ISSN 1725-2555

Official Journal of the European Union

L 176

English edition

Volume 53

10 July 2010

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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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II

(Non-legislative acts)

REGULATIONS

COMMISSION REGULATION (EU) No 583/2010

of 1 July 2010

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

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) [1], and in particular Article 75(4), Article 78(7), and Article 81(2) thereof,

Whereas:

(1) Directive 2009/65/EC specifies the main principles that should be followed in preparing and providing key investor information, including requirements concerning its format and presentation, its objectives, the main elements of the information that is to be disclosed, who should deliver the information to whom, and the methods that should be used for such delivery. Details on the content and format have been left to be developed further by means of implementing measures, which should be specific enough to ensure that investors receive the information they need in respect to particular fund structures.

(2) The form of a Regulation is justified as this form alone can ensure that the exhaustive content of key investor information is harmonised. Furthermore, a key investor information document will be more efficient where requirements applicable to it are identical in all Member States. All stakeholders should benefit from a harmonised regime on the form and content of the disclosure, which will ensure that information about investment opportunities in the UCITS' market is consistent and comparable.

(3) In some cases, key investor information can be delivered more effectively when the key investor information document is provided to investors through a website, or where the key investor information document is attached to another document when it is given to the potential investor. In these cases, however, the context in which the key investor information document appears should not undermine the key investor information document, or imply that it is an item of promotional literature or that accompanying items of promotional literature are of equal or greater relevance to the retail investor.

(4) It is necessary to ensure that the content of the information is relevant, the organisation of the information is logical and the language appropriate for retail investors. To address these concerns, this Regulation should ensure that the key investor information document is able to engage investors and aid comparisons through its format, presentation and the quality and nature of the language used. This Regulation aims to ensure consistency in the format of the document, including a common running order with identical headings.

(5) This Regulation specifies the content of the information on investment objectives and the investment policy of UCITS so that investors can easily see whether or not a fund is likely to be suitable for their needs. For this reason, the information should indicate whether returns can be expected in the form of capital growth, payment of income,

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

or a combination of both. The description of the investment policy should indicate to the investor what the overall aims of the UCITS are and how these objectives are to be achieved. With regard to the financial instruments in which investments are to be made, only those which may have a material impact on UCITS' performance need to be mentioned, rather than all possible eligible instruments.

(6) This Regulation lays down detailed rules on the presentation of the risk and reward profile of the investment, by requiring use of a synthetic indicator and specifying the content of narrative explanations of the indicator itself and risks which are not captured by the indicator, but which may have a material impact on the risk and reward profile of the UCITS. In applying the rules on the synthetic indicator account should be taken of the methodology for the calculation of the synthetic indicator as developed by competent authorities working within the Committee of European Securities Regulators. The management company should decide on a case-by-case basis which specific risks should be disclosed by analysing the particular characteristics of each fund, bearing in mind the need to avoid overburdening the document with information that retail investors will find difficult to understand. In addition the narrative explanation of the risk and reward profile should be limited in size in terms of the amount of space it occupies within the key investor information document. It should be possible to have cross-references to the prospectus of the UCITS where full details of its risks are disclosed.

(7) Consistency should be ensured between the explanation of risks in the key investor information document and the management company's internal processes related to risk management, established in accordance with Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and the Council as regards organisational requirements, conflicts of interests, conduct of business, risk management and content of the agreement between a depositary and a management company [1]. For instance, so as to ensure consistency, the permanent risk management function should where appropriate be given the opportunity to review and comment on the risk and reward profile section of the key investor information document.

(8) This Regulation specifies the common format for the presentation and explanation of charges, including relevant warnings, so that investors are appropriately informed about the charges they will have to incur and their proportion to the amount of capital actually invested into the fund. In applying these rules, account should be taken of the work on the methodology for the calculation of charges figures as developed by competent authorities working within the Committee of European Securities Regulators.

(9) The detailed rules on the presentation of information about past performance are based on the requirements for such information in the Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC [2]. This Regulation supplements the rules of Directive 2004/39/EC by including specific requirements necessary for harmonising the information for the purpose of facilitating comparisons between different key investor information documents. In particular, this Regulation prescribes that only net annual returns shall be shown, through a bar chart format. Certain aspects of the presentation of the bar chart should be regulated, including the limited circumstances in which simulated data might be used.

(10) It should be recognised that cross-referring to information might be useful to the investor but it is essential that the key investor information document should contain all information necessary for the investor to understand the essential elements of the UCITS. If cross-references to sources of information other than the prospectus and periodic reports are used, it should be made clear that the prospectus and periodic reports are the primary sources of additional information for investors, and the cross-references should not downplay their significance.

(11) The key investor information document should be reviewed and revised as appropriate and as frequently as is necessary to ensure that it continues to meet the requirements for key investor information specified in Articles 78(2) and 79(1) of Directive 2009/65/EC. As a matter of good practice, management companies should review the key investor information document before entering into any initiative that is likely to result in a significant number of new investors acquiring units in the fund.

(12) The form or content of key investor information may need to be adjusted to specific cases. Consequently, this Regulation tailors the general rules applicable to all UCITS so as to take into account the specific situation of certain types of UCITS, namely those having different investment compartments or share classes, those with fund of funds structures, those with master-feeder structures, and those that are structured, such as capital protected or comparable UCITS.

[1] See page 42 of this Official Journal.

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

(13) With regard to UCITS having different share classes, there should be no obligation to produce a separate key investor information document for every such share class, so long as investors' interests are not compromised. The details of two or more classes may be combined into a single key investor information document only where this can be done without making the document too complicated or crowded. Alternatively, a representative class may be selected, but only in cases where there is sufficient similarity between the classes such that information about the representative class is fair, clear and not misleading as regards the represented class. In determining whether the use of a representative class is fair, clear and not misleading, regard should be had to the characteristics of the UCITS, the nature of the differences represented by each class, and the range of choices on offer to each investor or group of investors.

(14) In the case of a fund of funds, the right balance is kept between the information on the UCITS that the investor invests in and its underlying collectives. The key investor information document of a fund of funds should therefore be prepared on the basis that the investor does not wish or need to be informed in detail about the individual features of each of the underlying collectives, which in any case are likely to vary from time to time if the UCITS is being actively managed. However, in order for the key investor information document to deliver effective disclosure of the fund of funds' objective and investment policy, risk factors, and charging structure, the characteristics of its underlying funds should be transparent.

(15) In the case of master-feeder structures, the description of the feeder UCITS' risk and reward profile should not be materially different to that of the corresponding section in the master UCITS' key investor information document so that the feeder can copy information from the key investor information document of the master wherever it is relevant. However, this information should be supplemented by relevant statements or duly adjusted in those cases where ancillary assets held by the feeder might modify the risk profile compared to the master, addressing the risks inherent in these ancillary assets, for instance where derivatives are used. The combined costs of investing in the feeder and the master should be disclosed to investors in the feeder.

(16) With regard to structured UCITS, such as capital protected and other comparable UCITS, the provision of prospective performance scenarios in place of past performance information is required. Prospective performance scenarios involve calculating the expected return of the fund under favourable, adverse, or neutral hypotheses regarding market conditions. These scenarios should be chosen so as to effectively illustrate the full range of possible outcomes according to the formula.

(17) Where the key investor information and the prospectus are to be provided in a durable medium other than paper or by means of a website, additional safety measures are necessary for investor protection reasons, so as to ensure that investors receive information in a form relevant to their needs, and so as to maintain the integrity of the information provided, prevent alterations that undermine its comprehensibility and effectiveness, and avoid manipulation or modification by unauthorised persons. This Regulation contains a reference to rules on durable medium laid down in the Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive [1] in order to ensure the equal treatment of investors and a level playing field in financial sectors.

(18) In order to allow management companies and investment companies to adapt to the new requirements contained in this Regulation in an efficient and effective manner, the starting date of application of this Regulation should be aligned with the transposition of Directive 2009/65/EC.

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

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

HAS ADOPTED THIS REGULATION:

CHAPTER I

SUBJECT MATTER AND GENERAL PRINCIPLES

Article 1

Subject matter

This Regulation lays down the detailed rules for the implementation of Articles 75(2), 78(2) to (5) and 81(1) of Directive 2009/65/EC.

Article 2

General principles

1. Requirements laid down in this Regulation shall apply to any management company with regard to each UCITS it manages.

2. This Regulation shall apply to any investment company which has not designated a management company authorised pursuant to Directive 2009/65/EC.

[1] OJ L 241, 2.9.2006, p. 26.
[2] OJ L 25, 29.1.2009, p. 18.

Article 3

Principles regarding the key investor information document

1. This Regulation specifies in an exhaustive manner the form and content of the document containing key investor information (hereinafter referred to as key investor information document). No other information or statements shall be included except where this Regulation states otherwise.

2. The key investor information shall be fair, clear and not misleading.

3. The key investor information document shall be provided in such a way as to ensure that investors are able to distinguish it from other material. In particular, it shall not be presented or delivered in a way that is likely to lead investors to consider it less important than other information about the UCITS and its risks and benefits.

CHAPTER II

FORM AND PRESENTATION OF KEY INVESTOR INFORMATION

SECTION 1

Title of document, order of contents and headings of sections

Article 4

Title and content of document

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

2. The title 'Key investor information' shall appear prominently at the top of the first page of the key investor information document.

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

'This document provides you with key investor information about this fund. It is not marketing material. The information is required by law to help you understand the nature and the risks of investing in this fund. You are advised to read it so you can make an informed decision about whether to invest'.

4. The identification of the UCITS, including the share class or investment compartment thereof, shall be stated prominently. In the case of an investment compartment or share class, the name of the UCITS shall follow the compartment or share class name. Where a code number identifying the UCITS, investment compartment or share class exists, it shall form part of the identification of the UCITS.

5. The name of the management company shall be stated.

6. In addition, in cases where the management company forms part of a group of companies for legal, administrative or marketing purposes, the name of that group may be stated. Corporate branding may be included provided it does not hinder an investor in understanding the key elements of the investment or diminish his ability to compare investment products.

7. The section of the key investor information document entitled 'Objectives and investment policy' shall contain the information set out in Section 1 of Chapter III of this Regulation.

8. The section of the key investor information document entitled 'Risk and reward profile' shall contain the information set out in Section 2 of Chapter III of this Regulation.

9. The section of the key investor information document entitled 'Charges' shall contain the information set out in Section 3 of Chapter III of this Regulation.

10. The section of the key investor information document entitled 'Past performance' shall contain the information set out in Section 4 of Chapter III of this Regulation.

11. The section of the key investor information document entitled 'Practical information' shall contain the information set out in Section 5 of Chapter III of this Regulation.

12. Authorisation details shall consist of the following statement:

'This fund is authorised in [name of Member State] and regulated by [identity of competent authority]'.

In cases where the UCITS is managed by a management company exercising rights under Article 16 of Directive 2009/65/EC, an additional statement shall be included:

'[Name of management company] is authorised in [name of Member State] and regulated by [identity of competent authority]'.

13. Information on publication shall consist of the following statement:

'This key investor information is accurate as at [the date of publication]'.

SECTION 2

Language, length and presentation

Article 5

Presentation and language

1. A key investor information document shall be:

(a) presented and laid out in a way that is easy to read, using characters of readable size;

(b) clearly expressed and written in language that communicates in a way that facilitates the investor's understanding of the information being communicated, in particular where:

(i) the language used is clear, succinct and comprehensible;

(ii) the use of jargon is avoided;

(iii) technical terms are avoided when everyday words can be used instead;

(c) focused on the key information that investors need.

2. Where colours are used, they shall not diminish the comprehensibility of the information in the event that the key investor information document is printed or photocopied in black and white.

3. Where the design of the corporate branding of the management company or the group to which it belongs is used, it shall not distract the investor or obscure the text.

Article 6

Length

The key investor information document shall not exceed two pages of A4-sized paper when printed.

CHAPTER III

CONTENT OF SECTIONS OF THE KEY INVESTOR INFORMATION DOCUMENT

SECTION 1

Objectives and investment policy

Article 7

Specific contents of the description

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

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

(b) the possibility that the investor may redeem units of UCITS on demand, qualifying that statement with an indication as to the frequency of dealing in units;

(c) whether the UCITS has a particular target in relation to any industrial, geographic or other market sectors or specific classes of assets;

(d) whether the UCITS allows for discretionary choices in regards to the particular investments that are to be made, and whether this approach includes or implies a reference to a benchmark and if so, which one;

(e) whether dividend income is distributed or reinvested.

For the purposes of point (d), where a reference to a benchmark is implied, the degree of freedom available in relation to this benchmark shall be indicated, and where the UCITS has an index-tracking objective, this shall be stated.

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

(a) where the UCITS invests in debt securities, an indication of whether they are issued by corporate bodies, governments or other entities, and, if applicable, any minimum rating requirements;

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

(c) where the choice of assets is guided by specific criteria, an explanation of those criteria, such as 'growth', 'value' or 'high dividends';

(d) where specific asset management techniques are used, which may include hedging, arbitrage or leverage, an explanation in simple terms of the factors that are expected to determine the performance of the UCITS;

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

(f) where a minimum recommended term for holding units in the UCITS is stated either in the prospectus or in any marketing documents, or where it is stated that a minimum holding period is an essential element of the investment strategy, a statement with the following wording:

'Recommendation: this fund may not be appropriate for investors who plan to withdraw their money within [period of time]'.

3. Information included under paragraphs 1 and 2 shall distinguish between the broad categories of investments as specified under paragraphs 1(a), (c) and 2(a) and the approach to these investments to be adopted by a management company as specified under paragraphs 1(d) and 2 (b), (c) and (d).

4. The 'Objectives and investment policy' section of the key investor information document may contain elements other than those listed in paragraph 2, including the description of the UCITS' investment strategy, where these elements are necessary to adequately describe the objectives and investment policy of the UCITS.

SECTION 2

Risk and reward profile

Article 8

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

1. The 'Risk and reward profile' section of the key investor information document shall contain a synthetic indicator, supplemented by:

(a) a narrative explanation of the indicator and its main limitations;

(b) a narrative explanation of risks which are materially relevant to the UCITS and which are not adequately captured by the synthetic indicator.

2. The synthetic indicator referred to in paragraph 1 shall take the form of a series of categories on a numerical scale with the UCITS assigned to one of the categories. The presentation of the synthetic indicator shall comply with the requirements laid down in Annex I.

3. The computation of the synthetic indicator referred to in paragraph 1, as well as any of its subsequent revisions, shall be adequately documented.

Management companies shall keep records of these computations for a period of not less than five years. This period shall be extended to five years after maturity for the case of structured funds.

4. The narrative explanation referred to in paragraph 1(a) shall include the following information:

(a) a statement that historical data, such as is used in calculating the synthetic indicator, may not be a reliable indication of the future risk profile of the UCITS;

(b) a statement that the risk and reward category shown is not guaranteed to remain unchanged and that the categorisation of the UCITS may shift over time;

(c) a statement that the lowest category does not mean a risk-free investment;

(d) a brief explanation as to why the UCITS is in a specific category;

(e) details of the nature, timing and extent of any capital guarantee or protection offered by the UCITS, including the potential effects of redeeming units outside of the guaranteed or protected period.

5. The narrative explanation referred to in paragraph 1(b) shall include the following categories of risks, where these are material:

(a) credit risk, where a significant level of investment is made in debt securities;

(b) liquidity risk, where a significant level of investment is made in financial instruments, which are by their nature sufficiently liquid, yet which may under certain circumstances have a relatively low level of liquidity, so as to have an impact on the level of liquidity risk of the UCITS as a whole;

(c) counterparty risk, where a fund is backed by a guarantee from a third party, or where its investment exposure is obtained to a material degree through one or more contracts with a counterparty;

(d) operational risks and risks related to safekeeping of assets;

(e) impact of financial techniques as referred to in Article 50(1)(g) of Directive 2009/65/EC such as derivative contracts on the UCITS' risk profile where such techniques are used to obtain, increase or reduce exposure to underlying assets.

Article 9

Principles governing the identification, explanation and presentation of risks

The identification and explanation of risks referred to in Article 8(1)(b) shall be consistent with the internal process for identifying, measuring and monitoring risk adopted by the UCITS' management company as laid down in Directive 2010/43/EU. Where a management company manages more than one UCITS, the risks shall be identified and explained in a consistent fashion.

SECTION 3

Charges

Article 10

Presentation of charges

1. The 'Charges' section of the key investor information document shall contain a presentation of charges in the form of a table as laid down in Annex II.

2. The table referred to in paragraph 1 shall be completed in accordance with the following requirements:

(a) entry and exit charges shall each be the maximum percentage which might be deducted from the investor's capital commitment to the UCITS;

(b) a single figure shall be shown for charges taken from the UCITS over a year, to be known as the 'ongoing charges,' representing all annual charges and other payments taken from the assets of the UCITS over the defined period, and based on the figures for the preceding year;

(c) the table shall list and explain any charges taken from the UCITS under certain specific conditions, the basis on which the charge is calculated, and when the charge applies.

Article 11

Explanation of charges and a statement about the importance of charges

1. The 'Charges' section shall contain a narrative explanation of each of the charges specified in the table including the following information:

(a) with regard to entry and exit charges:

(i) it shall be made clear that the charges are always maximum figures, as in some cases the investor might pay less;

(ii) a statement shall be included stating that the investor can find out the actual entry and exit charges from their financial adviser or distributor;

(b) with regard to 'ongoing charges', there shall be a statement that the ongoing charges figure is based on the last year's expenses, for the year ending [month/year], and that this figure may vary from year to year where this is the case.

2. The 'Charges' section shall contain a statement about the importance of charges which shall make clear that the charges an investor pays are used to pay the costs of running the UCITS, including the costs of marketing and distributing the UCITS, and that these charges reduce the potential growth of the investment.

Article 12

Additional requirements

1. All of the elements of the charging structure shall be presented as clearly as possible to allow investors to consider the combined impact of the charges.

2. Where the impact of portfolio transaction costs on returns is likely to be material due to the strategy adopted by the UCITS, this shall be stated within the 'Objectives and investment policy' section, as indicated in Article 7(2)(e).

3. Performance fees shall be disclosed in accordance with Article 10(2)(c). The amount of the performance fee charged during the UCITS' last financial year shall be included as a percentage figure.

Article 13

Specific cases

1. Where a new UCITS cannot comply with the requirements contained in Article 10(2)(b) and Article 11(1)(b), the ongoing charges shall be estimated, based on the expected total of charges.

2. Paragraph 1 shall not apply in the following cases:

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

(b) for funds which set a cap or maximum on the amount that can be charged, where instead that figure shall be disclosed so long as the management company gives a commitment to respect the published figure and to absorb any costs that would otherwise cause it to be exceeded.

