

**Amended proposal for a Directive of the European Parliament and of the Council amending Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) with a view to regulating management companies and simplified prospectuses <sup>(1)</sup>**

(2000/C 311 E/20)

(Text with EEA relevance)

COM(2000) 331 final — 98/0242(COD)

*(Submitted by the Commission pursuant to Article 250(2) of the EC Treaty on 30 May 2000)*

<sup>(1)</sup> OJ C 272, 1.9.1998, p. 7.

INITIAL PROPOSAL

AMENDED PROPOSAL

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Unchanged

Having regard to the Treaty establishing the European Community, and in particular Article 57(2) thereof,

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

Having regard to the proposal from the Commission,

Unchanged

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Economic and Social Committee <sup>(1)</sup>,

Acting in accordance with the procedure laid down in Article 189b of the Treaty,

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

Whereas:

(1) Whereas Directive 85/611/EEC on undertakings for collective investment in transferable securities (UCITS) <sup>(1)</sup>, as last amended by Directive 88/220/EEC <sup>(2)</sup>, has already contributed substantially to the achievement of the Single Market in this field, laying down — for the first time in the financial services sector — the principle of mutual recognition of authorisation and other provisions which facilitate the free circulation within the European Union of the units of the collective investment undertakings (unit trusts/common funds or as investment companies) covered by that Directive.

(1) Directive 85/611/EEC on undertakings for collective investment in transferable securities (UCITS) <sup>(2)</sup>, as last amended by Directive 95/26/EC <sup>(3)</sup>, has already contributed substantially to the achievement of the Single Market in this field, laying down — for the first time in the financial services sector — the principle of mutual recognition of authorisation and other provisions which facilitate the free circulation within the European Union of the units of the collective investment undertakings (unit trusts/common funds or as investment companies) covered by that Directive.

<sup>(1)</sup> OJ L 375, 31.12.1985, p. 3.

<sup>(2)</sup> OJ L 100, 19.4.1988, p. 31.

<sup>(1)</sup> OJ C 116, 28.4.1999, p. 1.

<sup>(2)</sup> OJ L 375, 31.12.1985, p. 3.

<sup>(3)</sup> OJ L 168, 18.7.1995, p. 7.

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- (2) Whereas, Directive 85/611/EEC does not regulate to a great extent the companies which manage collective investment undertakings (so-called 'management companies'); whereas, in particular, Directive 85/611/EEC does not lay down provisions assuring in all Member States equivalent market access rules and operating conditions for such companies; whereas, Directive 85/611/EEC does not lay down provisions regulating the establishment of branches and the free provision of services by such companies in Member States other than their home Member State.
- (3) Whereas, authorisation granted in the management company's home Member State must ensure investor protection and the stability of the financial system; whereas the approach adopted is to ensure the essential harmonisation necessary and sufficient to secure the mutual recognition of authorisation and of prudential supervision systems, making possible the grant of a single authorisation valid throughout the European Union and the application of the home Member State supervision.
- (4) Whereas it is necessary, for the protection of investors, to guarantee the internal supervision of every management company in particular by means of a two-man management and by adequate internal control mechanisms.
- (5) Whereas by virtue of mutual recognition, management companies authorised in their home Member States shall be permitted to carry on the services for which they have received authorisation throughout the European Union by establishing branches or under the freedom to provide services; whereas the approval of the fund rules of common funds/unit trusts falls within the competence of the management company's home Member State.
- (6) Whereas, with regard to collective portfolio management (management of unit trusts/common funds and investment companies), the authorisation granted to a management company authorised in its home Member State should permit the company to carry on in host Member States the following activities: to distribute the units of the unit trusts/common funds set up by the company in its home Member State; to distribute the shares of the investment companies, managed by such a company; to perform all the other functions and tasks included in the activity of collective portfolio management; to manage the assets of investment companies incorporated in Member States other than its home Member State; to perform, on the basis of mandates, on behalf of management companies incorporated in Member States other than its home Member State, the functions included in the activity of collective portfolio management.

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- (2) However, Directive 85/611/EEC does not regulate to a great extent the companies which manage collective investment undertakings (so-called 'management companies'); in particular, Directive 85/611/EEC does not lay down provisions assuring in all Member States equivalent market access rules and operating conditions for such companies; Directive 85/611/EEC does not lay down provisions regulating the establishment of branches and the free provision of services by such companies in Member States other than their home Member State.
- (3) Authorisation granted in the management company's home Member State must ensure investor protection and the stability of the financial system; the approach adopted is to ensure the essential harmonisation necessary and sufficient to secure the mutual recognition of authorisation and of prudential supervision systems, making possible the grant of a single authorisation valid throughout the European Union and the application of the home Member State supervision.
- (4) It is necessary, for the protection of investors, to guarantee the internal overview of every management company in particular by means of a two-man management and by adequate internal control mechanisms.
- (5) By virtue of mutual recognition, management companies authorised in their home Member States shall be permitted to carry on the services for which they have received authorisation throughout the European Union by establishing branches or under the freedom to provide services; the approval of the fund rules of common funds/unit trusts falls within the competence of the management company's home Member State.
- (6) With regard to collective portfolio management (management of unit trusts/common funds and investment companies), the authorisation granted to a management company authorised in its home Member State should permit the company to carry on in host Member States the following activities: to distribute the units of the unit trusts/common funds set up by the company in its home Member State; to distribute the shares of the investment companies, managed by such a company; to perform all the other functions and tasks included in the activity of collective portfolio management; to manage the assets of investment companies incorporated in Member States other than its home Member State; to perform, on the basis of mandates, on behalf of management companies incorporated in Member States other than its home Member State, the functions included in the activity of collective portfolio management.

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- (7) Whereas this Directive represents therefore an important step to complete the Single Market in the field of collective investment undertakings.
- (8) Whereas the principles of mutual recognition and of home Member State supervision require that the Member States' competent authorities should not grant or should withdraw authorisation where factors, such as the content of programmes of operations, the geographical distribution or the activities actually carried on indicate clearly that a management company has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry on or does carry on the greater part of its activities; whereas, for the purpose of this Directive, a management company must be authorised in the Member State in which it has its registered office; whereas, in accordance with the principle of the home country control, only the Member State in which the management company has its registered office can be considered competent to approve the fund rules of unit trusts/common funds set up by such a company and the choice of the depositary;
- (9) Whereas Directive 85/611/EEC limits the scope of management companies to the sole activity of management of unit trusts/common funds and of investment companies (collective portfolio management); whereas, in order to take into account recent developments in national legislation of Member States and to permit such companies to achieve important economies of scale, it is desirable to revise this restriction; whereas therefore it is desirable to permit such companies to carry out also the activity of management of portfolios of investments on a client-by-client basis (individual portfolio management) including the management of pension funds as well as some specific non-core activities linked to the main business; whereas such an extension of the scope of the activity of the management company would not prejudice the stability of such companies; whereas, however, specific rules shall be introduced preventing conflicts of interest when management companies are authorised to carry on both the business of collective and individual portfolio management.

