, as a function of the way the investment plan or fund works. If such consequences are material, they are better explained in the other sections of the KII where they can be placed into context. For example:

- Explain the likelihood of capital loss in Objectives and investment policy, where a structured UCITS is cashed in early.

- Explain the deduction of an exit charge, and therefore the possibility of capital loss, in *Charges* if an investor cashes in early.

- *Risks are judged on their impact and probability*

  Go beyond a bald statement of the risk by briefly explaining its implications to the investor. For the information to be helpful, a potential investor will need an idea of your assessment of a risk's materiality. For example: how much of the fund is being exposed to a particular risk, how likely it is that the risk will materialise, and how severe the impact would be if it did. Where relevant, explanations of ways by which a risk is mitigated may help a consumer understand the impact and probability.

- *Effect* of guarantees or protections

  Explain if the risk is modified by a legally enforceable guarantee or a protection. Also explain the implications of cashing in the investment outside of any associated set period.

  In analysing the volatility data over the last five years, you will identify which risks are reflected in the synthetic indicator and which are not.

  The typical risks that may not be reflected in the synthetic indicator are counterparty, default, liquidity, operational and some of the various emerging market risks.

  – Where material (bearing in mind that all UCITS should be liquid enough to enable investments to be cashed in quickly), clearly explain the risk and its potential

impact. But giving the risk its technical name may not be helpful to investors. It may be sufficient simply to describe the nature and implications of each risk separated by a bullet or other design device.

– Do not include immaterial risks in the KII, even if there is space for them. The required signpost to the prospectus will allow interested investors to find out full details of all the risks.

– Rather than itemising each risk, it may be appropriate to categorise them by the asset or strategy that gives rise to them; for example, by grouping together the risks arising from bonds or from emerging markets.

– For an umbrella structure with no legal segregation between investment compartments, explain the possible impact on such a sub-fund in the *Practical information* section.

Note that a statement about the impact of tax in the investor's home State belongs in the *Practical information* section, not in the risk and reward profile.

d) Heading – Charges

See Articles 10-13 and 24 of Commission Regulation (EU) No 583/2010.

Charges information is summarised in a mandatory table, with each charge then explained in turn.

One-off charges taken before or after you invest	
Entry charge **Exit charge**	[ ] % [ ] %
This is the maximum that might be taken out of your money [before it is invested] [before the proceeds of your investment are paid out]	
Charges taken from the fund over a year	
Ongoing charge	[ ] %
Charges taken from the fund under certain specific conditions	
Performance fee	[ ] % a year of any returns the fund achieves above the benchmark for these fees, the [insert name of benchmark]

Explain briefly each of the charges in the table. In doing so note the following:

– State where necessary that detailed charges information is in the prospectus.

– The entry and exit charges are the maximum amounts which could be taken. Refer investors to the financial advisor where it is possible that lower charges may apply to certain investors.

– The entry charge must include any difference between the buying and selling prices.

– If the ongoing charges are taken from capital rather than income and you consider their effect on final returns may be material, explain this in this section rather than as a risk.

– Avoid industry terms such as *subscription*, *redemption* and re-*purchase*.

– Explain if a charge for a fund switch differs from the normal charge for buying units.

– If no charge is payable under a particular sub-heading (e.g. “Charges taken from the fund under specific conditions”) put “none” or “not applicable” in the relevant box beneath that sub- heading.

- *Articles 10 ff. Commission Regulation 583/2010 – pp. 254 ff.*
- *Article 24 Commission Regulation 583/2010 – p. 260*

e) Heading – Past performance

See Articles 15-19 of Commission Regulation (EU) No 583/2010. This section is not required for structured UCITS funds.

This section includes a bar chart that must be no larger than half of an A4 page and prominent supporting statements. Standards for the fair presentation of the bar chart are given in Annex III of Commission Regulation (EU) No 583/2010.

- *Articles 15 ff. Commission Regulation 583/2010 – pp. 256 ff.*
- *Annex III Commission Regulation 583/2010 – p. 269*

f) Heading – Practical information

See Article 20 of Commission Regulation (EU) No 583/2010. The extra information required for umbrella structures is given in Article 25, for share classes (where applicable) in Article 27 and for feeder UCITS in Article 34. No other information is permitted but, where it will help an investor, it is good practice to put the information into context.

The mandated statement below emphasises the precision of wording required for the KII and should stimulate a final check on the content.

[Name of investment company or management company] may be held liable solely on the basis of any statement contained in this document that is misleading, inaccurate or inconsistent with the relevant parts of the prospectus for the fund.

- *Article 20 of Commission Regulation 583/2010 – p. 258*

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COMMITTEE OF EUROPEAN SECURITIES REGULATORS

Date: 20 December 2010
Ref.: CESR/10-1321

GUIDELINES

CESR's template for the Key Investor Information document

- *Article 78(2) of the consolidated UCITS Directive – p. 101*

- *Articles 4 ff. of Commission Regulation 583/2010 – pp. 248 ff.*
- *Articles 7 ff. of Commission Regulation 583/2010 – pp. 251*

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Executive Summary

The template that CESR has developed for the Key Investor Information document for UCITS reflects the content of Commission Regulation (EU) 583/2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website. It shows the type of contents and layout that UCITS management companies would be expected to follow for a standard UCITS.

Key Investor Information

This document provides you with key investor information about this fund. It is not marketing material. The information is required by law to help you understand the nature and the risks of investing in this fund. You are advised to read it so you can make an informed decision about whether to invest.

123 Fund, a sub-fund of ABC Fund SICAV (ISIN: 4321)
This fund is managed by ABC Fund Managers Ltd, part of the XYZ group of companies

Objectives and Investment Policy

Joint description of the objectives and policy of the UCITS in plain language (it is suggested not to copy-out the prospectus)

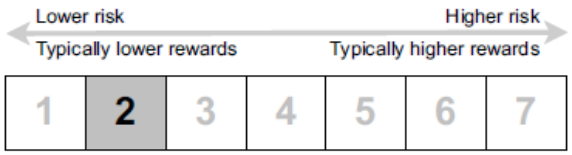
Essential features of the product which a typical investor should know:

- main categories of eligible financial instruments that are the object of investment
- a statement that the investor may redeem units on demand, and how frequently units are dealt in
- whether the UCITS has a particular target in relation to any industrial, geographic or other market sectors or specific classes of assets
- whether discretionary choices regarding particular investments are allowed, and whether the fund refers to a benchmark and if so which one
- a statement of whether any income arising from the fund is distributed or reinvested

Other information if relevant, such as:

- what type of debt securities the UCITS invests in
- information regarding any pre-determined pay off and the factors expected to determine performance
- if choice of assets is guided by growth, value or high dividends
- how use of hedging / arbitrage / leverage techniques may determine the fund's performance
- that portfolio transaction costs will have a material impact on performance
- minimum recommended holding term

Risk and Reward Profile



Narrative explanation of the indicator and its main limitations:

- Historical data may not be a reliable indication for the future
- Risk category shown is not guaranteed and may shift over time
- The lowest category does not mean 'risk free'
- Why the fund is in its specific category
- Details of nature, timing and extent of any capital guarantee or protection

Narrative presentation of risks materially relevant to the fund which are not adequately captured by the indicator:

- Credit risk, where a significant level of investment is made in debt securities
- Liquidity risk, where a significant level of investment is made in financial instruments that are likely to have a low level of liquidity in some circumstances
- Counterparty risk, where a fund is backed by a guarantee from, or has material investment exposure through contracts with, a third party
- Operational risks including safekeeping of assets
- Impact of any techniques such as derivative contracts

Charges for this Fund

The charges you pay are used to pay the costs of running the fund, including the costs of marketing and distributing it. These charges reduce the potential growth of your investment.

