Valtiovarainministeriö E-KIRJE VM2010-00140

RMO Vuori Irmeli 24.03.2010

Eduskunta
Suuri valiokunta

Viite

Asia
Komission ehdotukset säädöksiksi siirtokelpoisiin arvopapereihin kohdistuvaa yhteistä sijoitustoimintaa harjoittavia yrityksiä (yhteissijoitusyritykset) koskevien lakien, asetusten ja hallinnollisten määräysten yhteensovittamisesta annetun Euroopan parlamentin ja neuvoston direktiivin 2009/65/EY täytäntöönpanosta

U/E-tunnus: **EUTORI-numero: EU/2008/1264**

Ohessa lähetetään perustuslain 97§:n mukaisesti komission edustajan Euroopan arvopaperikomitealle maaliskuun 8 päivänä 2010 pidettyyn kokoukseen jakamat ehdotukset edellä mainitun direktiivin täytäntöönpanotoimenpiteiksi ja ehdotuksista laadittu muistio.

Hallinto- ja kuntaministeri Mari Kiviniemi

Neuvotteleva virkamies Irmeli Vuori

LIITTEET Perusmuistio VM2010-00093, Komission säädösehdotukset 4 kpl

Asiasanat	rahoitusmarkkinat
Hoitaa	**VM**
Tiedoksi	TEM, STM, EUE, OM, VNEUS, UM

Valtiovarainministeriö PERUSMUISTIO VM2010-00093

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Komission ehdotukset säädöksiksi siirtokelpoisiin arvopapereihin kohdistuvaa yhteistä sijoitustoimintaa harjoittavia yrityksiä (yhteissijoitusyritykset) koskevien lakien, asetusten ja hallinnollisten määräysten yhteensovittamisesta annetun Euroopan parlamentin ja neuvoston direktiivin 2009/65/EY täytäntöönpanosta

Kokous

Liitteet Viite

EUTORI/Eurodoc nro:
EU/2008/1264

U-tunnus / E-tunnus:

Käsittelyn tarkoitus ja käsittelyvaihe:

Komission sisämarkkinat –pääosaston (Internal Market and Services DG) ehdotukset säädöksiksi, joilla pantaisiin täytäntöön 13 päivänä heinäkuuta 2009 annettu Euroopan parlamentin ja neuvoston direktiivi 2009/65/EY siirtokelpoisiin arvopapereihin kohdistuvaa yhteistä sijoitustoimintaa harjoittavia yrityksiä (yhteissijoitusyritykset) koskevien lakien, asetusten ja hallinnollisten määräysten yhteensovittamisesta (uudelleenlaadittu toisinto), *sijoitusrahastodirektiivi.* Sijoitusrahastodirektiivi julkaistiin Euroopan unionin virallisessa lehdessä 17 päivänä marraskuuta 2009. Jäsenvaltioiden on annettava ja julkaistava sijoitusrahastodirektiivin noudattamisen edellyttämät lait, asetukset ja hallinnolliset määräykset viimeistään 30 päivänä kesäkuuta 2011. Jäsenvaltioiden on sovellettava kyseisiä säädöksiä 1 päivästä heinäkuuta 2011 alkaen.

Ehdotukset on jaettu Euroopan arvopaperikomitean varajäsenten 5.2.2010 pidettyyn kokoukseen ja uudet ehdotukset 8.3.2010 pidettyyn kokoukseen. Ehdotukset eivät vielä ole viralliset eikä niistä ole suomenkielisiä versioita.

Asiakirjat:

Draft Commission Regulation (EU) No .../.. of [...] implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the key investor information and conditions to be met when providing the key investor information or the prospectus in a durable medium other than paper or by means of the website (8.3.2010)
Ehdotus asetukseksi sijoitusrahastodirektiivin täytäntöönpanosta siltä osin kuin on kysymys sijoittajille annettavista avaintiedoista ja ehdoista, jotka on täytettävä annettaessa avaintiedot tai esite muulla pysyvällä välineellä kuin paperilla tai verkkosivuilla

Draft Commission Regulation (EU) No .../.. of [...] implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and contents of

standardised notification and attestation letters, 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 (8.3.2010)
Ehdotus asetukseksi sijoitusrahastodirektiivin täytäntöönpanosta siltä osin kuin on kysymys vakiomuotoisten ilmoituskirjeiden ja todistusten sisällöstä ja muodosta, ilmoitusmenettelyssä käytettävästä toimivaltaisten viranomaisten välisestä sähköisen viestinnän käytöstä, paikalla tehtävissä tarkastuksissa ja tutkimuksissa noudatettavista menettelyistä ja toimivaltaisten viranomaisten välisestä tietojenvaihdosta

Draft Commission Directive 2010/.../EU of [...] 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 (8.3.2010)
Ehdotus direktiiviksi sijoitusrahastodirektiivin täytäntöönpanosta siltä osin kuin on kysymys rahastoyhtiön organisaatiovaatimuksista, eturistiriidoista, käytännesäännöistä, riskienhallinnasta sekä rahastoyhtiön ja säilytysyhteisön välisen sopimuksen sisällöstä

Draft Commission Directive 2010/.../EU of [...] 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 (8.3.2010)
Ehdotus direktiiviksi sijoitusrahastodirektiivin täytäntöönpanosta siltä osin kuin on kysymys eräistä sulautumisia, master-feeder rakennetta ja ilmoitusmenettelyä koskevista säännöksistä

EU:n oikeuden mukainen oikeusperusta/päätöksentekomenettely:

Neuvoston päätöksen 1999/468/EY 5 artiklan mukainen sääntelymenettely (non-PRAC) ja 5a artiklan mukainen valvonnan käsittävä sääntelymenettely (PRAC).

Käsittelijä(t):

Lainsäädäntöneuvos Ilkka Harju / VM, puh. 160 33 082
Neuvotteleva virkamies Irmeli Vuori / VM, puh. 160 33013

Suomen kanta/ohje:

Suomi kannattaa periaatteessa täytäntöönpanotoimenpiteiden toteuttamista komission ehdottamilla täytäntöönpanosäädöksillä, jotka annettaisiin yhtenä kokonaisuutena (single package of measures). Suomi pitää tärkeänä, että täytäntöönpanotoimenpiteet toteutetaan sijoitusrahastodirektiivissä komissiolle annettujen valtuuksien rajoissa

Suomi on suhtautunut säädösluonnosten sisältöön eräiltä osin varauksellisesti. Suomi katsoo ehdotusten sisältävän tarpeettomia säännöksiä ja vaatimuksia toimenpiteistä ja menettelyistä, joita voidaan pitää tulkinnanvaraisina suhteessa komissiolle annettuihin täytäntöönpanovaltuuksiin.

Ehdotukset sisältävät useita säännöksiä, jotka vastaavat Euroopan parlamentin ja neuvoston direktiivin 2004/39/EY täytäntöönpanosta sijoituspalveluyritysten toiminnan järjestämistä koskevien vaatimusten, toiminnan harjoittamisen edellytysten ja kyseisessä direktiivissä määriteltyjen käsitteiden osalta annetun komission direktiivin 2006/73/EY säännöksiä. Ehdotukset sisältävät muun muassa vaatimuksia, jotka vastaavat sijoituspalveluyrityksen ja asiakkaan välistä suhdetta koskevia vaatimuksia. Suomi on

katsonut, ettei näitä vaatimuksia voida soveltaa rahastoyhtiön ja sen hoitaman sijoitusrahaston välisessä suhteessa, jotka yhdessä muodostavat yhteissijoitusyrityksen.

Suomi on katsonut, ettei tietojen antamista sijoittajalle pysyvällä välineellä tulisi säännellä asetuksessa ottaen huomioon, että vastaava sääntely pysyvällä välineellä tapahtuvasta tietojen antamisesta on säännelty aikaisemmin direktiivin tasolla edellä mainitussa komission direktiivissä. Sääntelytason samasta kysymyksestä tulisi olla yhdenmukainen.

Pääasiallinen sisältö:

Ehdotus asetukseksi sijoitusrahastodirektiivin täytäntöönpanosta siltä osin kuin on kysymys sijoittajille annettavista avaintiedoista ja ehdoista, jotka on täytettävä annettaessa avaintiedot tai esite muulla pysyvällä välineellä kuin paperilla tai verkkosivuilla

Ehdotettu asetus koskee sijoitusrahastodirektiivin 75 artiklan 2 kohdan, 78 artiklan 2-5 kohdan ja 81 artiklan 1 kohdan täytäntöönpanoa. Asetuksella säädettäisiin tyhjentävästi sijoittajalle annettavan avaintiedot sisältävän asiakirjan sisältö. Asetuksella säädettäisiin avaintietojen muodosta, esittämisestä ja sisällöstä (II ja III Luku). Avaintiedot sisältävässä asiakirjassa olisi esitettävä sijoitusrahaston tavoitteet ja sijoituspolitiikka, riski-hyötyprofiili, tiedot kuluista, aiempi arvonkehitys, käytännön tiedot ja viittauksin annettava tiedot sekä avaintietojen tarkistaminen. Asetuksella säädettäisiin tietyntyyppisten rahastorakenteiden osalta ilmoitettavat tiedot (IV Luku) ja pysyvä väline, jota käyttäen sijoittajalle annettavat tiedot voidaan antaa (V Luku).

Ehdotetun asetuksen mukaan riski- ja hyötyprofiilia koskevien tietojen tulisi sisältää synteettinen riski-indikaattoriluku, jonka avulla sijoitusrahasto luokiteltaisiin volatiliteettitason perusteella määräytyvään tiettyyn riskiluokkaan kuuluvaksi rahastoksi. Indikaattorilukua täydentäisi selostus indikaattorista ja sen olennaisista rajoitteista sekä selostus olennaisista riskeistä, joita indikaattorilla ei riittävästi kateta. Indikaattoriluvun avulla määriteltäisiin rahaston riskiluokka asteikolla 1-7, jossa luokka 1 tarkoittaisi alhaista riskiä ja luokka 7 korkeaa riskiä. Ehdotus sisältää neljä liitettä, jotka koskevat synteettisen riski-indikaattorin esittämistä koskevia vaatimuksia (Liite 1), kulujen esittämistä (Liite 2) ja tietojen esittämistä aiemmasta arvonkehityksestä (Liite 3). Lisäksi annetaan esimerkki aiemmassa arvonkehityksessä tapahtuneiden olennaisten muutosten esittämisestä (Liite 4).

Ehdotus asetukseksi sijoitusrahastodirektiivin täytäntöönpanosta siltä osin kuin on kysymys vakiomuotoisten ilmoituskirjeiden ja todistusten sisällöstä ja muodosta, ilmoitusmenettelyssä käytettävästä toimivaltaisten viranomaisten välisestä sähköisen viestinnän käytöstä, paikalla tehtävissä tarkastuksissa ja tutkimuksissa noudatettavista menettelyistä ja toimivaltaisten viranomaisten välisestä tietojenvaihdosta

Ehdotettu asetus koskee sijoitusrahastodirektiivin 93 artiklan 1-3 ja 5 kohdan, 101 artiklan 4-7 kohdan ja 101 artiklan 2 kohdan täytäntöönpanoa. Asetuksella säädettäisiin toimivaltaiselle viranomaiselle toimitettavasta vakiomuotoisesta ilmoituksesta yhteissijoitusyrityksen aikoessa markkinoida rahasto-osuuksiaan muussa jäsenvaltiossa kuin kotijäsenvaltiossaan ja vakiomuotoisesta todistuksesta, jolla toimivaltainen viranomainen ilmoittaa yhteissijoitusyrityksen täyttävän sijoitusrahastodirektiivissä asetetut vaatimukset. Asetuksella säädettäisiin sähköisestä ilmoitusmenettelystä toimivaltaisten viranomaisten välillä. Tiedot ja asiakirjat voidaan toimittaa sähköisessä muodossa ja kullakin toimivaltaisella viranomaisella tulee olla sähköpostiosoite

ilmoitusmenettelyä varten (I Luku). Asetuksella säädettäisiin toimivaltaisten viranomaisten välillä noudatettavasta menettelystä paikalla tehtävissä tarkastuksissa ja tutkimuksissa ja toimivaltaisten viranomaisten välisestä tietojenvaihdosta (II Luku). Asetuksen liitteisiin sisältyy vakiomuotoinen ilmoituskirje (Liite I, notification letter) ja vakiomuotoinen todistus (Liite II, UCITS attestation).