## AMENDED PROPOSAL

- (7) This Directive represents therefore an important step to complete the Single Market in the field of collective investment undertakings.
- (8) The principles of mutual recognition and of home Member State supervision require that the Member States' competent authorities should not grant or should withdraw authorisation where factors, such as the content of programmes of operations, the geographical distribution or the activities actually carried on indicate clearly that a management company has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry on or does carry on the greater part of its activities; for the purpose of this Directive, a management company must be authorised in the Member State in which it has its registered office; in accordance with the principle of the home country control, only the Member State in which the management company has its registered office can be considered competent to approve the fund rules of unit trusts/common funds set up by such a company and the choice of the depositary; in order to prevent supervisory arbitrage and to promote confidence in the effectiveness of supervision by the home Member State authorities, a requirement for authorisation of a UCITS must be that it should not be prevented in any legal way to be marketed in its home Member State; this does not affect the free decision, once the UCITS has been authorised, to chose the Member State(s) where the units of the UCITS shall be marketed in accordance with this directive.
- (9) Directive 85/611/EEC limits the scope of management companies to the sole activity of management of unit trusts/common funds and of investment companies (collective portfolio management); in order to take into account recent developments in national legislation of Member States and to permit such companies to achieve important economies of scale, it is desirable to revise this restriction; therefore it is desirable to permit such companies to carry out also the activity of management of portfolios of investments on a client-by-client basis (individual portfolio management) including the management of pension funds as well as some specific non-core activities linked to the main business; such an extension of the scope of the activity of the management company would not prejudice the stability of such companies; however, specific rules shall be introduced preventing conflicts of interest when management companies are authorised to carry on both the business of collective and individual portfolio management.

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- (10) Whereas the activity of management of portfolios of investments is an investment service already covered by Directive 93/22/EEC (Investment Services Directive — ISD) <sup>(1)</sup> whereas, in order to ensure a homogeneous regulatory framework in this area, it is desirable to subject management companies the authorisation of which covers also that service to the operating conditions laid down in the ISD.
- (11) Whereas a home Member State may, as a general rule, establish rules stricter than those laid down in this Directive, in particular as regards authorisation conditions, prudential requirements and the rules of reporting and prospectuses.
- (12) Whereas it is desirable to lay down rules defining the pre-conditions under which a management company may delegate, on the basis of mandates, specific tasks and functions to third parties so as to increase the efficiency of the conduct of its business; whereas, in order to ensure the correct functioning of the principles of mutual recognition of the authorisation and of the home country control, Member States permitting such delegations shall ensure that the management company to which they granted an authorisation does not delegate globally its functions to one or more third parties, so as to become an empty entity, and the existence of mandates does not hinder an effective supervision over the management company; whereas, however, the fact that the management company delegated own functions shall in no case affect the liabilities of that company and of the depositary vis-à-vis the unit holders and the competent authorities.
- (13) Whereas to take into account developments of information techniques, it is desirable to revise the current information framework provided for in Directive 85/611/EEC; whereas, in particular, it is desirable to introduce, in addition to the existing full prospectus, a new type of prospectus for UCITS (simplified prospectus); whereas such a new prospectus should be designed to be investor-friendly and should therefore represent a source of valuable information for the average investor; whereas such a prospectus should give key information about the UCITS in a clear, synthetic and easily understandable way; whereas, however, the investor must always be informed, by an appropriate statement to be included in the simplified prospectus, that more detailed information is contained in the full prospectus and in the UCITS yearly and half-yearly report, which can be obtained free of charge at his/her request; whereas the simplified prospectus shall always be offered free of charge to subscribers before the conclusion of the contract; whereas this shall be a sufficient pre-condition to meet the legal obligation under this Directive to provide information to subscribers before the conclusion of the contract.

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- (10) The activity of management of portfolios of investments is an investment service already covered by Directive 93/22/EEC (Investment Services Directive — ISD) <sup>(1)</sup>; in order to ensure a homogeneous regulatory framework in this area, it is desirable to subject management companies the authorisation of which covers also that service to the operating conditions laid down in the ISD.
- (11) A home Member State may, as a general rule, establish rules stricter than those laid down in this Directive, in particular as regards authorisation conditions, prudential requirements and the rules of reporting and prospectuses.
- (12) It is desirable to lay down rules defining the pre-conditions under which a management company may delegate, on the basis of mandates, specific tasks and functions to third parties so as to increase the efficiency of the conduct of its business; in order to ensure the correct functioning of the principles of mutual recognition of the authorisation and of the home country control, Member States permitting such delegations shall ensure that the management company to which they granted an authorisation does not delegate globally its functions to one or more third parties, so as to become an empty entity, and the existence of mandates does not hinder an effective supervision over the management company; however, the fact that the management company delegated own functions shall in no case affect the liabilities of that company and of the depositary vis-à-vis the unit holders and the competent authorities.
- (13) To take into account developments of information techniques, it is desirable to revise the current information framework provided for in Directive 85/611/EEC; in particular, it is desirable to introduce, in addition to the existing full prospectus, a new type of prospectus for UCITS (simplified prospectus); such a new prospectus should be designed to be investor-friendly and should therefore represent a source of valuable information for the average investor; such a prospectus should give key information about the UCITS in a clear, synthetic and easily understandable way; however, the investor must always be informed, by an appropriate statement to be included in the simplified prospectus, that more detailed information is contained in the full prospectus and in the UCITS yearly and half-yearly report, which can be obtained free of charge at his/her request; the simplified prospectus shall always be offered free of charge to subscribers before the conclusion of the contract; whereas this shall be a sufficient pre-condition to meet the legal obligation under this Directive to provide information to subscribers before the conclusion of the contract.

<sup>(1)</sup> OJ L 141, 11.6.1993, p. 27.