One-off charges taken before or after you invest	
Entry charge	[]%
Exit charge	[]%
This is the maximum that might be taken out of your money [before it is invested][before the proceeds of your investment are paid out].	
Charges taken from the fund over a year	
Ongoing charges	[]%
Charges taken from the fund under certain specific conditions	
Performance fee	[]% a year of any returns the fund achieves above the benchmark for these fees, [insert name of benchmark].

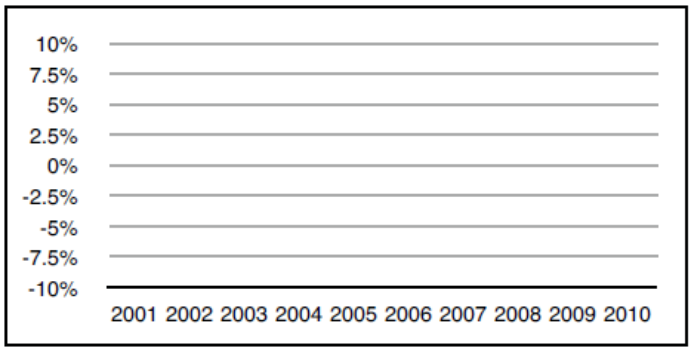
The entry and exit charges shown are maximum figures. In some cases you might pay less - you can find this out from your financial adviser.

The ongoing charges figure is based on expenses for the year ending []. This figure may vary from year to year. It excludes:

- Performance fees
- Portfolio transaction costs, except in the case of an entry/exit charge paid by the UCITS when buying or selling units in another collective investment undertaking

For more information about charges, please [see pages x to x / section x] of the fund's prospectus, which is available at www.ucitsfund/prospectus

Past Performance



The chart will be supplemented with prominent statements which:

- warn about its limited value as a guide to future performance
- indicate briefly which charges have been included or excluded
- state the year when the fund started to issue units
- indicate the currency in which past performance has been calculated

Practical Information

- Name of the depositary
- Where and how to obtain further information about the UCITS (prospectus, reports & accounts)
- Where and how to obtain other practical information (e.g. where to find latest unit prices)
- A statement that tax legislation of the fund's Home State may have an impact on the personal tax position of the investor
- A statement that "[Name of management company] may be held liable solely on the basis of any statement contained in this document that is misleading, inaccurate or inconsistent with the relevant parts of the prospectus for the fund"
- Specific information relating to umbrella funds (e.g. any switching rights between sub-funds)
- Information about other share classes, if applicable (KII may be based on a representative class)

This fund is authorised in [name of Member State] and regulated by [identity of competent authority].

[Name of management company] is authorised in [name of Member state] on and regulated by [identity of competent authority].]

This key investor information is accurate as at [the date of publication].

Date: 1 July 2010
Ref.: CESR/10-674

CESR's guidelines on the methodology for calculation of the ongoing charges figure in the Key Investor Information Document

- *Article 78(3)(d) of the consolidated UCITS Directive – p. 101*

- *Articles 10 ff. of Commission Directive 583/2010 – pp. 254 ff.*

Executive Summary

1. CESR delivered its advice to the European Commission on the format and content of Key Information Document disclosures in October 2009 (Ref. CESR/09-949). That advice was supplemented by two detailed technical methodologies on the risk and reward indicator (Ref. CESR/09-1026) and the ongoing charges figure (Ref. CESR/09-1028) that were delivered in December 2009. The Commission has indicated that it sees these methodologies as being more appropriately adopted via binding technical standards by the new European Securities and Markets Authority (ESMA) rather than as level 2 implementing measures. During the period leading up to the establishment of ESMA, CESR has agreed to adopt the methodologies as level 3 guidelines in order to provide clarity to the industry in implementing the new package of UCITS requirements.

3. The methodology for calculation of the ongoing charges figure set out in these guidelines applies to all UCITS and aims at ensuring a harmonised approach to the calculation of this figure, thereby enabling investors to compare UCITS more easily. The methodology identifies clearly which items should be included in the ongoing charges figure. There is a presumption that all costs borne by the fund must be taken into account unless they are explicitly excluded, while performance-related fees and transaction costs are among the costs excluded from the calculation (as are entry and exit charges borne by the investor). An ex-post calculation based on audited accounts should be used wherever possible. The methodology also takes account of the adaptation necessary in the case of new funds, or where there is a significant change to the costs of an existing fund.

Background and introduction

1. In its technical advice to the European Commission on the Key Information Document for UCITS (CESR/09-949), published on 28 October 2009 (hereafter the Advice), CESR made a number of recommendations on an improved approach to charges disclosure, including a clearer separation of the different types of charge and a harmonised approach to their presentation. As part of this, CESR proposed that each UCITS disclose in its Key Investor Information a single figure representing all annual charges and other payments taken from the assets of the UCITS on a periodic basis. This figure, to be referred to as the 'ongoing charges figure', was to be calculated using a harmonised methodology. CESR submitted that methodology to the Commission as part of the package of level 2 advice delivered in December 2009 (Ref. CESR/09-1028). CESR also published a feedback statement setting out how the responses to the consultation had been reflected in the advice (Ref. CESR/09-995).

2. Following submission of CESR's advice, the European Commission began work to prepare the level 2 implementing measures that would support the requirements of the revised UCITS Directive (2009/65/EC) at level 1. The advice that CESR submitted on charges disclosure – in particular Section 5 of Ref. CESR/09-949 – was incorporated into the level 2 implementing measures without any substantive changes to the content. This is reflected in Articles 10 to 14, 24, 30, 33 and Annex II of the KII implementing Regulation[1].

3. During the preparation of the implementing measures, the Commission explained that the technical methodologies, which it considered formed a central element of the advice, would not be best suited to delivery by means of measures at level 2, but instead as binding technical standards under the new EU supervisory framework. This covers both the detailed methodology for calculating each UCITS' ongoing charges figure and the methodology for calculation of the synthetic risk and reward indicator (on the latter, see document Ref. CESR/10-673).