Article 14

Cross-referencing

The 'Charges' section shall include, where relevant, a cross-reference to those parts of the UCITS prospectus where more detailed information on charges can be found, including information on performance fees and how they are calculated.

SECTION 4

Past performance

Article 15

Presentation of past performance

1. The information about the past performance of the UCITS shall be presented in a bar chart covering the performance of the UCITS for the last 10 years.

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

2. UCITS with performance of less than 5 complete calendar years shall use a presentation covering the last 5 years only.

3. For any years for which data is not available, the year shall be shown as blank with no annotation other than the date.

4. For a UCITS which does not yet have performance data for one complete calendar year, a statement shall be included explaining that there is insufficient data to provide a useful indication of past performance to investors.

5. The bar chart layout shall be supplemented by statements which appear prominently and which:

(a) warn about its limited value as a guide to future performance;

(b) indicate briefly which charges and fees have been included or excluded from the calculation of past performance;

(c) indicate the year in which the fund came into existence;

(d) indicate the currency in which past performance has been calculated.

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

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

Article 16

Past performance calculation methodology

The calculation of past performance figures shall be based on the net asset value of the UCITS, and they shall be calculated on the basis that any distributable income of the fund has been reinvested.

Article 17

Impact and treatment of material changes

1. Where a material change occurs to a UCITS' objectives and investment policy during the period displayed in the bar chart referred to in Article 15, the UCITS' past performance prior to that material change shall continue to be shown.

2. The period prior to the material change referred to in paragraph 1 shall be indicated on the bar chart and labelled with a clear warning that the performance was achieved under circumstances that no longer apply.

Article 18

Use of a benchmark alongside the past performance

1. Where the 'Objectives and investment policy' section of the key investor information document makes reference to a benchmark, a bar showing the performance of that benchmark shall be included in the chart alongside each bar showing the UCITS' past performance.

2. For UCITS which do not have past performance data over the required five or 10 years, the benchmark shall not be shown for years in which the UCITS did not exist.

Article 19

Use of 'simulated' data for past performance

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

(a) a new share class of an existing UCITS or investment compartment may simulate its performance by taking the performance of another class, provided the two classes do not differ materially in the extent of their participation in the assets of the UCITS;

(b) a feeder UCITS may simulate its performance by taking the performance of its master UCITS, provided that one of the following conditions are met:

(i) the feeder's strategy and objectives do not allow it to hold assets other than units of the master and ancillary liquid assets;

(ii) the feeder's characteristics do not differ materially from those of the master.

2. In all cases where performance has been simulated in accordance with paragraph 1, there shall be prominent disclosure on the bar chart that the performance has been simulated.

3. A UCITS changing its legal status but remaining established in the same Member State shall retain its performance record only where the competent authority of the Member State reasonably assesses that the change of status would not impact the UCITS' performance.

4. In the case of mergers referred to in Article 2(1)(p)(i) and (iii) of Directive 2009/65/EC, only the past performance of the receiving UCITS shall be maintained in the key investor information document.

SECTION 5

Practical information and cross-references

Article 20

Content of 'practical information' section

1. The 'Practical information' section of the key investor information document shall contain the following information relevant to investors in every Member State in which the UCITS is marketed:

(a) the name of the depositary;

(b) where and how to obtain further information about the UCITS, copies of its prospectus and its latest annual report and any subsequent half-yearly report, stating in which language(s) those documents are available, and that they may be obtained free of charge;

(c) where and how to obtain other practical information, including where to find the latest prices of units;

(d) a statement that the tax legislation of the UCITS' home Member State may have an impact on the personal tax position of the investor;

(e) the following statement:

'[Insert name of investment company or management company] may be held liable solely on the basis of any statement contained in this document that is misleading, inaccurate or inconsistent with the relevant parts of the prospectus for the UCITS.'

2. Where the key investor information document is prepared for a UCITS investment compartment, the 'Practical information' section shall include the information specified in Article 25(2) including on investors' rights to switch between compartments.

3. Where applicable, the 'Practical information' section of the key investor information document shall state the information required about available share classes in accordance with Article 26.

Article 21

Use of cross-references to other sources of information

1. Cross-references to other sources of information, including the prospectus and annual or half-yearly reports, may be included in the key investor information document, provided that all information fundamental to the investors' understanding of the essential elements of the investment is included in the key investor information document itself.

Cross-references shall be permitted to the website of the UCITS or the management company, including a part of any such website containing the prospectus and the periodic reports.

2. Cross-references referred to in paragraph 1 shall direct the investor to the specific section of the relevant source of information. Several different cross-references may be used within the key investor information document but they shall be kept to a minimum.

SECTION 6

Review and revision of the key investor information document

Article 22

Review of key investor information

1. A management company or investment company shall ensure that a review of key investor information is carried out at least every twelve months.

2. A review shall be carried out prior to any proposed change to the prospectus, the fund rules or the instrument of incorporation of the investment company where these changes were not subject to review as referred to in paragraph 1.

3. A review shall be carried out prior to or following any changes regarded as material to the information contained in the key investor information document.

Article 23

Publication of the revised version

1. Where a review referred to in Article 22 indicates that changes need to be made to the key investor information document, its revised version shall be made available promptly.

2. Where a change to the key investor information document was the expected result of a decision by the management company, including changes to the prospectus, fund rules or the instrument of incorporation of the investment company, the revised version of the key investor information document shall be made available before the change comes into effect.

3. A key investor information document with duly revised presentation of past performance of the UCITS shall be made available no later than 35 business days after 31 December each year.

Article 24

Material changes to the charging structure

1. The information on charges shall properly reflect any change to the charging structure that results in an increase in the maximum permitted amount of any one-off charge payable directly by the investor.

2. Where the 'ongoing charges' calculated in accordance with Article 10(2)(b) are no longer reliable, the management company shall instead estimate a figure for 'ongoing charges' that it believes on reasonable grounds to be indicative of the amount likely to be charged to the UCITS in future.

This change of basis shall be disclosed through the following statement:

'The ongoing charges figure shown here is an estimate of the charges. [Insert short description of why an estimate is being used rather than an ex-post figure.] The UCITS' annual report for each financial year will include detail on the exact charges made.'

CHAPTER IV

PARTICULAR UCITS STRUCTURES

SECTION 1

Investment compartments

Article 25

Investment compartments

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

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

(a) that the key investor information document describes a compartment of a UCITS, and, if it is the case, that the prospectus and periodic reports are prepared for the entire UCITS named at the beginning of the key investor information document;

(b) whether or not the assets and liabilities of each compartment are segregated by law and how this might affect the investor;

(c) whether or not the investor has the right to exchange his investment in units in one compartment for units in another compartment, and if so, where to obtain information about how to exercise that right.

3. Where the management company sets a charge for the investor to exchange his investment in accordance with paragraph 2(c), and that charge differs from the standard charge for buying or selling units, that charge shall be stated separately in the 'Charges' section of the key investor information document.

SECTION 2

Share classes

Article 26

Key investor information document for share classes

1. Where a UCITS consists of more than one class of units or shares, the key investor information document shall be prepared for each class of units or shares.

2. The key investor information pertinent to two or more classes of the same UCITS may be combined into a single key investor information document, provided that the resulting document fully complies with all requirements as laid down in Section 2 of Chapter II, including as to length.

3. The management company may select a class to represent one or more other classes of the UCITS, provided the choice is fair, clear and not misleading to potential investors in those other classes. In such cases the 'Risk and reward profile' section of the key investor information document shall contain the explanation of material risk applicable to any of the other classes being represented. A key investor information document based on the representative class may be provided to investors in the other classes.

4. Different classes shall not be combined into a composite representative class as referred to in paragraph 3.

5. The management company shall keep a record of which other classes are represented by the representative class referred to in paragraph 3 and the grounds justifying that choice.

Article 27

Practical information section

If applicable, the 'Practical information' section of the key investor information document shall be supplemented by an indication of which class has been selected as representative, using the term by which it is designated in the UCITS' prospectus.

That section shall also indicate where investors can obtain information about the other classes of the UCITS that are marketed in their own Member State.

SECTION 3

Fund of funds

Article 28

Objectives and investment policy section

Where the UCITS invests a substantial proportion of its assets in other UCITS or other collective investment undertakings as referred to in Article 50(1)(e) of Directive 2009/65/EC, the description of the objectives and investment policy of that UCITS in the key investor information document shall include a brief explanation of how the other collective undertakings are to be selected on an ongoing basis.

Article 29

Risk and reward profile

The narrative explanation of risk factors referred to in Article 8(1)(b) shall take account of the risks posed by each underlying collective undertaking, to the extent that these are likely to be material to the UCITS as a whole.

Article 30

Charges section

The description of the charges shall take account of any charges that that UCITS will itself incur as an investor in the underlying collective undertakings. Specifically, any entry and exit charges and ongoing charges levied by the underlying collective undertakings shall be reflected in the UCITS' calculation of its own ongoing charges figure.

SECTION 4

Feeder UCITS

Article 31

Objectives and investment policy section

1. The key investor information document for a feeder UCITS, as defined in Article 58 of Directive 2009/65/EC, shall contain, in the description of objectives and investment policy, information about the proportion of the feeder UCITS' assets which is invested in the master UCITS.

2. There shall also be a description of the master UCITS' objectives and investment policy, supplemented as appropriate by either of the following:

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

(ii) an explanation of how and why the investment returns of the feeder and master UCITS may differ.

Article 32

Risk and reward profile section

1. Where the risk and reward profile of the feeder UCITS differs in any material respect from that of the master, this fact and the reason for it shall be explained in the 'Risk and reward profile' section of the key investor information document.

2. Any liquidity risk and the relationship between purchase and redemption arrangements for the master and feeder UCITS shall be explained in the 'Risk and reward profile' section of the key investor information document.

Article 33

Charges section

The 'Charges' section of the key investor information document shall cover both the costs of investing in the feeder UCITS and any costs and expenses that the master UCITS may charge to the feeder UCITS.

In addition, it shall combine the costs of both the feeder and the master UCITS in the ongoing charges figure for the feeder UCITS.

Article 34

Practical information section

1. The key investor information document for a feeder UCITS shall contain in the 'Practical information' section information specific to the feeder UCITS.

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

(a) a statement that the master UCITS' prospectus, key investor information document, and periodic reports and accounts are available to investors of the feeder UCITS upon request, how they may be obtained, and in which language(s);

(b) whether the items listed in point (a) are available in paper copies only or in other durable media, and whether any fee is payable for items not subject to free delivery in accordance with Article 63(5) of Directive 2009/65/EC;

(c) where the master UCITS is established in a different Member State to the feeder UCITS, and this may affect the feeder's tax treatment, a statement to this effect.

Article 35

Past performance

1. The past performance presentation in the key investor information document of the feeder UCITS shall be specific to the feeder UCITS, and shall not reproduce the performance record of the master UCITS.

2. Paragraph 1 shall not apply:

(a) where a feeder UCITS shows the past performance of its master UCITS as a benchmark; or

(b) where the feeder was launched as a feeder UCITS at a later date than the master UCITS, and where the conditions of Article 19 are satisfied, and where a simulated performance is shown for the years before the feeder existed, based on the past performance of the master UCITS; or

(c) where the feeder UCITS has a past performance record from before the date on which it began to operate as a feeder, its own record being retained in the bar chart for the relevant years, with the material change labelled as required by Article 17(2).

SECTION 5

Structured UCITS

Article 36

Performance scenarios

1. The key investor information document for structured UCITS shall not contain the 'Past performance' section.

For the purposes of this Section, structured UCITS shall be understood as UCITS which provide investors, at certain predetermined dates, with algorithm-based payoffs that are linked to the performance, or to the realisation of price changes or other conditions, of financial assets, indices or reference portfolios or UCITS with similar features.

2. For structured UCITS, the 'Objectives and investment policy' section of the key investor information document shall include an explanation of how the formula works or how the pay-off is calculated.

3. The explanation referred to in paragraph 2 shall be accompanied by an illustration, showing at least three scenarios of the UCITS' potential performance. Appropriate scenarios shall be chosen to show the circumstances in which the formula may generate a low, a medium or a high return, including, where applicable, a negative return for the investor.

4. The scenarios referred to in paragraph 3 shall enable the investor to understand fully all the effects of the calculation mechanism embedded in the formula.

They shall be presented in a way that is fair, clear and not misleading, and that is likely to be understood by the average retail investor. In particular, they shall not artificially magnify the importance of the final performance of the UCITS.

5. The scenarios referred to in paragraph 3 shall be based on reasonable and conservative assumptions about future market conditions and price movements.

However, whenever the formula exposes investors to the possibility of substantial losses, such as a capital guarantee that functions only under certain circumstances, these losses shall be appropriately illustrated, even if the probability of the corresponding market conditions is low.

6. The scenarios referred to in paragraph 3 shall be accompanied by a statement that they are examples that are included to illustrate the formula, and do not represent a forecast of what might happen. It shall be made clear that the scenarios shown may not have an equal probability of occurrence.

Article 37

Length

The key investor information document for structured UCITS shall not exceed three pages of A4-sized paper when printed.

CHAPTER V

DURABLE MEDIUM

Article 38

Conditions applying to the provision of a key investor information document or a prospectus in a durable medium other than paper or by means of a website

1. Where, for the purposes of Directive 2009/65/EC, the key investor information document or prospectus is to be provided to investors using a durable medium other than paper the following conditions shall be met:

(a) the provision of the key investor information document or the prospectus using such a durable medium is appropriate to the context in which the business between the management company and the investor is, or is to be, carried on; and

(b) the person to whom the key investor information document or the prospectus is to be provided, when offered the choice between information on paper or in that other durable medium, specifically chooses that other medium.

2. Where the key investor information document or the prospectus is to be provided by means of a website and that information is not addressed personally to the investor, the following conditions shall also be satisfied:

(a) the provision of that information in that medium is appropriate to the context in which the business between the management company and the investor is, or is to be, carried on;

(b) the investor must specifically consent to the provision of that information in that form;

(c) the investor must be notified electronically of the address of the website, and the place on the website where the information may be accessed;

(d) the information must be up to date;

(e) the information must be accessible continuously by means of that website for such period of time as the client may reasonably need to inspect it.

3. For the purposes of this Article, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the management company and the investor is, or is to be, carried on if there is evidence that the investor has regular access to the Internet. The provision by the investor of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

CHAPTER VI

FINAL PROVISIONS

Article 39

Entry into force

1. This Regulation shall enter into force on the 20th day following its publication in the Official Journal of the European Union.

2. This Regulation shall apply from 1 July 2011.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 1 July 2010.

For the Commission
The President
José Manuel BARROSO

ANNEX I

REQUIREMENTS RELATED TO THE PRESENTATION OF THE SYNTHETIC INDICATOR

1. The synthetic indicator shall rank the fund on a scale from 1 to 7 on the basis of its volatility record.

2. The scale shall be shown as a sequence of categories denoted by the whole numbers in ascending order from 1 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 shall be used for distinguishing between items on the scale.

ANNEX II

PRESENTATION OF CHARGES

The charges shall be presented in a table structured in the following way:

One-off charges taken before or after you invest	
Entry charge	[] %
Exit charge	[] %
This is the maximum that might be taken out of your money [before it is invested] [before the proceeds of your investment are paid out]	
Charges taken from the fund over a year	
Ongoing charge	[] %
Charges taken from the fund under certain specific conditions	
Performance fee	[] % a year of any returns the fund achieves above the benchmark for these fees, the [insert name of benchmark]

— A percentage amount shall be indicated for each of these charges.

— In the case of a performance fee, the amount charged in the fund's last financial year shall be included as a percentage figure.

ANNEX III

PRESENTATION OF THE PAST PERFORMANCE INFORMATION

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

1. the scale of the Y-axis of the bar chart shall be linear, not logarithmic;

2. the scale shall be adapted to the span of the bars shown and shall not compress the bars so as to make fluctuations in returns harder to distinguish;

3. the X-axis shall be set at the level of 0 % performance;

4. a label shall be added to each bar indicating the return in percentage that was achieved;

5. past performance figures shall be rounded to one decimal place.

COMMISSION REGULATION (EU) No 584/2010

of 1 July 2010

implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

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

Whereas:

(1) Directive 2009/65/EC provides the Commission with implementing powers to specify and harmonise certain aspects of the new procedure for notification of marketing of units of UCITS in a host Member State. Such harmonisation should provide competent authorities with the necessary certainty as to how the new requirements will work and help to ensure that the new procedure functions smoothly.

(2) In order to facilitate the notification procedure it is necessary to specify the form and content of the standard model notification letter to be used by a UCITS and the form and content of the attestation to be used by the competent authorities of Member States to confirm that the UCITS fulfils the conditions set out in Directive 2009/65/EC. Member States should be able to communicate both the notification letter and the attestation electronically.

(3) Given the objective of Directive 2009/65/EC to ensure that a UCITS is able to market its units in other Member States subject to a notification procedure based on improved communication between the competent authorities of the Member States, it is necessary to set out a detailed procedure for the electronic transmission of the notification file between competent authorities.

(4) Directive 2009/65/EC requires the competent authorities of the UCITS home Member State to verify if the notification file is complete before they transmit the complete file to the competent authorities of the Member State in which the UCITS proposes to market its units. It also provides a UCITS with the right to access the market of a host Member State immediately after the complete notification file has been transmitted by the competent authorities of the UCITS home Member State to the competent authorities of a Member State where the UCITS proposes to market its units. In order to ensure legal certainty it is necessary to establish when the transmission of the complete notification file is considered to have taken place. Moreover, the procedure for the use of electronic communication shall require competent authorities of the UCITS home Member State to make sure that transmission of the complete documentation has taken place, before they notify a UCITS about the transmission pursuant to Article 93(3) of Directive 2009/65/EC. It is also necessary to set out procedures for dealing with technical problems that occur in the process of the transmission of the notification file between competent authorities of the UCITS home and host Member State.

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

(6) Directive 2009/65/EC requires that Member States take the necessary administrative and organisational measures to facilitate cooperation. Enhanced cooperation between competent authorities is necessary to ensure that UCITS and management companies managing UCITS comply with Directive 2009/65/EC and to ensure the smooth functioning of the internal market and a high level of investor protection.

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

(7) Directive 2009/65/EC provides that the competent authorities of one Member State may request the cooperation of the competent authorities of another Member State in a supervisory activity or for an on-the-spot verification or in an investigation on the territory of the latter. In particular, where a UCITS is managed by a management company situated in another Member State, it is essential to establish mechanisms for cooperation between competent authorities and detailed procedures to be applied when a competent authority needs to carry out an investigation or on-the-spot verification of an entity or person situated in another Member State.

(8) A competent authority should have a right to request the cooperation of other competent authorities with respect to matters falling within the scope of its supervisory responsibilities. The requested authority should provide assistance even where the conduct under investigation is not considered an infringement in its own jurisdiction. The requested authority may refuse assistance in the cases listed in Article 101(6) of Directive 2009/65/EC.