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(14) Whereas, considering the need to ensure the level playing field among intermediaries in the financial services area when providing the same services and a harmonised minimum degree of investor protection; whereas a harmonised minimum degree of harmonisation of the conditions for taking up business and operating conditions represents the essential pre-condition to complete the internal market for these operators, whereas, therefore, only a binding Community Directive laying down agreed minimum standards can achieve the desired objectives; whereas this Directive effects only the minimum harmonisation required.

(15) Whereas, for the time being, no harmonised rules for compensation arrangements for unit-holders exist when a management company or an investment company is unable to redeem or to repurchase the units from unit-holders; whereas Directive 97/9/EC <sup>(1)</sup> provides harmonised rules for compensation arrangements for investors demanding investment services from investment firms (including banks); whereas, according to Article 14 of that Directive, the Commission will submit no later than 31 December 1999 to the Council and the Parliament a report on the application of the Directive; whereas, depending on the outcome of that report, the Commission might consider it appropriate to submit a proposal for the introduction of compensation arrangements for unit-holders.

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

Directive 85/611/EEC is amended as follows:

1. The following Article 1(a) is inserted:

*'Article 1(a)*

For the purposes of this Directive:

1. depositary shall mean any institution entrusted with the duties mentioned in Articles 7 and 14 and subject to the other provisions laid down in Sections III and IV;

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(14) Considering the need to ensure the level playing field among intermediaries in the financial services area when providing the same services and a harmonised minimum degree of investor protection; a harmonised minimum degree of harmonisation of the conditions for taking up business and operating conditions represents the essential pre-condition to complete the internal market for these operators, therefore, only a binding Community Directive laying down agreed minimum standards can achieve the desired objectives; this Directive effects only the minimum harmonisation required.

(15) The Commission may consider proposing codification in due time after adoption of the proposals,

Unchanged

<sup>(1)</sup> OJ L 84, 26.3.1997, p. 22.

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2. management company shall mean any company the regular business of which is the management of unit trusts/common funds and of investment companies (collective portfolio management);
3. a management company's home Member State shall mean the Member State in which is situated the management company's registered office;
4. a management company's host Member State shall mean the Member State, other than the home Member State, within the territory of which a management company has a branch or provides services;
5. a UCITS home Member State shall mean:
  - (a) with regard to a UCITS constituted as unit trust/common fund, the Member State in which is situated the management company's registered office;
  - (b) with regard to a UCITS constituted as investment company, the Member State in which is situated the investment company's registered office,
6. a UCITS host Member State shall mean a Member State in which the units of the common fund/unit trust or of the investment company are marketed;
7. branch shall mean a place of business which is a part of the management company, which has no legal personality and which provides the services for which the management company has been authorised; all the places of business set up in the same Member State by a management company with headquarters in another Member State shall be regarded as a single branch;
8. competent authorities shall mean the authorities which each Member State designates under Article 49 of Directive 85/611/EEC;
9. close links shall mean a situation as defined in Article 2, paragraph 1 of Directive 95/26/EC <sup>(1)</sup>;

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2. management company shall mean any company the regular business of which is the management of the assets of UCITS in the form of unit trusts/common funds and/or of investment companies (collective portfolio management of UCITS), this includes the functions mentioned in Annex II;

Unchanged

<sup>(1)</sup> OJ L 168, 8.7.1995, p. 7.

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10. qualifying holdings shall mean any direct or indirect holding in a management company which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the management company in which that holding subsists.

For the purpose of this definition, the voting rights referred to in Article 7 of Directive 88/627/EEC <sup>(1)</sup> shall be taken into account;

11. ISD shall mean Directive 93/22/EEC of 10 May 1993 on investment services <sup>(2)</sup>.

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12. group shall mean issuers/bodies which are connected as described in Article 1(1) of Directive 83/349/EEC <sup>(3)</sup>; issuers/bodies situated in non-Member States which are linked in a similar way either to issuers/bodies in a Member State or to such in a non-Member State shall be included.'

2. Article 4(3) shall be replaced by the following:

Unchanged

'3. The competent authorities may not authorise a UCITS if the management company does not comply with the pre-conditions laid down in Section III of this Directive. Moreover the competent authorities may not authorise a UCITS if the directors of the investment company or of the depositary are not of sufficiently good repute or lack the experience required for the performance of their duties. To that end, the names of the directors of the investment company and of the depositary and of every person succeeding them in office must be communicated forthwith to the competent authorities.

'3. The competent authorities may not authorise a UCITS if the management company does not comply with the pre-conditions laid down in Section III of this Directive. Moreover the competent authorities may not authorise a UCITS if the directors of the investment company or of the depositary are not of sufficiently good repute or are not sufficiently experienced also in relation to the type of UCITS to be managed. To that end, the names of the directors of the investment company and of the depositary and of every person succeeding them in office must be communicated forthwith to the competent authorities.

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

Unchanged

3. Articles 5 and 6 shall be replaced by the following:

'SECTION III

**Obligations regarding management companies**

<sup>(1)</sup> OJ L 348, 17.12.1988, p. 62.

<sup>(2)</sup> OJ L 141, 11.6.1993, p. 27.

<sup>(3)</sup> OJ L 193, 18.7.1983, p. 1.

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## Title A

**Conditions for taking up business**

## Article 5

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

2. No management company may engage in activities other than the management of unit trusts/common funds and of investment companies

The activity of management of unit trusts/common funds and of investment companies includes, for the purpose of this Directive, the activities mentioned in Annex II

3. By the way of derogation of paragraph 2, Member States may authorise management companies to provide, in addition to the management of unit trusts/common funds and of investment companies, the following services:

— management of portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, where such portfolios include one or more of the instruments listed in Section B of the Annex of the ISD,

— as non-core services:

(a) investment advice concerning one or more of the instruments listed in Section B of the annex of the ISD,

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

2. No management company may engage in activities other than the management of UCITS in the form of unit trusts/common funds and of investment companies except the additional management of other collective investment undertakings which are not covered by this Directive and thus cannot be marketed in other Member States under this Directive.

The activity of management of unit trusts/common funds and of investment companies includes, for the purpose of this Directive, the functions mentioned in Annex II which is not exhaustive.

3. By way of derogation from paragraph 2, Member States may authorise management companies to provide, in addition to the management of unit trusts/common funds and of investment companies, the following services:

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(b) safekeeping and administration in relation to units of collective investment undertakings which are managed by the management company.