4. The Commission considers the methodologies an important element in the operation and uniform application of the requirements on Key Investor Information and takes the view that they should be harmonised and legally binding on all UCITS. The Commission has further acknowledged that, due to their highly technical features which are tailored to the current market, it is likely that the methodologies will require work by CESR in the future to reflect developments in the market in an appropriate and timely manner. This will allow sufficient flexibility in monitoring the application of the methodologies over time and appropriate adjustments to be made.

5. Taking these points into account, the Commission decided that it would be preferable to allow the future European Securities and Markets Authority (ESMA) to adopt the methodologies as technical standards in their entirety. In the interim, CESR has agreed to adopt the methodologies as level 3 guidelines. This provides clarity and certainty to the industry for the purposes of implementing the new UCITS requirements as a package. Stakeholders should note that the substance of the methodology itself has

[1] COMMISSION REGULATION 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website.

not changed and is exactly the same as the version published on 22 December 2009 (Ref. CESR/09-1028).

Methodology for calculation of the ongoing charges figure

The following calculation methodology should be used by UCITS management companies for the purposes of calculating the ongoing charges figure referred to in Article 10(2)(b) of the KII implementing Regulation.

1. The management company of the UCITS shall:

(a) be responsible for the calculation of the ongoing charges figure and for its accurate statement in the KID;

(b) establish procedures that are consistent with this methodology and are adequately documented;

(c) keep records of each calculation for a period of 5 years after the last date on which that version of the KID was available to be issued.

Definition of ongoing charges to be disclosed

2. In the context of the KID, 'ongoing charges' are payments deducted from the assets of a UCITS where such deductions are required or permitted by national law and regulation, the fund rules or instrument of incorporation of the UCITS, or its prospectus. The figure to be disclosed in the KID shall be based on the total of all such payments made over a specific period, excluding the exceptions identified in (5) below.

3. The ongoing charges figure shall include all types of cost borne by the UCITS, whether they represent expenses necessarily incurred in its operation, or the remuneration of any party connected with it or providing services to it. These costs may be expressed or calculated in a variety of ways (e.g. a flat fee, a proportion of assets, a charge per transaction, etc).

4. The following list is indicative but not exhaustive of the types of ongoing charge that, if they are deducted from the assets of a UCITS, shall be taken into account in the amount to be disclosed:

(a) all payments to the following persons, including any person to whom they have delegated any function:

- the management company of the UCITS
- directors of the UCITS if an investment company
- the depositary
- the custodian(s)
- any investment adviser;

(b) all payments to any person providing outsourced services to any of the above, including:

- providers of valuation and fund accounting services
- shareholder service providers, such as the transfer agent and broker dealers that

are record owners of the UCITS' shares and provide sub-accounting services to the beneficial owners of those shares;

(c) registration fees, regulatory fees and similar charges;

(d) audit fees;

(e) payments to legal and professional advisers;

(f) any costs of distribution.

5. The following charges and payments shall not form part of the amount to be disclosed as ongoing charges in the KID:

(a) entry / exit charges or commissions, or any other amount paid directly by the investor or deducted from a payment received from or due to the investor;

(b) a performance-related fee payable to the management company or any investment adviser; (c) interest on borrowing;

(d) payments to third parties to meet costs necessarily incurred in connection with the acquisition or disposal of any asset for the UCITS' portfolio, whether those costs are explicit (e.g. brokerage charges, taxes and linked charges) or implicit (e.g. costs of dealing in fixed- interest securities, market impact costs);

(e) payments incurred for the holding of financial derivative instruments (e.g. margin calls);

(f) the value of goods or services received by the management company or any connected person in exchange for placing of dealing orders (soft commissions or any similar arrangement).

6. The exclusion in 5(d) for transaction-related costs shall not extend to:

(a) transaction-based payments made to any of the persons listed in 4(a) or (b), in respect of which the recipient is not accountable to the UCITS; all such amounts shall be taken into account in the published figure;

(b) the costs of acquiring or disposing of units in other UCITS or collective investment undertakings (CIUs), which shall be taken into account in accordance with 8(f) below.

7. Under a fee-sharing agreement, the management company or another party may be meeting, in whole or in part, operating costs that should normally be included in the ongoing charges figure.

(a) Any remuneration of the management company (or another person) that derives from such fee-sharing agreements shall be taken into account and added to the total ongoing charges figure. Possible examples include the remuneration of a management company through a fee-sharing agreement with a broker on transaction costs, or with a custodian on stock-lending income.

(b) There is generally no need to take into account fee-sharing agreements on expenses that are already accounted for in the ongoing charges disclosure (for example, the remuneration of a management company through a fee-sharing agreement with a fund which is captured under paragraph 4(a) above). However, in the specific case of a UCITS investing in other CIUs, any fee-sharing agreement between the management company of the UCITS and the CIU or its operator or management company shall be taken into account if it is not already captured under paragraph 8 below.

8. Where a UCITS invests a substantial proportion of its assets in other UCITS or CIUs, and so makes the disclosures required by the second paragraph of Article 50(3) of the UCITS Directive, its ongoing charges figure shall take account of the ongoing charges incurred in the underlying CIUs. The following shall be included in the calculation:

(a) if the underlying CIU is a UCITS (or a non-harmonised CIU which elects to comply with the KID disclosure requirements) its most recently available ongoing charges figure shall be used; this may be the figure published by the CIU or its operator or management company, or a figure calculated by a reliable third-party source if more up-to-date than the published figure;

(b) if the underlying CIU is operated by the UCITS management company or any linked company (i.e. within the definition in the first paragraph of Article 50(3) of the Directive), but does not fall within (a), the UCITS management company shall make a best estimate of its ongoing charges according to this methodology;

(c) if the underlying CIU does not fall within (a) or (b) and does not publish an ongoing charges figure, the UCITS management company shall either use any published information that represents a reasonable substitute for that figure (e.g. a total expense ratio published by a reliable source) or else shall make a best estimate of its maximum level based on scrutiny of the CIU's current prospectus and most recently published report and accounts;

(d) where CIUs falling within (c) represent less than 15% of the UCITS' assets, it shall be sufficient to use the published annual management charge for each of those CIUs instead of estimating their ongoing charges;

(e) in all cases, the ongoing charges figure may be reduced to the extent that there is any arrangement in place (and that is not already reflected in the fund's profit and loss account) for the investing UCITS to receive a rebate or retrocession of charges from the underlying CIU;

(f) in cases where subscription and / or redemption fees are payable by the UCITS in relation to the acquisition or disposal of units in an underlying CIU, the monetary value of those fees shall be aggregated for the period under review and taken into account in the calculation of the ongoing charges figure.