Ehdotus direktiiviksi sijoitusrahastodirektiivin täytäntöönpanosta siltä osin kuin on kysymys rahastoyhtiön organisaatiovaatimuksista, eturistiriidoista, käytännesäännöistä, riskienhallinnasta sekä rahastoyhtiön ja säilytysyhteisön välisen sopimuksen sisällöstä

Ehdotettu direktiivi koskee sijoitusrahastodirektiivin 12 artiklan 1 kohdan toisen alakohdan a ja b kohdan, 14 artiklan 1 ja 2 kohdan, 23 artiklan 5 kohdan, 33 artiklan 5 kohdan ja 51 artiklan 1 kohdan täytäntöönpanoa. Direktiivillä säädettäisiin rahastoyhtiön voimavaroja, hallinto- ja tilinpitokäytäntöjä ja sisäisiä valvontajärjestelmiä koskevista vaatimuksista sekä eturistiriidoista kuten eturistiriitojen määrittämistä koskevista kriteereistä, eturistiriitoja koskevista toimintaperiaatteista ja toimenpiteistä haitallisten eturistiriitojen hallitsemiseksi (II ja III Luku). Direktiivillä säädettäisiin käytännesäännöistä (Rules of conduct), merkintä- ja lunastustoimeksiantojen käsittelystä sekä parasta toteutusta, toimeksiantojen käsittelyä ja kannustimia koskevista vaatimuksista (IV Luku). Direktiivillä säädettäisiin säilytysyhteisön ja rahastoyhtiön välisen vakiosopimuksen yksityiskohdista (V Luku) ja riskienhallinnan vaatimuksista, jotka koskevat riskienhallinnan periaatteita, riskien mittaamista, riskienhallinnan menettelyjä, vastapuoliriskin ja liikkeeseenlaskijariskikeskittymän laskentaa, vakioimattomien johdannaissopimusten arvonlaskennan menettelyjä sekä johdannaissopimuksia koskevaa tiedonantovelvollisuutta toimivaltaisille viranomaisille (VI Luku).

Ehdotus direktiiviksi sijoitusrahastodirektiivin täytäntöönpanosta siltä osin kuin on kysymys eräistä sulautumisia, master-feeder rakennetta ja ilmoitusmenettelyä koskevista säännöksistä

Ehdotettu direktiivi koskee sijoitusrahastodirektiivin 43 artiklan 5 kohdan, 60 artiklan 6 kohdan a ja c alakohdan, 61 artiklan 3 kohdan, 62 artiklan 4 kohdan, 64 artiklan 4 kohdan a alakohdan ja 95 artiklan 1 kohdan täytäntöönpanoa. Direktiivillä säädettäisiin osuudenhaltijoille sulautumisesta annettavista tiedoista ja tietojen antamistavasta (II Luku). Direktiivillä säädettäisiin master-feeder rakenteista. Säännökset koskevat feeder-yhteissijoitusyrityksen ja master-yhteissijoitusyrityksen välisen sopimuksen sisältöä, sisäisten liiketoiminnan harjoittamista koskevien sääntöjen sisältöä, master-yhteissijoitusyrityksen purkamista, sulautumista ja jakautumista, säilytysyhteisöjen tietojenvaihtoa koskevaa sopimusta, master-yhteissijoitusyrityksen säilytysyhteisön sääntöjenvastaisuuksia koskevaa raportointia, tilintarkastajien välistä tietojenvaihtoa koskevaa sopimusta ja osuudenhaltijoille annettavien tietojen toimittamistapaa (III Luku). Direktiivillä säädettäisiin sijoitusrahastodirektiivin 91 artiklan 3 kohdassa tarkoitettujen tietojen laajuudesta, yhteissijoitusyrityksen vastaanottavan jäsenvaltion toimivaltaisten viranomaisten tietojensaantioikeudesta ja toimivaltaisten viranomaisten välisen tietojenvaihtojärjestelmän kehittämisestä (IV Luku).

Kansallinen käsittely:

E-kirjelmän perusmuistio on lähetetty 15.3.2010 kommentoitavaksi EU-asioiden komitean alaiselle rahoituspalvelut ja pääomaliikkeet jaostolle. Suomen Pankki ja Elinkeinoelämän keskusliitto EK ovat ilmoittaneet, ettei heillä ole huomauttamista ehdotettuun kannanottoon

Eduskuntakäsittely:

Käsittely Euroopan parlamentissa:

Kansallinen lainsäädäntö, ml. Ahvenanmaan asema:

Sijoitusrahastolaki (48/1999), laki ulkomaisen rahastoyhtiön toiminnasta Suomessa (224/2004), valtiovarainministeriön asetus rahastoesitteestä ja yksinkertaistetusta rahastoesitteestä (821/2007), valtiovarainministeriön asetus rahastoyhtiön ja säilytysyhteisön toimilupahakemukseen liitettävistä selvityksistä (938/2007), laki Finanssivalvonnasta (878/2008)

Taloudelliset vaikutukset:

Sijoitusrahastodirektiivin ja sen täytäntöönpanotoimenpiteiden tavoitteena on tehostaa sijoitusrahastomarkkinoiden toimintaa. Sijoitusrahastodirektiivi ja ehdotetut täytäntöönpanotoimenpiteet yhtenäistävät ja tarkentavat merkittävästi menettelytapoja, joita rahastoyhtiöiden on noudatettava toiminnassaan. Sääntelyn tarkoituksena on alentaa yhteissijoitusyritysten kustannuksia mahdollistamalla suurempien sijoitusrahastojen syntyminen ja siten taloudellisten mittakaavaetujen aikaansaaminen yhteissijoitusyrityksille ja välillisesti myös sijoittajille. Euroopan talousalueella toimivat yhteissijoitusyritykset tulevat todennäköisesti kasvamaan kooltaan, minkä uskotaan tuovan lisää kilpailua myös Suomen sijoitusrahastomarkkinoille. Yhteissijoitusyrityksille arvioidaan aiheutuvan siirtymävaiheessa jonkin verran kustannuksia menettelytapojen ja tiedonantovelvollisuuksien muuttumisesta.

Muut mahdolliset asiaan vaikuttavat tekijät:

Asiasanat
Hoitaa

Tiedoksi

Draft

COMMISSION REGULATION (EU) No …/..

of […]

implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the key investor information and conditions to be met when providing the key investor information or the prospectus in a durable medium other than paper or by means of the website.

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) (recast), 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 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, so that they can be specified in detail, and tailored where necessary for ensuring 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 the exhaustive content of key investor information is harmonised. Furthermore, the efficient functioning of key investor information by means of a key information document (KID) will be maximised where requirements applicable to it do not differ between Member States. All stakeholders should benefit from a harmonised regime on the form and content of the disclosure, which will assure the consistency and comparability of information about investment opportunities in the UCITS' market.

(3) One of the most important features of the KID in regards its capacity to engage investors and aid comparisons is its format, presentation and the quality and nature of the language used in the document. This Regulation aims at ensuring consistency in the format of the document, including a common running order with identical headings, a common approach to the content and defining main criteria with regard to the language used in KID.

(4) The needs and abilities of the retail investor should be considered to ensure that the content of the information is relevant**,** the organization of the information is logical and the language appropriate as seen through the retail investors' eyes. .

(5) The objective of Directive 2009/65/EC of delivering key investor information effectively can be supported by the context in which KID is provided to investors, such as its location on a website, or where the KID may be attached to another document when it is given to the potential investor. In this regard, the context in which the KID appears should not undermine the KID, 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.

(6) This Regulation specifies the content of the 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 statement should indicate whether returns can be expected in the form of capital growth, payment of income, or a combination of both. A description of the investment policy should indicate to the investor what the UCITS overall aims are and how these objectives are to be achieved, for instance by exposure to specific markets, such as emerging markets, or instruments, or the application of a specific formula. With regard to the financial instruments only those which have potentially material impact on UCITS' performance need to be mentioned, rather than all possible eligible instruments. .

(7) 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, like operational risks, which include risk related to the choice of a depositary. 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 overburdening the document with information that retail investors will find difficult to understand. Cross-references to the prospectus of the UCITS where full details of its risks are disclosed might be used. .

(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. This Regulation prescribes the use of a consistent and harmonised methodology for the calculation of a single ongoing charges figure, which is for most funds based on an ex-post approach. For technical reasons relating to the consistency of information about charges between different funds, it is necessary to exclude portfolio transaction costs from this figure. However, where the potential impact of portfolio transaction costs on investment returns is known to be material or considered likely to be material, this Regulation requires this information to be highlighted in the objectives and investment policy section. The detailed rules on the presentation of information about past performance are based on the requirements on such information in Directive 2004/39/EC. This Regulation supplements the MiFID rules by including specific requirements necessary for harmonising the information for the purpose of facilitating comparisons between different KIDs. In particular, this Regulation prescribes that only net annual returns shall be shown, through a bar chart format that covers five or ten years of historic data (as available), and including a comparison to a benchmark where this is appropriate. This Regulation also prescribes certain aspects of the presentation of the bar chart, and states the limited circumstances

Virhe. Tuntematon asiakirjan ominaisuuden nimi.

in which simulated data might be used. It should be recognised that there is a difference between sign-posting to information which might be useful to the investor but which would not be required or necessary for the investor to understand the essential elements of the UCITS, and sign-posting to important information where comprehension of essential features or elements of the fund would not be possible without it. If sign-posting to sources of information other than the prospectus and periodic reports is used, it should be made clear that the prospectus and periodic reports are the primary sources of additional information for investors, and the sign-posting should not downplay their significance.

(9) The key information document should be reviewed and revised as appropriate 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. , Carrying out a review does not imply that there must be a consequential revision on every occasion; a review is an internal process which may conclude there is no need for an actual revision at the present time. Such reviews should be carried out in good time so that, if a revision of the KID is necessary, the availability of the revised version coincides with the implementation of the aforementioned changes. As a matter of good practice, management companies should review the KID before entering into any initiative that is likely to result in a significant number of new investors acquiring units in the fund. Such initiatives might include: a fund merger, where the unit-holders of the merging UCITS have to be given a copy of the KID of the receiving UCITS in order to decide whether they wish to remain invested in the fund; a notification to market units in another Member State, especially where a new translation of the KID needs to be prepared.

(10) 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 structures, those with master-feeder structures, and those that are structured, such as capital protected or comparable UCITS.

(11) With regard to UCITS having different share classes , there should be no obligation to produce a separate KID 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 KID 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(es). 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. 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 KID 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 KID to deliver effective disclosure of the fund of funds' objective and investment

policy, risk factors, and charging structure, it is necessary to 'look through' to the characteristics of its underlying funds.

(12) 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' KID, so that the feeder can copy information from the KID 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.

(13) 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. 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, for instance including unlikely scenarios which may lead to a loss of capital protection. In order to ensure comparability between funds, national competent authorities should work together through CESR in order to develop level 3 guidelines for harmonizing the selection of scenarios to ensure the consistency in the choice of prospective scenarios used and the precise presentation of those scenarios.

(14) 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 Directive contains a reference to rules on durable medium laid down in Directive 2006/73/EC in order to to ensure the equal treatment of investors and a level playing field in financial sectors.

(15) The Committee of European Securities Regulators, established by Commission Decision 2009/77/EC has been consulted for technical advice.

(16) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee

HAS ADOPTED THIS REGULATION:

CHAPTER I
SCOPE, DEFINITIONS 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. This Regulation specifies in an exhaustive manner the content of the key information document. No other information or statements shall be included except where this Regulation states otherwise.

2. The information contained in the key information document shall be fair, clear and not misleading.

3. Requirements laid down in this Regulation apply to a management company with regard to each UCITS it manages.

4. Where an investment company has not designated a management company authorised pursuant to Directive 2009/65/EC it shall comply with obligations laid down in this Regulation.

5. The key 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

CHAPTER II
FORM AND PRESENTATION OF KEY INVESTOR INFORMATION

SECTION 1
TITLE OF DOCUMENT, ORDER OF CONTENTS AND SECTIONS' HEADINGS

Article 3
Title and content of document

1. 'The content of the key information document shall be presented in the order as set out in paragraphs 2 to 13.

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2. The title of the document containing key investor information shall be 'Key Information Document'. It shall appear prominently at the top of the first page [side] of the document.