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Management companies may in no case be authorised under this Directive to provide only the services mentioned in this paragraph.

4. Articles 2(4), 8(2), 10, 11, 12(1) and 13 of the ISD shall apply to management companies, the authorisation of which covers the discretionary portfolio management service mentioned in the first indent of paragraph 3.

*Article 5(a)*

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

— it has sufficient initial capital of the following amount:

(a) if it is authorised to manage only unit trusts/common funds and investment companies, ECU 50 000;

(b) if its authorisation covers also the discretionary portfolio management service mentioned in Article 5(3), first indent, in addition to the capital mentioned in the previous letter (a), an amount of capital to be determined in accordance with the rules laid down in Article 3, paragraphs 1 and 2 of Directive 93/6/EEC<sup>(1)</sup> having regard to the nature of the service in question;

— the persons who effectively direct the business of a management company are of sufficiently good repute and are sufficiently experienced also in relation to the type of UCITS managed by the management company. The direction of a management company's business must be decided by at least two persons meeting these conditions;

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Management companies may in no case be authorised under this Directive to provide only the services mentioned in this paragraph or to provide non-core services without being authorised for the service of paragraph 3 first indent.

4. Articles 2(4), 8(2), 10, 11, 12(1) and 13 of the ISD shall apply to the provision services mentioned in paragraph 3 by management companies.

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

Unchanged

— it has sufficient initial capital of EUR 125 000; and it maintains in respect of each of the following situations an additional amount of capital of:

(a) if the management company manages UCITS which invest in instruments other than transferable securities: 0,05 % of the amount of the UCITS' portfolio under management, up to an amount of capital of EUR 10 000 000 at the maximum,

(b) if the management company also provides services according to Article 5(3) first indent: an additional initial capital of EUR 125 000 which Member States can reduce to EUR 50 000 if the management company is not authorised to hold client's money and/or securities; and additional ongoing capital to be calculated according to Annex IV of Directive 93/6/EEC<sup>(1)</sup>.

Unchanged

<sup>(1)</sup> OJ L 141, 11.6.1993, p. 1.

<sup>(1)</sup> OJ L 141, 11.6.1993, p. 1.

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- the application for authorisation is accompanied by a programme of activity setting out, *inter alia*, the organisational structure of the management company;
- both its head office and its registered office are located in the same Member State.

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

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

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

3. An applicant shall be informed, within six months of the submission of a complete application, whether or not authorisation has been granted. Reasons shall be given whenever an authorisation is refused.

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

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

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

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- (c) no longer fulfils the conditions under which authorisation was granted;
- (d) no longer complies with Directive 93/6/EEC if its authorisation covers also the discretionary portfolio management service mentioned in Article 5(3), first indent;
- (e) has seriously and systematically infringed the provisions adopted pursuant to this Directive;
- (f) falls within any of the cases where national law provides for withdrawal.

*Article 5(b)*

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

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

2. In the case of branches of management companies that have registered offices outside the European Union and are commencing or carrying on business, the Member States shall not apply provisions that result in treatment more favourable than that accorded to branches of management companies that have registered offices in Member States.

3. The competent authorities of the other Member State involved shall be consulted beforehand on the authorisation of any management company which is:

- a subsidiary of another management company, an investment firm or a credit institution authorised in another Member State,
- a subsidiary of the parent undertaking of another management company, an investment firm or a credit institution authorised in another Member State,

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

*Title B***Relations with third countries***Article 5(c)*

1. Relations with third countries are regulated according to the relevant rules laid down in Article 7 of Directive 93/22/EEC.

For the purpose of this Directive, the expressions "firm/investment firm" and "investment firms" contained in Article 7 of the ISD shall be read respectively as "management company" and "management companies"; the expression "providing investment services" in Article 7(2) of the ISD shall be read as "providing services".

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

*Title C***Operating conditions***Article 5(d)*

1. The competent authorities of the management company's home Member State shall require that the management company which they have authorised complies at all times with the conditions imposed in Articles 5 and 5(a)(1) and (2) of this Directive.

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

*Article 5(e)*

1. Qualifying holdings in management companies shall be subject to the same rules as those laid down in Article 9 of the ISD.

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For the purpose of this Directive, the expressions “firm/investment firm” and “investment firms” contained in Article 9 of the ISD shall be read respectively as “management company” and “management companies”.

*Article 5(f)*

1. Each home Member State shall draw up prudential rules which management companies, the authorisation of which covers only the activity of management of unit trusts/common funds and investment companies, shall observe at all times.

In particular, the competent authorities of the home Member State having regard also to the nature of the UCITS managed by a management company, shall require that each such company has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms ensuring, inter alia, that the assets of the unit trusts/common funds or of the investment companies managed by the management company are invested according to the fund rules or the instruments of incorporation and the legal provisions in force.

2. Each management company the authorisation of which covers also the discretionary portfolio management service mentioned in Article 5(3), first indent:

— shall not be permitted to invest all or a part of the investor's portfolio in units of unit trusts/common funds or of investment companies it manages, unless it receives prior general approval from the client,

— shall not be permitted to provide the discretionary portfolio management service to the depositary which performs for that management company the duties mentioned in Articles 7 and 14 of this Directive,

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2. For the purpose of this Directive, the expressions “firm/investment firm” and “investment firms” contained in Article 9 of the ISD shall be read respectively as “management company” and “management companies”.

Unchanged

In particular, the competent authorities of the home Member State having regard also to the nature of the UCITS managed by a management company, shall require that each such company has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms ensuring, inter alia, that each transaction involving the fund may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected provided this information is accessible to the management company, and that the assets of the unit trusts/common funds or of the investment companies managed by the management company are invested according to the fund rules or the instruments of incorporation and the legal provisions in force.

Unchanged

## INITIAL PROPOSAL

- shall be subject to the provisions laid down in Directive 97/9/EC on investor-compensation schemes <sup>(1)</sup>.

*Article 5(g)*

1. When a Member State permits a management company to delegate to third parties, on the basis of specific mandates and for the purpose of a more efficient conduct of the company's business, to carry out on its behalf one or more of the functions included in the activity of collective portfolio management mentioned in Annex II, each mandate must be submitted to the competent authorities for prior approval.