9. In the case of a UCITS which is an umbrella, each constituent compartment or sub-fund shall be treated separately for the purpose of this section, but any charges attributable to the UCITS as a whole shall be apportioned among all of the sub-funds on a basis that is fair to all investors.

Methodology for calculation (except for new funds)

10. The ongoing charges figure shall be the ratio of the total disclosable costs to the average net assets of the UCITS, calculated according to this section. The figure shall be expressed as a percentage to two decimal places.

11. As provided for in section 3 of the KII implementing Regulation, the ongoing charges figure shall be calculated at least once a year, on a ex-post basis. Where it is considered unsuitable to use the ex-post figure because of a material change (e.g. an increase in management fees), an estimate may be used instead until reliable ex-post figures reflecting the impact of the material change become available.

12. A separate calculation shall be performed for each share class, but if the units of two or more classes rank *pari passu*, a single calculation may be performed for them (see also Article 26 of the KII implementing Regulation on the use of a representative

class).

13. The ex-post figure shall be based on recent cost calculations which the management company has determined on reasonable grounds to be appropriate for that purpose. The figure may be based on the costs set out in the UCITS' statement of operations published in its latest annual or half-yearly report, if this is sufficiently recent; if it is not, a comparable calculation based on the costs charged during a more recent 12-month period shall be used instead. The costs are assessed on an 'all taxes included' basis, which means that the gross value of expenses shall be used.

14. The average net assets shall relate to the same period as the costs, and be calculated using figures based on the UCITS' net assets at each calculation of the NAV (e.g. daily NAVs where this is the normal frequency of calculation approved by the UCITS competent authority).

15. Where the ongoing charges attributable to an underlying CIU are to be taken into account:

(a) the ongoing charges figure (or equivalent) of each underlying CIU is pro-rated according to the proportion of the UCITS' net asset value which that CIU represents at the relevant date (being the date at which the UCITS figures are taken);

(b) all the pro-rated figures are added to the ongoing charges figure of the investing UCITS itself, thus presenting a single total (a 'synthetic' ongoing charges figure).

16. Information about the ongoing charges figures that were applicable during previous years / periods should be published at the location (e.g. the management company's website) which is specified in the KID as the general source of further information for investors who require it.

Methodology for calculation for new funds

17. The same methodology shall apply as for an ex-post calculation, subject to the following differences:

(a) paragraphs 13 and 14 above do not apply and estimates shall be used instead in accordance with Article 13 of the KII implementing Regulation;

(b) if, in the management company's opinion, expressing a figure to two decimal places would be likely to suggest a spurious degree of accuracy to investors, it shall be sufficient to express that figure to one decimal place;

(c) it shall be assumed, unless there is a statement in the prospectus to the contrary, that no rebates or fee waivers will be received to the benefit of the fund.

18. The management company shall ensure that the accuracy of the estimated figure is kept under review. The management company shall determine when it is appropriate to begin using ex-post figures rather than an estimate; but in any case it shall, no later than 12 months after the date on which units were first offered for sale in any Member State, review the accuracy of the estimate by calculating a figure on an ex-post basis.

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Date: 1 July 2010
Ref.: CESR/10-673

CESR's guidelines on the methodology for the calculation of the synthetic risk and reward indicator in the Key Investor Information Document

- *Article 78(3)(e) of the consolidated UCITS Directive – p. 101*

- *Articles 8 and 9 of Commission Regulation 583/2010 – pp. 252 f.*

Executive Summary

1. CESR delivered its advice to the European Commission on the format and content of Key Information Document disclosures in October 2009 (Ref. CESR/09-949). That advice was supplemented by two detailed technical methodologies on the risk and reward indicator (Ref. CESR/09-1026) and the ongoing charges figure (Ref. CESR/09-1028) that were delivered in December 2009. The Commission has indicated that it sees these methodologies as being more appropriately adopted via binding technical standards by the new European Securities and Markets Authority (ESMA) rather than as level 2 implementing measures. During the period leading up to the establishment of ESMA, CESR has agreed to adopt the methodologies as level 3 guidelines in order to provide clarity to the industry in implementing the new package of UCITS requirements.

2. The methodology for the synthetic risk and reward indicator (SRRI) set out in these guidelines applies to all UCITS. It should be based on the volatility of the fund using weekly or monthly returns covering the previous five years. In light of the outcome of the volatility calculation, the UCITS should be assigned to the appropriate category on a numerical scale of 1 to 7. The methodology sets out how the volatility intervals should be defined as well as detailed rules on how to assess migrations. There are specific rules on application of the methodology to absolute return funds, total return funds, life cycle funds and structured funds. In the latter case, the SRRI should be calculated on the basis of the annualized volatility corresponding to the 99% Value at Risk (VaR) at maturity.

Background and introduction

1. In its technical advice to the European Commission on the Key Information Document for UCITS (CESR/09-949), published on 28 October 2009 (hereafter the Advice), CESR proposed the use of a synthetic indicator (hereafter the SRRI) for funds' risk and reward disclosure, accompanied by a short narrative description of the limitations of the indicator and, where relevant, the risks that are not fully captured by the indicator.

2. In order to reach this conclusion, CESR consulted twice with external stakeholders, during the spring (March) and over the summer (August and early September) of 2009, and took into account, inter alia, the findings from the Commission's testing exercise. In particular, the testing revealed that investors have a strong preference for the inclusion of a synthetic indicator in the Key Investor Information Document (KID), and that they seem to be more confident in their ability to compare funds and assess their level of risk when they are provided with an indicator based on a numerical scale.

3. However, CESR also acknowledged that a move towards the inclusion of a synthetic risk and reward indicator requires agreement on the methodological elements underlying the calculation of such an indicator. This will ensure that all UCITS funds are classified into the risk and reward scale according to the same criteria throughout the European Union.

4. CESR therefore developed a detailed methodology for the computation of the SRRI, which it submitted to the Commission in December 2009 (Ref. CESR/09-1026). In the formulation of its proposal, CESR benefited from the work of both regulators and industry representatives. CESR also published a feedback statement setting out how the responses to the consultation had been reflected in the advice (Ref. CESR/09-995).

5. The methodology was tailored to cover the particular features of the different types of fund and, in particular, to satisfy the following criteria and objectives:

   - provide investors with a meaningful indication of the overall risk and reward profile of the UCITS;
   - ensure an appropriate spread of UCITS across different risk classes;
   - be applicable to all types of UCITS;
   - leave no room for manipulation;
   - enable easy and cost-effective implementation by UCITS providers;
   - be easily understood by auditors, advisers and distributors;
   - enable easy and effective supervision by regulators; and
   - achieve an adequate degree of stability in the risk classification process with respect to normal trends and fluctuations of financial markets.