3. An explanatory statement shall appear directly underneath the. It shall read:

4. '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 this fund. You are advised to read it so you can make an informed decision about whether to invest'.

5. The identification of the UCITS, including the share class or an 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 UCITS.

6. The name of the management company shall be stated.. In cases where the management company forms part of a group of companies for legal, administrative or marketing purposes, the name of that group shall 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 entitled 'Objectives and investment policy' shall contain the information set out in Section 1 of Chapter III.

8. The section entitled ‘Risk and reward profile’ shall contain the information set out in Section 2 of Chapter III.

9. The section entitled ‘Charges’ shall contain the information set out in Section 3 of Chapter III.

10. The section entitled ‘Past performance’ shall contain the information set out in Section 4 of Chapter III.

11. The section entitled ‘Practical information’ shall contain the information set out in Section 5 of Chapter III.

12. Authorisation details shall consist of a 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 a publication shall be accompanied by a statement 'This key information document is accurate as at the [the date of publication].

SECTION 2
LANGUAGE, LENGTH AND APPEARANCE

Article 4
Presentation and language

1. A key 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 plain language as far as possible. "Plain language" shall be understood as communicating 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; and

      (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 understanding of the information in case such key 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 5
(Article 78(5))
Length

The key information document shall not exceed two pages of A-4 sized paper when printed.

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CHAPTER III
CONTENT OF SECTIONS OF THE KEY INFORMATION DOCUMENT

SECTION 1
OBJECTIVES AND INVESTMENT POLICY

Article 6
(Article 78(3))
Specific contents of the description

1. The description contained in the 'Objectives and investment policy' section of key information document shall cover those essential features of the UCITS about which an average investor should be informed, even if these features do not form part of the description of objectives and investment policy in the prospectus, such as:

   (a) the main categories of eligible financial instruments that are the object of investment;

   (b) 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 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. Where it includes or implies a reference to a benchmark, the degree of freedom available in relation to this benchmark should be indicated, and in particular where the UCITS has an index-tracking objective this should be stated;

   (e) whether dividend income is distributed or reinvested.

2. The description referred to in paragraph 1 shall include the following information, so long as it is both applicable and material:

   (a) if it is the case that UCITS invests in debt securities, an indication of whether they are issued by corporates, governments or other entities , and, if applicable, any minimum rating requirements;

   (b) where the UCITS is a structured fund all elements necessary for a correct understanding of the pay-off and the expected factors that will determine performance shall be explained in simple terms, including references, if necessary, that details on the algorithm and its workings appear in the prospectus;

(c) if it is the case that the choice of assets within the investment universe is guided by specific criteria, such as 'growth', 'value' or 'high dividends', these shall be explained;

(d) when specific asset management techniques are used, which include hedging, arbitrage or leverage, the factors that are expected to determine the performance of the UCITS shall be explained in simple terms;

(e) if it is the case that the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the UCITS, a statement should be included to that effect, making clear that portfolio transaction costs are paid from the assets of the fund in addition to the charges set out in the Section 3 of this Chapter;

(f) if it is the case that a minimum recommended term for holding units in the UCITS is stated either in the prospectus or in any marketing documents, or that a minimum holding period is an essential element of the investment strategy, the following prominent statement shall be included:

'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 investment universe an asset manager operates within as specified under paragraphs 1(a), (c) and 2(a) and their management style in relation to that investment universe as specified under paragraphs 1(d) and (b) to (d).

4. This section of the key information document may contain other elements than 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.

SECTION 2
RISK AND REWARD PROFILE

Article 7
Explanation of potential risks and rewards, including the use of an indicator

1. The section entitled "Risk and reward profile" 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 paragraph 1 shall take the form of a series of categories on a numerical scale with a fund assign to one of the categories. The

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presentation of the synthetic indicator shall comply with the requirements laid down in Annex 1.

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 cover, in particular, the following categories of risks, so long as they 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 that are likely to have a relatively low level of liquidity;

   (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;

   (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 8

Principles governing the identification, explanation and presentation of risks

The identification and explanation of risks referred to in Article 7(1)(b) shall be consistent with the internal process for identifying, measuring and monitoring risk adopted by its management company as laid down in Directive (other level 2 measure). Where a

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management company manages more than one UCITS the risks shall be identified and explained in a consistent fashion.

SECTION 3
CHARGES

Article 9
presentation of charges

The section entitled "Charges" shall contain a presentation of charges in a form of a table as laid down in Annex 2. The table 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 by which the charge is calculated, and when the charge applies.

Article 10
Explanation of charges and a statement about the importance of charges

1. The section entitled "Charges" 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 it is a maximum figure so that 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 an explanation 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 if it is the case.

2. The section entitled "Charges" 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 11
Additional requirements

1. All of the elements of the charging structure shall be presented as simply 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 fund, this shall be stated within the 'Objectives and investment policy' section, as indicated in Article 6(2)(e).

3. Performance fees shall be disclosed in accordance with Article 9(c). The amount of the performance fee charged during the UCITS' last financial year shall be included as a percentage figure.

Article 12
Specific cases

In the case of a new UCITS where it is not possible to comply with requirements contained in Article 9(b) and Article 10(1)(b), the ongoing charges shall be estimated, based on the expected total of charges, except in the following cases:

(a) for funds which charge a fixed all-inclusive fee, that figure shall be displayed;

(b) for funds which set a cap or maximum on the amount that can be charged, 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 13
Cross-referencing

The section in the key information document entitled "Charges" 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 14
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 UCITS for the last 10 years.

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.

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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 prominent statements 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.

6. The size of the bar chart referred to in paragraph 1 shall allow for legibility but shall under no circumstances exceed half a page in the key investor information document.

7. The requirement laid down in paragraph 5(b) shall not apply to UCITS which do not have entry or exit charges.

8. A key information document shall not contain any record of past performance for any part of the current calendar year.

Article 15
Past performance calculation methodology

The calculation of past performance figures shall be made in accordance with the following requirements:

   (a) they shall be based on the net asset value of the UCITS;

   (b) they shall be calculated on the basis that any distributable income of the fund has been reinvested.

Article 16
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 18, the UCITS' past performance prior to this 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 prominent warning that the performance was achieved under circumstances that no longer apply.

Article 17
Use of a benchmark alongside the past performance

1. Where the objectives and investment policy section of the key 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 ten years, the benchmark shall not be shown for years in which the UCITS did not exist.

Article 18
Use of 'simulated' data for past performance

1. A simulated performance record for the period before data was available shall be permitted in the following circumstances, provided that its use is fair, clear and not misleading:

   (a) a new share class of an existing fund 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 use 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 can reasonably assess that the change of status would not impact the UCITS' performance.

4. In the case of mergers through absorption, only the past performance of the receiving UCITS shall be maintained in the key information document.

SECTION 5
PRACTICAL INFORMATION AND CROSS-REFERENCES

Article 19
Content of "Practical information" Section

1. The section in the key information document entitled "Practical information" 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, and in particular 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 UCITS' home Member State tax legislation 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. In cases where the key 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 section entitled 'Practical information' of the key information document shall state the information required in accordance with Article 27 about available share classes.

Article 20
Use of cross-references to other sources of information

1. Signposts to other sources of information, including the prospectus and annual or half-yearly reports, can be included in the key information document, so long as it is the case that all information fundamental to the investors' understanding of the essential elements of the investment is included in the key information document itself.

   Cross-references are 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.

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2. Cross-references referred to in paragraph 1 shall direct the investor to the specific section of the relevant source of information. The number of cross-references shall be kept to a minimum. although several different signposts within the key information document may be used.

SECTION 6
REVISION OF KEY INFORMATION DOCUMENT

Article 21
Review of the key information document

1. A review of the key investor information shall be carried out at least every twelve months.

2. The charges figures disclosed in the section entitled 'Charges' of the key information document shall be subject to regular review.

3. 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 referred to in paragraph 1.

4. A review shall be carried out prior to or following any changes regarded as material to the information contained in the key information document, including any change to the information in the sections of the key information document entitled 'Objectives and investment policy', 'Risk and reward profile' and 'Practical information'.

Article 22
Publication of the revised version

1. A duly revised key information document shall be published no later than 35 business days after 31 December each year.

2. Where a review of key investor information was prompted by a change which was the expected result of a decision by the management company the revised version of key information document shall be published and made available before the change comes into effect.

3. Where the change amounts to the change to the prospectus, the fund rules or the instrument of incorporation of the investment company the revised version of key information document shall be published and made available no later than the date on which the change comes into effect.

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Article 23
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. The management company shall estimate an ongoing charge figure that it believes on reasonable grounds will be indicative of the amount likely to be charged to the UCITS in future.

   This change of basis shall be disclosed through a statement as follows:

   "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."

3. Where a change is within the control of the management company, the key information document reflecting that change shall be published no later than the date on which the revised charge comes into effect. In all other cases, the key information document shall be revised as soon as reasonably practicable after the management company becomes or should have become aware of the change.

CHAPTER IV
PARTICULAR UCITS STRUCTURES

Article 24
General principle

Chapters I to III shall apply to particular UCITS structures except where this Chapter states otherwise.

SECTION 1
UMBRELLA STRUCTURES

Article 25
Umbrella structures

1. Where a UCITS consists of two or more investment compartments a separate key information document shall be produced for each individual compartment

2. Each key information document referred to in paragraph 1 shall indicate within the section entitled 'Practical information' the following information:

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(a) that it 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 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 of another compartment, and if so, where to obtain information about how to exercise that right.

3. If 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, the charge shall be stated separately in the section entitled 'Charges' of key information document.

SECTION 2
SHARE CLASSES

Article 26
Key information document for share classes

1. Where a UCITS consists of more than one class of units or shares the key 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 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 section of the key information document entitled 'Risk and reward profile' shall contain the explanation of material risk applicable to any of the other classes being represented. A key information document based on the representative class may be provided to investors in the other classes.

4. Specific features of different classes shall not be selected and combined into a composite representative class as referred to in paragraph 2.

5. The management company shall keep a record of which other classes are represented by the representative class referred to in paragraph 2 and the grounds justifying that choice.

Article 27
Practical information section

If applicable, the section of the key information document entitled 'Practical information' shall be supplemented by an indication of:

(a) which class has been selected as representative, using the term by which it is designated in the UCITS' prospectus;

(b) 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 point (e) of Article 50(1) of Directive 2009/65/EC, the description of the objectives and investment policy of that UCITS in the key information document shall include a brief explanation of how the other collective undertakings are to be selected on an ongoing basis.

Article 29
Risk and reward profile

The narrative description of the risk factors 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

The key 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 the following information:

(a) the proportion of feeder UCITS' assets which is invested in the master UCITS;

(b) the description of the master UCITS' objectives and investment policy, depending on the situation supplemented by one of the following:

(i) an indication that the feeder UCITS' investment returns will be very similar to those of the master UCITS,

(ii) an explanation of how and why they may differ.

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 section entitled "Risk and reward profile" of the key 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 section entitled 'Risk and reward profile' of the key information document.

Article 33
Charges section

The section entitled 'Charges' shall:

(a) 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;

(b) 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

The key information document for a feeder UCITS shall contain in the section entitled 'Practical information' the following information specific to the feeder UCITS:

(a) 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 (i) 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) if it is the case, that the master UCITS is established in a different Member State to the feeder UCITS, and that this may affect the feeder's tax treatment.

Article 35
Past performance

1. The past performance presentation in the key 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. By way of derogation from paragraph 1:

   (a) A feeder UCITS may show the past performance of its master UCITS as a benchmark.

   (b) Where the feeder was launched as a feeder UCITS at a later date than the master UCITS, and where Article 18 allows, a simulated performance may be shown for the years before the feeder existed, based on the past performance of the master UCITS.

   (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 shall be retained in the bar chart for the relevant years, with the material change labelled as required by Article 16(2).

SECTION 5
STRUCTURED UCITS

Article 36
Performance scenarios

1. The key information document for structured UCITS, understood as 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 or UCITS of similar features shall not contain the "Past performance" section.

2. For structured UCITS, the section entitled "Objectives and investment policy" of the key 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:

   (a) enable the investor to understand fully all the effects of the calculation mechanism embedded in the formula;

(b) 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 extreme losses, for instance through 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 37
Length

The key information document for structured UCITS shall not exceed three pages of A-4 sized paper when printed.