(9) Directive 2009/65/EC requires the competent authorities of Member States to immediately provide each other with the information required for the purpose of carrying out their duties. It is therefore appropriate to set out detailed rules on the routine exchange of information and the exchange of information without prior request.

(10) In order to ensure that the obligations set out in Directive 2009/65/EC and in this Regulation apply from the same date, this Regulation should apply from the same date as the national measures transposing Directive 2009/65/EC.

(11) The Committee of European Securities Regulators, established by Commission Decision 2009/77/EC [1] has been consulted for technical advice.

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

HAS ADOPTED THIS REGULATION:

CHAPTER I

NOTIFICATION PROCEDURE

Article 1

Form and content of the notification letter

An undertaking for collective investment in transferable securities (UCITS) shall produce the notification letter as referred to in Article 93(1) of Directive 2009/65/EC in accordance with the model set out in Annex I to this Regulation.

Article 2

Form and content of the UCITS attestation

The competent authorities of the UCITS home Member State shall produce the attestation that the UCITS fulfils the conditions imposed by Directive 2009/65/EC as referred to in Article 93(3) of that Directive in accordance with the model set out in Annex II to this Regulation.

Article 3

Designated e-mail address

1. Competent authorities shall designate an e-mail address for the purpose of transmitting the documentation referred to in Article 93(3) of Directive 2009/65/EC and for the purpose of the exchange of information related to the notification procedure set out in that Article.

2. Competent authorities shall inform the competent authorities of other Member States of the designated e-mail address and shall ensure that any modification of that e-mail address is immediately brought to their attention.

3. The competent authorities of the UCITS home Member State shall transmit all documents referred to in the second subparagraph of Article 93(3) of Directive 2009/65/EC to only the designated e-mail address of the competent authorities of the Member State in which the UCITS proposes to market its units.

4. Competent authorities shall establish a procedure to ensure that their designated e-mail address for receiving notifications is checked each working day.

Article 4

Transmission of the notification file

1. Competent authorities of the UCITS home Member State shall transmit the complete documentation referred to in the first and the second subparagraph of Article 93(3) of Directive 2009/65/EC to the competent authorities of a Member State in which the UCITS proposes to market its units, by e-mail.

Any attachment to the notification letter as specified in Annex I shall be listed in the e-mail and shall be provided in a format in common use that is capable of being viewed and printed.

2. The transmission of the complete documentation as referred to in the second subparagraph of Article 93(3) of Directive 2009/65/EC shall not be considered as having taken place only in any of the following cases:

(a) a document that has to be transmitted is missing, incomplete or is in a format other than that specified in paragraph 1;

(b) the competent authorities of the UCITS home Member State do not use the e-mail address designated by the competent authorities of the Member State in which the UCITS proposes to market its units pursuant to Article 3(1);

[1] OJ L 25, 29.1.2009, p. 18.

(c) the competent authorities of the UCITS home Member State have failed to transmit the complete documentation as a result of a technical failure in their electronic system.

3. Competent authorities of the UCITS home Member State shall ensure that the transmission of the complete documentation as referred to in Article 93(3) of Directive 2009/65/EC has taken place before they notify the UCITS about the transmission.

4. If the competent authorities of the UCITS home Member State are informed or become aware that the transmission of the complete documentation has not taken place, they shall immediately take steps to transmit the complete documentation.

5. Competent authorities may agree to replace the means by which the complete documentation referred to in the second subparagraph of Article 93(3) of Directive 2009/65/EC is transmitted by a more sophisticated method of electronic communication than e-mail, or to establish additional procedures to enhance the security of e-mails transmitted.

Any alternative method or enhanced procedure shall comply with the notification time limits set out in Chapter XI of Directive 2009/65/EC and shall not impair the ability of the UCITS to access the market of a Member State other than its home Member State.

Article 5

Receipt of the notification file

1. When the competent authorities of a Member State in which a UCITS proposes to market its units receive the documentation to be transmitted to them pursuant to Article 93(3) of Directive 2009/65/EC, they shall confirm to the competent authorities of the UCITS home Member State as soon as possible, but no later than five working days from the date of the receipt of such documentation whether or not:

(a) all attachments which have to be listed in accordance with Article 4(1) of this Regulation have been received; and

(b) the documentation which have to be transmitted to them can be viewed or printed.

The confirmation may be sent by e-mail to the competent authorities of the UCITS home Member State, using the address designated pursuant to Article 3(1) unless the relevant competent authorities have agreed on a more sophisticated method for the acknowledgement of receipt.

2. Where the competent authorities of the UCITS home Member State have not received confirmation from the competent authorities of a Member State in which the UCITS proposes to market its units within the time limits specified in paragraph 1, they shall contact the competent authorities of the Member State in which the UCITS proposes to market its units and verify that the transmission of the complete documentation has taken place.

CHAPTER II

SUPERVISORY COOPERATION

SECTION 1

Procedure for on-the-spot verifications and investigations

Article 6

Request for assistance for on-the-spot verifications and investigations

1. A competent authority intending to carry out an on-the-spot verification or investigation on the territory of another Member State ('the requesting authority') shall submit a written request to the competent authority of that other Member State ('the requested authority'). The request shall contain the following:

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

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

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

(d) any actions to be taken by the requested authority;

(e) the proposed methodology of the on-the-spot verification or investigation and the requesting authority's reasons for choosing it.

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

3. Where a request for assistance for an on-the-spot verification or investigation is urgent, it may be transmitted by e-mail and subsequently confirmed in writing.

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

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

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

7. The requested authority and the requesting authority shall reassess the necessity of the on-the-spot verification and investigation in light of the documents and information transmitted pursuant to paragraph 5 or 6.

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

9. The requested authority and the requesting authority shall agree on issues related to the allocations of costs of on-the-spot verification or investigation.

Article 7

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

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

2. Where the requesting authority has requested that its own officials accompany the officials of the requested authority carrying out the verification or investigation in accordance with Article 101(5) of Directive 2009/65/EC, the requesting authority and the requested authority shall agree on practical arrangements for such participation.

Article 8

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

1. Where the requested authority has decided to allow the requesting authority to carry out the on-the-spot verification or investigation, such on-the-spot verification or investigation shall be carried out in accordance with the procedure provided for in the law of the Member State on whose territory the on-the-spot verification or investigation is to be conducted.

2. Where the requested authority has decided to allow the requesting authority to carry out the on-the-spot verification or investigation, it shall provide the necessary assistance to facilitate that on-the-spot verification or investigation.

3. If the requesting authority discovers material information relevant for the discharging of duties of the requested authority during its on-the-spot verification or investigation, it shall 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

1. Where the requested authority has decided to allow auditors or experts to carry out on-the-spot verification or investigation, such on-the-spot verification or investigation shall be carried out in accordance with the procedure provided for in the law of the Member State on whose territory the on-the-spot verification or investigation is to be conducted.

2. Where the requested authority has decided to allow auditors or experts to carry out on-the-spot verification or investigation, it shall provide the necessary assistance to facilitate those auditors or experts in the performance of their tasks.

3. Where the requesting authority proposes to appoint auditors or experts, it shall transmit any relevant information on the identity and professional qualifications of such auditors or experts to the requested authority.

The requested authority shall promptly notify the requesting authority whether it accepts the proposed appointment.

Where the requested authority does not accept the proposed appointment or the requesting authority does not propose the appointment of auditors or experts, the requested authority shall have the right to propose auditors or experts.

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

5. Unless the requested authority and the requesting authority otherwise agree, the authority that has proposed the appointed auditors or experts, shall bear the relevant costs.

6. If, whilst carrying out on-the-spot verification or investigation the auditors or experts discover material information relevant for the discharging of duties of the requested authority, they shall transmit this information promptly to the requested authority.

Article 10

Requests for assistance in interviews with persons situated in another Member State

1. Where the requesting authority considers it necessary to conduct interviews with persons situated in the territory of another Member State, it shall submit a written request to the competent authorities of that other Member State.

2. The request shall contain the following:

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

(b) the scope of the interviews;

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

(d) any actions to be taken by the requested authority;

(e) the proposed methodology to be used in the interviews and the requesting authority's reasons for choosing it.

3. The request shall be submitted sufficiently in advance of the interviews.

4. Where a request for assistance for conducting interviews with persons situated in the territory of another Member State is urgent, it may be transmitted by e-mail and subsequently confirmed in writing.

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

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

7. The requested authority shall transmit without undue delay any information and documents that are available to it as are relevant or useful to the requesting authority, in light of the reasons for and scope of the interviews.

8. The requested authority and the requesting authority shall reassess the need for conducting interviews in light of the documents and information transmitted pursuant to paragraph 6 or 7.

9. The requested authority shall decide whether it conducts the interviews itself or whether it allows the requesting authority to conduct the interviews.

10. The requested authority and the requesting authority shall agree on issues related to the allocations of costs for conducting the interviews.

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

Article 11

Specific provisions related to on-the-spot verifications and investigations

1. The competent authorities of the management company's home Member State and the competent authorities of the UCITS home Member State shall notify each other of any on-the-spot verifications and investigations to be undertaken with regard to the management company or the UCITS subject to their respective supervision. Upon such notification, the notified competent authority may request without undue delay the notifying competent authority to include in the scope of on-the-spot verification or investigation the matters falling within the scope of supervision of the notified authority

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

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

4. Where necessary, the competent authorities of the UCITS home Member State and the competent authorities of the management company's home Member State shall agree on further actions that need to be taken with regard to the on-the-spot verification or investigation.

SECTION 2

Exchange of information

Article 12

Routine exchange of information

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

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

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

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

2. Where a UCITS is managed by a management company situated in a Member State other than the UCITS home Member State, the competent authorities of the management company's home Member State shall immediately notify the competent authorities of the UCITS home Member State that the ability of a management company to properly perform its duties with respect to the UCITS it manages may be materially adversely affected or that the management company does not fulfil the requirements set out in Chapter III of Directive 2009/65/EC.

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

(a) the procedures for the authorisation of a management company to pursue activities within the territory of another Member State pursuant to Articles 17 and 18 of Directive 2009/65/EC;

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

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

Article 13

Unsolicited exchange of information

Competent authorities shall communicate all relevant information likely to be of material interest with regard to the discharge of duties under Directive 2009/65/EC to other competent authorities, without prior request and undue delay.

CHAPTER III

FINAL PROVISIONS

Article 14

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 July 2011.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 1 July 2010.

For the Commission
The President
José Manuel BARROSO

ANNEX I

NOTIFICATION LETTER

(Article 1 of Commission Regulation (EU) No 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities (OJ L 176, 10.7.2010, p. 16)

NOTIFICATION OF INTENTION TO MARKET UNITS OF UCITS

IN _____
(the host Member State)

PART A

Name of the UCITS: _____

UCITS home Member State: _____

Legal form of the UCITS (please tick appropriate one box):

☐ common fund

☐ unit trust

☐ investment company

Does the UCITS have compartments? Yes/No

Name of the UCITS and/or compartment(s) to be marketed in the host Member State	Name of share class(es) to be marketed in the host Member State (1)	Duration (2)	Code numbers (3)

(1) If the UCITS intends to market only certain share classes, it should list only those classes
(2) If applicable
(3) If applicable (e.g. ISIN)

Name of the management company/self-managed investment company:

_____

Management company's home Member State: _____

Address and registered office/domicile if different from address

_____

_____

Details of management company's website: _____

Details of contact person at the management company

Name/Position: _____

Telephone number: _____

E-mail address: _____

Fax number: _____

Duration of the company, if applicable: _____

Scope of activities of the management company in the UCITS host Member State:

_____

_____

Additional information about the UCITS (if necessary):

_____

_____

_____

_____

_____

Attachments:

(1) The latest version of the fund rules or instruments of incorporation, translated if necessary in accordance with Article 94(1)(c) of Directive 2009/65/EC.

_____

(Title of document or name of electronic file attachment)

(2) The latest version of the prospectus, translated if necessary in accordance with Article 94(1)(c) of Directive 2009/65/EC.

_____

(Title of document or name of electronic file attachment)

(3) The latest version of the key investor information, translated if necessary in accordance with Article 94(1)(b) of Directive 2009/65/EC.

_____

(Title of document or name of electronic file attachment)

(4) The latest published annual report and any subsequent half-yearly report, translated if necessary in accordance with Article 94(1)(c) of Directive 2009/65/EC.

_____

(Title of document or name of electronic file attachment)

Note:

The latest versions of the required documents listed above must be attached to this letter for onward transmission by the competent authorities of the UCITS home Member State, even if copies have previously been provided to that authority. If any of the documents have previously been sent to the competent authorities of the UCITS host Member State and remain valid, the notification letter may refer to that fact.

Indicate where the latest electronic copies of the attachments can be obtained in future:

_____

PART B

The following information is provided in conformity with the national laws and regulations of the UCITS host Member State in relation to the marketing of units of UCITS in that Member State.

UCITS shall refer to the website of the competent authorities of each Member State for details of which items of information shall be provided in this section. A list of relevant website addresses is available at www.cesr.eu

1. Arrangements made for marketing of units of UCITS

Units of the UCITS/UCITS compartments will be marketed by:

☐ the management company that manages the UCITS

☐ any other management company authorised under Directive 2009/65/EC

☐ credit institutions

☐ authorised investment firms or advisers

☐ other bodies

(1) _____

(2) _____

(3) _____

2. Arrangements for the provision of facilities to unit-holders in accordance with Article 92 of Directive 2009/65/EC:

Details of paying agent (if applicable):

Name: _____

Legal form: _____

Registered office: _____

Address for correspondence (if different): _____

Details of any other person from whom investors may obtain information and documents:

Name: _____

Address: _____

Manner in which the issue, sale, repurchase or redemption price of units of UCITS will be made public:

_____

_____

3. Other information required by the competent authorities of the host Member State in accordance with Article 91(3) of Directive 2009/65/EC

Include (if required by the UCITS host Member State):

☐ details of any additional information to be disclosed to unit-holders or their agents;

☐ in case a UCITS makes use of any exemptions from rules or requirements applicable in the UCITS host Member State in relation to marketing arrangements for the UCITS, a specific share class or any category of investors, details of the use made of such exemptions;

_____

_____

_____

_____

_____

If required by the UCITS host Member State, evidence of payment due to the competent authorities of the host Member State:

_____

PART C

Confirmation by the UCITS

We hereby confirm that the documents attached to this notification letter contain all relevant information as provided for in the Directive 2009/65/EC. The text of each document is the same as that previously submitted to the competent authorities of the home Member State, or is a translation that faithfully reflects that text.

(The notification letter shall be signed by an authorised signatory of the UCITS or a third person empowered by a written mandate to act on behalf of the notifying UCITS, in a manner which the competent authorities of the UCITS home Member State accept for certification of documents. The signatory shall state his/her full name and capacity, and shall ensure the confirmation is dated.)

ANNEX II

UCITS ATTESTATION

(Article 2 of Commission Regulation (EU) No 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities (OJ L 176, 10.7.2010, p. 16)

_____ is the competent authority in:

(name of the competent authorities of the UCITS home Member State)

_____

(the UCITS home Member State)

Address: _____

Telephone number: _____

E-mail address: _____

Fax number: _____

that carries out the duties provided for in Article 97(1) of Directive 2009/65/EC.

For the purpose of Article 93(3) of Directive 2009/65/EC,

_____ certifies that

(name of competent authority, as above)

_____

(name of UCITS, i.e. the name of the common fund, unit trust or investment company)

is established in: (name of its home Member State)

_____

was set up on: (date of approval of the fund rules or instrument of incorporation of the UCITS)

_____

has registry number (if applicable UCITS registry number in its home Member State)

_____

registered with (if applicable name of the authority responsible for the register)

_____

is based at:

_____

_____

(for investment companies only, address of the UCITS' head office)

is: (please tick appropriate one box)

either ☐ a common fund/unit trust

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

managed by the management company:

_____

_____

(name and address of the management company)

or ☐ an investment company:

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

that: (please tick appropriate one box)

either ☐ has designated a management company

_____

(name and address of the designated management company)

or ☐ is self-managed

and fulfils the conditions set out in Directive 2009/65/EC

(The attestation shall be signed and dated by a representative of the competent authority of the UCITS home Member State in a manner that is accepted for the certification by that authority. The signatory shall state his or her full name and capacity.)

II

(Non-legislative acts)

DIRECTIVES

COMMISSION DIRECTIVE 2010/42/EU

of 1 July 2010

implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) [1], and in particular Article 43(5), Article 60(6)(a) and (c), Articles 61(3) and 62(4), Article 64(4)(a) and Article 95(1) thereof,

Whereas:

(1) The information to be provided to unit-holders pursuant to Article 43(1) of Directive 2009/65/EC in the case of a merger should reflect the different needs of the unit-holders of the merging and receiving UCITS and assist their understanding.

(2) The merging UCITS or the receiving UCITS should not be required to include information other than that referred to in Article 43(3) of Directive 2009/65/EC and Articles 3 to 5 of this Directive in the information document. The merging UCITS or the receiving UCITS may however add other information of relevance in the context of the proposed merger.

(3) Where the information document pursuant to Article 43(1) of Directive 2009/65/EC is supplemented by a summary, it should not relieve the UCITS of the obligation to avoid the use of long or technical explanations in the rest of the information document.

(4) The information to be provided to the unit-holders of the receiving UCITS pursuant to Article 43(1) of Directive 2009/65/EC should assume that those unit-holders are already reasonably familiar with the features of the receiving UCITS, the rights they enjoy in relation to it, and the manner of its operation. It should therefore focus on the operation of the merger and its potential impact on the receiving UCITS.

(5) The way the information pursuant to Articles 43 and 64 of Directive 2009/65/EC is provided to unit-holders should be harmonised. That information aims to enable unit-holders to make an informed judgement about whether they want to continue investing or request redemption, where a UCITS is either part of a merger, converts into a feeder UCITS or changes the master UCITS. Unit-holders should be aware of the aforementioned major change the UCITS is undergoing and be in a position to read the information. For that reason the information should be personally addressed to unit-holders either on paper or in another durable medium such as electronic mail (e-mail). The use of electronic means should allow UCITS to provide the information in a cost-efficient way. This Directive should not require UCITS to directly inform their unit-holders, but should take due account of the specificities in certain Member States in which UCITS or their management companies, for legal or practical reasons, are unable to

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

directly contact unit-holders. UCITS should also be able to provide the information by passing it on to the depositary or to intermediaries provided that it is ensured that all unit-holders receive the information in due course. This Directive should only harmonise the manner in which the information pursuant to Articles 43 and 64 of Directive 2009/65/EC is provided to unit-holders. Member States may regulate the provision of other types of information to unit-holders by national rules.

