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European Commission Publishes Consultation on Changes to the UCITS Directive

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TO: INTERNATIONAL MEMBERS No. 6-07
INTERNATIONAL OPERATIONS ADVISORY COMMITTEE No. 5-07 RE: EUROPEAN
COMMISSION PUBLISHES CONSULTATION ON CHANGES TO THE UCITS DIRECTIVE

On March 22, 2007, the European Commission's Internal Market and Services Directorate General ("DG Internal Market") published a working document and consultation on the EU single market framework for investment funds to:

- improve the efficiency of the notification procedures for marketing authorized UCITS funds in other member states ("fund passport");
- enable fund managers to manage funds in other jurisdictions ("management company passport");
- facilitate cross-border fund mergers;
- create a more favorable environment for asset pooling and master-feeder structures;
- improve investor disclosure through revisions to the simplified prospectus; and
- enhance supervisory cooperation among regulatory authorities.

The consultation documents discuss proposals in each of the six subject areas, including specific adjustments to the UCITS Directive and consultation questions. Many additional details of these proposals will be developed in later implementing measures. The documents are available at

http://ec.europa.eu/internal_market/securities/ucits/index_en.htm. Comments on the consultation are due by June 15, 2007.

Background

On November 15, 2006, the European Commission published a White Paper describing a number of actions to improve the efficiency of the fund industry in Europe. [\[1\]](#) The purpose of the current consultation is to gather comments from interested persons on the proposed adjustments to the UCITS Directive. A public hearing has been scheduled for April 26, 2007. The European Commission and DG Internal Market will use the information to develop a formal legislative proposal.

Proposed Adjustments to the UCITS Directive

Fund Passport

DG Internal Market is recommending a streamlined notification process for UCITS funds seeking to market in another member state ("MS") that would involve a straightforward regulator-to-regulator filing. Under the modified procedure, a UCITS fund would submit a defined set of documents to its home MS regulator, which would then be responsible for verifying that the information is complete, certifying that the UCITS is duly authorized, and transmitting specified information to relevant host MS counterparts. A UCITS fund would be allowed to begin marketing in a host MS three days after its home MS regulator transmits complete notification documents to the host MS regulator. The host MS regulator would then check "ex post" that marketing is conducted consistent with local rules. The information provided in the notification letter would be harmonized at the EU level in both form and content.

Partial Management Company Passport

DG Internal Market is recommending a partial management company passport to permit a UCITS fund, corporate or contractual, to be managed by a management company in a MS that is different from the MS in which the fund is authorized/based. The proposal would permit cross-border investment management; however, the following administrative functions would still be required to be performed in the fund's domicile: (1) verification of pricing and valuation and (2) maintenance of the unitholder/shareholder register. [\[2\]](#)

Cross-Border Fund Mergers

The proposed regime would require a MS to provide for the possibility of merging two UCITS funds and would apply to both cross-border and domestic mergers. DG Internal Market is recommending that only the MS regulator for a disappearing fund decide whether to approve the merger. This regulatory approval must be given within fifteen days from submission of a complete file.

The proposal identifies specific categories of information about the merger that must be

delivered to unitholders, with more detail to be developed in later rules. Other important aspects of this proposal include: (1) depositaries must approve the common merger terms; (2) costs may not be charged to a merging fund or its unitholders; (3) merging fund unitholders would have a right to redeem free of charge; and (4) national rules would apply to any approval by unitholders, although such rules may not require the approval of more than 75% of the outstanding votes present or represented at the general unitholder meeting. As anticipated in the White Paper, DG Internal Market does not address the tax implications of fund mergers in the current set of recommendations.

Entity Pooling: Master- Feeder

DG Internal Market supports adjustments to allow a feeder fund to invest in a single master. Both the master and feeder funds must be UCITS funds. The feeder fund's regulator would approve the investment into the master fund. A feeder must invest at least 85% of its assets into the master fund. Master funds may not invest in another feeder fund or master fund. Specific information would be required in certain feeder fund documents, the content of which would be further developed in implementing measures.

Simplified Prospectus

DG Internal Market is proposing to abandon the current simplified prospectus and move to a "key investor information" regime. The key investor information envisioned by DG Internal Market would be delivered to investors prior to purchase, although not necessarily in a single document. While DG Internal Market has identified general principles for key investor information, important details on content and format will be developed later, including rules for adapting disclosure to different types of funds, different types of investors (e.g. retail or professional), and funds in different distribution channels (e.g., direct sales, intermediated sales, and wrapped or structured fund products). The goal is to better harmonize content across jurisdictions.

For direct sales, DG Internal Market expects fund managers (or a tied agent) to deliver the key investor information. For indirect sales, the fund manager would make the information available to the intermediaries. Existing intermediary regulation is intended to dictate how the information would be used at the point of sale.

On liability, DG Internal Market has recommended an adjustment providing that no civil liability shall attach as a result of the key investor information unless it is misleading, inaccurate, or inconsistent with the prospectus.

Enhancing Supervisory Cooperation

Adjustments are recommended to (1) ensure equivalence of powers among competent authorities; (2) develop mechanisms for information exchanges; and (3) develop

mechanisms for circumstances in which it is appropriate to permit competent authorities to exercise certain powers or to perform investigations in another MS or request that the other MS regulator act.

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endnotes

[1] Commission of the European Communities, White Paper on Enhancing the Single Market Framework for Investment Funds, COM(2006)686, dated November 15, 2006 (the “White Paper”), available at http://ec.europa.eu/internal_market/securities/docs/ucits/whitepaper/whitepaper_en.pdf. See also [Memorandum](#) to International Members 30-06, International Operations Advisory Committee 34-06 [20590], dated November 16, 2006.

[2] These administrative functions can be performed by the management company, including by a branch or by delegation.

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