2. The competent authorities shall approve the mandate only after having verified the compliance with the following pre-conditions:

- the mandate shall not prevent the effectiveness of supervision over the management company,
- in order to prevent conflicts of interest, the mandate shall not be given to the depositary and to persons having qualifying holdings in the management company's or the depositary's capital or to any other person whose interests may conflict with those of the management company or the unit-holders,
- measures shall exist which enable the persons who direct the business of the management company to monitor at any time the activity of the person to whom the mandate is given,
- the mandate shall not prevent the persons who direct the business of the management company to give at any time further instructions to the person to whom functions are delegated and to withdraw the mandate at any time,

## AMENDED PROPOSAL

- shall be subject in regard to services according to Article 5 (3) to the provisions laid down in Directive 97/9/EC on investor-compensation schemes <sup>(1)</sup>.

1. When a Member State permits a management company to delegate to third parties for the purpose of a more efficient conduct of the company's business, to carry out on its behalf one or more of their own functions mentioned in Annex II, the management company shall notify the competent authorities of each mandate. In case of the core function of investment management, management companies may delegate specific investment decisions to intermediaries which are subject to prudential supervision, in accordance with investment-allocation criteria periodically laid down by the management companies.

2. The competent authorities shall ensure that the mandate is in compliance with the following pre-conditions:

- the mandate shall not prevent the effectiveness of supervision over the management company, and in particular it must not prevent the management company from acting, or the UCITS from being managed, in the best interests of its investors,
- where the mandate is given to a third-country intermediary which is subject to supervision, cooperation between the prudential supervisory authorities concerned must be ensured,
- in order to prevent conflicts of interest, a mandate in regard to the core function of investment management shall not be given to the depositary and to persons having qualifying holdings in the management company's or the depositary's capital or to any other person whose interests may conflict with those of the management company or the unit-holders,
- measures shall exist which enable the persons who direct the business of the management company to effectively monitor at any time the activity of the person to whom the mandate is given,

Unchanged

<sup>(1)</sup> OJ L 84, 26.3.1997, p. 22.

<sup>(1)</sup> OJ L 84, 26.3.1997, p. 22.

## INITIAL PROPOSAL

- having regard to the nature of the functions to be delegated, the person to whom functions will be delegated must furnish sufficient professional and financial guarantees,
- the UCITS' prospectuses and any promotional literature list the functions which the management company has been permitted to delegate.

3. In no case shall the management company's and the depositary's liabilities be affected by the fact that the management company delegated own functions to third parties.

*Article 5(h)*

The Council and the Parliament note the Commission's statement to the effect that, based on the outcome of the report the Commission will submit, according to Article 14 of Directive 97/9/EC on investor compensation schemes no later than 31 December 1999 to the Council and the Parliament, it may, if appropriate, propose the introduction of compensation arrangements for unit-holders of UCITS.

*Title D***The right of establishment and the freedom to provide services***Article 6*

1. Member States shall ensure that a management company, authorised in accordance with this Directive by the competent authorities of another Member State, may carry on within their territories the activity for which it has been authorised, either by the establishment of a branch or under the freedom to provide services.

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

*Article 6(a)*

1. In addition to meeting the conditions imposed in Article 5 and 5(a), any management company wishing to establish a branch within the territory of another Member State shall notify the competent authorities of its home Member State.

## AMENDED PROPOSAL

- having regard to the nature of the functions to be delegated, the person to whom functions will be delegated must be qualified and capable to undertake the functions in question, and
- the UCITS' prospectuses list the functions which the management company has been permitted to delegate.

3. In no case shall the management company's and the depositary's liabilities be affected by the fact that the management company delegated any functions to third parties.

Deleted

Unchanged

## INITIAL PROPOSAL

## AMENDED PROPOSAL

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

I. General information:

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

(b) a programme of the activity envisaged and the organisational structure of the branch;

(c) the address in the host Member State from which documents may be obtained;

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

II. Information concerning the distribution, by the branch, of the units of the unit trusts/common funds and of the investment companies subject to this Directive which are managed by the management company:

(a) details about the planned distribution and of the arrangements made for the marketing of the units in that other Member State;

(b) for each unit trust/common fund and investment company concerned: the fund rules or the instruments of incorporation; the prospectuses and, where appropriate, its latest annual report and any subsequent half-yearly report;

3. Unless the competent authorities of the home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of a management company, taking into account the activities envisaged, they shall, within three months of receiving all the information referred to in paragraph 2, communicate that information to the competent authorities of the host Member State and shall inform the management company accordingly.

(b) a programme of operations setting out the activities and services according to Article 5 (2) and (3) envisaged and the organisational structure of the branch;

Unchanged

II. a list of the UCITS managed by the management company and notified according to Article 46, the units of which shall be marketed through the branch in the host Member State

Deleted

Unchanged



## INITIAL PROPOSAL

## AMENDED PROPOSAL

They shall also communicate:

- details of any compensation scheme intended to protect investors,
- an attestation for each unit trust/common fund or investment company, the units of which are distributed in the host country, that it fulfils the conditions imposed by this Directive.

- details of any compensation scheme intended to protect investors

Deleted

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

Unchanged

4. Before the branch of a management company commences business, the competent authorities of the host Member State shall, within two months of receiving the information referred to in paragraph 2, prepare for the supervision of the management company and, if necessary, indicate the conditions, including the rules mentioned in Articles 44 and 45 in force in the host Member State and the rules of conduct to be respected in the case of provision of the portfolio management service mentioned in Article 5(3), under which, in the interest of the general good, that business must be carried on in the host Member State.

4. Before the branch of a management company commences business, the competent authorities of the host Member State shall, within two months of receiving the information referred to in paragraph 2, prepare for the supervision of the management company and, if necessary, indicate the conditions, including the rules mentioned in Articles 44 and 45 in force in the host Member State and the rules of conduct to be respected in the case of provision of the portfolio management service mentioned in Article 5(3) and of investment advisory services and custody, under which, in the interest of the general good, that business must be carried on in the host Member State.

5. On receipt of a communication from the competent authorities of the host Member State or on the expiry of the period provided for in paragraph 4 without receipt of any communication from those authorities, the branch may be established and commence business. From that moment the management company may also begin distributing the units of the unit trusts/common funds and of the investment companies subject to this Directive which it manages, unless the competent authorities of the host Member State establish, in a reasoned decision taken before the expiry of that period of two months — to be communicated to the competent authorities of the home Member State — that the arrangements made for the marketing of the units do not comply with the provisions referred to in Article 44(1) and 45.