(6) The agreement between the master UCITS and the feeder UCITS should take account of the specific needs of the feeder UCITS, which invests at least 85 % of its assets in the master UCITS, while at the same time remaining subject to all obligations as a UCITS. The agreement should therefore ensure that the master UCITS provides the feeder UCITS with all necessary information in due course to allow the feeder UCITS to comply with its own obligations. It should also stipulate the other rights and duties of both parties.

(7) Member States should not require the agreement between master and feeder UCITS pursuant to the first subparagraph of Article 60(1) to cover elements other than those referred to in Chapter VIII of Directive 2009/65/EC and Articles 8 to 14 of this Directive. The agreement may however cover other elements, if the master UCITS and the feeder UCITS so stipulate.

(8) Where the dealing arrangements between master UCITS and feeder UCITS do not differ from those applying to all non-feeder unit-holders of the master UCITS and where those arrangements are laid down in the prospectus of the master UCITS, the agreement between master UCITS and feeder UCITS should not have to replicate those standard dealing arrangements, but may cross-refer to the relevant parts of the prospectus of the master UCITS in order to help industry to save costs and reduce the administrative burden.

(9) The agreement between master UCITS and feeder UCITS should include appropriate procedures for the handling of enquiries and complaints from unit-holders with a view to dealing with correspondence which has mistakenly been sent to the master UCITS instead of the feeder UCITS or vice versa.

(10) In order to save transaction costs and to avoid negative tax implications, the master UCITS and the feeder UCITS may wish to agree on a transfer of assets in kind, unless this is prohibited under national law or incompatible with the fund rules or instruments of incorporation of either the master UCITS or the feeder UCITS. The possibility of transferring assets in kind to the master UCITS should in particular help those feeder UCITS which have already been carrying on activities as a UCITS, including a feeder UCITS of a different master UCITS, to avoid transaction costs arising from the sale of assets which both the feeder UCITS and the master UCITS have invested in. The feeder UCITS should also be able to receive, if it so wishes, assets in kind from the master UCITS, since this may help to reduce transaction costs and to avoid negative tax implications. A transfer of assets in kind to the feeder UCITS should not be limited to the cases of a liquidation, merger or division of the master UCITS, but should also be available under other circumstances.

(11) In order to preserve the necessary flexibility, while at the same time taking account of the best interests of investors, a feeder UCITS which has received assets through a transfer of assets in kind should be able to either transfer some or all of those assets to its master UCITS where the master UCITS so agrees, or to realise assets for cash in order to invest cash in the master UCITS.

(12) Due to the specificities of the master-feeder structure it is necessary that the agreement between the master and the feeder UCITS provides for conflict of law rules which derogate from Articles 3 and 4 of Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) [1] in such a way that the applicable law to this agreement should be either the law of the Member State where the feeder UCITS is established, or that of the master UCITS. The parties should be free to assess the advantages and disadvantages of that choice and to take into account whether the master UCITS has several feeder UCITS and whether those feeder UCITS are established in only one or in several Member States.

(13) In the case of a liquidation, merger or division of the master UCITS in respect of which Directive 2009/65/EC grants unit-holders of the feeder UCITS the right to request redemption, the feeder UCITS should not undermine that right by temporarily suspending repurchase or redemption, unless exceptional circumstances require it to do so to protect the interests of unit-holders or it is directed to do so by its competent authorities.

(14) Since a merger or division of the master UCITS may become effective within 60 days, the time limit for the feeder UCITS to apply for and obtain approval of its new investment intentions and to grant the unit-holders of the feeder UCITS the right to request repurchase or redemption within 30 days, may in exceptional circumstances be too short to allow the feeder UCITS to know for sure how many of its unit-holders will request redemption. Under such circumstances the feeder UCITS should in principle be obliged to request redemption of all its units in the master UCITS. In order to avoid unnecessary transaction costs, the feeder UCITS should however be able to use other means to ensure that its unit-holders may make use of the right to request redemption, while allowing it to reduce

[1] OJ L 177, 4.7.2008, p. 6.

transaction costs or to avoid other negative impacts. The feeder UCITS should in particular apply for approval as soon as possible. Furthermore, the feeder UCITS should for instance not be obliged to request redemption to the extent its own unit-holders choose not to make use of that facility. Where the feeder UCITS requests redemption from the master UCITS, it should consider whether a redemption in kind might reduce transaction costs and avoid other negative impacts.

(15) The information-sharing agreement between the depositaries of the master UCITS and the feeder UCITS should allow the depositary of the feeder UCITS to receive all relevant information and documents which it needs in order to be able to perform its duties. Given the specificity of this agreement it should provide for the same conflict of law rules as foreseen in the agreement between master and feeder UCITS derogating from Articles 3 and 4 of the Rome I Regulation. The information-sharing agreement should however require neither the depositary of the master UCITS nor of the feeder UCITS to carry out tasks which are forbidden or not provided for under the national law of their home Member State.

(16) The reporting of irregularities, which the depositary of the master UCITS detects in the course of carrying out its depositary function under the national law of its home Member State, aims to protect the feeder UCITS. For that reason no reporting should be required when those irregularities do not have a negative impact on the feeder UCITS. Where irregularities with regard to the master UCITS have a negative impact on the feeder UCITS, the latter should also be informed as to whether and how the irregularities have been resolved. The depositary of the master UCITS should therefore inform the depositary of the feeder UCITS of how the master UCITS has resolved or proposes to resolve the irregularity. If the depositary of the feeder UCITS is not satisfied that the resolution is in the interests of the unit-holders of the feeder UCITS, it should promptly report its view to the feeder UCITS.

(17) The information-sharing agreement between the auditors of the master UCITS and the feeder UCITS should allow the auditor of the feeder UCITS to receive all relevant information and documents which it needs in order to be able to perform its duties. Given the specificity of this agreement it should provide for the same conflict of law rules as foreseen in the agreement between master and feeder UCITS derogating from Articles 3 and 4 of the Rome I Regulation.

(18) The scope of the information to be made accessible by electronic means in accordance with Article 91(3) of Directive 2009/65/EC should be specified in order to provide for legal certainty as to what categories of information should be included.

(19) In order to provide for a common approach to how the documents referred to in Article 93(2) of Directive 2009/65/EC should be made accessible by electronic means to the competent authorities of the UCITS host Member State, it is necessary to require that each UCITS or its management company designates a website where such documents are made available in an electronic format that is in common use. It is also necessary to set out a procedure for electronic notification of changes to these documents to the competent authorities of the UCITS host Member State, in accordance with Article 93(7) of that Directive.

(20) In order to allow UCITS and their management companies to adapt to the new requirements on the method and manner to provide information to unit-holders in the cases referred to in Articles 7 and 29, Member States should be granted a longer period for the transposition of those requirements into their national legal systems. This is particularly important in those cases where the UCITS or their management companies are unable for legal or practical reasons to inform the unit-holders directly. UCITS with dematerialised bearer shares should be able to prepare all arrangements necessary to ensure that unit-holders receive the information in the cases specified in Articles 8 and 32. UCITS with materialised bearer shares should be able to convert them into registered shares or dematerialised bearer shares, if they want to be able to merge, convert into a feeder UCITS or change the master UCITS.

(21) The Committee of European Securities Regulators, established by Commission Decision 2009/77/EC [1] has been consulted for technical advice.

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

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

GENERAL

Article 1

Subject matter

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

[1] OJ L 25, 29.1.2009, p. 18.

Article 2

Definitions

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

1. 'rebalancing of the portfolio' means a significant modification of the composition of the portfolio of a UCITS;

2. 'synthetic risk and reward indicators' means synthetic indicators within the meaning of Article 8 of Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website [1].

CHAPTER II

UCITS MERGERS

SECTION 1

Content of the merger information

Article 3

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

1. Member States shall require that the information to be provided to unit-holders pursuant to Article 43(1) of Directive 2009/65/EC shall be written in a concise manner and in non-technical language that enables unit-holders to make an informed judgement of the impact of the proposed merger on their investment.

In the case of a proposed cross-border merger, the merging UCITS and the receiving UCITS, respectively, shall explain in plain language any terms or procedures relating to the other UCITS which differ from those commonly used in the other Member State.

2. The information to be provided to the unit-holders of the merging UCITS shall meet the needs of investors who have no prior knowledge of the features of the receiving UCITS or of the manner of its operation. It shall draw their attention to the key investor information of the receiving UCITS and emphasise the desirability of reading it.

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

[1] See page 1 of this Official Journal.

Article 4

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

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

(a) details of any differences in the rights of unit-holders of the merging UCITS before and after the proposed merger takes effect;

(b) if the key investor information of the merging UCITS and the receiving UCITS show synthetic risk and reward indicators in different categories, or identify different material risks in the accompanying narrative, a comparison of those differences;

(c) a comparison of all charges, fees and expenses for both UCITS, based on the amounts disclosed in their respective key investor information;

(d) if the merging UCITS applies a performance-related fee, an explanation of how it will be applied up to the point at which the merger becomes effective;

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

(f) in cases where Article 46 of Directive 2009/65/EC permits costs associated with the preparation and the completion of the merger to be charged to either the merging or the receiving UCITS or any of their unit-holders, details of how those costs are to be allocated;

(g) an explanation of whether the management or investment company of the merging UCITS intends to undertake any rebalancing of the portfolio before the merger takes effect.

2. Member States shall require that the information to be provided in accordance with Article 43(3)(b) of Directive 2009/65/EC to the unit-holders of the receiving UCITS shall also include an explanation of whether the management or investment company of the receiving UCITS expects the merger to have any material impact on the portfolio of the receiving UCITS, and whether it intends to undertake any rebalancing of the portfolio either before or after the merger takes effect.

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

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

(b) an indication of how the report of the independent auditor or the depositary referred to in Article 42(3) of Directive 2009/65/EC may be obtained.

4. Member States shall require that if the terms of the proposed merger include provisions for a cash payment in accordance with points (p)(i) and (p)(ii) of Article 2(1) of Directive 2009/65/EC, the information to be provided to the unit-holders of the merging UCITS shall contain details of that proposed payment, including when and how unit-holders of the merging UCITS will receive the cash payment.

5. Member States shall require that the information to be provided in accordance with Article 43(3)(d) shall include:

(a) where relevant under national law for the particular UCITS, the procedure by which unit-holders will be asked to approve the merger proposal, and what arrangements will be made to inform them of the outcome;

(b) the details of any intended suspension of dealing in units to enable the merger to be carried out efficiently;

(c) when the merger will take effect in accordance with Article 47(1) of Directive 2009/65/EC.

6. Member States shall ensure that in cases where, under the national law for the particular UCITS, the merger proposal must be approved by unit-holders, the information may contain a recommendation by the respective management company or board of directors of the investment company as to the course of action.

7. Member States shall require that the information to be provided to the unit-holders of the merging UCITS shall include:

(a) the period during which the unit-holders shall be able to continue making subscriptions and requesting redemptions of units in the merging UCITS;

(b) the time when those unit-holders not making use of their rights granted pursuant to Article 45(1) of Directive 2009/65/EC, within the relevant time limit, shall be able to exercise their rights as unit-holders of the receiving UCITS;

(c) an explanation that in cases where the merger proposal must be approved by the unit-holders of the merging UCITS under national law and the proposal is approved by the necessary majority, those unit-holders who vote against the proposal or who do not vote at all, and who do not make use of their rights granted pursuant to Article 45(1) of Directive 2009/65/EC within the relevant time limit, shall become unit-holders of the receiving UCITS.

8. If a summary of the key points of the merger proposal is provided at the beginning of the information document, it must cross-refer to the parts of the information document where further information is provided.

Article 5

Key investor information

1. Member States shall ensure that an up-to-date version of the key investor information of the receiving UCITS shall be provided to existing unit-holders of the merging UCITS.

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

Article 6

New unit-holders

Between the date when the information document pursuant to Article 43(1) of Directive 2009/65/EC is provided to unit-holders and the date when the merger takes effect, the information document and the up-to-date key investor information of the receiving UCITS shall be provided to each person who purchases or subscribes units in either the merging or the receiving UCITS or asks to receive copies of the fund rules or instruments of incorporation, prospectus or key investor information of either UCITS.

SECTION 2

Method of providing the information

Article 7

Method of providing the information to unit-holders

1. Member States shall ensure that the merging and the receiving UCITS provide the information pursuant to Article 43(1) of Directive 2009/65/EC to unit-holders on paper or in another durable medium.

2. Where the information is to be provided to all or certain unit-holders using a durable medium other than paper, the following conditions shall be fulfilled:

(a) the provision of the information is appropriate to the context in which the business between the unit-holder and the merging or receiving UCITS or, where relevant, the respective management company is, or is to be, carried on;

(b) the unit-holder to whom the information is to be provided, when offered the choice between information on paper or in another durable medium, specifically chooses the durable medium other than paper.

3. For the purposes of paragraphs 1 and 2, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the merging and receiving UCITS or their respective management companies and the unit-holder is, or is to be, carried on if there is evidence that the unit-holder has regular access to the Internet. The provision by the unit-holder of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

CHAPTER III

MASTER-FEEDER STRUCTURES

SECTION 1

Agreement and internal conduct of business rules between feeder UCITS and master UCITS

Subsection 1

Content of the agreement between master UCITS and feeder UCITS

Article 8

Access to information

Member States shall require that the agreement between the master UCITS and the feeder UCITS referred to in the first subparagraph of Article 60(1) of Directive 2009/65/EC includes the following with regard to access to information:

(a) how and when the master UCITS provides the feeder UCITS with a copy of its fund rules or instruments of incorporation, prospectus and key investor information or any amendment thereof;

(b) how and when the master UCITS informs the feeder UCITS of a delegation of investment management and risk management functions to third parties in accordance with Article 13 of Directive 2009/65/EC;

(c) where applicable, how and when the master UCITS provides the feeder UCITS with internal operational documents, such as its risk management process and its compliance reports;

(d) what details of breaches by the master UCITS of the law, the fund rules or instruments of incorporation and the agreement between the master UCITS and the feeder UCITS the master UCITS shall notify the feeder UCITS of and the manner and timing thereof;

(e) where the feeder UCITS uses financial derivative instruments for hedging purposes, how and when the master UCITS will provide the feeder UCITS with information about its actual exposure to financial derivative instruments to enable the feeder UCITS to calculate its own global exposure as envisaged by point (a) of the second subparagraph of Article 58(2) of Directive 2009/65/EC;

(f) a statement that the master UCITS informs the feeder UCITS of any other information-sharing arrangements entered into with third parties and where applicable, how and when the master UCITS makes those other information-sharing arrangements available to the feeder UCITS.

Article 9

Basis of investment and divestment by the feeder UCITS

Member States shall require that the agreement between the master UCITS and the feeder UCITS referred to in the first subparagraph of Article 60(1) of Directive 2009/65/EC includes the following with regard to the basis of investment and divestment by the feeder UCITS:

(a) a statement of which share classes of the master UCITS are available for investment by the feeder UCITS;

(b) the charges and expenses to be borne by the feeder UCITS, and details of any rebate or retrocession of charges or expenses by the master UCITS;

(c) if applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the feeder UCITS to the master UCITS.

Article 10

Standard dealing arrangements

Member States shall require that the agreement between the master UCITS and the feeder UCITS referred to in the first subparagraph of Article 60(1) of Directive 2009/65/EC includes the following with regard to standard dealing arrangements:

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

(b) coordination of transmission of dealing orders by the feeder UCITS, including, where applicable, the role of transfer agents or any other third party;

(c) where applicable, any arrangements necessary to take account of the fact that either or both UCITS are listed or traded on a secondary market;

(d) where necessary, other appropriate measures to ensure compliance with the requirements of Article 60(2) of Directive 2009/65/EC;

(e) where the units of the feeder UCITS and the master UCITS are denominated in different currencies, the basis for conversion of dealing orders;

(f) settlement cycles and payment details for purchases or 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 redemption requests by a transfer of assets in kind to the feeder UCITS, notably in the cases referred to in Article 60(4) and (5) of Directive 2009/65/EC;

(g) procedures to ensure enquiries and complaints from unit-holders are handled appropriately;

(h) where the fund rules or instruments of incorporation and prospectus of the master UCITS give it certain rights or powers in relation to unit-holders, and the master UCITS chooses to limit or forego the exercise of all or any such rights and powers in relation to the feeder UCITS, a statement of the terms on which it does so.

Article 11

Events affecting dealing arrangements

Member States shall require that the agreement between the master UCITS and the feeder UCITS referred to in the first subparagraph of Article 60(1) of Directive 2009/65/EC includes the following with regard to events affecting dealing arrangements:

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

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

Article 12

Standard arrangements for the audit report

Member States shall require that the agreement between the master UCITS and the feeder UCITS referred to in the first subparagraph of Article 60(1) of Directive 2009/65/EC includes the following with regard to standard arrangements for the audit report:

(a) where the feeder UCITS and the master UCITS have the same accounting years, the coordination of the production of their periodic reports;

(b) where the feeder UCITS and the master UCITS have different accounting years, arrangements for the feeder UCITS to obtain any necessary information from the master UCITS to enable it to produce its periodic reports on time and which ensure that the auditor of the master UCITS is in a position to produce an ad hoc report on the closing date of the feeder UCITS in accordance with the first subparagraph of Article 62(2) of Directive 2009/65/EC.

Article 13

Changes to standing arrangements

Member States shall require that the agreement between the master UCITS and the feeder UCITS referred to in the first subparagraph of Article 60(1) of Directive 2009/65/EC includes the following with regard to changes to standing arrangements:

(a) the manner and timing of notice to be given by the master UCITS of proposed and effective amendments to its fund rules or instruments of incorporation, prospectus and key investor information, if these details differ from the standard arrangements for notification of unit-holders laid down in the master UCITS fund rules, instruments of incorporation or prospectus;

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

(c) the manner and timing of notice by either UCITS that it has ceased or will cease to meet the qualifying conditions to be a feeder UCITS or a master UCITS respectively;

(d) the manner and timing of notice by either UCITS that it intends to replace its management company, its depositary, its auditor or any third party which is mandated to carry out investment management or risk management functions;

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

Article 14

Choice of the applicable law

1. Member States shall ensure that where the feeder UCITS and the master UCITS are established in the same Member State, the agreement between the master UCITS and the feeder UCITS referred to in the first subparagraph of Article 60(1) of Directive 2009/65/EC provides that the law of that Member State shall apply to the agreement and that both parties agree to the exclusive jurisdiction of the courts of that Member State.

2. Member States shall ensure that where the feeder UCITS and the master UCITS are established in different Member States, the agreement between the master UCITS and the feeder UCITS referred to in the first subparagraph of Article 60(1) of Directive 2009/65/EC provides that the applicable law shall be either the law of the Member State in which the feeder UCITS is established or that it shall be that of the Member State in which the master UCITS is established and that both parties agree to the exclusive jurisdiction of the courts of the Member State whose law they have stipulated to be applicable to the agreement.