CHAPTER V
DURABLE MEDIUM

Article 38
Conditions applying to the provision of a prospectus in a durable medium other than paper or by means of a website

Member States shall require management companies to ensure that the conditions laid down in Article 3 of Directive 2006/73/EC are fulfilled in all cases where Directive 2009/65/EC provides for the possibility to provide the prospectus or key investor information to investors using a durable medium other than paper.

CHAPTER VI
FINAL PROVISIONS

Article 39
Entry into force

1. This Regulation shall enter into force on the 20th day following that of 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.

Done at Brussels, […]

For the Commission
[…]
The President

Virhe. Tuntematon asiakirjan ominaisuuden nimi.

ANNEX 1

Requirements related to the presentation of the synthetic indicator

1. The synthetic indicator shall rank the fund over 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 to 7 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 should be used for distinguishing between items on the scale.

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ANNEX 2

Presentation of charges

The charges shall be presented in a table structured in a 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 its benchmark, 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.

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ANNEX 3

Presentation of the past performance information

The bar chart presenting past performance shall comply with the following requirements:

(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.

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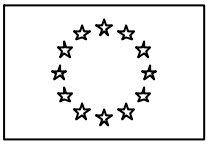

EUROPEAN COMMISSION

Brussels, 25.2.2010

Draft

COMMISSION DIRECTIVE ../…/EC

of […]

on […]

DRAFT

COMMISSION DIRECTIVE ../…/EC

of

on 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 COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty on the Functioning of the European Union,
Having regard to 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) (recast), and in particular Articles 43(5), 60(6)(a) and (c), 61(3), 62(4), 64(4)(a) and 95(1) thereof,
Whereas:

(17) 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.

(18) The merging UCITS or the receiving UCITS should not be required to include other information than that referred to in Article 43(3) of Directive 2009/65/EC and Articles4 to 6 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 proposed merger.

(19) 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.

(20) In order to ensure a consistent application for the use on key investor information also in the case where the key investor information of the receiving UCITS is included in the information document, its design and appearance must comply with the requirements set out in Commission Regulation 2010/…/EU.

(21) The way the information pursuant to Article 43 and 64 of Directive 2009/65/EC is provided to unit-holders should be harmonised. That information aims at enabling 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 become 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 the UCITS industry to provide the information in a cost efficient way. This Directive does not require UCITS to directly inform their unit-holders, but takes 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 those entities ensure that all unit-holders receive the information in due course. This Directive only harmonises the way the information pursuant to Article 43 and 64 of Directive 2009/65/EC must be provided to unit-holders. Member States may regulate the provision of other types of information to unit-holders by national rules.

(22) The agreement between master UCITS and 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. Feeder UCITS should only be granted different rights than other unit-holders of the master UCITS in order to take account of obligations under Directive 2009/65/EC or where this is justified by the nature of a master-feeder structure. The arrangements between master UCITS and feeder UCITS should not violate the principle of equitable treatment of all unit-holders and should not unfairly prejudice the interests of other unit-holders of the master UCITS.

(23) Member States should not require the agreement between master and feeder UCITS pursuant to subparagraph 1 of Article 60(1) to cover other elements than that referred to in Chapter VIII of Directive 2009/65/EC and Articles 9 to 16 of this Directive. The agreement may however cover other elements, if the master UCITS and the feeder UCITS stipulate so.

(24) 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.

(25) 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.

(26) In order to save transactions 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 to transfer assets in kind to the master UCITS should in particular help those feeder

UCITS which have already carried 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 are 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.

(27) 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.

(28) The master UCITS and the feeder UCITS may stipulate whether the law of the home Member State of the master or of the feeder UCITS should apply to their agreement, if they are established in different Member States. The parties should be free to ponder 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.

(29) In case of a liquidation, merger or division of the master UCITS for 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.

(30) 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 decision and to grant the unit-holders of the feeder UCITS the right to request 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 request redemption. Under such circumstances the feeder UCITS should in principle be obliged to redeem all assets from the master UCITS. In order to avoid unnecessary transaction costs, the feeder UCITS should however be able to use other means which ensure that its unit-holders may make use of the right to request redemption, while allowing to reduce transaction costs or to avoid other negative impacts. The feeder UCITS should for instance not be obliged to request redemption to the extent its own unit-holders renounced to make use of it. Where the feeder UCITS requests redemption from the master UCITS, it should consider whether a redemption in kind does not reduce transaction costs and avoids other negative impacts.

(31) 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 tasks. 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 forbidden or not provided for under the national law of their home Member State.

(32) 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 at protecting the feeder UCITS. For that reason no reporting is 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 interest of the unit-holders of the feeder UCITS, it should promptly report its view to the feeder UCITS.

(33) Directive 2009/65/EC requires that competent authorities make available by electronic means the complete information on the laws regulation and administrative provisions which do not fall within the field governed by this Directive and which are specifically relevant to the arrangement made for the marketing of units of UCITS. It is necessary to define categories of such information to ensure legal certainty and promote consistent application of this requirement.

(34) Directive 2009/65/EC requires that competent authorities of the UCITS host Member States have access by electronic means to the documents referred to in article 93(2) of that Directive. It is desirable to provide for the common procedures that will facilitate such access.

(35) Directive 2009/65/EC requires UCITS to notify updates of the documents transmitted to the competent authorities of UCITS host authorities pursuant to article 93(2) of that Directive. It is desirable to establish procedures that will allow UCITS to notify changes to these documents to the competent authorities of the UCITS host Member State by electronic mail

(36) The measures provided for in this Directive are in accordance with the opinion of the European Securities Committee Committee,

HAS ADOPTED THIS DIRECTIVE:

Chapter I
General

Article 1
Subject-matter

This Directive lays down detailed rules for the implementation of Articles 43(5), 60(6)(a) and (c), 61(3), 62(4), 64(4)(a) and 95(1) of Directive 2009/65/EC.

Article 2
Definitions

For the purpose of this Directive the following definitions should apply:

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(a) "rebalancing of the portfolio" shall mean that the composition of the portfolio of a UCITS is significantly modified;

(b) "synthetic risk and reward indicators" shall mean synthetic indicators in the meaning of Article 11 of Commission Regulation 2010/…/EC (on key investor information).

Article 3
Master and feeder UCITS

3. For the purpose of Chapter III a feeder UCITS continues to be a feeder UCITS of the same master UCITS in situations where:

(a) he master UCITS is the receiving UCITS in a proposed merger;

(b) he master UCITS is to continue materially unchanged as one of the resulting UCITS in a proposed division.

4. For the purpose of Chapter III a feeder UCITS becomes a feeder UCITS of another UCITS resulting from the merger or division of the master UCITS in situations where:

(a) he master UCITS is the merging UCITS and, due to the merger, the feeder UCITS becomes a unit-holder of the receiving UCITS; or

(b) he feeder UCITS becomes a unit-holder of a UCITS resulting from a division that is materially different to the master UCITS.

CHAPTER II
UCITS MERGERS

SECTION 1
CONTENT OF THE MERGER INFORMATION

Article 4
General rules regarding the content of information to be provided to unit-holders

5. 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 brief manner and in non-technical language that is reasonably likely to enable unit-holders to make an informed judgement of the impact of the proposed merger on their investment. 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.

In case of a proposed cross-border merger, the merging UCITS and the receiving UCITS, respectively, shall take particular care to provide explanations in plain

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language on any terms or procedures relating to the other UCITS which are unlikely to be familiar to their own unit-holders.

6. The information to be provided to the unit-holders of the merging UCITS shall meet the reasonable 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.

7. The information to be provided to the unit-holders of the receiving UCITS shall 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 shall focus on the operation of the merger and its potential impact on the receiving UCITS.

Article 5

Specific rules regarding the content of information to be provided to unit-holders

8. Member States shall require that the information to be provided in accordance with point (a) of Article 43(3) of Directive 2009/65/EC shall include an explanation of why the merger is being proposed.

9. Member States shall require that the information to be provided in accordance with point (b) of Article 43(3) of Directive 2009/65/EC to the unit-holders of the merging UCITS shall also include:

   (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) in the context of costs, 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; and, if the receiving UCITS applies such a fee, how it will subsequently be applied to ensure fair treatment of those unit-holders who previously held units in the merging UCITS;

   (e) 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.

10. Member States shall require that the information to be provided in accordance with point (b) of Article 43(3) of Directive 2009/65/EC to the unit-holders of the receiving

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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.

11. Member States shall require that the information to be provided in accordance with point (c) of Article 43(3) of Directive 2009/65/EC shall also include:

(a) how any accrued income in the respective UCITS is to be treated;

(b) 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;

(c) 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.

5. 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 also contain details of that proposed payment, including when and how unit-holders of the merging UCITS will receive the cash payment.

12. 6. Member States shall require that the information to be provided in accordance with point (d) of Article 43(3) 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.

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 of the respective management company or board of directors of the investment company for the course of action.
Member States shall require that the information to be provided to the unit-holders of the merging UCITS shall also include:
(a) how long unit-holders shall be able to continue making subscriptions and redemptions of units in the merging UCITS;

(b) when those unit-holders not making use of their rights granted under 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) 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 under Article 45(1) of Directive 2009/65/EC within the relevant time limit shall become unit-holders of the receiving UCITS.

Article 6
Key investor information

13. Member States shall ensure that an up-to-date version of the key investor information of the receiving UCITS shall in all cases be provided to existing unit-holders of the merging UCITS in accordance with point (e) of Article 43(3) of Directive 2009/65/EC.

14. The key investor information of the receiving UCITS shall be provided to existing unit-holders of the receiving UCITS in cases where it has been amended for the purpose of the proposed merger.

15. The key investor information of the receiving UCITS may either be an integral part of the information document to be provided pursuant to Article 43(1) of Directive 2009/65/EC, or a free-standing document that is despatched or transmitted together with the information document.

If the key investor information of the receiving UCITS is included in the information document, it shall appear in a prominent position and its design and appearance must comply with all relevant requirements set out in Regulation 2010/…/EC (Regulation on key investor information).

Article 7
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, where relevant, the up-to-date key investor information of the receiving UCITS shall also 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 8
Method of providing the information to unit-holders

16. 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 on another durable medium.

17. Where the information is to be provided to all or certain unit-holders using a durable medium other than paper, the following conditions are to 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 on another durable medium, specifically chooses the durable medium other than paper.

18. 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 9
Content of the agreement between feeder UCITS and master UCITS

Member States shall require that the agreement between the master UCITS and the feeder UCITS pursuant to subparagraph 1 of Article 60(1) shall include the elements covered in this subsection.

Article 10
Access to information

The agreement between the master UCITS and the feeder UCITS shall include the following with regard to the 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;

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(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) in order to allow the feeder UCITS, when using financial derivative instruments for hedging purposes, to comply with its obligations under Article 58(2) of Directive 2009/65/EC together with Article 51(3) of that Directive, 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 subparagraph 2 of Article 58(2) of Directive 2009/65/EC;

(f) 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 11
Basis of investment and divestment by the feeder UCITS

The agreement between the master UCITS and the feeder UCITS shall include the following with regard to the basis of investment and divestment by the feeder UCITS:

(a) the charges and expenses to be borne by the feeder UCITS, including a statement of which share classes of the master UCITS are available for investment, and details of any rebate or retrocession of charges or expenses by the master UCITS;

(b) 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 12
Standard dealing arrangements

The agreement between the master UCITS and the feeder UCITS shall include the following with regard to standard dealing arrangements:

(a) co-ordination of the frequency and timing of the net asset value calculation process and the publication of prices of units;

(b) co-ordination 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 which 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 or subscriptions 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 redemptions 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 13
Events affecting dealing arrangements

The agreement between the master UCITS and the feeder UCITS shall include the following with regard to events affecting dealing arrangements:

(a) manner and timing of notification by either UCITS of the temporary suspension and the resumption of repurchase, redemption, purchase or subscription of units of UCITS;

(b) arrangements for notifying and resolving pricing errors in the master UCITS.

Article 14
Standard arrangements for the audit report

The agreement between the master UCITS and the feeder UCITS shall include 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 co-ordination 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 in 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.

Article 15
Changes to standing arrangements

The agreement between the master UCITS and the feeder UCITS shall include the following with regard to changes to standing arrangements:

(a) timing and manner 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;

(b) timing and manner of notice by the master UCITS of a planned or proposed liquidation, merger, or division;

(c) timing and manner 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) timing and manner 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) timing and manner of notice of other changes to standing arrangements that the master UCITS undertakes to provide.