Unchanged

## INITIAL PROPOSAL

## AMENDED PROPOSAL

6. In the event of change of any particulars communicated in accordance with paragraphs 2(l)(b), (c) or (d) and subparagraph II, a management company shall give written notice of that change to the competent authorities of the home and host Member States at least one month before implementing the change so that the competent authorities of the home Member State may take a decision on the change under paragraph 3 and the competent authorities of the host Member State may do so under paragraph 4.

7. In the event of a change in the particulars communicated in accordance with the second subparagraph of paragraph 3, the authorities of the home Member State shall inform the authorities of the host Member State accordingly.

*Article 6(b)*

1. Any management company wishing to carry on business within the territory of another Member State for the first time under the freedom to provide services shall communicate the following information to the competent authorities of its home Member State:

## I. General information:

Deleted

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

Unchanged

(b) a programme of the activity envisaged.

(b) a programme of operations stating the activities and services according to Article 5 (2) and (3) envisaged;

II. Information concerning the distribution, in the host Member State, of units of the unit trusts/common funds and of the investment companies subject to this Directive which are managed by the management company:

Deleted

(a) details about the planned distribution and of the arrangements made for the marketing of the units in that other Member State;

(b) for each unit trust/common fund and investment company concerned; the fund rules or the instruments of incorporation; the prospectuses and, where appropriate, its latest annual report and any subsequent half-yearly report.

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

Unchanged

## INITIAL PROPOSAL

They shall also communicate:

- details of any compensation scheme intended to protect investors,
- an attestation for each trust/common fund or investment company, the units of which are distributed in the host country, that it fulfils the conditions imposed by this Directive.

3. The management company may then commence business in the host Member State. The distribution of the units of the unit trusts/common funds and the investment companies subject to this Directive may begin one month after the host Member State's competent authorities receive of the information referred to in paragraphs 1 and 2, unless the competent authorities of the host Member State establish, in a reasoned decision taken before the expiry of that period of one month to be communicated to the competent authorities of the home Member State, that the arrangements made for the marketing of the units do not comply with the provisions referred to in Articles 44(1) and 45.

When appropriate, the competent authorities of the host Member State shall, on receipt of the information referred to in paragraph 1, indicate to the management company the conditions, including the rules of conduct to be respected in the case of provision of the portfolio management service mentioned in Article 5(3), with which, in the interest of the general good, the management company must comply in the host Member State.

4. Should the content of the information communicated in accordance with paragraph 1(I)(b) and (II) be amended, the management company shall give notice of the amendment in writing to the competent authorities of the home Member State and of the host Member State before implementing the change, so that the competent authorities of the host Member State may, if necessary, inform the company of any change or addition to be made to the information communicated under paragraph 2.

5. A management company shall also be subject to the notification procedure laid down in this Article in the case where it entrusts a third party with the marketing of the units in a host Member State.

*Article 6(c)*

1. Host Member States may, for statistical purposes, require all management companies with branches within their territories to report periodically on their activities in those host Member States to the competent authorities of those host Member States.

## AMENDED PROPOSAL

- details of any compensation scheme intended to protect investors

Deleted

3. The management company may then commence business in the host Member State notwithstanding the provisions of Article 46.

When appropriate, the competent authorities of the host Member State shall, on receipt of the information referred to in paragraph 1, indicate to the management company the conditions, including the rules of conduct to be respected in the case of provision of the portfolio management service mentioned in Article 5(3) and of investment advisory services and custody, with which, in the interest of the general good, the management company must comply in the host Member State.

4. Should the content of the information communicated in accordance with paragraph 1(I)(b) be amended, the management company shall give notice of the amendment in writing to the competent authorities of the home Member State and of the host Member State before implementing the change, so that the competent authorities of the host Member State may, if necessary, inform the company of any change or addition to be made to the information communicated under paragraph 2.

Unchanged

## INITIAL PROPOSAL

2. In discharging their responsibilities under this Directive, host Member States may require branches of management companies to provide the same particulars as national management companies for that purpose.

Host Member States may require management companies, carrying on business within their territories under the freedom to provide services, to provide the information necessary for the monitoring of their compliance with the standards set by the host Member State that apply to them, although those requirements may not be more stringent than those which the same Member State imposes on established management companies for the monitoring of their compliance with the same standards.

3. Where the competent authorities of a host Member State ascertain that a management company that has a branch or provides services within its territory is in breach of the legal or regulatory provisions adopted in that State pursuant to those provisions of this Directive which confer powers on the host Member State's competent authorities, those authorities shall require the management company concerned to put an end to its irregular situation.

4. If the management company concerned fails to take the necessary steps, the competent authorities of the host Member State shall inform the competent authorities of the home Member State accordingly. The latter shall, at the earliest opportunity, take all appropriate measures to ensure that the management company concerned puts an end to its irregular situation. The nature of those measures shall be communicated to the competent authorities of the host Member State.

5. If, despite the measures taken by the home Member State or because such measures prove inadequate or are not available in the State in question, the management company persists in violating the legal or regulatory provisions referred to in paragraph 2 in force in the host Member State, the latter may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or to penalise further irregularities and, in so far as necessary, to prevent that management company from initiating any further transaction within its territory. The Member States shall ensure that within their territories it is possible to serve the legal documents necessary for those measures on management companies.

## AMENDED PROPOSAL

## INITIAL PROPOSAL

6. The foregoing provisions shall not affect the powers of host Member States to take appropriate measures to prevent or to penalise irregularities committed within their territories which are contrary to legal or regulatory provisions adopted in the interest of the general good. This shall include the possibility of preventing offending management companies from initiating any further transactions within their territories.

7. Any measure adopted pursuant to paragraphs 4, 5 or 6 involving penalties or restrictions on the activities of a management company must be properly justified and communicated to the management company concerned. Every such measure shall be subject to the right to apply to the courts in the Member State which adopted it.

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

After consulting the competent authorities of the Member States concerned, the Commission may decide that the Member State in question must amend or abolish those measures.

9. In the event of the withdrawal of authorisation, the competent authorities of the host Member State shall be informed and shall take appropriate measures to prevent the management company concerned from initiating any further transactions within its territory and to safeguard investors' interests. Every two years the Commission shall submit a report on such cases to the Contact Committee set up according to Article 53.

10. The Member States shall inform the Commission of the number and type of cases in which there have been refusals pursuant to Article 6(a) or measures have been taken in accordance with paragraph 5. Every two years the Commission shall submit a report on such cases to the Contact Committee set up according to Article 53 of this Directive.'