Subsection 2

Content of the internal conduct of business rules

Article 15

Conflicts of interest

Member States shall ensure that the management company's internal conduct of business rules referred to in the third subparagraph of Article 60(1) of Directive 2009/65/EC shall include appropriate measures to mitigate conflicts of interest that may arise between the feeder UCITS and the master UCITS, or between the feeder UCITS and other unit-holders of the master UCITS, to the extent that these are not sufficiently addressed by the measures applied by the management company in order to meet requirements of Articles 12(1)(b) and 14(1)(d) of Directive 2009/65/EC and Chapter III of Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company [1].

Article 16

Basis of investment and divestment by the feeder UCITS

Member States shall ensure that the management company's internal conduct of business rules referred to in the third subparagraph of Article 60(1) of Directive 2009/65/EC shall include at least the following with regard to the basis of investment and divestment by the feeder UCITS:

(a) a statement of which share classes of the master UCITS are available for investment by the feeder UCITS;

(b) the charges and expenses to be borne by the feeder UCITS, and details of any rebate or retrocession of charges or expenses by the master UCITS;

(c) where applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the feeder UCITS to the master UCITS.

Article 17

Standard dealing arrangements

Member States shall ensure that the management company's internal conduct of business rules referred to in the third subparagraph of Article 60(1) of Directive 2009/65/EC shall include at least the following with regard to standard dealing arrangements:

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

(b) coordination of transmission of dealing orders by the feeder UCITS, including, if applicable, the role of transfer agents or any other third party;

(c) where applicable, any arrangements necessary to take account of the fact that either or both UCITS are listed or traded on a secondary market;

(d) appropriate measures to ensure compliance with the requirements of Article 60(2) of Directive 2009/65/EC;

(e) where the feeder UCITS and the master UCITS are denominated in different currencies, the basis for conversion of dealing orders;

(f) settlement cycles and payment details for purchases and redemptions of units of the master UCITS including, where agreed between the parties, the terms on which the master UCITS may settle redemption requests by a transfer of assets in kind to the feeder UCITS, notably in the cases referred to in Article 60(4) and (5) of Directive 2009/65/EC;

(g) where the fund rules or instruments of incorporation and prospectus of the master UCITS give it certain rights or powers in relation to unit-holders, and the master UCITS chooses to limit or forego the exercise of all or any such rights and powers in relation to the feeder UCITS, a statement of the terms on which it does so.

Article 18

Events affecting dealing arrangements

Member States shall ensure that the management company's internal conduct of business rules referred to in the third subparagraph of Article 60(1) of Directive 2009/65/EC shall include at least the following with regard to events affecting dealing arrangements:

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

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

Article 19

Standard arrangements for the audit report

Member States shall ensure that the management company's internal conduct of business rules referred to in the third subparagraph of Article 60(1) of Directive 2009/65/EC shall include at least the following with regard to standard arrangements for the audit report:

(a) where the feeder UCITS and the master UCITS have the same accounting years, the coordination of the production of their periodic reports;

[1] See page 42 of this Official Journal.

(b) where the feeder UCITS and the master UCITS have different accounting years, arrangements for the feeder UCITS to obtain any necessary information from the master UCITS to enable it to produce its periodic reports on time and which ensure that the auditor of the master UCITS is in a position to make an ad hoc report on the closing date of the feeder UCITS in accordance with the first subparagraph of Article 62(2) of Directive 2009/65/EC.

SECTION 2

Liquidation, merger or division of the master UCITS

Subsection 1

Procedures in the event of a liquidation

Article 20

Application for approval

1. Member States shall require the feeder UCITS to submit to its competent authorities no later than two months after the date on which the master UCITS informed it of the binding decision to liquidate, the following:

(a) where the feeder UCITS intends to invest at least 85 % of its assets in units of another master UCITS in accordance with Article 60(4)(a) of Directive 2009/65/EC:

(i) its application for approval for that investment;

(ii) its application for approval of the proposed amendments to its fund rules or instrument of incorporation;

(iii) the amendments to its prospectus and its key investor information in accordance with Articles 74 and 82 of Directive 2009/65/EC, respectively;

(iv) the other documents required pursuant to Article 59(3) of Directive 2009/65/EC;

(b) where the feeder UCITS intends to convert into a UCITS that is not a feeder UCITS in accordance with Article 60(4)(b) of Directive 2009/65/EC:

(i) its application for approval of the proposed amendments to its fund rules or instrument of incorporation;

(ii) the amendments to its prospectus and its key investor information in accordance with Articles 74 and 82 of Directive 2009/65/EC, respectively;

(c) where the feeder UCITS intends to be liquidated, a notification of that intention.

2. By way of derogation from paragraph 1, where the master UCITS informed the feeder UCITS of its binding decision to liquidate more than five months before the date at which the liquidation will start, the feeder UCITS shall submit to its competent authorities its application or notification in accordance with one of the points (a), (b) or (c) of paragraph 1 at the latest three months before that date.

3. The feeder UCITS shall inform its unit-holders of its intention to be liquidated without undue delay.

Article 21

Approval

1. The feeder UCITS shall be informed within 15 working days following the complete submission of the documents referred to in points (a) or (b) of Article 20(1) respectively, whether the competent authorities have granted the required approvals.

2. On receiving the competent authorities' approval pursuant to paragraph 1, the feeder UCITS shall inform the master UCITS of it.

3. The feeder UCITS shall take necessary measures to comply with the requirements of Article 64 of Directive 2009/65/EC as soon as possible after the competent authorities have granted the necessary approvals pursuant to Article 20(1)(a) of this Directive.

4. Where the payment of liquidation proceeds of the master UCITS is to be executed before the date on which the feeder UCITS is to start to invest in either a different master UCITS pursuant to Article 20(1)(a) or in accordance with its new investment objectives and policy pursuant to Article 20(1)(b), the competent authorities of the feeder UCITS shall grant approval subject to the following conditions:

(a) the feeder UCITS shall receive the proceeds of the liquidation:

(i) in cash; or

(ii) some or all of the proceeds as a transfer of assets in kind where the feeder UCITS so wishes and where the agreement between the feeder UCITS and master UCITS or the internal conduct of business rules and the binding decision to liquidate provide for it;

(b) any cash held or received in accordance with this paragraph may be re-invested only for the purpose of efficient cash management before the date on which the feeder UCITS is to start to invest either in a different master UCITS or in accordance with its new investment objectives and policy.

Where point (a)(ii) of the first subparagraph applies, the feeder UCITS may realise any part of the assets transferred in kind for cash at any time.

Subsection 2

Procedures in the event of a merger or division

Article 22

Application for approval

1. Member States shall require that the feeder UCITS submits to its competent authorities, no later than one month after the date on which the feeder UCITS received the information of the planned merger or division in accordance with the second subparagraph of Article 60(5) of Directive 2009/65/EC, the following:

(a) where the feeder UCITS intends to continue to be a feeder UCITS of the same master UCITS:

(i) its application for approval thereof;

(ii) where applicable, its application for approval of the proposed amendments to its fund rules or instrument of incorporation;

(iii) where applicable, the amendments to its prospectus and its key investor information in accordance with Articles 74 and 82 of Directive 2009/65/EC, respectively;

(b) where the feeder UCITS intends to become a feeder UCITS of another master UCITS resulting from the proposed merger or division of the master UCITS or where the feeder UCITS intends to invest at least 85 % of its assets in units of another master UCITS not resulting from the merger or division:

(i) its application for approval of that investment;

(ii) its application for approval of the proposed amendments to its fund rules or instruments of incorporation;

(iii) the amendments to its prospectus and its key investor information in accordance with Articles 74 and 82 of Directive 2009/65/EC, respectively;

(iv) the other documents required pursuant to Article 59(3) of Directive 2009/65/EC;

(c) where the feeder UCITS intends to convert into a UCITS that is not a feeder UCITS in accordance with Article 60(4)(b) of Directive 2009/65/EC:

(i) its application for approval of the proposed amendments to its fund rules or instrument of incorporation;

(ii) the amendments to its prospectus and its key investor information in accordance with Articles 74 and 82 of Directive 2009/65/EC, respectively;

(d) where the feeder UCITS intends to be liquidated, a notification of that intention.

2. For the purpose of the application of points (a) and (b) of paragraph 1 the following should be taken into account:

The expression 'continues to be a feeder UCITS of the same master UCITS' refers to cases where:

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

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

The expression 'becomes a feeder UCITS of another master UCITS resulting from the merger or division of the master UCITS' refers to cases where:

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

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

3. By way of derogation from paragraph 1, in cases where the master UCITS provided the information referred to in or comparable with Article 43 of Directive 2009/65/EC to the feeder UCITS more than four months before the proposed effective date, the feeder UCITS shall submit to its competent authorities its application or notification in accordance with one of the points (a) to (d) of paragraph 1 of this Article at the latest three months before the proposed effective date of the merger or division of the master UCITS.

4. The feeder UCITS shall inform its unit-holders and the master UCITS of its intention to be liquidated without undue delay.

Article 23

Approval

1. The feeder UCITS shall be informed within 15 working days following the complete submission of the documents referred to in Article 22(1)(a) to (c) respectively, whether the competent authorities have granted the required approvals.

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

3. After the feeder UCITS has been informed that the competent authorities have granted the necessary approvals pursuant to Article 22(1)(b) of this Directive, the feeder UCITS shall take the necessary measures to comply with the requirements of Article 64 of Directive 2009/65/EC without undue delay.

4. In the cases of Article 22(1)(b) and (c) of this Directive, the feeder UCITS shall exercise the right to request repurchase and redemption of its units in the master UCITS in accordance with the third subparagraph of Article 60(5) and Article 45(1) of Directive 2009/65/EC, where the competent authorities of the feeder

UCITS have not granted the necessary approvals required pursuant to Article 22(1) of this Directive by the working day preceding the last day on which the feeder UCITS can request repurchase and redemption of its units in the master UCITS before the merger or division is effected.

The feeder UCITS shall also exercise this right in order to ensure that the right of its own unit-holders to request repurchase or redemption of their units in the feeder UCITS according to Article 64(1)(d) of Directive 2009/65/EC is not affected.

Before exercising the right referred to in the first subparagraph, the feeder UCITS shall consider available alternative solutions which may help to avoid or reduce transaction costs or other negative impacts for its own unit-holders.

5. Where the feeder UCITS requests repurchase or redemption of its units in the master UCITS, it shall receive one of the following:

(a) the repurchase or redemption proceeds in cash;

(b) some or all of the repurchase or redemption proceeds as a transfer in kind where the feeder UCITS so wishes and where the agreement between the feeder UCITS and the master UCITS provides for it.

Where point (b) of the first subparagraph applies, the feeder UCITS may realise any part of the transferred assets for cash at any time.

6. The competent authorities of the feeder UCITS shall grant approval on the condition that any cash held or received in accordance with paragraph 5 may be re-invested only for the purpose of efficient cash management before the date on which the feeder UCITS is to start to invest either in the new master UCITS or in accordance with its new investment objectives and policy.

SECTION 3

Depositaries and auditors

Subsection 1

Depositaries

Article 24

Content of the information-sharing agreement between depositaries

The information-sharing agreement between the depositary of the master UCITS and the depositary of the feeder UCITS referred to in Article 61(1) of Directive 2009/65/EC shall include the following:

(a) the identification of the documents and categories of information which are to be routinely shared between both depositaries, and whether such information or documents are provided by one depositary to the other or made available on request;

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

(c) the coordination of the involvement of both depositaries, to the extent appropriate in view of their respective duties under national law, in relation to operational matters, including:

(i) the procedure for calculating the net asset value of each UCITS, including any measures appropriate to protect against the activities of market timing in accordance with Article 60(2) of Directive 2009/65/EC;

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

(d) the coordination of accounting year-end procedures;

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

(f) the procedure for handling ad hoc requests for assistance from one depositary to the other;

(g) identification of particular contingent events which ought to be notified by one depositary to the other on an ad hoc basis, and the manner and timing in which this will be done.

Article 25

Choice of the applicable law

1. Member States shall ensure that where the feeder UCITS and the master UCITS have concluded an agreement in accordance with Article 60(1) of Directive 2009/65/EC, the agreement between the depositaries of the master UCITS and the feeder UCITS provides that the law of the Member State applying to that agreement in accordance with Article 14 of this Directive shall also apply to the information-sharing agreement between both depositaries and that both depositaries agree to the exclusive jurisdiction of the courts of that Member State;

2. Member States shall ensure that where the agreement between the feeder UCITS and the master UCITS has been replaced by internal conduct of business rules in accordance with the third subparagraph of Article 60(1) of Directive 2009/65/EC, the agreement between the depositaries of the master UCITS and the feeder UCITS provides that the law applying to the information-sharing agreement between both depositaries shall be either that of the Member State in which the feeder UCITS is established or, where different, that of the Member State in which the master UCITS is established, and that both depositaries agree to the exclusive jurisdiction of the courts of the Member State whose law is applicable to the information-sharing agreement.

Article 26

Reporting of irregularities by the depositary of the master UCITS

The irregularities referred to in Article 61(2) of Directive 2009/65/EC which the depositary of the master UCITS detects in the course of carrying out its function under the national law and which may have a negative impact on the feeder UCITS shall include, but are not limited to:

(a) errors in the net asset value calculation of the master UCITS;

(b) errors in transactions for or settlement of the purchase, subscription or request to repurchase or redeem units in the master UCITS undertaken by the feeder UCITS;

(c) errors in the payment or capitalisation of income arising from the master UCITS, or in the calculation of any related withholding tax;

(d) breaches of the investment objectives, policy or strategy of the master UCITS, as described in its fund rules or instrument of incorporation, prospectus or key investor information;

(e) breaches of investment and borrowing limits set out in national law or in the fund rules, instruments of incorporation, prospectus or key investor information.

Subsection 2

Auditors

Article 27

Information-sharing agreement between auditors

1. The information-sharing agreement between the auditor of the master UCITS and the auditor of the feeder UCITS referred to in Article 62(1) of Directive 2009/65/EC shall include the following:

(a) the identification of the documents and categories of information which are to be routinely shared between both auditors;

(b) whether the information or documents referred to in point (a) are to be provided by one auditor to the other or made available on request;

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

(d) the coordination of the involvement of each auditor in the accounting year-end procedures for the respective UCITS;

(e) identification of matters that shall be treated as irregularities disclosed in the audit report of the auditor of the master UCITS for the purposes of the second subparagraph of Article 62(2) of Directive 2009/65/EC;

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

2. The agreement referred to in paragraph 1 shall include provisions on the preparation of the audit reports referred to in Article 62(2) and Article 73 of Directive 2009/65/EC and the manner and timing for the provision of the audit report for the master UCITS and drafts of it to the auditor of the feeder UCITS.

3. Where the feeder UCITS and the master UCITS have different accounting year-end dates, the agreement referred to in paragraph 1 shall include the manner and timing by which the auditor of the master UCITS is to make the ad hoc report required by the first subparagraph of Article 62(2) Directive 2009/65/EC and to provide it and drafts of it to the auditor of the feeder UCITS.

Article 28

Choice of the applicable law

1. Member State shall ensure that where the feeder UCITS and the master UCITS have concluded an agreement in accordance with Article 60(1) of Directive 2009/65/EC, the agreement between the auditors of the master UCITS and the feeder UCITS provides that the law of the Member State applying to that agreement in accordance with Article 14 of this Directive shall also apply to the information-sharing agreement between both auditors and that both auditors agree to the exclusive jurisdiction of the courts of that Member State.

2. Member States shall ensure that where the agreement between the feeder UCITS and the master UCITS has been replaced by internal conduct of business rules in accordance with the third subparagraph of Article 60(1) of Directive 2009/65/EC, the agreement between the auditors of the master UCITS and the feeder UCITS provides that the law applying to the information-sharing agreement between both auditors shall be either that of the Member State in which the feeder UCITS is established or, where different, that of the Member State in which the master UCITS is established, and that both auditors agree to the exclusive jurisdiction of the courts of the Member State whose law is applicable to the information-sharing agreement.

SECTION 4

Manner of providing the information to unit-holders

Article 29

Manner of providing the information to unit-holders

Member States shall ensure that the feeder UCITS provides the information to unit-holders pursuant to Article 64(1) of Directive 2009/65/EC in the same manner as prescribed by Article 7 of this Directive.

CHAPTER IV

NOTIFICATION PROCEDURE

Article 30

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

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

(a) the definition of the term 'marketing of units of UCITS' or the equivalent legal term either as stated in national legislation or as developed in practice;

(b) requirements for the contents, format and manner of presentation of marketing communications, including all compulsory warnings and restrictions on the use of certain words or phrases;

(c) without prejudice to Chapter IX of Directive 2009/65/EC, details of any additional information required to be disclosed to investors;

(d) details of any exemptions from rules or requirements governing arrangements made for marketing applicable in that Member State for certain UCITS, certain share classes of UCITS or certain categories of investors;

(e) requirements for any reporting or transmission of information to the competent authorities of that Member State, and the procedure for lodging updated versions of required documents;

(f) requirements for any fees or other sums to be paid to the competent authorities or any other statutory body in that Member State, either when marketing commences or periodically thereafter;

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

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

(i) detailed contents of the information required by a Member State to be included in Part B of the notification letter as referred to in Article 1 of Commission Regulation (EU) No 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities [1];

(j) the e-mail address designated for the purpose of Article 32.

2. Member States shall give the information listed in paragraph 1 in the form of a narrative description, or a combination of a narrative description and a series of references or links to source documents.

Article 31

UCITS host Member State's access to documents

1. Member States shall require UCITS to ensure that an electronic copy of each document referred to in Article 93(2) of Directive 2009/65/EC is made available on a website of the UCITS, or a website of the management company that manages that UCITS, or on another website designated by the UCITS in the notification letter submitted in accordance with Article 93(1) of Directive 2009/65/EC or any updates of it. Any document made available on a website shall be provided in an electronic format in common use.

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

Article 32

Updates of documents

1. Competent authorities shall designate an e-mail address for the purpose of receiving notification of updates and amendments to the documents referred to in Article 93(2) of Directive 2009/65/EC, pursuant to Article 93(7) of that Directive.

2. Member States shall allow UCITS to notify any update or amendment to the documents referred to in Article 93(2) of Directive 2009/65/EC, pursuant to Article 93(7) of Directive 2009/65/EC by e-mail to be sent to the e-mail address referred to in paragraph 1.

[1] See page 16 of this Official Journal.

The e-mail notifying such an update or amendment may either describe the update or the amendment that has been made, or provide a new version of the document as an attachment.

3. Member States shall require that any document attached to the e-mail referred to in paragraph 2, shall be provided by UCITS in a commonly used electronic format.