6. Following submission of CESR's advice, the European Commission began work to prepare the level 2 implementing measures that would support the requirements of the revised UCITS Directive (2009/65/EC) at level 1. The advice that CESR submitted on risk and reward disclosure – in particular Section 4 of Ref. CESR/09-949 – was incorporated into the level 2 implementing measures without any substantive changes

to the content. This is reflected in Articles 8 to 9, 29, 32 and Annex II of the KII implementing Regulation[1].

7. During the preparation of the implementing measures, the Commission explained that the technical methodologies, which it considered formed a central element of the advice, would not be best suited to delivery by means of measures at level 2, but instead as binding technical standards under the new EU supervisory framework. This relates to the SRRI methodology and the detailed methodology for calculating each UCITS' ongoing charges figure (on the latter, see document Ref. CESR/10-674).

8. The Commission considers the methodologies an important element in the operation and uniform application of the requirements on Key Investor Information and takes the view that they should be harmonised and legally binding on all UCITS. The Commission has further acknowledged that, due to their highly technical features which are tailored to the current market, it is likely that the methodologies will require work by CESR in the future to reflect developments in the market in an appropriate and timely manner. This will allow sufficient flexibility in monitoring the application of the methodologies over time and appropriate adjustments to be made.

9. Taking these points into account, the Commission decided that it would be preferable to allow the future European Securities and Markets Authority (ESMA) to adopt the methodologies as technical standards in their entirety. In the interim, CESR has agreed to adopt the methodologies as level 3 guidelines. This provides clarity and certainty to the industry for the purposes of implementing the new UCITS requirements as a package. Stakeholders should note that the substance of the methodology itself has not changed and is exactly the same as the version published on 22 December 2009 (Ref. CESR/09-1026).

Methodology for the calculation of the synthetic risk and reward indicator

The following calculation methodology should be used by UCITS management companies for the purposes of calculating the synthetic indicator referred to in Article 8 and Annex I of the KII implementing Regulation.

General methodology **Box 1**

1. The synthetic risk and reward indicator shall be based on the volatility of the fund.

2. Volatility shall be estimated using the weekly past returns of the fund or, if not otherwise possible, using the monthly returns of the fund.

3. The returns relevant for the computation of volatility shall be gathered from a sample period covering the last 5 years of the life of the fund and, in case of distribution of income, shall be measured taking into account the relevant earnings or dividend payoffs.

[1] COMMISSION REGULATION 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website.

4. The volatility of the fund shall be computed, and then rescaled to a yearly basis, using the following standard method:

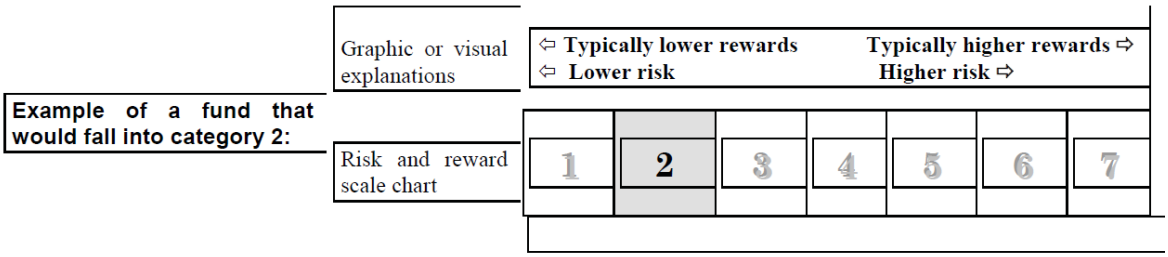
$$\text{volatility} = \sigma_f = \sqrt{\frac{m}{T-1}\sum_{t=1}^{T}(r_{f,t} - \bar{r}_f)^2}$$

where the returns of the fund ($r_{f,t}$) are measured over T non overlapping periods of the duration of 1/m years. This means m=52 and T= 260 for weekly returns, and m=12 and T=60 for monthly returns; and where $\bar{r}_f$ is the arithmetic mean of the returns of the fund over the T periods:

$$\bar{r}_f = \frac{1}{T}\sum_{t=1}^{T} r_{f,t}$$

5. The synthetic risk and reward indicator will correspond to an integer number designed to rank the fund over a scale from 1 to 7, according to its increasing level of volatility.

6. The illustration of the SRRI in the KID will take the following form:



7. Management companies shall compute the synthetic risk and reward indicator of the UCITS in strict coordination with the arrangements and procedures adopted for risk management purposes, and ensure monitoring of the correct and consistent implementation of this process on an ongoing basis.

8. The computation of the synthetic risk and reward indicator of the UCITS, as well as any of its subsequent revisions, shall be adequately documented. Management companies shall keep records of these computations for a period of not less than five years; this period shall be extended to five years after maturity for the case of structured funds.

Explanatory text

The SRRI should be based on the volatility of the returns (past performances) of the fund; these shall be the weekly past returns of the fund or, if this is not possible because of the limited NAV calculation frequency, the monthly returns of the fund.

The SRRI should therefore translate the volatility of the returns into a general indication concerning the overall level of risk of the fund.

Volatility is a well-known and well-established concept in finance, a measure conceptually easy to grasp and, at the same time, able to capture the effects of very different risk factors. Insofar as risk exposures cause fluctuations in the net asset value (NAV) of a fund, the volatility of its returns will reflect the loadings on all risk and reward drivers from which the fund generate returns. As set out in the implementing Regulation, any material changes to the risk and reward profile of the UCITS should result in a prompt revision of the KID, provided this is still being used to comply with the disclosure obligations linked to the public

offering of the fund. The revision of the KID shall include, where relevant and appropriate, an update of the SRRI according to the rules established in Box 3, of these Guidelines.

Therefore, management companies should operate the risk classification of UCITS as an integrated part of, or at least in strict coordination with, the arrangements and procedures adopted for risk management purposes, to ensure monitoring of the correct and consistent implementation of this process on an ongoing basis.

Furthermore, the risk classification of UCITS, as well as any of its subsequent revisions, should be adequately documented and subject to a record keeping requirement of five years. As clarified in the following of this Annex, the aforementioned record keeping requirement period shall extend to five years after maturity (expiration of the proposed holding period) for the case of structured funds.

As set out in paragraph 3 of Box 1, the returns relevant for the computation of volatility should be measured taking into account the relevant earnings or dividend payoffs. As clarified in the example below, since the methodology requires calculation of the volatility of weekly (or monthly) returns, no correction (such as assuming reinvestment) is needed with respect to the value of the NAV of the fund.

Week	1	2	3	4	5
NAV	100	96	89	86	90
Distribution of income	No	No	5	No	No
Weekly returns		-4.00%	-2.08%	-3.37%	4.65%
Details of the calculation		(96-100)/100	((89+5)-96)/96	(86-89)/89	(90-86)/86

Relevant returns, in fact, will simply be calculated taking into account also the income which is distributed. Since accrued income should be factored into the NAV, this requirement will not have any impact on the calculation of the returns which do not correspond to the periods (week or month) in which the income is distributed.