## AMENDED PROPOSAL

## INITIAL PROPOSAL

## AMENDED PROPOSAL

4. Before Article 7 the following shall be included:

‘SECTION IIIa

**Obligations regarding the depositary’**

5. Article 27(1) shall be replaced by the following:

‘1. An investment company and, for each of the unit trusts it manages, a management company, must publish:

- a simplified prospectus,
- a full prospectus,
- an annual report for each financial year, and
- a half-yearly report covering the first six months of the financial year.’

6. Article 28(1) shall be replaced by the following:

‘1. Both the simplified and the full prospectuses must include the information necessary for investors to be able to make an informed judgement of the investment proposed to them.

2. The full prospectus shall contain at least the information provided for in Schedule A annexed to this Directive, in so far as that information does not already appear in the fund rules or instruments of incorporation annexed to the full prospectus in accordance with Article 29(1).

3. The simplified prospectus shall contain synthetically at least the key information provided for in Schedule C annexed to this Directive. It shall be structured and written in such a way that it can be easily understood by the average investor. Member States may permit that the simplified prospectus be attached to the full prospectus as a removable part of it.

‘1. Both the simplified and the full prospectuses must include the information necessary for investors to be able to make an informed judgement of the investment proposed to them, and, in particular, of the risks attached thereto. The latter shall include, independent of the instruments invested in, a clear and easily understandable explanation of the fund's risk profile.

Unchanged

3. The simplified prospectus shall contain in summary form the key information provided for in Schedule C annexed to this Directive. It shall be structured and written in such a way that it can be easily understood by the average investor. Member States may permit that the simplified prospectus be attached to the full prospectus as a removable part of it. The simplified prospectus can be used as a marketing tool designed to be used in all Member States without alterations except translation. Member States may therefore not require any further documents or additional information to be added.

## INITIAL PROPOSAL

## AMENDED PROPOSAL

4. Both the full and the simplified prospectus can be incorporated in a written document or in any durable medium having an equivalent legal status approved by the competent authorities.'

Unchanged'

7. Article 29 shall be replaced by the following:

*'Article 29*

1. The fund rules or an investment company's instruments of incorporation shall form an integral part of the full prospectus and must be annexed thereto.

2. The documents referred to in paragraph 1 need not, however, be annexed to the full prospectus provided that the unit-holder is informed that on request he or she will be sent those documents or be apprised of the place where, in each Member State in which the units are placed on the market, he or she may consult them.'

8. Article 30 shall be replaced by the following:

*'Article 30*

The essential elements of the simplified and the full prospectuses must be kept up to date.'

9. Article 32 shall be replaced by the following:

*'Article 32*

UCITS must send their simplified and full prospectuses and any amendments thereto, as well as their annual and half-yearly reports, to the competent authorities.'

10. Article 33 shall be replaced by the following:

*'Article 33*

1. The simplified prospectus must be offered to subscribers free of charge before the conclusion of the contract.

In addition, the full prospectus and the latest published annual and half-yearly reports shall be supplied to subscribers free of charge on request.

2. The annual and half-yearly reports shall be supplied to unit-holders free of charge on request.

3. The annual and half-yearly reports must be available to the public at the places, or through other means approved by the competent authorities, specified in the full and simplified prospectus.'

## INITIAL PROPOSAL

## AMENDED PROPOSAL

11. Article 35 shall be replaced by the following:

*'Article 35*

All publicity comprising an invitation to purchase the units of UCITS must indicate that prospectuses exist and the places where they may be obtained by the public or how the public may have access to them.'

12. Article 46 shall be replaced by the following:

*'Article 46*

If an investment company proposes to market its units in a Member State other than that in which it is situated, it must first inform the competent authorities of that other Member State accordingly. It must simultaneously send the latter authorities:

- an attestation by the competent authorities to the effect that it fulfils the conditions imposed by this Directive,
- its instruments of incorporation,
- its full prospectus and its simplified prospectus,
- where appropriate, its latest annual report and any subsequent half-yearly report, and
- details of the arrangements made of the marketing of its units in that other Member State.

An investment company may begin to market its units in that other Member State one month after such communication, unless the authorities of the Member States concerned establish, in a reasoned decision taken before the expiry of that period of one month, that the arrangements made for the marketing of units do not comply with the provisions referred to in Articles 44(1) and 45.'

13. Article 47 shall be replaced by the following:

*'Article 47*

If a UCITS markets its units in a Member State other than that in which it is situated, it must distribute in that other Member State, in accordance with the same procedures as those provided for in the home Member State:

If a management company in regard to the UCITS it manages or if an investment company, proposes to market its units in a Member State other than that in which it is situated, it must first inform the competent authorities of that other Member State accordingly. It must simultaneously send the latter authorities:

Unchanged

- its fund rules or its instruments of incorporation,

Unchanged

An investment company or a management company may begin to market its units in that other Member State one month after such communication, unless the authorities of the Member States concerned establish, in a reasoned decision taken before the expiry of that period of one month, that the arrangements made for the marketing of units do not comply with the provisions referred to in Articles 44(1) and 45.'

Unchanged



## INITIAL PROPOSAL

## AMENDED PROPOSAL

1. the simplified prospectus and the other information provided for in Articles 29 and 30 of this Directive in a language which is easily understandable for the investors concerned in the host Member State;
  2. the full prospectus and the annual and half-yearly reports in the official language or in one of the official languages of the host Member State or in another language, provided that in the Member State in question that other language is customary in the sphere of finance, accepted by the competent authorities and, when appropriate, such further conditions as they may impose are complied with.'
14. After Article 52 the following Articles shall be added:

*'Article 52(a)*

1. Where, through the provision of services or by the establishment of branches, a management company operates in one or more host Member States, the competent authorities of all the Member States concerned shall collaborate closely.

They shall supply one another on request with all the information concerning the management and ownership of such management companies that is likely to facilitate their supervision and all information likely to facilitate the monitoring of such companies. In particular, the authorities of the home Member State shall cooperate to ensure that the authorities of the host Member State collect the particulars referred to in Article 6(c)(2).

2. In so far as it is necessary for the purpose of exercising their powers of supervision, the competent authorities of the home Member State shall be informed by the competent authorities of the host Member State of any measures taken by the host Member State pursuant to Article 6(c)(6) which involve penalties imposed on a management company or restrictions on a management company's activities.