Article 33

Development of common data processing systems

1. In order to facilitate access by the competent authorities of the UCITS host Member States to the information or documents referred to in Article 93(1), (2) and (3) of Directive 2009/65/EC, for the purpose of Article 93(7) of that Directive, competent authorities of Member States may coordinate the establishment of sophisticated electronic data processing and central storage systems common to all Member States.

2. The coordination between Member States referred to in paragraph 1 shall take place in the Committee of European Securities Regulators.

CHAPTER V

FINAL PROVISIONS

Article 34

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2011 at the latest.

However, they shall bring into force the laws, regulations and administrative provisions necessary to comply with Articles 7 and 29 by 31 December 2013 at the latest.

They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 35

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 36

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 1 July 2010.

For the Commission
The President
José Manuel BARROSO

COMMISSION DIRECTIVE 2010/43/EU

of 1 July 2010

implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) [1], and in particular Article 12(3), Article 14(2), Article 23(6), Article 33(6) and Article 51(4) thereof,

Whereas:

(1) The rules and terminology on the organisational requirements, conflicts of interest and conduct of business should be aligned to the greatest possible extent with the standards introduced in the financial services area by Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC [2] and Commission Directive 2006/73/EC of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive [3]. Such alignment, while taking due account of the specificities of the collective portfolio management business, would allow the achievement of equal standards not only between different financial services sectors but also within asset management business more widely, where certain requirements of Directive 2006/73/EC have already been extended by some Member States to UCITS management companies.

(2) It is appropriate to adopt these rules in the form of a Directive in order to enable the implementing provisions to be adjusted to the specificities of the particular market and legal system in each Member State. A directive will also enable a maximum level of consistency with the regime created by Directive 2006/73/EC.

(3) Even though the principles laid down in this Directive have general relevance for all management companies, they are flexible enough to ensure that their application and the supervision of such application by competent authorities is proportionate and takes into account the nature, scale and complexity of a management company's business and the diversity of the companies falling within the scope of application of Directive 2009/65/EC, and the varied nature of the different UCITS that may be managed by a management company.

(4) As far as allowed by national law, management companies should be able to make arrangements for third parties to carry out some of their activities. The implementing rules should be read accordingly. The management company should in particular perform due diligence in order to determine whether, having regard to the nature of the functions to be carried out by third parties, the undertaking performing those activities can be considered as qualified and capable of undertaking the functions in question. The third party should therefore fulfil all the organisational and conflicts of interest requirements in relation to the activity to be carried out. It also follows that the management company should verify that the third party has taken the appropriate measures in order to comply with the said requirements and should monitor effectively the compliance by the third party with these requirements. Where the delegatee is responsible for applying the rules governing the delegated activities, equivalent organisational and conflict of interests requirements should apply to the activity of monitoring the delegated activities. The management company should be able to take into account in the due diligence process the fact that the third party to whom activities are delegated will often be subject to Directive 2004/39/EC.

(5) To avoid the application of different standards to management companies and investment companies which have not designated a management company, the latter should be subject to the same rules of conduct and provisions regarding conflicts of interest and risk management as management companies. Therefore, the rules of this Directive on administrative procedures and internal control mechanism should, as a matter of good practice, apply both to management companies and investment companies that have not designated a management company, taking into account the principle of proportionality.

[1] OJ L 302, 17.11.2009, p. 32.
[2] OJ L 145, 30.4.2004, p. 1.
[3] OJ L 241, 2.9.2006, p. 26.

(6) Directive 2009/65/EC requires management companies to have sound administrative procedures. In order to comply with this requirement management companies should establish a well-documented organisational structure that clearly assigns responsibilities and ensures good flows of information between all parties involved. Management companies should also establish systems to safeguard information and ensure business continuity and which are sufficient to allow them to discharge their obligations in cases where their activities are performed by third parties.

(7) Management companies should also maintain the necessary resources, in particular, to employ personnel with the right skills, knowledge and experience in order to be able to fulfil their duties.

(8) With respect to safe data processing procedures and the obligation to reconstruct all transactions involving the UCITS the management company should have arrangements in place which permit a timely and proper recording of each transaction carried out on behalf of the UCITS.

(9) Accounting is one of the key areas of UCITS administration. It is therefore of paramount importance that the accounting procedures are further specified in the implementing legislation. This Directive should therefore uphold the principles that all assets and liabilities of a UCITS or of its investment compartments can be directly identified, and that accounts should be separate. In addition, where different share classes exist depending on, for example, the level of management fees, it should be possible to extract directly from the accounting the net asset value of those different classes.

(10) The clear allocation of the responsibilities of senior management and the supervisory function are central for the implementation of appropriate internal control mechanisms as required by Directive 2009/65/EC. This entails that the senior management should be responsible for the implementation of the general investment policy as referred to in the Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website [1]. Senior management should also maintain the responsibility for the investment strategies which are the general indications concerning the strategic asset allocation of the UCITS and the investment techniques which are needed to adequately and effectively implement the investment policy. The clear division of responsibilities should also ensure that adequate control exists so as to ensure the assets of the UCITS are invested according to the fund rules or the instruments of incorporation and the applicable legal provisions and that risk limits of each UCITS are complied with. The allocation of responsibilities should be consistent with the role and responsibilities of the senior management and the supervisory function under applicable national law and corporate governance codes. It is possible that senior management includes several or all members of the board of directors.

(11) To ensure that a management company has an adequate control mechanism, a permanent compliance function and an internal audit function are necessary. The compliance function should be designed in such a way as to ensure that it may detect any risk of failure by the management company to comply with its obligations under Directive 2009/65/EC. The audit function should aim at verifying and evaluating the different control procedures and administrative arrangements the management company has put in place.

(12) It is necessary to allow management companies some flexibility in structuring the organisation of their risk management. Where it is not appropriate or proportionate to have a separate risk management function, the management company should nevertheless be able to demonstrate that specific safeguards against conflicts of interest allow for an independent performance of risk management activities.

(13) Directive 2009/65/EC obliges management companies to put rules in place on personal transactions. In accordance with Directive 2006/73/EC, management companies should prevent their employees who are subject to conflicts of interest or in possession of insider information, within the meaning of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) [2], from entering into personal transactions that are the consequence of a misuse of information they have acquired through their professional activity.

(14) Directive 2009/65/EC requires that management companies ensure that each portfolio transaction involving the UCITS can be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was executed. Therefore, it is necessary to lay down requirements for recording of portfolio transactions and of subscription and redemption orders.

(15) Directive 2009/65/EC requires UCITS management companies to have appropriate mechanisms in place to ensure fair treatment of UCITS in cases of unavoidable conflicts of interest. Therefore, management companies should make sure that in these cases senior management or other competent internal body of the management company are promptly informed, in order to for them to take any necessary decision to ensure the fair treatment of the UCITS and of its unit-holders.

[1] See page 1 of this Official Journal.

[2] OJ L 96, 12.4.2003, p. 16.

(16) Management companies should be requested to adopt, apply and maintain an effective and adequate strategy for the exercise of voting rights attached to the financial instruments held by the UCITS they manage, with a view to ensuring that such rights are exercised to the exclusive benefit of UCITS. Information related to the strategy and its application should be freely available to investors, including via a website. As the case may be, the decision not to exercise voting rights could be considered in certain circumstances as being to the exclusive benefit of the UCITS depending upon its investment strategy. However the possibility for an investment company to vote itself or to give specific voting instructions to its management company should not be excluded.

(17) The obligation to inform senior management or other competent internal body of the management company in order for them to take necessary decisions should not limit the duty of the management companies and the UCITS to report on situations where the organisational or administrative arrangements for conflicts of interest were not sufficient to ensure, with reasonable confidence, the prevention of the risk of damage, for instance in their periodic reports. Such reporting should explain and give reasons for the decision taken by the management company, even where a decision is taken not to act, taking into account the internal policies and procedures adopted to identify, prevent and manage conflicts of interest.

(18) Directive 2009/65/EC obliges management companies to act in the best interest of the UCITS they manage and the integrity of the market. Certain behaviour, such as market timing and late trading, may have detrimental effects on unit-holders and may undermine the functioning of the market. Therefore, management companies should have appropriate procedures in place to prevent malpractices. Furthermore, management companies should put in place appropriate procedures to guard against unreasonable charges and activities such as excessive trading, taking into account the UCITS investment objectives and policy.

(19) Management companies should also act in the best interest of the UCITS when directly executing orders to deal on behalf of the UCITS they manage or by transmitting them to third parties. When executing orders on behalf of the UCITS, management companies should take all reasonable steps to obtain the best possible result for the UCITS on a consistent basis, taking into account price, costs, speed, likelihood of execution and settlement, size and nature of the order or any other consideration relevant to the execution of the order.

(20) In order to ensure that management companies act with due skill, care and diligence in the best interests of the UCITS they manage as required by 2009/65/EC Directive, it is necessary to lay down rules on order handling.

(21) Certain fees, commissions or non-monetary benefits which may be paid to or by a management company should not be permitted as they could have an impact on the observance of the requirements laid down in 2009/65/EC Directive that the management company should act honestly, fairly and professionally in accordance with the best interests of the UCITS. Therefore, it is necessary to set out clear rules specifying where the payments of fees, commissions and non-monetary benefits are not considered a violation of those principles.

(22) The cross-border activities of the management company create new challenges for the relationship between the management company and the UCITS' depositary. To ensure the necessary legal certainty, the main elements of the agreement between the UCITS' depositary and the management company, where that management company is established in a Member State other than the UCITS' home Member State, should be specified in this Directive. Given the need to ensure that this agreement properly serves its purpose it is necessary to provide for conflict of law rules which derogate from Articles 3 and 4 of the Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) [1] in such a way that the applicable law to this agreement should be the law of the UCITS' home Member State.

(23) Directive 2009/65/EC contains an obligation to specify the criteria for assessing the adequacy of a management company's risk management process. Such criteria focus on the establishment of an adequate and documented risk management policy to be employed by management companies. This policy should enable the management companies to assess the risks of the positions taken within the portfolios they manage and the contributions of these individual risks to the overall risk profile of the portfolio. The organisation of the risk management policy should be adequate and proportionate to the nature, scale and complexity of the management company's activities and of the UCITS it manages.

(24) The periodical assessment, monitoring and review of the risk management policy by management companies are also a criterion to assess the adequacy of the risk management process. This criterion also includes the review of the effectiveness of measures taken to address any deficiencies in the performance of the risk management process.

[1] OJ L 177, 4.7.2008, p. 6.

(25) As an essential element in the criteria for assessing the adequacy of risk management processes, proportionate and effective risk measurement techniques should be adopted by management companies in order to measure at any time the risks which the UCITS they manage are or might be exposed to. These requirements are based on common practices agreed by competent authorities of Member States. They include both quantitative measures, as regards quantifiable risks, and qualitative methods. Electronic data processing systems and tools used for the computation of quantitative measures should be integrated with one another or with the front-office and accounting applications. Risk measurement techniques should allow for an adequate measurement of risks in periods of increased market turbulence and be reviewed whenever necessary in the interest of unit-holders. They should also allow adequate assessment of the concentration and interaction of relevant risks at the portfolio level.

(26) It is the objective of a functioning risk management system that the investment limits set by Directive 2009/65/EC such as limits on global exposure and exposure to counterparty risk are respected by the management companies. Therefore criteria should be laid down as to how the global exposure should be calculated and how counterparty risk should be calculated.

(27) It is necessary in laying down such criteria that this Directive clarifies how the global exposure can be calculated, including by using the commitment approach, the value at risk approach or advanced risk measurement methodologies. It should also lay down the main elements of the methodology according to which the management company should calculate the counterparty risk. In applying those rules, account should be taken of the conditions under which those methodologies are used, including the principles to be applied to such collateral arrangements to reduce the UCITS' exposure to counterparty risk as well as the use of the hedging and netting arrangements, as developed by competent authorities working within the Committee of European Securities Regulators.

(28) According to Directive 2009/65/EC, management companies are obliged to employ a process for the accurate and independent assessment of the value of over-the-counter (OTC) derivatives. This Directive therefore lays down detailed rules for that process in accordance with Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions [1]. As a matter of good practice, management companies should apply those requirements to instruments which expose UCITS to valuation risks equivalent to those raised by OTC derivatives, such as those relating to product illiquidity and/or the complexity of the pay-off structure. Accordingly, management companies should adopt arrangements and procedures consistent with the requirements set out in Article 44 for the valuation of less liquid or complex transferable securities and money market instruments which require the use of model-based valuation methods.

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

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

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

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

SUBJECT-MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

This Directive lays down rules implementing Directive 2009/65/EC:

1. specifying the procedures and arrangements as referred to under point (a) of the second subparagraph of Article 12(1), and the structures and organisational requirements to minimise conflicts of interests as referred to under point (b) of the second subparagraph of Article 12(1);

2. establishing criteria for acting honestly and fairly and with due skill, care and diligence in the best interests of the UCITS and the criteria for determining the types of conflict of interests, specifying the principles required to ensure that the resources are employed effectively, defining the steps that should be taken to identify, prevent, manage or disclose conflicts of interests referred to in Article 14(1) and (2);

3. concerning the particulars that need to be included in the agreements between the depository and management company in accordance with Articles 23(5) and 33(5); and

[1] OJ L 79, 20.3.2007, p. 11.

[2] OJ L 25, 29.1.2009, p. 18.

4. concerning the risk management process referred to in Article 51(1), in particular criteria for assessing the adequacy of the risk management process employed by the management company and the risk management policy and processes and the arrangements, processes and techniques for risk measurement and management relating to such criteria.

Article 2

Scope

1. This Directive shall apply to management companies pursuing the activity of management of an undertaking for collective investment in transferable securities (UCITS) as referred to in Article 6(2) of Directive 2009/65/EC.

Chapter V of this Directive shall also apply to depositaries carrying out their functions according to the provisions of Chapter IV and Section 3 of Chapter V of Directive 2009/65/EC.

2. The provisions of this Chapter, Article 12 of Chapter II and Chapters III, IV and VI shall apply *mutatis mutandis* to investment companies that have not designated a management company authorised pursuant to Directive 2009/65/EC.

In those cases 'management company' shall be understood as 'investment company'.

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply in addition to the definitions set out in Directive 2009/65/EC:

1. 'client' means any natural or legal person, or any other undertaking including a UCITS, to whom a management company provides a service of collective portfolio management or services pursuant to Article 6(3) of Directive 2009/65/EC;

2. 'unit-holder' means any natural or legal person holding one or more units in a UCITS;

3. 'relevant person' in relation to a management company, means any of the following:

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

   (b) an employee of the management company, as well as any other natural person whose services are placed at the disposal and under the control of the management company and who is involved in the provision by the management company of collective portfolio management;

   (c) a natural person who is directly involved in the provision of services to the management company under a delegation arrangement to third parties for the purpose of the provision by the management company of collective portfolio management;

4. 'senior management' means the person or persons who effectively conduct the business of a management company in accordance with Article 7(1)(b) of Directive 2009/65/EC;

5. 'board of directors' means the board of directors of the management company;

6. 'supervisory function' means the relevant persons or body or bodies responsible for the supervision of its senior management and for the assessment and periodical review of the adequacy and effectiveness of the risk management process and of the policies, arrangements and procedures put in place to comply with the obligations under Directive 2009/65/EC;

7. 'counterparty risk' means the risk of loss for the UCITS resulting from the fact that the counterparty to a transaction may default on its obligations prior to the final settlement of the transaction's cash flow;

8. 'liquidity risk' means the risk that a position in the UCITS portfolio cannot be sold, liquidated or closed at limited cost in an adequately short time frame and that the ability of the UCITS to comply at any time with Article 84(1) of Directive 2009/65/EC is thereby compromised;

9. 'market risk' means the risk of loss for the UCITS resulting from fluctuation in the market value of positions in the UCITS' portfolio attributable to changes in market variables, such as interest rates, foreign exchange rates, equity and commodity prices or an issuer's credit worthiness;

10. 'operational risk' means the risk of loss for the UCITS resulting from inadequate internal processes and failures in relation to people and systems of the management company or from external events, and includes legal and documentation risk and risk resulting from the trading, settlement and valuation procedures operated on behalf of the UCITS.

The term 'board of directors' defined in point 5 of the first paragraph shall not comprise the supervisory board where management companies have a dual structure composed of a board of directors and a supervisory board.

CHAPTER II

ADMINISTRATIVE PROCEDURES AND CONTROL MECHANISM

(Article 12(1)(a) and Article 14(1)(c) of Directive 2009/65/EC)

SECTION 1

General principles

Article 4

General requirements on procedures and organisation

1. Member States shall require management companies to comply with the following requirements:

(a) to establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities;

(b) to ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;

(c) to establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the management company;

(d) to establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the management company as well as effective information flows with any third party involved;

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

Member States shall ensure that management companies take into account the nature, scale and complexity of the business of the management company, and the nature and range of services and activities undertaken in the course of that business.

2. Member States shall require management companies to establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.

3. Member States shall require management companies to establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their services and activities.

4. Member States shall require management companies to establish, implement and maintain accounting policies and procedures that enable them, at the request of the competent authority, to deliver in a timely manner to the competent authority financial reports which reflect a true and fair view of their financial position and which comply with all applicable accounting standards and rules.

5. Member States shall require management companies to monitor and, on a regular basis, evaluate the adequacy and effectiveness of their systems, internal control mechanisms and arrangements established in accordance with paragraphs 1 to 4, and to take appropriate measures to address any deficiencies.

Article 5

Resources

1. Member States shall require management companies to employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.

2. Member States shall ensure that management companies retain the necessary resources and expertise so as to effectively monitor the activities carried out by third parties on the basis of an arrangement with the management company, especially with regard to the management of the risk associated with those arrangements.

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

Article 6

Complaints handling

1. Member States shall require management companies to establish, implement and maintain effective and transparent procedures for the reasonable and prompt handling of complaints received from investors.

2. Member States shall require management companies to ensure that each complaint and the measures taken for its resolution are recorded.

3. Investors shall be able to file complaints free of charge. The information regarding procedures referred to in paragraph 1 shall be made available to investors free of charge.

Article 7

Electronic data processing

1. Member States shall require management companies to make appropriate arrangements for suitable electronic systems so as to permit a timely and proper recording of each portfolio transaction or subscription or redemption order in order to be able to comply with Articles 14 and 15.

2. Member States shall require management companies to ensure a high level of security during the electronic data processing as well as integrity and confidentiality of the recorded information, as appropriate.

Article 8

Accounting procedures

1. Member States shall require management companies to ensure the employment of accounting policies and procedures as referred to in Article 4(4) so as to ensure the protection of unit-holders.

UCITS accounting shall be kept in such a way that all assets and liabilities of the UCITS can be directly identified at all time.

If a UCITS has different investment compartments, separate accounts shall be maintained for those investment compartments.