Article 16
Choice of the applicable law

The agreement between the master UCITS and the feeder UCITS shall include the following stipulation with regard to the choice of the applicable law:

(a) where the feeder UCITS and the master UCITS are established in the same Member State, a stipulation 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;

(b) where the feeder UCITS and the master UCITS are established in different Member States, a stipulation either that the applicable law shall be 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.

SUBSECTION 2
Content of the internal conduct of business rules

Article 17
Content of internal conduct of business rules

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 include at least the elements covered in this subsection.

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Article 18
Conflicts of interest

The management company's internal conduct of business rules 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(d) of Directive 2009/65/EC and Chapter III of Directive 2010/…/EC (Organisational requirements Directive).

Article 19
Basis of investment and divestment by the feeder UCITS

The management company's internal conduct of business rules shall at least include the following with regard to the basis of investment and divestment by the feeder UCITS:

(a) the charges and expenses to be borne by the feeder UCITS, including a statement of which share classes of the master UCITS are available for investment, and details of any rebate or retrocession of charges or expenses by the master UCITS;

(b) 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 20
Standard dealing arrangements

The management company's internal conduct of business rules shall at least include the following with regard to standard dealing arrangements:

(a) co-ordination of the frequency and timing of the net asset value calculation process and the publication of prices of units;

(b) co-ordination 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 which 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 redemptions 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 21
Events affecting dealing arrangements

The management company's internal conduct of business rules shall at least include the following with regard to events affecting dealing arrangements:

(a) 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 22
Standard arrangements for the audit report

The management company's internal conduct of business rules shall at least include 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 co-ordination 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 in 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.

SECTION 2
LIQUIDATION, MERGER OR DIVISION OF THE MASTER UCITS

SUBSECTION 1
Procedures in the event of a liquidation

Article 23
Application for approval

19. As soon as the master UCITS has informed the feeder UCITS of the binding decision to liquidate in accordance with the second subparagraph of Article 60(4) of Directive 2009/65/EC, the feeder UCITS shall notify its competent authorities when the liquidation of the master UCITS will start, and whether the feeder UCITS expects to temporarily suspend the repurchase, redemption, purchase or subscription of its units before that date.

20. Member States shall require the feeder UCITS to submit to its competent authorities as soon as possible, but no later than two months after the date on which the master UCITS informed it of the binding decision to liquidate, one of 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 of 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 under 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 of its fund rules or instruments 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 binding confirmation of that intention. The feeder UCITS shall also inform its unit-holders thereof in due course.

Article 24
Approval

21. 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 23(2) respectively, whether or not the competent authorities have granted the required approvals.

22. On receiving the competent authorities' approval pursuant to paragraph 1, the feeder UCITS shall inform the master UCITS thereof.

23. 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 under point (a) of Article 23(2).

24. In the event that 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 point (a) of Article 23(2) or in accordance with its new investment objectives and policy pursuant to point (b) of Article 23(2), 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 either in cash or some or all of the proceeds as a transfer of assets in kind where the feeder UCITS so wishes and where both 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; the feeder UCITS may realise any part of the assets transferred in kind for cash at any time;

(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.

SUBSECTION 2

PROCEDURES IN THE EVENT OF A MERGER OR DIVISION

Article 25
Application for approval

25. Member States shall require that the feeder UCITS, as soon as the master UCITS has informed it of the planned merger or division in accordance with the second subparagraph of Article 60(5) of Directive 2009/65/EC, notifies its competent authorities whether the feeder UCITS expects to temporarily suspend the repurchase, redemption or subscription of its units before the proposed effective date.

26. The feeder UCITS shall submit to its competent authorities one of the following, as soon as possible, but no later than one month after the date on which the feeder UCITS received the information referred to in paragraph 1:

(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 proposed amendments to its fund rules or instruments 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 UCITS resulting from the proposed merger or division of the master UCITS:

(i) its application for approval for 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 under Article 59(3) of Directive 2009/65/EC;

(c) 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 for 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 under Article 59(3) of Directive 2009/65/EC;

(d) 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 of its fund rules or instruments 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;

(e) where the feeder UCITS intends to be liquidated, a binding confirmation of that intention. The feeder UCITS shall also inform its unit-holders and the master UCITS thereof in due course.

Article 26
Approval

27. The feeder UCITS shall be informed within 15 working days following the complete submission of the documents referred to in points (a) to (d) of Article 25(2) respectively, whether or not the competent authorities have granted the required approvals.

28. Upon receipt of the information that the competent authorities have granted approval according to paragraph 1, the feeder UCITS shall inform the master UCITS thereof.

29. As soon as possible after the feeder UCITS was informed that the competent authorities had granted the necessary approvals pursuant to points (b) and (c) of Article 25(2), the feeder UCITS shall take necessary measures to comply with the requirements of Article 64 of Directive 2009/65/EC.

30. In the cases of points (b), (c) and (d) of Article 25(2), 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 under Article 25(2) by the working day preceding the last day on which units in the master UCITS can be repurchased or redeemed 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 this right, the feeder UCITS shall thoroughly consider available alternative solutions which may help to avoid or reduce transaction costs or other negative impacts for its own unit-holders.

31. If the feeder UCITS requests repurchase or redemption of its units in the master UCITS, it shall receive either:

(a) the repurchase or redemption proceeds in cash; or

(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; in this event the feeder UCITS may realise any part of the transferred assets for cash at any time.

32. 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

Article27
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

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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 co-ordination 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 according to Article 60(2) of Directive 2009/65/EC;

(ii) the processing of instructions by the feeder UCITS to subscribe, repurchase or redeem units in the master UCITS, and the settlement of such transactions, including any arrangement to transfer assets in kind;

(d) the co-ordination of accounting years-end procedures;

(e) what details of breaches by the master UCITS of the law and the fund rules or instruments of incorporation the depositary of the master UCITS shall provide to the depositary of the feeder UCITS and the manner and timing thereof;

(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 28
Choice of the applicable law

The agreement between the depositaries of the master UCITS and the feeder UCITS shall include the following stipulation with regard to the choice of the applicable law:

(a) where the feeder UCITS and the master UCITS have concluded an agreement in accordance with Article 60(1) of Directive 2009/65/EC, a stipulation that the law of the Member State applying to that agreement in accordance with Article 16 shall also apply to the information-sharing agreement between both depositaries and that both depositaries agree to the exclusive jurisdiction of the courts of that Member State;

(b) 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, a stipulation either that the law applying to the information-sharing agreement between both depositaries shall be that of the Member State in which the feeder UCITS is established or that of the Member State in which the master UCITS is

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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 29
Reporting of irregularities by the depositary of the master UCITS

33. In accordance with Article 61(2) of Directive 2009/65/EC, 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 of any irregularities with regard to the master UCITS 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 and which may have a negative impact on the feeder UCITS.

34. The matters referred to in paragraph 1 may 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, repurchase or redemption of 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 master UCITS investment objectives, policy or strategy as described in its fund rules or instruments 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.

SUBSECTION 2
Auditors

Article 30
Information-sharing agreement between auditors

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, and whether such information or documents are to be provided by one auditor to the other or made available on request;

(b) the manner and timing including any applicable deadlines of the transmission of information by the auditor of the master UCITS to the auditor to the feeder UCITS;

(c) the co-ordination of the involvement of each auditor in the accounting years-end procedures for the respective UCITS. This shall include, in particular, the preparation of the audit reports referred to in Articles 62(2) and 73 of Directive 2009/65/EC and the manner and timing for the provision of the audit report for the master UCITS and drafts thereof to the auditor of the feeder UCITS so as to ensure that the latter may comply with the requirements of Article 62(2) of Directive 2009/65/EC. Where the feeder UCITS and the master UCITS have different accounting year-end dates, the information-sharing agreement 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 thereof the auditor of the feeder UCITS so as to ensure that the latter may comply with the requirements of Article 62(2) of Directive 2009/65/EC;

(d) identification of matters that should be treated as irregularities revealed 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;

(e) the manner and timing for handling ad hoc requests for assistance from one auditor to the other, including the request for further information on irregularities revealed in the audit report of the auditor of the master UCITS.

Article 31
Choice of the applicable law

The agreement between the auditors of the master UCITS and the feeder UCITS shall include the following stipulation with regard to the choice of the applicable law:

(a) where the feeder UCITS and the master UCITS have concluded an agreement in accordance with Article 60(1) of Directive 2009/65/EC, a stipulation that the law of the Member State applying to that agreement in accordance with Article 16 shall also apply to the information-sharing agreement between both auditors and that both depositaries agree to the exclusive jurisdiction of the courts of that Member State;

(b) 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, a stipulation either that the law applying to the information-sharing agreement between both auditors shall be that of the Member State in which the feeder UCITS is established or 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 32
Manner of providing the information to unit-holders

35. Member States shall ensure that the feeder UCITS provides the information to unit-holders pursuant to Article 64(1) of Directive 2009/65/EC on paper or on another durable medium.

36. 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 by using a durable medium other than paper is appropriate to the context in which the business between the unit-holder and the feeder UCITS or, where relevant, its 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 on another durable medium, specifically chooses a durable medium other than paper.

37. 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 feeder UCITS or its management company 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 IV
NOTIFICATION PROCEDURE

Article 33
Scope of the information to be made accessible by Member States in accordance with Article 91(3) of Directive 2009/65/EC

38. Member States shall ensure that the following categories of information on the laws, regulations and administrative provisions are made accessible in accordance with Article 91(3) of Directive 2009/65/EC:

    (a) the Member State's national definition or understanding of the term "marketing" or the equivalent legal term; ;

    (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;

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(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 category 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 on the inception of marketing or periodically thereafter;

(g) requirements in relation to the facilities to be made available to unit-holders as required by Article 92 of Directive 2009/65/EC;

(h) requirements for the termination of marketing of units of UCITS in that Member State by a UCITS situated in another Member States;

(i) detailed content of information required by a Member State to be included in the Part B of the notification letter as referred to in Article 2 of Commission Regulation 2010/xxx.

(j) electronic mail (e-mail- address designated for the purpose of Article 35.

39. Member States shall give 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 34
UCITS host Member State's access to documents

40. 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 other website designated by UCITS in the notification letter submitted in accordance with Article 93(1) of Directive 2009/65/EC or any updates thereof. Any document made available on a website shall be provided in an electronic format in common use.

41. Member States shall require UCITS to ensure that UCITS host Member State has access to the website referred to in paragraph 1.

Article 35
Updates of documents

42. Competent authorities shall designate an electronic mail (e-mail) address for the purpose of receiving notification of updates and amendments to the documents

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referred to in Article 93(2) of Directive 2009/65/EC, pursuant to Article 93(7) of that Directive.

43. Member State 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 update or amendment may either describe the update or the amendment that have been made, or provide a new version of the document as an attachment.

44. 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 36
Development of common data processing systems

45. In order to facilitate the competent authorities of the UCITS host Member States' access 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 establishments of sophisticated electronic data processing and central storage systems common to all Member States.

46. The co-ordination between Member States referred to in paragraph 1 shall take place in the Committee of European Securities Regulators.

CHAPTER V
Final Provisions

Article 37
Transposition

47. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 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.

48. 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 38
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union.*

Article 39
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Commission

The President

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Draft

COMMISSION REGULATION (EU) No …/..

of […]

implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and contents of standardised notification and attestation letters, 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

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,
Having regard to Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast)[1], and in particular Articles 95(2)(a), 95(2)(b), 95(2)(c), 101(9) and Article 105 thereof,
Whereas:

(37) 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 will 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.

(38) 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. Both the notification letter and the attestation should be able to be communicated electronically between competent authorities.

(39) Given the objective of Directive 2009/65/EC to ensure that a UCITS is able to market its units in other Member State 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.

(40) Directive 2009/65/EC 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 UCITS intends to market its units. Therefore, it is necessary to define what condition must be met in order the transmission of the

[1] OJ L 302, 17.11.2009, p.32

complete notification file is considered executed. It is also necessary to set out procedures for dealing with technical problems that occur in the process of the transmission of the file between component authorities of the UCITS home and host Member State.