*Article 52(b)*

1. Each host Member State shall ensure that, where a management company authorised in another Member State carries on business within its territory through a branch, the competent authorities of the management company's home Member State may, after informing the competent authorities of the host Member State, themselves or through the intermediary of persons they instruct for the purpose, carry out on-the-spot verification of the information referred to in Article 52(a).

They shall supply one another on request with all the information concerning the management and ownership of such management companies that is likely to facilitate their supervision and all information likely to facilitate the monitoring of such companies. In particular, the authorities of the home Member State shall co-operate to ensure that the authorities of the host Member State collect the particulars referred to in Article 6(c)(2).

Unchanged

## INITIAL PROPOSAL

## AMENDED PROPOSAL

2. The competent authorities of the management company's home Member State may also ask the competent authorities of the management company's host Member State to have such verification carried out. Authorities which receive such requests must, within the framework of their powers, act upon them by carrying out the verifications themselves, by allowing the authorities who have requested them to carry them out or by allowing auditors or experts to do so.

3. This Article shall not affect the right of the competent authorities of the host Member State, in discharging their responsibilities under this Directive, to carry out on-the-spot verifications of branches established within their territory.'

15. Schedule A of the Annex shall be amended as follows:

Under the column 'Information concerning the investment company', after paragraph 1.2 the following shall be added:

'1.3. In the case of investment companies having different investment compartments, the indication of the compartments.'

Under the column 'Information concerning the investment company', in paragraph 1.13 the following sentence shall be added:

'In the case of investment companies having different investment compartments, information on how a unit-holder may pass from one compartment into another and the charges applicable in such cases.'

After paragraph 4 the following paragraphs 5 and 6 shall be added:

'5. Other investment information

5.1. Historical performance of the unit trust/common fund or of the investment company (where applicable);

5.2. Profile of the typical investor for whom the unit trust/common fund or the investment company is designed.

6. Economic information

6.1. Possible expenses or fees, other than the charges mentioned in paragraph 1.17, distinguishing between those to be paid by the unit-holder and those to be paid out of the unit trust's/common fund's or of the investment company's assets.'

INITIAL PROPOSAL

AMENDED PROPOSAL

**Transitional and final provisions***Article 2*

1. Investment firms, as defined in Article 1(2) of the ISD, authorised to carry out only the services provided for in Section A(3) and in Section C(1) and (6) of the Annex to Directive 93/22/EEC, may obtain authorisation under this Directive to manage unit trusts/common funds and investment companies and to qualify themselves as 'management companies'. In that case, such investment firms must give up the authorisation obtained under the ISD.

2. Management companies already authorised before 31 December 2002, in their home Member State under Directive 85/611/EEC to manage unit trusts/common funds and investment companies shall be deemed to be authorised for the purposes of this Directive if the laws of those Member States provide that to take up such activity they must comply with conditions equivalent to those imposed in Articles 5(a) and 5(b).

3. Management companies, already authorised before 31 December 2002, which are not included among those referred to in paragraph 2 may continue such activity provided that, no later than 31 December 2005 and pursuant to the provisions of their home Member State, they obtain authorisation to continue such activity in accordance with the provisions adopted in implementation of this Directive.

Only the grant of such authorisation shall enable such management companies to qualify under the provisions of this Directive on the right of establishment and the freedom to provide services.

*Article 3*

No later than 30 June 2002 Member States shall adopt the laws, regulations and administrative provisions necessary for them to comply with this Directive.

These provisions shall enter into force no later than 31 December 2002. The Member States shall forthwith inform the Commission thereof.

When Member States adopt these provisions they shall include a reference to this Directive or accompany them with such a reference on the occasion of their official publication. The manner in which such references are to be made shall be laid down by the Member States.

*Article 4*

This Directive shall enter into force 20 days after the date of publication in the *Official Journal of the European Communities*.

*Article 5*

This Directive is addressed to the Member States.

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## INITIAL PROPOSAL

## AMENDED PROPOSAL

## ANNEX I

**Schedule C**

Unchanged

## CONTENTS OF THE SIMPLIFIED PROSPECTUS

*Brief presentation of the UCITS*

- when the unit trust/common fund or the investment company was created and indication of the Member State where the unit trust/common fund or the investment company has been registered/incorporated,
- management company (when applicable),
- expected period of existence (when applicable),
- depositary,
- auditors
- financial group (e.g. a bank) promoting the UCITS.

*Investment information*

- short definition of the UCITS' objectives,
- in the case of investment companies having different investment compartments, the indication of this circumstance,
- the unit trust's/common fund's or the investment company's investment policy,
- historical performance of the common fund/investment company (where applicable),
- profile of the typical investor the unit trust/common fund or the investment company is designed for

- the unit trust's/common fund's or the investment company's investment policy and a brief assessment of the fund's risk profile (including, if applicable, information according to Article 24a and Article 24b),
- historical performance of the unit trust/common fund/investment company (where applicable),
- Unchanged

*Economic information*

- tax regime,
- entry and exit commissions,
- other possible expenses or fees, distinguishing between those to be paid by the unit-holder and those to be paid out of the unit trust's/common fund's or the investment company's assets.

*Commercial information*

- how to buy the units,
- how to sell the units,

## INITIAL PROPOSAL

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- in the case of investment companies having different investment compartments how to pass from one investment compartment into another and the charges applicable in such cases,
- when and how dividends (if applicable) are distributed,
- frequency and where/how prices are published or made available,
- indication of a contact point (person/department, timing, etc.) where additional explanations may be obtained if needed.

*Additional information*

- statement that, on request, the full prospectus, the annual and half-yearly reports may be obtained free of charge before the conclusion of the contract and afterwards.

## ANNEX II

**Functions included in the activity of collective portfolio management**

- Investment activity:
  - (a) investment management;
  - (b) investment administration (such as: instructing brokers, arranging settlement, instructing the depositary on the exercise of voting rights).
- Marketing:
  - (a) production of literature;
  - (b) distribution of the units of the unit trusts/common funds and of the investment companies managed by the management company;
  - (c) relations with distribution agents.
- Administration:
  - (a) legal and fund management accounting services;
  - (b) customer inquiries;
  - (c) valuation and pricing (including tax returns);
  - (d) regulatory compliance monitoring;
  - (e) maintenance of unit-holder register;
  - (f) distribution of income;
  - (g) unit issues and redemptions;
  - (h) contract settlements (including certificate dispatch);
  - (i) record keeping.