2. Member States shall require management companies to have accounting policies and procedures established, implemented and maintained, in accordance with the accounting rules of the UCITS' home Member States, so as to ensure that the calculation of the net asset value of each UCITS is accurately effected, on the basis of the accounting, and that subscription and redemption orders can be properly executed at that net asset value.

3. Member States shall require management companies to establish appropriate procedures to ensure the proper and accurate valuation of the assets and liabilities of the UCITS, as consistent with the applicable rules referred to in Article 85 of Directive 2009/65/EC.

SECTION 3

Internal control mechanisms

Article 9

Control by senior management and supervisory function

1. Member States shall require management companies, when allocating functions internally, to ensure that senior management and, where appropriate, the supervisory function, are responsible for the management company's compliance with its obligations under Directive 2009/65/EC.

2. The management company shall ensure that its senior management:

(a) is responsible for the implementation of the general investment policy for each managed UCITS, as defined, where relevant, in the prospectus, the fund rules or the instruments of incorporation of the investment company;

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

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

(d) ensures and verifies on a periodic basis that the general investment policy, the investment strategies and the risk limits of each managed UCITS are properly and effectively implemented and complied with, even if the risk management function is performed by third parties;

(e) approves and reviews on a periodic basis the adequacy of the internal procedures for undertaking investment decisions for each managed UCITS, so as to ensure that such decisions are consistent with the approved investment strategies;

(f) approves and reviews on a periodic basis the risk management policy and arrangements, processes and techniques for implementing that policy, as referred to in Article 38, including the risk limit system for each managed UCITS.

3. The management company shall also ensure that its senior management and, where appropriate, its supervisory function shall:

(a) assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations in Directive 2009/65/EC;

(b) take appropriate measures to address any deficiencies.

4. Member States shall require management companies to ensure that their senior management receives on a frequent basis, and at least annually, written reports on matters of compliance, internal audit and risk management indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies.

5. Member States shall require management companies to ensure that their senior management receives on a regular basis reports on the implementation of investment strategies and of the internal procedures for taking investment decisions referred to in points (b) to (e) of the paragraph 2.

6. Member States shall require management companies to ensure that the supervisory function, if any, receives on a regular basis written reports on the matters referred to in paragraph 4.

Article 10

Permanent compliance function

1. Member States shall ensure that management companies establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the management company to comply with its obligations under Directive 2009/65/EC, as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the competent authorities to exercise their powers effectively under that Directive.

Member States shall ensure that management companies take into account the nature, scale and complexity of the business of the company, and the nature and range of services and activities undertaken in the course of that business.

2. Member States shall require management companies to establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:

(a) to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures, policies and procedures put in place in accordance with paragraph 1, and the actions taken to address any deficiencies in the management company's compliance with its obligations;

(b) to advise and assist the relevant persons responsible for carrying out services and activities to comply with the management company's obligations under Directive 2009/65/EC.

3. In order to enable the compliance function referred to in paragraph 2 to discharge its responsibilities properly and independently, management companies shall ensure that the following conditions are satisfied:

(a) the compliance function must have the necessary authority, resources, expertise and access to all relevant information;

(b) a compliance officer must be appointed and must be responsible for the compliance function and for any reporting on a frequent basis, and at least annually, to the senior management on matters of compliance, indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies;

(c) the relevant persons involved in the compliance function must not be involved in the performance of services or activities they monitor;

(d) the method of determining the remuneration of the relevant persons involved in the compliance function must not 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) of the first subparagraph where it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of its services and activities, that requirement is not proportionate and that its compliance function continues to be effective.

Article 11

Permanent internal audit function

1. Member States shall require management companies, where appropriate and proportionate in view of the nature, scale and complexity of their business and the nature and range of collective portfolio management activities undertaken in the course of that business, to establish and maintain an internal audit function which is separate and independent from the other functions and activities of the management company.

2. The internal audit function referred to in paragraph 1 shall have the following responsibilities:

(a) to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the management company's systems, internal control mechanisms and arrangements;

(b) to issue recommendations based on the result of work carried out in accordance with point (a);

(c) to verify compliance with the recommendations referred to in point (b);

(d) to report in relation to internal audit matters in accordance with Article 9(4).

Article 12

Permanent risk management function

1. Member States shall require management companies to establish and maintain a permanent risk management function.

2. The permanent risk management function referred to in paragraph 1 shall be hierarchically and functionally independent from operating units.

However, Member States may allow management companies to derogate from that obligation where the derogation is appropriate and proportionate in view of the nature, scale and complexity of the management company's business and of the UCITS it manages.

A management company shall be able to demonstrate that appropriate safeguards against conflicts of interest have been adopted so as to allow an independent performance of risk management activities and that its risk management process satisfies the requirements of Article 51 of Directive 2009/65/EC.

3. The permanent risk management function shall:

(a) implement the risk management policy and procedures;

(b) ensure compliance with the UCITS risk limit system, including statutory limits concerning global exposure and counterparty risk in accordance with Articles 41, 42 and 43;

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

(d) provide regular reports to the board of directors and, where it exists, the supervisory function, on:

(i) the consistency between the current levels of risk incurred by each managed UCITS and the risk profile agreed for that UCITS;

(ii) the compliance of each managed UCITS with relevant risk limit systems;

(iii) the adequacy and effectiveness of the risk management process, indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies;

(e) provide regular reports to the senior management outlining the current level of risk incurred by each managed UCITS and any actual or foreseeable breaches to their limits, so as to ensure that prompt and appropriate action can be taken;

(f) review and support, where appropriate, the arrangements and procedures for the valuation of OTC derivatives as referred to in Article 44.

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 within the meaning of Directive 2003/6/EC;

(ii) it involves the misuse or improper disclosure of confidential information;

(iii) it conflicts or is likely to conflict with an obligation of the management company under Directive 2009/65/EC or under Directive 2004/39/EC;

(b) advising or procuring, other than in the proper course of his employment or contract for services, any other person to enter into a transaction in financial instruments which, if a personal transaction of the relevant person, would be covered by point (a) of this paragraph or by points (a) or (b) of Article 25(2) of Directive 2006/73/EC, or would otherwise constitute a misuse of information relating to pending orders;

(c) disclosing, other than in the normal course of his employment or contract for services and without prejudice to Article 3(a) of Directive 2003/6/EC, any information or opinion to any other person if the relevant person knows, or reasonably ought to know, that as a result of that disclosure that other person will or would be likely to take either of the following steps:

(i) to enter into a transaction in financial instruments which, where a personal transaction of the relevant person would be covered by point (a) of this paragraph or by points (a) or (b) of Article 25(2) of Directive 2006/73/EC, or would otherwise constitute a misuse of information relating to pending orders;

(ii) to advise or procure another person to enter into such a transaction.

2. The arrangements required under paragraph 1 shall in particular be designed to ensure that:

(a) each relevant person covered by paragraph 1 is aware of the restrictions on personal transactions, and of the measures established by the management company in connection with personal transactions and disclosure, in accordance with paragraph 1;

(b) the management company is informed promptly of any personal transaction entered into by a relevant person, either by notification of that transaction or by other procedures enabling the management company to identify such transactions;

(c) a record is kept of the personal transaction notified to the management company or identified by it, including any authorisation or prohibition in connection with such a transaction.

For the purposes of point (b) of the first subparagraph, where certain activities are performed by third parties, the management company shall ensure that the entity performing the activity maintains a record of personal transactions entered into by any relevant person and provides that information to the management company promptly on request.

3. Paragraphs 1 and 2 shall not apply to the following kinds of personal transactions:

(a) personal transactions effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or other person for whose account the transaction is executed;

(b) personal transactions in UCITS or units in collective undertakings that are subject to supervision under the law of a Member State which requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transactions are effected are not involved in the management of that undertaking.

4. For the purposes of paragraphs 1, 2 and 3 of this Article, 'personal transaction' shall have the same meaning as in Article 11 of Directive 2006/73/EC.

Article 14

Recording of portfolio transactions

1. Member States shall require management companies to ensure, for each portfolio transaction relating to UCITS, that a record of information which is sufficient to reconstruct the details of the order and the executed transaction is produced without delay.

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

(a) the name or other designation of the UCITS and of the person acting on account of the UCITS;

(b) the details necessary to identify the instrument in question;

(c) the quantity;

(d) the type of the order or transaction;

(e) the price;

(f) for orders, the date and exact time of the transmission of the order and name or other designation of the person to whom the order was transmitted, or for transactions, the date and exact time of the decision to deal and execution of the transaction;

(g) the name of the person transmitting the order or executing the transaction;

(h) where applicable, the reasons for the revocation of an order;

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

For the purposes of point (i) of the first subparagraph, an 'execution venue' shall mean a regulated market as referred to under Article 4(1)(14) of Directive 2004/39/EC, a multilateral trading facility as referred to in Article 4(1)(15) of that Directive, a systematic internaliser as referred to in Article 4(1)(7) of that Directive, or a market maker or other liquidity provider or an entity that performs a similar function in a third country to the functions performed by any of the foregoing.

Article 15

Recording of subscription and redemption orders

1. Member States shall require management companies to take all reasonable steps to ensure that the received UCITS subscription and redemption orders are centralised and recorded immediately after receipt of any such order.

2. That record shall include information on the following:

(a) the relevant UCITS;

(b) the person giving or transmitting the order;

(c) the person receiving the order;

(d) the date and time of the order;

(e) the terms and means of payment;

(f) the type of the order;

(g) the date of execution of the order;

(h) the number of units subscribed or redeemed;

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

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

(k) the gross value of the order including charges for subscription or net amount after charges for redemption.

Article 16

Recordkeeping requirements

1. Member States shall require management companies to ensure the retention of the records referred to in Articles 14 and 15 for a period of at least 5 years.

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

2. Following the termination of the authorisation of a management company, Member States or competent authorities may require the management company to retain records referred to in paragraph 1 for the outstanding term of the 5-year period.

Where the management company transfers its responsibilities in relation to the UCITS to another management company, Member States or competent authorities may require that arrangements are made that such records for the past 5 years are accessible to that company.

3. The records shall be retained in a medium that allows the storage of information in a way accessible for future reference by the competent authority, and in such a form and manner that the following conditions are met:

(a) the competent authority must be able to access them readily and to reconstitute each key stage of the processing of each portfolio transaction;

(b) it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;

(c) it must not be possible for the records to be otherwise manipulated or altered.

CHAPTER III

CONFLICT OF INTERESTS

(Article 12(1)(b) and Article 14(1)(d) and (2)(c) of Directive 2009/65/EC)

Article 17

Criteria for the identification of conflicts of interest

1. Member States shall ensure that, for the purposes of identifying the types of conflict of interest that arise in the course of providing services and activities and whose existence may damage the interests of a UCITS, management companies take into account, by way of minimum criteria, the question of whether the management company or a relevant person, or a person directly or indirectly linked by way of control to the management company, is in any of the following situations, whether as a result of providing collective portfolio management activities or otherwise:

(a) the management company or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the UCITS;

(b) the management company or that person has an interest in the outcome of a service or an activity provided to the UCITS or another client or of a transaction carried out on behalf of the UCITS or another client, which is distinct from the UCITS interest in that outcome;

(c) the management company or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the UCITS;

(d) the management company or that person carries on the same activities for the UCITS and for another client or clients which are not UCITS;

(e) the management company or that person receives or will receive from a person other than the UCITS an inducement in relation to collective portfolio management activities provided to the UCITS, in the form of monies, goods or services, other than the standard commission or fee for that service.

2. Member States shall require management companies, when identifying the types of conflict of interests, to take into account:

(a) the interests of the management company, including those deriving from its belonging to a group or from the performance of services and activities, the interests of the clients and the duty of the management company towards the UCITS;

(b) the interests of two or more managed UCITS.

Article 18

Conflicts of interest policy

1. Member States shall require management companies to establish, implement and maintain an effective conflicts of interest policy. That policy shall be set out in writing and shall be appropriate to the size and organisation of the management company and the nature, scale and complexity of its business.

Where the management company is a member of a group, the policy shall also take into account any circumstances of which the company is or should be aware which may give rise to a conflict of interest resulting from the structure and business activities of other members of the group.

2. The conflicts of interest policy established in accordance with paragraph 1 shall include the following:

(a) the identification of, with reference to the collective portfolio management activities carried out by or on behalf of the management company, the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of the UCITS or one or more other clients;

(b) procedures to be followed and measures to be adopted in order to manage such conflicts.

Article 19

Independence in conflicts management

1. Member States shall ensure that the procedures and measures provided for in Article 18(2)(b) are designed to ensure that relevant persons engaged in different business activities involving a conflict of interest carry on those activities at a level of independence appropriate to the size and activities of the management company and of the group to which it belongs and to the materiality of the risk of damage to the interests of clients.

2. The procedures to be followed and measures to be adopted in accordance with Article 18(2)(b) shall include the following where necessary and appropriate for the management company to ensure the requisite degree of independence:

(a) effective procedures to prevent or control the exchange of information between relevant persons engaged in collective portfolio management activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;

(b) the separate supervision of relevant persons whose principal functions involve carrying out collective portfolio management activities on behalf of, or providing services to, clients or to investors whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the management company;

(c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;

(d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out collective portfolio management activities;

(e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate collective portfolio management activities where such involvement may impair the proper management of conflicts of interest.

Where the adoption or the practice of one or more of those measures and procedures does not ensure the requisite degree of independence, Member States shall require management companies to adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.

Article 20

Management of activities giving rise to detrimental conflict of interest

1. Member States shall require management companies to keep and regularly update a record of the types of collective portfolio management activities undertaken by or on behalf of the management company in which a conflict of interest entailing a material risk of damage to the interests of one or more UCITS or other clients has arisen or, in the case of an ongoing collective portfolio management activity, may arise.

2. Member States shall require that, where the organisational or administrative arrangements made by the management company for the management of conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of UCITS or of its unit-holders will be prevented, the senior management or other competent internal body of the management company is promptly informed in order for them to take any necessary decision to ensure that in any case the management company acts in the best interests of the UCITS and of its unit-holders.

3. The management company shall report situations referred to in paragraph 2 to investors by any appropriate durable medium and give reasons for its decision.

Article 21

Strategies for the exercise of voting rights

1. Member States shall require management companies to develop adequate and effective strategies for determining when and how voting rights attached to instruments held in the managed portfolios are to be exercised, to the exclusive benefit of the UCITS concerned.

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

(a) monitoring relevant corporate events;

(b) ensuring that the exercise of voting rights is in accordance with the investment objectives and policy of the relevant UCITS;

(c) preventing or managing any conflicts of interest arising from the exercise of voting rights.

3. A summary description of the strategies referred to in paragraph 1 shall be made available to investors.

Details of the actions taken on the basis of those strategies shall be made available to the unit-holders free of charge and on their request.

CHAPTER IV

RULES OF CONDUCT

(Article 14(1)(a), (b) and (2)(a), (b) of Directive 2009/65/EC)

SECTION 1

General principles

Article 22

Duty to act in the best interests of UCITS and their unit-holders

1. Member States shall require management companies to ensure that unit-holders of managed UCITS are treated fairly.

Management companies shall refrain from placing the interests of any group of unit-holders above the interests of any other group of unit-holders.

2. Member States shall require management companies to apply appropriate policies and procedures for preventing malpractices that might reasonably be expected to affect the stability and integrity of the market.

3. Without prejudice to requirements under national law, Member States shall require management companies to ensure that fair, correct and transparent pricing models and valuation systems are used for the UCITS they manage, in order to comply with the duty to act in the best interests of the unit-holders. Management companies must be able to demonstrate that the UCITS portfolios have been accurately valued.

4. Member States shall require management companies to act in such a way as to prevent undue costs being charged to the UCITS and its unit-holders.

Article 23

Due diligence requirements

1. Member States shall require management companies to ensure a high level of diligence in the selection and ongoing monitoring of investments, in the best interests of UCITS and the integrity of the market.

2. Member States shall require management companies to ensure they have adequate knowledge and understanding of the assets in which the UCITS are invested.

3. Member States shall require management companies to establish written policies and procedures on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of the UCITS are carried out in compliance with the objectives, investment strategy and risk limits of the UCITS.

4. Member States shall require management companies when implementing their risk management policy, and where it is appropriate after taking into account the nature of a foreseen investment, to formulate forecasts and perform analyses concerning the investment's contribution to the UCITS portfolio composition, liquidity and risk and reward profile before carrying out the investment. The analyses must only be carried out on the basis of reliable and up-to-date information, both in quantitative and qualitative terms.

Management companies shall exercise due skill, care and diligence when entering into, managing or terminating any arrangements with third parties in relation to the performance of risk management activities. Before entering into such arrangements, management companies shall take the necessary steps in order to verify that the third party has the ability and capacity to perform the risk management activities reliably, professionally and effectively. The management company shall establish methods for the on-going assessment of the standard of performance of the third party.

SECTION 2

Handling of subscription and redemption orders

Article 24

Reporting obligations in respect of execution of subscription and redemption orders

1. Member States shall ensure that where management companies have carried out a subscription or redemption order from a unit-holder, they must notify the unit-holder, by means of a durable medium, confirming execution of the order as soon as possible, and no later than the first business day following execution or, where the confirmation is received by the management company from a third party, no later than the first business day following receipt of the confirmation from the third party.

However, the first subparagraph shall not apply where the notice would contain the same information as a confirmation that is to be promptly dispatched to the unit-holder by another person.

2. The notice referred to in paragraph 1 shall, where applicable, include the following information:

(a) the management company identification;

(b) the name or other designation of the unit-holder;

(c) the date and time of receipt of the order and method of payment;

(d) the date of execution;

(e) the UCITS identification;

(f) the nature of the order (subscription or redemption);

(g) the number of units involved;

(h) the unit value at which the units were subscribed or redeemed;

(i) the reference value date;

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

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

3. Where orders for a unit-holder which are executed periodically, management companies shall either take the action specified in paragraph 1 or provide the unit-holder, at least once every 6 months, with the information listed in paragraph 2 in respect of those transactions.

4. Management companies shall supply the unit-holder, upon request, with information about the status of his order.

SECTION 3

Best execution

Article 25

Execution of decisions to deal on behalf of the managed UCITS

1. Member States shall require management companies to act in the best interests of the UCITS they manage when executing decisions to deal on behalf of the managed UCITS in the context of the management of their portfolios.

2. For the purposes of paragraph 1, Member States shall ensure that management companies take all reasonable steps to obtain the best possible result for the UCITS, taking into account price, costs, speed, likelihood of execution and settlement, order size and nature, or any other consideration relevant to the execution of the order. The relative importance of such factors shall be determined by reference to the following criteria:

(a) the objectives, investment policy and risks specific to the UCITS, as indicated in the prospectus or as the case may be in the fund rules or articles of association of the UCITS;

(b) the characteristics of the order;

(c) the characteristics of the financial instruments that are the subject of that order;

(d) the characteristics of the execution venues to which that order can be directed.