(41) In order to streamline the transmission of the notification file as well as to take into account technical innovations and feasibility of developing \more sophisticated systems for electronic communication competent authorities, competent authorities may implement cooperative arrangements between them to improve the electronic communication of the notification file in particular in relation to systems security and the use of encryptions mechanisms Competent authorities should also coordinate arrangements for electronic communication within the Committee of European Securities Regulators.

(42) Directive 2009/65/EC requires that Member State take the necessary administrative and organisational measures to facilitate cooperation. Enhanced co-operation between competent authorities is necessary to ensure a UCITS and its management companies are able to comply with Directive 2009/65/EC and to ensure the smooth functioning of the internal market and a high level of investor protection.

(43) 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 procedure to be applied when a competent authority needs to proceed with an investigation or on-the-spot-verification of an entity or person situated in another member State.

(44) A competent authority should have a right to request the co-operation 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.

(45) Any practical cooperative arrangements with respect to cross-border investigations or on-the-spot verification should be efficient, effective and transparent. The requested authority should use its best efforts to take account of the relevant importance placed by the requesting authority on the on-the-spot verification or investigation. Competent authorities of Member States may establish protocols for joint supervision to ensure grater co-ordination of their supervisory activities.

(46) Where Directive 2009/65/EC requires the competent authorities of Member States to provide immediately each other with the information required for the purpose of carrying out their duties. This includes information that may be exchanged upon request or without request or on an unsolicited basis when considered appropriate in good faith by the authority providing the information. In order to ensure greater cooperation in exchange of information it is necessary to establish a framework for practical arrangements between competent authorities with regard to the exchange of information

(47) The Committee of European Securities Regulators, established by Commission Decision 2009/77/EC[2] has been consulted for technical advice.

(48) 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

This Chapter implements Article 93 paragraphs (1) to (3) and (5) of Directive 2009/65/EC

Article 1
Form and content of the notification letter

The notification letter to be submitted by a UCITS to the competent authorities of its home Member State pursuant to Article 93(1) of Directive 2009/65/EC shall respect the form and the content set out in Annex I. A UCITS may submit such notification letter in electronic form including electronic mail (e-mail).

Article 2
Form and content of the attestation

The attestation that the UCITS fulfils the conditions imposed by Directive 2009/65/EC as referred to in Article 93(3) shall be produced by the competent authorities of the UCITS home Member State in accordance with the schedule set out in Annex II. Such attestation shall be submitted to the competent authorities of the Member State in which the UCITS proposes to market its units only in electronic form.

Article 3
Designated email address

1. Competent authorities of Member States shall designate an e-mail address for the purpose of receiving documents 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 Article 93 of that Directive. The competent authorities shall inform the competent authorities of other Member States of its designated e-mail address and shall ensure that any change to the address is immediately brought to their attention.

2. The competent authorities of the UCITS home Member State shall transmit all documents related to the notification procedure set out in Article 93 of Directive

[2] OJ L 25, 29.01.2009, p.18

2009/65/EC to only the designated e-mail address of the competent authorities of the Member State in which UCITS intends to market its units.

3. Competent authorities shall implement 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 documents referred to in Article 93(3) of Directive 2009/65/EC to the competent authorities of a Member State in which the UCITS intends to market its units, by electronic mail (e-mail). Supporting documents provided shall be listed in the e-mail, indicating whether they are attached to the e-mail or that they have been provided to the competent authorities of a Member State in which the UCITS intends to market its units, indicating the date on which such document was provided. Any attachment shall be provided in a format in common use.

2. The transmission of the complete documentation as referred to in Article 93(2) of Directive 2009/65/EC has taken place only if:

   (a) a document listed as attached in the e-mail is not missing and is capable of being viewed or printed;

   (b) the competent authorities of the UCITS home Member State authority uses a correct e-mail address designated by the competent authorities of the Member State in which the UCITS intends to market its units pursuant to Article 3(1);

   (c) transmission does not fail as a result of a technical failure in the electronic systems of the competent authorities of the UCITS home Member State.

3. If the competent authorities of the UCITS home Member State are informed or become aware that the transmission has not taken place, they shall immediately take steps to rectify the problem. If they are unable to do so within three working days of becoming aware of the problem, they shall immediately inform the UCITS that a complete notification has not taken place.

4. Competent authorities may agree on a bilateral or multi-lateral basis to replace the transmission of documents referred to in Article 93(3) of Directive 2009/65/EC with the use of e-mail by more sophisticated method of electronic communication, or to implement additional procedures to enhance the security of e-mails transmitted between them. Any alternative method or enhanced procedure shall comply with the notification deadlines as set out in Chapter XI of Directive 2009/65/EC and shall not inhibit 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 intends to market its units receive the notification, they shall acknowledge receipt to the competent authorities of the UCITS home Member State within five working days. The acknowledgment of the receipt may be sent by e-mail to the competent authorities of the UCITS home Member State, to the address designated pursuant to Article 3. Competent authorities may agree on more sophisticated method of the acknowledgement of receipt.

2. Where the listed attachment to the notification e-mail is missing or is incapable of being viewed or printed, the competent authorities of a Member State in which the UCITS intends to market its units shall inform the competent authorities of the UCITS home Member State of the problem within five working days of receiving the notification, either as part of its acknowledgement of receipt or in a separate communication.

3. Where the competent authorities of the UCITS home Member State do not receive the acknowledgement from the competent authorities of a Member State in which UCITS intends to market its units within five working days from the date of transmission of the documentation, they shall contact the competent authorities of the Member State in which UCITS intends to market its units.

CHAPTER II
SUPERVISORY COOPERATION

SECTION 1
PROCEDURES FOR ON-THE-SPOT VERIFICATIONS AND INVESTIGATIONS

This Section implements Article 101 paragraphs (4) to (7) of Directive 2009/65/EC

Article 6
Request for assistance for on-the-spot verification and investigation

49. Before a competent authority carries out an on-the-spot verification or investigation ('the requesting authority') on the territory of another Member State, it shall submit a written request to the competent authority of that Member State (' the requested authority'). The request shall provide details on:

(c) the reasons for the request, including the legal provisions applicable in the jurisdiction of the requesting authority on which the request is based;

(d) the scope of the on-the-spot verification or the investigation ;

(e) the actions already undertaken by the requesting authority;

(f) the actions to be taken by the requested authority ;

(g) the proposed methodology of the execution of the on-the-spot verification or investigation and the requesting authority's reasons for it;

(h) why the requesting authority considers the proposed methods necessary.

50. The request shall be submitted sufficiently in advance of the on-the-spot verification or investigation.

51. 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.

52. The requested authority shall acknowledge receipt of the request without undue delay.

53. The requesting authority shall make any information available that has been requested by the requested authority in order to enable the requested authority to provide the necessary assistance.

54. The requested authority shall transmit without undue delay any information and documents that are available to them as are relevant or useful to the requesting authority, in light of the reasons and scope of the on-the-spot verification or the investigation.

55. The authorities shall reassess the necessity of the on-the-spot verification and investigation based on the documents and information transmitted pursuant to paragraph 7.

56. The requested authority shall decide whether it will carry out the on-the-spot verification or investigation itself or whether it will allow the requesting authority to carry out the on-the-spot verification or investigation, or whether it will allow auditors or other experts to carry out the on-the-spot verification or investigation.

57. The requested and 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

58. Where the requested authority has decided to carry out the on-the-spot verification or investigation by itself, it should do so in accordance with the procedure provided for in the law of the Member State on whose territory the verification or investigation is to be conducted.

59. 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 and requested authorities shall agree on practical arrangements of such participation.

Article 8

Carrying out of the on-the-spot verification and investigation by the requesting authority

60. 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 such assistance to facilitate the performance of the on-the-spot verification or investigation by the requesting authority.

61. 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 without 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

62. 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 the performance of the tasks assigned to the auditors or experts.

63. Where the requesting authority proposes the appointment of 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 the auditors or experts.

64. Where the requested and requesting authorities do not agree on the appointment of auditors or experts, the requested authority shall decide whether it will carry out the on-the-spot verification or investigation itself or whether it will allow the requesting authority to carry out the on-the-spot verification or investigation.

65. Unless the requested and requesting authorities otherwise agree, the authority appointing auditors or experts shall bear the relevant costs.

66. If whilst carrying out its 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

67. Where the requesting authority considers it necessary to conduct interviews with persons situated in the territory of another Member State, it shall submit a request to the requested authority. In such a case the procedure set out in Article 6 shall apply accordingly.

68. The requesting authority may take part in interviews requested in accordance with paragraph 1. Before and during the interviews, the requesting authority may submit questions to be asked.

Article 11
Additional rules on on-the-spot verification and investigation in case where a UCITS is managed by a management company situated in a Member State other than the UCITS home Member State.

69. 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 be undertaken with regards to the management company and the UCITS subject to their 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

70. The competent authority of the management company's home Member State may request the assistance of the competent authority of the UCITS home Member State regarding the on-the-spot verification and investigation of a depositary of a UCITS where necessary to discharge its supervisory duties of with regard to the management company.

71. The competent authorities of the UCITS home Member State and the competent authorities of the management company's home Member State shall agree the procedures for sharing the results of the on-the sport verification and investigations carried out with respect to the management company and the UCITS that are subject to their supervision. Where necessary, they 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

This Section implements Article 101 paragraph (2) of Directive 2009/65/EC

Article 12
Routine exchange of information

72. The competent authorities of the UCITS home Member State shall inform immediately the competent authorities of the UCITS host Member States and, if the UCITS is managed by a management company situated in a Member State other than UCITS home Member State to the competent authorities of the management company's home Member State of:

(a) any decision to withdraw authorisation for a UCITS;

(b) any decision regarding suspension of the issue, re-purchase or redemption is imposed upon the UCITS;

(c) any other serious measure taken against a UCITS.

73. The competent authorities of the management company's host Member State shall inform immediately the competent authorities of the management company's home Member State of any measures taken by them pursuant to Article 21 of Directive 2009/65/EC involving penalties imposed on a management company or restrictions on a management company's activities, insofar as it is necessary for the purpose of the competent authorities of the management company home Member State to carry out their duties.

74. The competent authorities of the management company's home Member State shall notify immediately the competent authorities of the UCITS home Member State when they establish that the ability of a management company to properly perform its duties with respect to the UCITS it manages may be adversely affected or the requirements under Chapter III of Directive 2009/65/EC are not fulfilled

75. Where a UCITS is managed by a management company situated in a Member State other than the UCITS home Member State, competent authorities of a UCITS home Member State and management company's home Member State should be able to facilitate the exchange of information required for the purposes of currying their duties under Directive 2009/65/EC, including the establishment of appropriate information flows. This shall include the exchange of information necessitated by:

(i) 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;

(j) the procedures for the authorisation of a management company to manage a UCITS authorised in a Member State other than management company's home Member State, pursuant to Article 20 of Directive 2009/65/EC; and

(k) the on-going supervision of management companies and UCITS.

Article 13
Unsolicited exchange of information

Each competent authority shall communicate to other competent authorities, without prior request and undue delay, any relevant factual information in which the other authorities, as determined in good faith by the communicating authority, are likely to have a material interest with regard to the discharge of their duties under Directive 2009/65/EC.

CHAPTER III
FINAL PROVISIONS

Article 14
Entry into force

This Regulation shall enter into force in Member States on the twentieth day after 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.

Done at Brussels, […]

For the Commission
[…]
The President

ANNEX I

NOTIFICATION LETTER

(Article (…) of the Commission Regulation (EC) no 2010/xxx/EC laying down detailed rules for the implementation of certain provisions of Directive 2009/65/EC of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L xxx, xx.x.2010, p. X)

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(s) to be marketed in the host Member State*	Duration**	Code numbers***

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: _____

* If the UCITS intends to market only certain share classes, it should list only those classes

** If applicable

*** If applicable (e.g. ISIN)

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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, unless 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:

* These documents do not need to be submitted separately if they form part of the prospectus; this should be indicated by the notifying UCITS or a third person empowered by a written mandate to act on its behalf.