Definition of the volatility intervals **Box 2**

1. The computation of the synthetic risk and reward indicator of UCITS shall be carried out according to the following grid of annualized volatility intervals (‘buckets’).

2. The grid provides volatility intervals which reflect the increasing level of risk borne by the fund and, therefore, its position in the risk scale.

Risk Class	Volatility Intervals	
	equal or above	less than
1	0%	0.5%
2	0.5%	2%
3	2%	5%
4	5%	10%
5	10%	15%
6	15%	25%
7	25%	

Explanatory text

CESR has considered a range of alternatives and factors in order to formulate its proposal concerning the upper and lower bounds of the volatility buckets that should be used for the classification of funds along the risk scale.

In particular, CESR has considered carefully the issues relating to the stability of the risk classification over the normal cycles which characterise financial markets. In this respect, CESR did not consider it desirable to develop an SRRI involving frequent migrations of category since:

1. The KID will not usually be revised more than once per year;

2. Frequent and significant migrations of funds across risk classes might give investors cause for concern over the reliability of the indicator.

However, CESR also acknowledges that in order to be useful for investors, the risk classification of funds should also provide sufficient discriminatory power to avoid the crowding of many funds in only one or a few buckets.

In order to formulate the proposed grid, CESR took into account, in addition to the results of both its consultations with external stakeholders, the outcome of several empirical studies by regulators, industry representatives and other external contributors and independent experts concerning the potential extent and frequency of the migrations of funds across the risk classes.

The volatility intervals proposed in the table above are the results of a compromise solution designed to strike a balance between the requirement to obtain an adequate degree of stability in the risk classification process and that of pursuing an appropriate spread of UCITS across different risk classes.

Revision of the SRRI – rules to assess migrations **Box 3**

1. Any material change to the risk and reward profile of the UCITS shall be reflected by a prompt revision of the KID.

2. The synthetic risk and reward indicator shall be revised if the relevant volatility of the UCITS has fallen outside the bucket corresponding to its previous risk category on each weekly or monthly data reference point over the preceding 4 months.

3. Subject to the paragraph above, if the volatility of the UCITS has moved so as to correspond to more than one bucket during the 4-month period, the UCITS shall be attributed the new risk class corresponding to the bucket which its relevant volatility has matched for the majority of the weekly or monthly data reference point during the preceding 4 months.

4. The synthetic risk and reward indicator shall always be revised when changes to the risk and reward section of the KID are the result of a decision by the management company regarding the investment policy or strategy of the fund. In these circumstances, any changes to the SRRI shall be intended as new classifications of the risk of the fund and, consequently, be carried out according to the general rules concerning the risk classification of UCITS presented in this Annex.

Explanatory text

As a general principle, the implementing Regulation establishes that any material change to the risk and reward profile of the fund should be reflected by a prompt revision of the KID, including the SRRI if appropriate.

This requirement applies also to those circumstances where the change of the risk and reward profile of the fund is linked to inadvertent changes in the overall market conditions in the segments that are relevant for the investment policies and/or strategies adopted by the UCITS.

Therefore, the SRRI of the fund should be monitored and controlled on an ongoing basis and, if any material change has occurred, the new risk grading of the fund should be reflected in the updated version of the KID.

However, there are several circumstances regarding the risk classification process that should also be taken into account when considering whether a change should be deemed as material.

For instance, the historical volatility used for the risk classification is estimated from a data sample and is, therefore, subject to estimation errors. In this respect, CESR considers that it is appropriate to establish certain rules that prevent migrations between risk categories that may be purely due to sampling errors.

Another situation that could raise concern is the case where the volatility of a particular fund is stable over time but oscillates around the threshold between two risk categories. This situation may cause frequent changes to the risk grading in the KID, while the underlying risk profile of the fund is stable and does not change significantly over time.

In order to address these potential concerns, CESR has established that the SRRI of a fund should be revised if its relevant volatility has fallen outside the bucket corresponding to its previous risk category on each weekly or monthly data reference point over the preceding 4 months. In this case, the UCITS should be attributed the new risk grading corresponding to the bucket, as defined in Box 3 paragraph 3, that its relevant volatility has matched over the preceding 4 months.

In any case, the SRRI should always be revised when changes to the risk and reward section of the KID are the result of a decision by the management company regarding the investment policy or strategy of the fund. In these circumstances, any changes to the SRRI

should be intended as new classifications of the risk of the fund and, consequently, be carried out according to the general rules concerning the risk classification of UCITS presented in this Annex.

Specific issues regarding the computation of volatility

The following sections provide the methodology that should apply to the calculation of the SRRI in circumstances or for funds for which the general approach described in Box 1 may not be appropriate. For example:

- market funds with an insufficient performance history (Box 4);
- funds with predetermined risk or reward targets (Boxes 5, 6, 7); and
- structured funds (Box 8).

The identification of the relevant volatility may require some adjustments in the case of funds that employ investment policies pursuing predetermined risk or reward targets. These funds are commonly referred to as 'strategy funds', and a distinction can be made between: (1) absolute return funds, (2) total return funds, and (3) life cycle funds.

The portfolio asset allocation of these funds is actively determined by the strategy adopted by the managers, which may either pursue a specific risk target or limit (as in the case of 'absolute return' funds), or aim to achieve specific reward objectives as set out by the investment policy of the UCITS (as in the case of 'total return' and 'life cycle' funds).

Since the portfolio allocation of these types of fund may change substantially over time, their historical volatility may not appropriately represent their actual risk and reward profile at the time of the computation.

As a consequence, CESR has developed the following adjustments which should be used to identify the relevant volatility of the types of UCITS mentioned above.

Market funds with insufficient performance history **Box 4**

1. UCITS that are managed according to investment policies or strategies which aim to reflect the risk and reward profile of some pre-determined segments of the capital market shall be considered as market funds.

2. For market funds where a full returns history, as required in Box 1, is unavailable, the methodology for the calculation of the synthetic risk and reward indicator shall be adjusted according to the following steps:

a) Take the relevant available history of the returns of the fund;

b) Identify the fund's representative portfolio model, target asset mix or benchmark;

c) Compute the returns of the representative portfolio model, target asset mix or benchmark of the fund from the beginning of the sample period, as required in Box 1, until the date of availability of the actual returns of the fund;

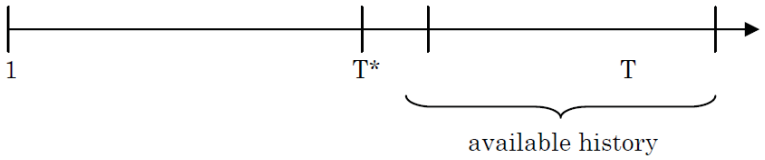
d) Concatenate both returns series to one series over the full sample period as required in Box 1;

e)	Estimate the annualised historical volatility according to the general formula.