3. Member States shall require management companies to establish and implement effective arrangements for complying with the obligation referred to in paragraph 2. In particular, management companies shall establish and implement a policy to allow them to obtain, for UCITS orders, the best possible result in accordance with paragraph 2.

Management companies shall obtain the prior consent of the investment company on the execution policy. The management company shall make available appropriate information to unit-holders on the policy established in accordance with this Article and on any material changes to their policy.

4. Management companies shall monitor on a regular basis the effectiveness of their arrangements and policy for the execution of orders in order to identify and, where appropriate, correct any deficiencies.

In addition, management companies shall review the execution policy on an annual basis. A review shall also be carried out whenever a material change occurs that affects the management company's ability to continue to obtain the best possible result for the managed UCITS.

5. Management companies shall be able to demonstrate that they have executed orders on behalf of the UCITS in accordance with the management company's execution policy.

Article 26

Placing orders to deal on behalf of UCITS with other entities for execution

1. Member States shall require management companies to act in the best interests of the UCITS they manage when placing orders to deal on behalf of the managed UCITS with other entities for execution, in the context of the management of their portfolios.

2. Member States shall ensure that management companies take all reasonable steps to obtain the best possible result for the UCITS taking into account price, costs, speed, likelihood of execution and settlement, size, nature or any other consideration relevant to the execution of the order. The relative importance of such factors shall be determined by reference to Article 25(2).

For those purposes, management companies shall establish and implement a policy to enable them to comply with the obligation referred to in the first subparagraph. The policy shall identify, in respect of each class of instruments, the entities with which the orders may be placed. The management company shall only enter into arrangements for execution where such arrangements are consistent with obligations laid down in this Article. Management companies shall make available to unit-holders appropriate information on the policy established in accordance with this paragraph and on any material changes to this policy.

3. Management companies shall monitor on a regular basis the effectiveness of the policy established in accordance with paragraph 2 and, in particular, the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies.

In addition, management companies shall review the policy on an annual basis. Such a review shall also be carried out whenever a material change occurs that affects the management company's ability to continue to obtain the best possible result for the managed UCITS.

4. Management companies shall be able to demonstrate that they have placed orders on behalf of the UCITS in accordance with the policy established in accordance with paragraph 2.

SECTION 4

Handling of orders

Article 27

General principles

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

The procedures and arrangements implemented by management companies shall satisfy the following conditions:

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

(b) execute otherwise comparable UCITS orders sequentially and promptly unless the characteristics of the order or prevailing market conditions make this impracticable, or the interests of the UCITS require otherwise.

Financial instruments or sums of money, received in settlement of the executed orders shall be promptly and correctly delivered to the account of the appropriate UCITS.

2. A management company shall not misuse information relating to pending UCITS orders, and shall take all reasonable steps to prevent the misuse of such information by any of its relevant persons.

Article 28

Aggregation and allocation of trading orders

1. Member States shall not permit management companies to carry out a UCITS order in aggregate with an order of another UCITS or another client or with an order on their own account, unless the following conditions are met:

(a) it must be unlikely that the aggregation of orders will work overall to the disadvantage of any UCITS or clients whose order is to be aggregated;

(b) an order allocation policy must be established and implemented, providing in sufficiently precise terms for the fair allocation of aggregated orders, including how the volume and price of orders determines allocations and the treatment of partial executions.

2. Member States shall ensure that where a management company aggregates a UCITS order with one or more orders of other UCITS or clients and the aggregated order is partially executed, it allocates the related trades in accordance with its order allocation policy.

3. Member States shall ensure that management companies which have aggregated transactions for own account with one or more UCITS or other clients' orders do not allocate the related trades in a way that is detrimental to the UCITS or another client.

4. Member States shall require that, where a management company aggregates an order of a UCITS or another client with a transaction for own account and the aggregated order is partially executed, it allocates the related trades to the UCITS or other client in priority over those for own account.

However, if the management company is able to demonstrate to the UCITS or its other client on reasonable grounds that it would not have been able to carry out the order on such advantageous terms without aggregation, or at all, it may allocate the transaction for own account proportionally, in accordance with the policy as referred to in paragraph 1(b).

SECTION 5

Inducements

Article 29

Safeguarding the best interests of UCITS

1. Member States shall ensure that management companies are not regarded as acting honestly, fairly and professionally in accordance with the best interests of the UCITS if, in relation to the activities of investment management and administration to the UCITS, they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit, other than the following:

(a) a fee, commission or non-monetary benefit paid or provided to or by the UCITS or a person on behalf of the UCITS;

(b) a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, where the following conditions are satisfied:

(i) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the UCITS in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant service;

(ii) the payment of the fee or commission, or the provision of the non-monetary benefit must be designed to enhance the quality of the relevant service and not impair compliance with the management company's duty to act in the best interests of the UCITS;

(c) proper fees which enable or are necessary for the provision of the relevant service, including custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the management company's duties to act honestly, fairly and professionally in accordance with the best interests of the UCITS.

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

CHAPTER V

PARTICULARS OF THE STANDARD AGREEMENT BETWEEN A DEPOSITARY AND A MANAGEMENT COMPANY

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

Article 30

Elements related to the procedures to be followed by the parties to the agreement

Member States shall require the depositary and the management company, referred to in this Chapter as the 'parties to the agreement', to include in the written agreement referred to in either Articles 23(5) or Article 33(5) of Directive 2009/65/EC at least the following particulars related to the services provided by and procedures to be followed by the parties to the agreement:

(a) a description of the procedures, including those related to the safe-keeping, to be adopted for each type of asset of the UCITS entrusted to the depositary;

(b) a description of the procedures to be followed where the management company envisages a modification of the fund rules or prospectus of the UCITS, and identifying when the depositary should be informed, or where a prior agreement from the depositary is needed to proceed with the modification;

(c) a description of the means and procedures by which the depositary will transmit to the management company all relevant information that the management company needs to perform its duties including a description of the means and procedures related to the exercise of any rights attached to financial instruments, and the means and procedures applied in order to allow the management company and the UCITS to have timely and accurate access to information relating to the accounts of the UCITS;

(d) a description of the means and procedures by which the depositary will have access to all relevant information it needs to perform its duties;

(e) a description of the procedures by which the depositary has the ability to enquire into the conduct of the management company and to assess the quality of information transmitted, including by way of on-site visits;

(f) a description of the procedures by which the management company can review the performance of the depositary in respect of the depositary's contractual obligations.

Article 31

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

1. Member States shall require parties to the agreement referred to in either Article 23(5) or Article 33(5) of Directive 2009/65/EC to include at least the following elements related to the exchange of information and obligations on confidentiality and money laundering in that agreement:

(a) a list of all the information that needs to be exchanged between the UCITS, its management company and the depositary related to the subscription, redemption, issue, cancellation and repurchase of units of the UCITS;

(b) the confidentiality obligations applicable to the parties to the agreement;

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

2. The obligations referred to in paragraph 1(b) shall be drawn up so as not to impair the ability of either the competent authorities of a management company's home Member State or the competent authorities of the UCITS home Member State in gaining access to relevant documents and information.

Article 32

Elements related to the appointment of third parties

Where the depositary or the management company envisage appointing third parties to carry out their respective duties, Member States shall require both parties to the agreement referred to either in Article 23(5) or Article 33(5) of Directive 2009/65/EC to include at least the following particulars in that agreement:

(a) an undertaking by both parties to the agreement to provide details, on a regular basis, of any third parties appointed by the depositary or the management company to carry out their respective duties;

(b) an undertaking that, upon request by one of the parties, the other party will provide information on the criteria used for selecting the third party and the steps taken to monitor the activities carried out by the selected third party;

(c) a statement that a depositary's liability as referred to in Article 24 or Article 34 of Directive 2009/65/EC shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safe-keeping.

Article 33

Elements related to potential amendments and the termination of the agreement

Member States shall require the parties to the agreement referred to in either Article 23(5) or Article 33(5) of Directive 2009/65/EC to include at least the following particulars related to amendments and the termination of the agreement in that agreement:

(a) the period of validity of the agreement;

(b) the conditions under which the agreement may be amended or terminated;

(c) the conditions which are necessary to facilitate transition to another depositary and, in case of such transition the procedure by which the depositary shall send all relevant information to the other depositary.

Article 34

Applicable law

Member States shall require the parties to the agreement referred to either in Articles 23(5) or Article 33(5) of Directive 2009/65/EC to specify that the law of the UCITS' home Member State applies to that agreement.

Article 35

Electronic transmission of information

In cases where the parties to the agreement referred to in either Article 23(5) or Article 33(5) of Directive 2009/65/EC agree to the use of electronic transmission for 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 36

Scope of the agreement

Member States may allow that the agreement referred to in either Article 23(5) or Article 33(5) of Directive 2009/65/EC cover more than one UCITS managed by the management company. In such case, the agreement shall list the UCITS covered.

Article 37

Service level agreement

Member States shall allow parties to the agreement to either include details of means and procedures referred to in Article 30(c) and (d) in the agreement referred to in either Article 23(5) or Article 33(5) of Directive 2009/65/EC or in a separate written agreement.

CHAPTER VI

RISK MANAGEMENT

(Article 51(1) of Directive 2009/65/EC)

SECTION 1

Risk management policy and risk measurement

Article 38

Risk management policy

1. Member States shall require management companies to establish, implement and maintain an adequate and documented risk management policy which identifies the risks the UCITS they manage are or might be exposed to.

The risk management policy shall comprise such procedures as are necessary to enable the management company to assess for each UCITS it manages the exposure of that UCITS to market, liquidity and counterparty risks, and the exposure of the UCITS to all other risks, including operational risks, which may be material for each UCITS it manages.

Member States shall require management companies to address at least the following elements in the risk management policy:

(a) the techniques, tools and arrangements that enable them to comply with the obligations set out in Articles 40 and 41;

(b) the allocation of responsibilities within the management company pertaining to risk management.

2. Member States shall require management companies to ensure that the risk management policy referred to in paragraph 1 states the terms, contents and frequency of reporting of the risk management function referred to in Article 12 to the board of directors and to senior management and, where appropriate, to the supervisory function.

3. For the purposes of paragraphs 1 and 2, Member States shall ensure that management companies take into account the nature, scale and complexity of their business and of the UCITS they manage.

Article 39

Assessment, monitoring and review of risk management policy

1. Member States shall require management companies to assess, monitor and periodically review:

(a) the adequacy and effectiveness of the risk management policy and of the arrangements, processes and techniques referred to in Articles 40 and 41;

(b) the level of compliance by the management company with the risk management policy and with arrangements, processes and techniques referred to in Articles 40 and 41;

(c) the adequacy and effectiveness of measures taken to address any deficiencies in the performance of the risk management process.

2. Member States shall require management companies to notify to competent authorities of their home Member State any material changes to the risk management process.

3. Members States shall ensure that requirements laid down in paragraph 1 are subject to review by the competent authorities of the management company's home Member State on an on-going basis and accordingly when granting authorisation.

SECTION 2

Risk management processes, Counterparty risk exposure and issuer concentration

Article 40

Measurement and management of risk

1. Member States shall require management companies to adopt adequate and effective arrangements, processes and techniques in order to:

(a) measure and manage at any time the risks which the UCITS they manage are or might be exposed to;

(b) ensure compliance with limits concerning global exposure and counterparty risk, in accordance with Articles 41 and 43.

Those arrangements, processes and techniques shall be proportionate to the nature, scale and complexity of the business of the management companies and of the UCITS they manage and be consistent with the UCITS risk profile.

2. For the purposes of paragraph 1, Member States shall require management companies to take the following actions for each UCITS they manage:

(a) put in place such risk measurement arrangements, processes and techniques as are necessary to ensure that the risks of taken positions and their contribution to the overall risk 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) conduct, where appropriate, periodic back-tests in order to review the validity of risk measurement arrangements which include model-based forecasts and estimates;

(c) conduct, where appropriate, periodic stress tests and scenario analyses to address risks arising from potential changes in market conditions that might adversely impact the UCITS;

(d) establish, implement and maintain a documented system of internal limits concerning the measures used to manage and control the relevant risks for each UCITS taking into account all risks which may be material to the UCITS as referred to in Article 38 and ensuring consistency with the UCITS risk-profile;

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

(f) establish, implement and maintain adequate procedures that, in the event of actual or anticipated breaches to the risk limit system of the UCITS, result in timely remedial actions in the best interests of unit-holders.

3. Member States shall ensure that management companies employ an appropriate liquidity risk management process in order to ensure that each UCITS they manage is able to comply at any time with Article 84(1) of Directive 2009/65/EC.

Where appropriate, management companies shall conduct stress tests which enable assessment of the liquidity risk of the UCITS under exceptional circumstances.

4. Member States shall require management companies to ensure that for each UCITS they manage the liquidity profile of the investments of the UCITS is appropriate to the redemption policy laid down in the fund rules or the instruments of incorporation or the prospectus.

Article 41

Calculation of global exposure

1. Member States shall require management companies to calculate the global exposure of a managed UCITS as referred to in Article 51(3) of Directive 2009/65/EC as either of the following:

(a) the incremental exposure and leverage generated by the managed UCITS through the use of financial derivative instruments including embedded derivatives pursuant to the fourth subparagraph of Article 51(3) of Directive 2009/65/EC, which may not exceed the total of the UCITS net asset value;

(b) the market risk of the UCITS portfolio.

2. Member States shall require management companies to calculate the UCITS global exposure on at least a daily basis.

3. Member States may allow management companies to calculate global exposure by using the commitment approach, the value at risk approach or other advanced risk measurement methodologies as may be appropriate. For the purposes of this provision, 'value at risk' shall mean a measure of the maximum expected loss at a given confidence level over a specific time period.

Member States shall require management companies to ensure that the method selected to measure global exposure is appropriate, taking into account the investment strategy pursued by the UCITS and the types and complexities of the financial derivative instruments used, and the proportion of the UCITS portfolio which comprises financial derivative instruments.

4. Where a UCITS in accordance with Article 51(2) of Directive 2009/65/EC employs techniques and instruments including repurchase agreements or securities lending transactions in order to generate additional leverage or exposure to market risk, Member States shall require management companies to take these transactions into consideration when calculating global exposure.

Article 42

Commitment approach

1. Where the commitment approach is used for the calculation of global exposure, Member States shall require management companies to apply this approach to all financial derivative instrument positions including embedded derivatives as referred to in the fourth subparagraph of Article 51(3) of Directive 2009/65/EC, whether used as part of the UCITS general investment policy, for purposes of risk reduction or for the purposes of efficient portfolio management as referred to in Article 51(2) of that Directive.

2. Where the commitment approach is used for the calculation of global exposure, Member States shall require management companies to convert each financial derivative instrument position into the market value of an equivalent position in the underlying asset of that derivative (standard commitment approach).

Member States may allow management companies to apply other calculation methods which are equivalent to the standard commitment approach.

3. Member States may allow a management company to take account of netting and hedging arrangements when calculating global exposure, where these arrangements do not disregard obvious and material risks and result in a clear reduction in risk exposure.

4. Where the use of financial derivative instruments does not generate incremental exposure for the UCITS, the underlying exposure need not be included in the commitment calculation.

5. Where the commitment approach is used, temporary borrowing arrangements entered into on behalf of the UCITS in accordance with Article 83 of Directive 2009/65/EC need not be included in the global exposure calculation.

Article 43

Counterparty risk and issuer concentration

1. Member States shall require management companies to ensure that counterparty risk arising from an over-the-counter (OTC) financial derivative instrument is subject to the limits set out in Article 52 of Directive 2009/65/EC.

2. When calculating the UCITS exposure to a counterparty in accordance with the limits as referred to in Article 52(1) of Directive 2009/65/EC, management companies shall use the positive mark-to-market value of the OTC derivative contract with that counterparty.

Management companies may net the derivative positions of a UCITS with the same counterparty, provided that they are able to legally enforce netting agreements with the counterparty on behalf of the UCITS. Netting shall only be permissible with respect to OTC derivative instruments with the same counterparty and not in relation to any other exposures the UCITS may have with that same counterparty.

3. Member States may allow management companies to reduce the UCITS exposure to a counterparty of an OTC derivative transaction through the receipt of collateral. Collateral received shall be sufficiently liquid so that it can be sold quickly at a price that is close to its pre-sale valuation.

4. Member States shall require management companies to take collateral into account in calculating exposure to counterparty risk as referred to in Article 52(1) of Directive 2009/65/EC when the management company passes collateral to OTC counterparty on behalf of the UCITS. Collateral passed may be taken into account on a net basis only if the management company is able to legally enforce netting arrangements with this counterparty on behalf of the UCITS.

5. Member States shall require management companies to calculate issuer concentration limits as referred to in Article 52 of Directive 2009/65/EC on the basis of the underlying exposure created through the use of financial derivative instruments pursuant to the commitment approach.

6. With respect to the exposure arising from OTC derivatives transactions as referred to in Article 52(2) of Directive 2009/65/EC, Member States shall require management companies to include in the calculation any exposure to OTC derivative counterparty risk.

SECTION 3

Procedures for the valuation of the OTC derivatives

Article 44

Procedures for the assessment of the value of OTC derivatives

1. Member States shall require management companies to verify that UCITS exposures to OTC derivatives are assigned fair values that do not rely only on market quotations by the counterparties of the OTC transactions and which fulfil the criteria set out in Article 8(4) of Directive 2007/16/EC.

2. For the purposes of paragraph 1, management companies shall establish, implement and maintain arrangements and procedures which ensure appropriate, transparent and fair valuation of UCITS exposures to OTC derivatives.

Member States shall require management companies to ensure that the fair value of OTC derivatives is subject to adequate, accurate and independent assessment.

The valuation arrangements and procedures shall be adequate and proportionate to the nature and complexity of the OTC derivatives concerned.

Management companies shall comply with the requirements set out in Article 5(2) and in the second subparagraph of Article 23(4) when arrangements and procedures concerning the valuation of OTC derivatives involve the performance of certain activities by third parties.

3. For the purposes of paragraphs 1 and 2, the risk management function shall be appointed with specific duties and responsibilities.

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

SECTION 4

Transmission of information on derivative instruments

Article 45

Reports on derivative instruments

1. Member States shall require management companies to deliver to the competent authorities of their home Member State, at least on an annual basis, reports containing information which reflects a true and fair view of the types of derivative instruments used for each managed UCITS, the underlying risks, the quantitative limits and the methods which are chosen to estimate the risks associated with the derivative transactions.

2. Member States shall ensure that the competent authorities of the management company's home Member State review the regularity and completeness of information referred to in paragraph 1 and that they have an opportunity to intervene where appropriate.

CHAPTER VII

FINAL PROVISIONS

Article 46

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 30 June 2011 at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 47

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 48

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 1 July 2010.

For the Commission

The President

José Manuel BARROSO

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