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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:

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 and attachments 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 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 a 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 applicable by 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 (…) of the Commission Regulation (EC) no 2010/xxx/EC laying down detailed rules for the implementation of certain provisions of Directive 2009/65/EC of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L xxx, xx.x.2010, p. X)

_____is the competent authority
(*name of the competent authorities of the UCITS home Member State*)
in_____
(*the UCITS home Member State*)
Address:_____
Telephone number:_____
E-mail address:_____
Fax number: _____
that carries out the duties provided for in the Directive 2009/65/EC on the co-ordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) ("the Directive") as required by Art. 97(1) of the Directive.
For the purpose of art. 93(3) of the Directive,
_____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 no. (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 sub-funds 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 sub-funds 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
_____

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(*name and address of the designated management company*)

or ? is self-managed
and fulfils the conditions imposed by the Directive

(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.)

Virhe. Tuntematon asiakirjan ominaisuuden nimi.

COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 25.02.2010
Cxxx

Draft

COMMISSION DIRECTIVE../…/EU

of.....

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

DRAFT

COMMISSION DIRECTIVE No …/..EU

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

(The 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) (recast), and in particular Article 12(3), Article 14(2), Article 23(6), Article 33(6) and Article 51(4) thereof,
Whereas:

(49) These rules as well as 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 and its implementing Directive 2006/73/EC. This alignment, while taking due account of the specificities of the collective management business, would allow to achieve 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 the UCITS management companies.

(50) A directive is necessary in order to enable the implementing provisions to be adjusted to the specificities of the particular market and 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.

(51) 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.

(52) As far as allowed by national law, management companies may make arrangements for third parties to carry out some of their activities. The implementing rules must be read accordingly. The management company will 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. This implies that the third party will have to 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 will have to verify that the third party has taken the appropriate measures in order to comply with the said requirements and will have to monitor effectively the compliance by the third party with these requirements. This implies, in the field of the delegated activities, where the delegatee in effect is responsible for applying the rules governing the delegated activities, that the relevant organisational and conflict of interests requirements will apply, mutatis mutandis, to the activity of monitoring the delegated activities. The management company may take into account in the due diligence process the fact that the third party to whom activities are delegated will often be subject to MiFID.

(53) To avoid that different standards would apply between 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, and without prejudice to the responsibility of the board of directors of investment companies that have designated a management company, 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.

(54) Directive 2009/65/EC requires management companies to have sound administrative procedures. In order to comply with this requirement management companies should be required to 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.

(55) Management companies should also be required to 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.

(56) 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.

(57) 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. The accounting books of each UCITS and, if a UCITS has different investment compartments, of each investment compartment, should be fully separated without prejudice to national rules on pooling techniques, provided that those rules comply with the Directive 2009/65/EC. The purpose of this principle is to ensure that all assets and liabilities of a UCITS or of its investment compartments can be directly identified. In addition, where different share classes exist (e.g. depending

on the level of management fees), it should be possible to extract directly from the accounting the net asset value of those different classes.

(58) The clear allocation of the responsibilities of the 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 Regulation on key investor information. The 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 senior management and supervisory function under applicable national law and corporate governance codes.

(59) 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 aims at verifying and evaluating the different control procedures and administrative arrangements the management company has put in place.

(60) It is necessary to allow management companies some flexibility in structuring the organisation of their risk management for instance it may be disproportionate for a smaller company to establish a separate risk management function. Where it is not appropriate or proportionate to have a separate risk management function, the management company should nevertheless be able to demonstrate that specific safeguards against conflicts of interest allow for an independent performance of risk management activities. However it is recommended, where the value at risk approach or advanced risk measurement methodologies are used to comply with statutory limits on global exposure, management companies should establish a separate risk management function.

(61) Directive 2009/65/EC obliges management companies to put in place rules on personal transactions. In full consistency with Directive 2006/73/EC it should be ensured that management companies prevent their employees who are subject to conflicts of interest or in possession of insider information from entering into personal transactions that are the consequence of a misuse of information they have acquired through their professional activity.

(62) 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, this Directive lays down requirements for recording of portfolio transactions and of subscription and redemption orders.

(63) 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 the 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.

(64) 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 in certain circumstances, could be considered as protecting the exclusive benefit of unit-holders depending on the investment strategy of the UCITS. The requirements on voting rights for management companies are without prejudice to the possibility for an investment company to vote itself or to give specific voting instructions to its management company.

(65) The obligation to inform the senior management or other competent internal body of the management company in order for them to take necessary decisions should be without prejudice to 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. This reporting should explain and justify the decision taken by the management company (which can be a decision not to act) taking into account the internal policies and procedures adopted to identify, prevent and manage conflicts of interest.

(66) 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 behaviours, such as market timing and late trading, might have detrimental effects on unit-holders and might 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.

(67) 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. In this respect, management companies face similar issues than other types of portfolio managers. When executing orders on behalf of the UCITS, management companies are expected to 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.

(68) 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.

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(69) Certain fees, commissions or non-monetary benefits which might be paid to or by a management company should not be acceptable 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 in this respect specifying *inter alia* conditions when the payments of fees, commissions and non-monetary benefits should not be considered as a violation of those principles.

(70) The cross-border operations of the management company create new challenges for the relationship between the depositary and such management company. Directive 2009/65/EC provides for non-mandatory level 2 provisions regarding the measures to be taken by a depositary in order to fulfil its duties including the particulars that need to be included in a standard agreement between a depositary and a management company situated in another Member State. To ensure the necessary legal certainty the main elements of contents which should be covered by this agreement are set out in this Directive. These elements also include the choice of law which is applicable to the agreement.

(71) Directive 2009/65/EC obliges management companies to employ a risk management policy and procedures which enables them to monitor and measure at any time the risk of the positions and their contributions to the overall risk profile of the portfolio. Therefore, it is desirable to establish common principles which should govern this risk management process. Setting out a common approach to risk management is also crucial to maintaining mutual confidence between supervisory authorities and delivering high standards of investor protection throughout the EU.

(72) With respect to the obligation of an adequate risk management process it is also necessary to lay down a common approach to risk measurement. The requirements of this Directive are based on common practices agreed by competent authorities of Member States. The functioning and organisational requirements of the risk management process which should be established as part of the organisational rules adopted by the management company, should be adequate and proportionate to the nature, scale and complexity of the company‘s activities and of the UCITS it manages. It should allow adequate assessment of the concentration and interaction of relevant risks at the portfolio level.

(73) Management companies should employ proportionate and effective risk measurement techniques, which 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.

(74) With respect to the obligation of an adequate risk management process it is also necessary to lay down a common approach to certain methodological aspects of risk measurement. It is the objective of a functioning risk management system that the investment limits set by Directive 2009/65/EC such as the limit on global exposure are respected by the management companies. This requires laying down principles on how

the global exposure should be measured and how the counterparty risk should be calculated.

(75) Directive 2009/65/EC sets out limits for the calculation of a UCITS' global exposure and its exposure to counterparty risk. It is therefore advisable that this Directive clarifies that the global exposure can be calculated 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.

(76) According to Directive 2009/65/EC management companies are obliged to employ a process for accurate and independent assessment of the value of OTC derivatives. This Directive therefore lays down detailed rules for this process in consistency with Directive 2007/16/EC.

(77) Directive 2009/65/EC obliges a management company to provide its competent authorities with information with regard to the types of derivative instruments in which a UCITS has been invested, the underlying risks these pose, applicable quantitative limits and methods chosen for estimating the risks associated with these transactions. This Directive specifies the content and the procedure to be followed by a management company when discharging this obligation.

(78) The Committee of European Securities Regulators, established by Commission Decision 2009/77/EC has been consulted for technical advice.

(79) 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 the detailed rules for the implementation of point a and b of the second subparagraph of Article 12(1), Article 14(1) and (2), Article 23(5), Article 33(5) and Article 51(1) of Directive 2009/65/EC.

Article 2
Scope

7. This Directive shall apply to management companies pursuing the activity of management of UCITS as referred to in Article 6(2) of Directive 2009/65/EC. Chapter V of this Directive applies also to depositaries carrying out their functions according to the provision of Chapter IV and Section 3 of Chapter V of Directive 2009/65/EC.

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8. The provisions of this Chapter, Article 12 of Chapter II and Chapters from III to 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:

(a) "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, paragraph 3 of the Directive 2009/65/EC.

(b) "unit-holder" means any natural or legal person holding one or more units in a UCITS.

(c) "relevant person" in relation to a management company, means any of the following:

(i) a director, partner or equivalent, or manager of the management company;

(ii) 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;

(iii) 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.

(d) "senior management" means the person or persons who in effect conduct the business of a management company.

(e) "board of directors" means the board of directors of the management company. This term does not comprise the supervisory board in cases where management companies have a dual structure composed of a board of directors and a supervisory board.

(f) "supervisory function" means the function within a management company 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 the Directive 2009/65/EC.

(g) "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.

(h) "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 Directive 2009/65/EC is thereby compromised.

(i) (g) "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.

(j) (h) "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.

Chapter II
Administrative procedures and control mechanism

This Chapter implements 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

76. 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 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 designed to secure compliance with decisions and procedures at all levels of the management company;

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(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, , in such a way that those parties receive all information deemed to be necessary to perform their duties adequately. The third party could be the depository, distributors and any other third party which performs activities on behalf of the management company.

(e) to maintain adequate and orderly records of their business and internal organisation;

Member States shall ensure that for those purposes 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.

77. 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.

78. 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. Where that is not possible, they shall be required to ensure the timely recovery of such data and functions and the timely resumption of their services and activities.

79. 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.

80. 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.

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.

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3. Member States shall require management companies to ensure that the performance of multiple functions by relevant persons 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 PEROCEDURES

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 7
Electronic data processing

81. Member States shall require management companies to make appropriate arrangements so as to permit a timely and proper recording of each portfolio transaction or subscription or redemption order.

82. 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.

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.

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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 can be 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 valuation rules as laid down in accordance with Article 85 of Directive 2009/65/EC.

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. The management company shall ensure that:

   (a) its senior management:

      (i) 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;

      (ii) oversees the approval of investment strategies for each managed UCITS;

      (iii) is responsible for ensuring that the management company has a permanent and effective compliance function, as defined in Article 10, even if this function is performed by a third party;

      (iv) 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;

      (v) approves and reviews on a periodic basis the adequacy of the internal procedures for undertaking investment decisions for each managed UCITS, in order to ensure that these decisions are consistent with the approved investment strategies;

      (vi) approves and reviews on a periodic basis the risk management policy and arrangements, processes and techniques for implementing this policy, as

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referred to under Article 39, including the risk limit system for each managed UCITS.

(b) senior management and, where appropriate, the supervisory function shall:

(i) 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,

(ii) take appropriate measures to address any deficiencies.

2. 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.

9. 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 paragraph 1 point a(ii) to (v).

10. 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 2.

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 for those purposes, 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;

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(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 compromise 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) if 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, the requirement under that point is not proportionate and that its compliance function continues to be effective.

Article 11
Internal audit function

1. Member States shall require management companies, 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 be appropriate and proportionate to 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.

It 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 paragraph 2.

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 the obligation in paragraph 2 when 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 must, in any case, be able to demonstrate that its risk management process satisfies the requirements of Article 51 of Directive 2009/65/EC. In particular, a management company must 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.

3. The permanent risk management function shall carry out the following tasks:

(a) implementing the risk management policy and procedures;

(b) ensuring compliance with the UCITS risk limit system, including statutory limits concerning global exposure and counterparty risk in accordance with Articles 42 to 44;

(c) providing advice to the board of directors as regards the identification of the risk profile of each managed UCITS;

(d) providing regular reports to the board of directors and the supervisory function, if any 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) providing 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) reviewing and supporting, where appropriate, the arrangements and procedures for the valuation of assets which involve complex risks as referred to in Article 45.

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.

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 under 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) without prejudice to Article 3(a) of Directive 2003/6/EC, disclosing, other than in the normal course of his employment or contract for services, 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, 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;

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(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. Where certain activities are performed by third parties, the management company must 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;

(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.

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 this Article 'personal transaction' shall have the same meaning as in Article 11 of Directive 2006/73/EC.

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 made immediately.

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;

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(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 an order has been revoked, the reasons behind this;

(i) for executed transactions, the counterparty and venue identification.

11. For the purposes of paragraph 2(i) an "execution venue" means a regulated market as referred to under Article 4 paragraph 14 of Directive 2004/39/EC, a Multilateral trading facility (MTF) as referred to under Article 4 paragraph 15 of Directive 2004/39/EC, a systematic internaliser as referred to under Article 4 paragraph 7 of Directive 2004/39/EG, 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.