Explanatory text

The computation of the relevant volatility may require some adjustments for UCITS that have not been in existence long enough to generate the required time series of relevant returns.

This is typically the case for new funds or funds which have recently revised – to a material extent – their investment policy. In these circumstances, in fact, the relevant returns of the fund are available only from the date of inception (T*), or of validity of the new investment policy, to the most recent date (T) and, thus, over a period which may fall short of the span of time required under paragraph 1.



However, the lack of an appropriate history of past returns should in general not represent a problem for 'market funds', that is, for those funds which are managed according to investment policies and/or strategies which predominantly aim at reflecting the risk and reward profile of some predetermined segments of the capital market. In fact, their targets in terms of asset allocation should generally allow the identification of meaningful and appropriate portfolio models, asset mixes or benchmarks for such funds.

As illustrated above, the methodology assumes that a representative portfolio model, target asset mix or benchmark can be identified for these funds, with returns available over the period [1,T*]. However, although this is often the case, the availability of suitable portfolio models or proxy indices or benchmarks cannot be assumed in all circumstances. As a consequence, a solution of 'last resort' should be identified as part of the methodology.

In this respect, CESR believes that, when market funds pursue the risk and reward profile of some market segments which are represented by indices (or benchmarks or target asset mixes) whose return history is not sufficiently long, the SRRI of these funds shall be computed having regard to the volatility of such indices as estimated from the simulation of their relevant returns.

This simulation process shall take into account all the available information and shall be carried out through adequate risk factors models under the assumption of risk neutrality.

In either case, the computation or the simulation of the relevant returns of benchmarks or target asset mixes shall be adjusted to reflect the effects of the ongoing costs that are charged to the funds only when these can be justifiably expected to affect the volatility estimates to a material degree.

Absolute return funds **Box 5**

1. UCITS that are managed according to investment policies or strategies which envisage a variable allocation of the portfolio of the fund across asset classes, under the constraint of a predetermined risk limit, shall be considered as absolute return funds.

2. For absolute return funds, the methodology for the computation of the risk and reward indicator shall comprise the following steps:

(a) When a full returns history is available, take the maximum of:

(i) the actual historical annualized volatility; and

(ii) the volatility that is consistent with the risk limit adopted by the UCITS.

(b) For funds that lack a sufficient returns history, and for funds that have recently revised their investment policy, consider the annualized volatility that is consistent with the risk limit of the fund.

3. The volatility referred to in point (a)(ii) shall be deemed consistent with the risk limit of the UCITS if this is itself a risk target for the fund or if, once the risk limit is translated into a VaR measure, this is computed by reverse engineering the VaR under the assumption of risk neutrality.

Explanatory text

CESR believes that for absolute return funds that is, those funds which are managed in line with a pre-determined risk limit (generally expressed in terms of volatility or VaR measures) – the existence of such an ex-ante risk 'budget' should be deemed a relevant feature for disclosure and should therefore be taken into account for the computation of the SRRI.

In particular, when the risk limit of absolute return funds takes the form of a VaR measure, the relevant volatility required for ranking the risk of the fund should be derived through adequate and consistent reverse engineering of the VaR under the assumption of risk neutrality.

For instance, for a 99% confidence level VaR with holding period equal to a number of T time intervals of 1/m years, the relevant volatility (σ_A) should be computed from reverse engineering the following formula:

$$VaR = -(\mathrm{rf}_{1/m} - \frac{\sigma^2_{1/m}}{2}) \times T + 2.33 \times \sigma_{1/m} \times \sqrt{T};$$

$$\sigma_A = \sigma_{1/m} \times \sqrt{m}$$

where $\mathrm{rf}_{1/m}$ is the risk free rate valid at the time of the computation for each of the T intervals of 1/m years included in the holding period of the fund.

Total return funds **Box 6**

1. UCITS that are managed according to investment policies and/or strategies that pursue certain reward objectives by participating, through flexible investment in different financial asset classes (e.g. in both equity and fixed-income markets) shall be considered as total return funds.

2. For total return funds, the methodology for the computation of the risk and reward indicator shall comprise the following steps:

(a) When a full returns history is available, take the maximum of: (i) the actual historical annualized volatility of the returns;

(ii) the annualized volatility of the returns of the pro-forma asset mix that is consistent with the reference asset allocation of the fund at the time of the computation;

(iii) the volatility which, as elaborated in Box 5, is consistent with the risk limit of the fund, if any and appropriate.

(b) For new funds that lack sufficient returns history and for funds that have revised their investment policy over the required sample period, take the maximum of (a)(ii) and (iii) above.

Explanatory text

Total return funds shall be understood as those UCITS that aim to achieve certain reward objectives by participating in different asset classes (e.g. in both equity and fixed-income markets). The range of these funds is remarkably broad and may also include UCITS that provide some sort of capital protection, such as Constant Proportion Portfolio Insurance (CPPI) or Variable Proportion Portfolio Insurance (VPPI).

The portfolio allocation of total return funds across assets and asset classes may change rapidly over time, following market dynamics or according to managers' views and strategies. As a consequence, the active and dynamic nature of their investment policies requires the identification of the SRRI of total return funds to be calculated taking into account the maximum volatility resulting from the information regarding the past returns history (indent (a)(i)), the recent composition of their portfolios (indent (a)(ii)) and, finally, the risk limits these funds are managed in line with (indent (a)(iii)), if any.

Life cycle funds **Box 7**

1. UCITS that are managed according to investment policies or strategies which imply a shifting over time of their portfolio allocation from equity to fixed-income assets, according to some pre- determined rules as a target maturity date approaches, shall be considered as life cycle funds.

2. For life cycle funds, the methodology for the computation of the risk and reward indicator shall comprise the following steps:

- When a full returns history is available and the fund has not changed its target asset mix over this period, take the actual historical volatility,

- For new funds that lack sufficient returns history:

i) take the relevant fund return history;

ii) identify the representative benchmark, portfolio model or asset mix of the fund and calculate the returns of these proxy indices in accordance with Box 4;

iii) combine both returns series to estimate the relevant annualized volatility.

Explanatory text

Life cycle funds are managed according to investment policies which require their portfolio asset allocation and composition to become more defensive, switching gradually from equity to fixed- income assets according to some pre-determined rules. Since the portfolio composition changes substantially over time, it may be the case that not all of the return history of these funds is representative of their current overall risk profile.

As a consequence, the SRRI computation methodology for life cycle funds needs to be modified to reflect the changes over time of the portfolio reference asset allocation as envisaged in their investment policies.

Therefore, when a life cycle fund is next due to revise its target portfolio allocation as a consequence of its investment policy or strategy, the management company should update the SRRI according to Box 3 and, consequently, identify the relevant volatility through the proxy indices, as elaborated in Box 4 (benchmarks, representative portfolio models or asset mixes), that are relevant to the fund at that point in time.