Article 15
Recording of subscription and redemption orders

1. Member States shall require management companies to ensure that the UCITS subscription and redemption orders received from investors and the relevant terms and conditions applying to these orders are centralised and recorded in electronic form immediately after receipt of any such order.

2. The record referred to in paragraph 1 shall include:

(a) a specific identification of the unit-holder and the relevant UCITS;

(b) the identification of the persons receiving the order from the unit-holder;

(c) information about the order, namely the date and time of the order;

(d) the terms and means of payment;

(e) the type of the order;

(f) the date and exact time of execution of the order;

(g) the number of units subscribed or redeemed;

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(h) the subscription or redemption price for each unit;

(i) the total subscription or redemption value of the units;

(j) the gross value of the order including charges for subscription or net amount after charges for redemptions;

(k) the amount of each single fee and expense.

Article 16
Recordkeeping requirements

1. Member States shall require management companies to retain the records referred to in Articles 14 and 15 for a period of at least five years.

However, competent authorities may, in exceptional circumstances, require management companies to retain any or all of those records for such longer period as is justified by the nature of the instrument or portfolio transaction, if that is necessary to enable the authority to exercise its supervisory functions under Directive 2009/65/EC.

Following the termination of the authorisation of a management company, Member States or competent authorities may require the management company to retain records for the outstanding term of the five year period. If 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 five years are accessible to that company.

2. 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.

3. The competent authority of each Member State shall draw up and maintain a list of the minimum records that management companies are required to keep according to Directive 2009/65/EC and its implementing measures.

Chapter III
Conflict of interests

This Chapter implements 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 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 business as the 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 to consider, when taking into account the situations possibly giving rise to a conflict:

(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.

Article 18
Conflicts of interest policy

1. Member States shall require management companies to establish, implement and maintain an effective conflicts of interest policy set out in writing and 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 must also take into account any circumstances, of which the company is or should be aware, which may give rise to a conflict of interest arising as a result of 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) it must identify, 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) it must specify procedures to be followed and measures to be adopted in order to manage such conflicts.

Article 19
Independence in the conflicts management

83. 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.

84. The procedures to be followed and measures to be adopted in accordance with Article 18(2)(b) shall include such of the following as are 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.

If 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 kinds of collective portfolio management activities carried out 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 undertake 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 explain 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 defining when and how voting rights attached to instruments held in the managed portfolios are to be exercised, to the exclusive benefit of UCITS.

2. The strategy referred to in paragraph 1 shall define measures and procedures for:

(a) monitoring relevant corporate events;

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(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 these strategies shall be made available to the unit-holders free of charge and on their request.

Chapter IV
Rules of conduct

This Chapter implements 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.

2. Member States shall require management companies to apply appropriate policies and procedures designed so as to prevent 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 such undue as transaction costs being charged to the UCITS and its unit-holders.

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 investors 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. In implementing risk management policy Member States shall require management companies to:

   (a) formulate forecasts and perform analyses concerning the contribution of the foreseen investment to the UCITS portfolio composition, liquidity and risk and reward profile before carrying out investments. These analyses must only be carried out on the basis of reliable and up-to-date information, both in quantitative and qualitative terms where appropriate taking into account the nature of the investment.

   (b) exercise due skill, care and diligence when entering into, managing or terminating any arrangement with third parties in relation to the performance of risk management activities. Before entering into such arrangements necessary steps are to be taken by management companies 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
Handling of subscription and redemption orders

Member States shall require management companies to handle and process subscription and redemption orders from investors in accordance with the relevant provisions laid down in the prospectus, the fund rules or the instruments of incorporation.

Article 25
Reporting obligations in respect of execution of subscription and redemption orders

1. Member States shall ensure that where management companies have carried out an order from an investor they must send the investor a notice, in a durable medium,

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confirming execution of the order as soon as possible, and no later than the first business day following execution or, if 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.

This requirement shall not apply where the confirmation notice would contain the same information as a confirmation that is to be promptly dispatched to the investor by another person. In such a case the management company shall provide the investor, in a durable medium, with the essential information concerning the execution of that order.

2. In the case of orders for an investor which are executed periodically, management companies shall either take the action specified in paragraph 1 of or provide the investor, at least once every six months, with the information listed in paragraph 3 in respect of those transactions.

3. The notice referred to in point (b) of paragraph 1 shall include such of the following information as is applicable:

(a) the management company identification;

(b) the name or other designation of the investor ;

(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, and the reference value date;

(i) the total amount;

(j) a total sum of the commissions and expenses charged and, where the investor so requests, an itemised breakdown;

(k) the investor's responsibilities in relation to the settlement of the transaction, including the time limit for payment or delivery as well as the appropriate account details, where these details and responsibilities have not previously been notified to the investor.

4. In addition to the requirements under paragraphs 1 and 2, management companies shall supply the investor, on request, with information about the status of his order.

SECTION 3
BEST EXECUTION

Article 26
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 this purpose, 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 these 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. 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 to the relevant unit-holders, that they have executed orders on behalf of the UCITS in accordance with the management company's execution policy.

Article 27
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. For this purpose 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 these factors shall be determined by reference to the requirements laid down in Article 26(2).

3. Management companies shall establish and implement a policy to enable them to comply with the obligation referred to in paragraph 2. The policy shall identify, in respect of each class of instruments, the entities with which the orders may be placed. The identified entities shall have execution arrangements that do not hinder the management company to comply with its obligations under paragraph 2 when it places orders with that entity for execution.

   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.

4. Management companies shall monitor on a regular basis the effectiveness of the policy established in accordance with paragraph 3 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.

5. Management companies shall be able to demonstrate to the relevant unit-holders that they have placed orders on behalf of the UCITS in accordance with the policy referred to in paragraph 3.

SECTION 4
HANDLING OF ORDERS

Article 28
General principles

1. Member States shall require management companies to implement procedures and arrangements which provide for the prompt, fair and expeditious execution of portfolio transactions on behalf of the UCITS.

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To this purpose, management companies shall satisfy the following conditions:

(a) they must ensure that orders executed on behalf of UCITS are promptly and accurately recorded and allocated;

(b) they must carry out 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.

2. Member States shall ensure that any UCITS financial instruments or sums of money, received in settlement of the executed order, are promptly and correctly delivered to the account of the appropriate UCITS.

3. 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 29
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 effectively 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 clients 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 30
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 and its unit-holders 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 and its unit-holders 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 and its unit-holders;

   (c) proper fees which enable or are necessary for the provision of the relevant service, such as 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 and its unit-holders.

2. Member States shall permit a management company, for the purposes of point (b)(i) in paragraph 1, to disclose the essential terms of the arrangements relating to the fee, commission or non-monetary benefit in summary form, provided that it undertakes to disclose further details at the request of the unit-holder and provided that it honours that undertaking.

CHAPTER V

Particulars of the standard agreement between a depositary and a management company

This Chapter implements Article 23(5) and Article 33(5) of Directive 2009/65/EC

Article 31
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 into the written agreement as referred to in Articles 23 (5) and 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 when the management company envisages a modification of the fund rules or prospectus of the UCITS, in particular setting out those situations in which 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. This shall include 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 32

Elements related to the exchange of information and to obligations on confidentiality and money-laundering

Member States shall require parties to the agreement to include in the agreement at least the following elements related to the exchange of information and obligations on confidentiality and money laundering:

(a) 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. These obligations 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;

(c) information on the tasks and responsibilities of the parties to the agreement in respect of obligations regarding money laundering and combating the financing of terrorism, where applicable.

Article 33

Elements related to the appointment of third parties

In case the depositary or the management company appoint a third party to carry out their respective duties, Member States shall require parties to the agreement to include into the agreement at least the following particulars:

(a) details of any third parties appointed by the depositary or the management company to carry out its duties,

(b) following a request by the management company or the depositary, 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 entrusting the assets of the UCITS to a third party does not affect liability of the depositary as referred to in Article 24 of Directive 2009/65/EC.

Article 34

Elements related to potential amendments and the termination of the agreement

Member States shall require the parties to the agreement to include in the written agreement between a depositary and a management company at least the following particulars related to amendments and the termination of the 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.

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Article 35
Applicable law

Member States shall require the parties to the agreement to include the law applicable to the agreement which should be the law of the UCITS' home Member State.

Article 36
Electronic transmission of information

In cases where the parties to the agreement agree to the use of electronic transmission in regards part or all of information that flows between them, Member States shall require that such agreement contains provisions ensuring that a record is kept of such information.

Article 37
Scope of the agreement

Member States may allow that the agreement covers more than one UCITS managed by the management company. In this case the agreement shall list the UCITS covered.

Article 38
Service level agreement

Member States shall allow parties to the agreement to either include into the agreement or into a separate written agreement the details of means and procedures referred to in Article 32(a) and (b).

Chapter VI
Risk management

This Chapter implements Article 51(1) of Directive 2009/65/EC

SECTION 1
RISK MANAGEMENT POLICY AND RISK MEASUREMENT

Article 39
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.

   In particular, 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 might 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 referred to in paragraph 1:

(a) the techniques, tools and arrangements that enable them to comply with the obligations set out in Articles 41 and 42;

(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 defines 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 40
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 41 and 42;

(b) the level of compliance by the management company with the risk management policy and with arrangements, processes and techniques referred to in Articles 41 and 42;

(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 when granting authorisation and on an on-going basis.

SECTION 2
RISK MANAGEMENT PROCESSES, COUNTERPARTY RISK EXPOSURE AND ISSUER CONCENTRATION

Article 41
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) to ensure compliance with limits concerning global exposure and counterparty risk, in accordance with Articles 42 and 44.

   Those arrangements, processes and techniques shall be proportionate in view of 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) to 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 profile are accurately measured on the basis of sound and reliable data and that the risk measurement arrangements, processes and techniques are adequately documented;

   (b) to conduct, where appropriate, periodic back-tests in order to review the validity of risk measurement arrangements which include model-based forecasts and estimates;

   (c) to 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) to establish, implement and maintain a documented system of internal limits concerning the measures used to manage and control the relevant risks for each UCITS. The risk limit system shall have regard to all risks which might be material to the UCITS as identified in Article 39 and shall be consistent with the UCITS risk-profile;

   (e) to ensure that the current level of risk complies with the risk limit system as set out in point (d) for each UCITS;

(f) to 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 42
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 either as:

(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, or

(b) the market risk of the UCITS portfolio.

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. 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. Management companies are also required to consider 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.

5. For the purposes of paragraph 3 value at risk shall mean a measure of the maximum expected loss at a given confidence level over the specific time period.

Article 43
Commitment approach

1. When 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 Directive 2009/65/EC.

2. When using the commitment approach 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, so long as 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 does not need to be included in the commitment calculation.

5. When using the commitment approach Member States shall require management companies to ensure that temporary borrowing arrangements entered into on behalf of the UCITS in accordance with Article 83 of Directive 2009/65/EC do not form part of the global exposure calculation.

Article 44
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 the management company is able to legally enforce netting agreements with the counterparty on behalf of the UCITS. Netting is only 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 must 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 any exposure to OTC derivative counterparty risk.

SECTION 3
PROCEDURES FOR THE VALUATION OF THE OTC DERIVATIVES

Article 45
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 referred to in Article 8(4) of the 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 described in paragraph 1 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 Articles 4, 5 and 23(4)(b) when arrangements and procedures concerning the valuation of OTC derivatives involve the performance of certain activities by third parties.

3. For this purpose the risk management function shall be appointed with specific duties and responsibilities. In all cases, it shall review and, if needed, provide appropriate

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support concerning the arrangements and procedures adopted for the valuation of OTC derivatives and of other asset types which involve complex risks, such as illiquid investments and structured securities.

4. The valuation arrangements and procedures referred to in paragraph 2 shall be adequately documented.

5. The requirements set out in this Article shall apply also to other types of financial instrument which expose the UCITS to valuation risks equivalent to those raised by OTC derivatives.

SECTION 4
TRANSMISSION OF INFORMATION ON DERIVATIVE INSTRUMENTS

Article 46
(Article 51(4)(c))
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 as referred to in paragraph 1 and that they have an opportunity to intervene where appropriate.

Chapter VII
Final Provisions

Article 47
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 1 July 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 48
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union.*

Article 49
Addressees

This Directive is addressed to the Member States.

Virhe. Tuntematon asiakirjan ominaisuuden nimi.

Done at Brussels, […]

For the Commission
[…]
The President

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