In any case, since the investment policy of life cycle funds is inherently structured to lead to such changes of their portfolio allocation, and thus their risk and reward profile, CESR believes that the illustration of their SRRI in a KID should be supplemented by a prominent statement warning investors in clear terms about these characteristics.

The text in Box 7 assumes that a representative portfolio model or target asset mix can be identified for total return funds at the time of the computation (paragraph 2 (ii)). However the availability of the information needed to compute the returns of this portfolio model or target asset mix cannot be assumed in all circumstances and, consequently, a solution of 'last resort' should be identified as part of the methodology.

In this respect, CESR believes that, when the return history of such a portfolio model or target asset mix cannot be computed for a sufficiently long time, a simulation of the relevant returns should be allowed.

This simulation process should take into account all the available information and be carried out through adequate risk factor models under the assumption of risk neutrality.

Structured funds **Box 8**

1. UCITS which provide investors, at certain predetermined dates, with algorithm-based payoffs that are linked to the performance, or to the realization of price changes or other conditions, of financial assets, indices or reference portfolios shall be considered as structured funds.

2. The synthetic risk and reward indicator for structured funds shall be calculated by considering the annualized volatility corresponding to the 99% VaR at maturity, as elaborated in this Box.

3. The volatility corresponding to the 99% VaR at maturity shall be estimated from historical simulation of the returns of the fund on the basis of the following model:

$$\ln(R_{fund}) \sim N((rf_w - \frac{\sigma_w^2}{2}) \times T; \sigma_w \sqrt{T}) \;;\; R_{fund} = \frac{NAV^T}{NAV_0}$$

where:

- T identifies the number of weeks included in the holding period of the fund, which is equal to the time (life to maturity) spanned by the algorithm employed by its investment policy;

- rf_w represents the average weekly risk free rate which is valid at the time of the computation over the holding period of the fund;

- σ_w is the volatility of the weekly (log)returns of the fund.

4. The 99% VaR at maturity of a structured fund which provides a payout linked to the performance of a predetermined reference asset, instrument or pool of assets (in the following the 'XYZ' index) shall be computed through the following steps:

(a) Identify the relevant changes of the XYZ index for each of the T-week holding periods that ends at each of the week included in the past 5 years. If the length of the time series of the XYZ index is not sufficient, this can be integrated, according to the requirements elaborated in Box 4, through backward simulation;

(b) Simulate the (log)returns at maturity of the funds that correspond to the relevant changes of the XYZ index as identified according to (a). If the formula allows for the distribution of dividends, or for the possibility of anticipating results, upon the realization of some circumstances that are matched in the simulation, these pay-offs shall be capitalized at maturity (at the end of the holding period T) through the appropriate risk-free rates which are known at the time of the simulation;

(c) Isolate the 1% percentile of the distribution of the (log)returns of the fund simulated at step 2.

This percentile, changed in sign according to international standards, represents the historical simulation VaR of the fund at maturity with a confidence level of 99%;

(d) Once the 99% VaR at maturity has been calculated, the corresponding annualized volatility shall be computed through the following procedure:

i) Identify rf_w as the average weekly risk free rate valid at the time of the computation over the holding period of the fund. This rate shall be estimated if not directly available from the interest swap curve;

ii) Reverse engineer the model introduced above to estimate the weekly returns volatility (σ_w) of the fund which is consistent with the VaR figure calculated as illustrated above (step 3). This can be done by solving the following equation for σ_w:

$$VaR = -(rf_w - \frac{\sigma_w^2}{2}) \times T + 2.33 \times \sigma_w \times \sqrt{T}$$

(e) Annualize the volatility according to the usual square root rule, $\sigma_A = \sigma_w \times \sqrt{52}$.

5. The use of a specific historical time-period for the calculation of the synthetic risk and reward indicator may generate a bias in the result of this 5-step method, due to the potential

drift of the underlying XYZ index over the computation period. The UCITS shall then adapt this 5-step method to ensure that the synthetic risk reward indicator adequately reflects the level of risk of the UCITS through an appropriate correction of this potential drift effect.

Explanatory text

As set out in the implementing Regulation, UCITS shall be classified as structured funds if they provide investors, at certain predetermined dates, with algorithm-based contingent payoffs that are linked to the performance, or to the realization of price changes or of other conditions (path dependency), of financial assets, indices or reference portfolios.

In any case, the payoff targets promised by structured funds are due at certain pre-determined dates, which correspond to the finite maturities of the holding periods proposed for such funds. These dates may also vary depending on the realization of some conditions concerning the underlying assets of the funds.

Structured funds can sometimes be assisted by a guarantee (a 'hard floor'), which ensures investors can recover all, or part of, the capital initially invested in the fund. These capital guarantees can be unconditional (some level of protection is always guaranteed) or conditional (the guarantee can be reduced) or even fully disappear (a knock-out feature), according to some contingency. This contingency may be an event, for instance a decrease in the value of a reference index (i.e. below a certain level the guarantee no longer applies in full or at all).

To achieve its objectives, a structured fund generally uses complex techniques and instruments (i.e. derivatives with non-linear payoffs) which make its return distribution markedly asymmetrical. In addition, the investment strategy of structured funds generally entails that their exposure to market indices or asset classes (and hence their risk profile) can change quite quickly and drastically over time.

Given both the asymmetry of its return distributions and the changing nature of its risk exposures, neither the historical volatility of a structured fund nor the volatility associated with its current asset mix can be deemed a representative tool for evaluating its risk profile.

In order to address these concerns, these Guidelines require the risk profile of structured funds to be evaluated by looking at the potential losses that an investment in the fund may incur at maturity under different market conditions. In particular, the SRRI of structured funds should be estimated by first computing the VaR at maturity through historical simulation and then transforming this measure into the corresponding annualized returns volatility.

This approach is designed to tackle the specific drawbacks that an approach based on a traditional measurement of historical volatility would have. In this respect, VaR is focused, in fact, on the loss side of the return distribution and, therefore, it takes into account any potential asymmetry that such distributions may present.

In addition, by computing the return that the fund would have obtained at maturity, the risk measurement process focuses on the overall strategy of the fund, and not only on the risk profile that the fund might have at a particular point of time. This is more appropriate for structured funds since, as noted above, the risk exposure derived from their portfolio composition can change quite quickly and drastically over time.

The methodology is supported, among other factors, by the evidence that most investors in structured funds hold their investments until maturity. However, since structured funds that fall within the remit of the UCITS Directive must remain open for redemption at any time, CESR believes that the illustration of their SRRI in a KID should be supplemented, where

appropriate and relevant, by a prominent warning stating that early repurchase and/or redemption of structured funds' shares/units can be associated with a higher level of risk.

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