L.N. 242 of 2011

INVESTMENT SERVICES ACT (CAP. 370)

Investment Services Act (UCITS Mergers) Regulations, 2011

IN exercise of the powers conferred by article 12 of the Investment Services Act, the Minister of Finance, the Economy and Investment, acting on the advice of the Malta Financial Services Authority, has made the following regulations:-

PRELIMINARY

Citation, commencement and scope.

1. (1) The title of these regulations is the Investment Services Act (UCITS Merger) Regulations, 2011.

(2) These regulations shall come into force on 1st July, 2011.

(3) The objective of these regulations is to transpose Articles 2(1)(q), 2(1)(r), 37 to 48 and 60 (5) of the UCITS Directive as herein defined, and Articles 4, 5, 6, 22, and 23 of the Implementing Directive as herein defined, and they shall be interpreted and applied accordingly.

Interpretation

2. (1) In these regulations, unless the context otherwise requires :

"the Act" means the Investment Services Act; Cap. 370.

"cross border merger" means a merger:

(a) between a Maltese UCITS and a UCITS established in another Member State or EEA State; or

(b) between two UCITS established in other Member States or EEA States into a newly constituted UCITS established in Malta; or

(c) between two UCITS established in Malta into a newly constituted UCITS established in another Member State or EEA State;

"custodian" means an institution entrusted with the duties of a depositary in terms of the UCITS Directive and includes a custodian

licensed in terms of the Act;

"domestic merger" means a merger:

(a) between two or more UCITS established in Malta; or

(b) between two or more UCITS established in Malta where at least one of the UCITS has notified the competent authority that it intends to market its units in another Member State or EEA State pursuant to the Investment Services Act (Marketing of UCITS) Regulations;

"European UCITS" means a UCITS which is established and authorised in accordance with the laws of another Member State or EEA state;

"feeder UCITS" means a UCITS or subfund thereof which has been approved to invest at least eighty-five per cent of its assets in units of another UCITS or subfund thereof in terms of the UCITS Directive;

"Implementing Directive" means 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;

"the Regulation" means Commission Regulation (EU) No.583/2010, specifying the form and contents of key investor information;

"key investor information" shall have the same meaning as is assigned to it in the Investment Services Rules for Retail Collective Investment Schemes;

"management company" means a company authorised by its supervisory authority within the meaning of Article 6 of the UCITS Directive and the regular business of which is the management of UCITS;

"Maltese UCITS" means:

(a) an investment company, a partnership *en commandite* or a limited partnership with its registered office and head office situated in Malta and licensed in terms of the Act;

(b) where the UCITS is constituted as a common fund, a UCITS domiciled in Malta in terms of the Investment Services Act (Contractual Funds) Regulations, and licensed in terms of the Act; S.L. 370.16

(c) where the UCITS is established as a unit trust, a unit trust whose proper law is the law of Malta;

"master UCITS" means a UCITS which:

(a) has, among its unit-holders, at least one feeder UCITS;

(b) is not itself a feeder UCITS; and

(c) does not hold units of a feeder UCITS;

"merger" means an operation by two or more UCITS in accordance with one of the merger techniques provided for in regulation 3, and which may be a cross-border merger or a domestic merger as herein defined;

"UCITS" means undertakings for collective investment in transferable securities which are harmonized in accordance with the UCITS Directive, or a subfund of such undertaking, and includes an open ended investment company or a unit trust to which the UCITS Directive applies;

"UCITS Directive" means Directive 2009/65/EC of the European Parliament and of the Council of the 13th July, 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast);

(2) Words and expressions used in the Act shall, in these regulations, have the same meaning as in the Act.

(3) In addition to the requirements set out in these regulations, the provisions of Title I and Title II of Part VIII of the Companies Act shall apply *mutatis mutandis* to UCITS established as limited liability companies or partnerships *en commandite* or limited partnerships within the meaning of the Companies Act insofar as they are not inconsistent with the provisions of these regulations, and - Cap. 386.

(a) any reference to a "company being acquired" shall be construed as referring to the "merging UCITS";

(b) any reference to "acquiring company" shall be

construed as referring to the "receiving UCITS";

(c) any reference to "shareholders" shall be construed as referring to "unit holders";

(d) in the case of a merger by formation of a new UCITS as described in regulation 3(1)(a):

(i) any reference to "merging companies" shall be construed as referring to the "merging UCITS";

(ii) any reference to "the new company" shall be construed as referring to the "receiving UCITS";

(iii) any reference to "commercial partnerships to be substituted" shall be construed as referring to the "merging UCITS"; and

(iv) any reference to "the new commercial partnership" shall be construed as reference to the "receiving UCITS";

(e) any reference to "commercial partnership being acquired" shall be construed as referring to the "merging UCITS"; and

(f) any reference to the "acquiring commercial partnership" shall be construed as referring to the "receiving UCITS":

Provided that:

Cap. 386. (i) notwithstanding the provisions of Title I of Part VII of the Companies Act, in the case of UCITS established in Malta in the form of a partnership, a merger may only take place between UCITS established as partnerships *en comandite* or limited partnerships;

Cap. 386. (ii) for the purposes of articles 338 (1) and 350 of the Companies Act, the Registrar of Companies shall only register the documents indicated therein after the necessary regulatory approvals for the merger have been obtained from the competent authority in terms of these regulations or from the European regulatory authority, in terms of the UCITS Directive, as the case may be; and

Cap. 368. (iii) where the Maltese UCITS is established as a limited liability company, the provisions of article 344(2)

of the Companies Act shall not apply.

AUTHORISATION OF UCITS MERGERS

Merger techniques.

3. (1) A domestic merger or a cross-border merger where a Maltese UCITS is the merging UCITS may be effected in the following manner:

(a) one or more UCITS or subfunds thereof, the "merging UCITS", on being dissolved without going into liquidation, transfer all of their assets and liabilities to another existing UCITS, or subfunds thereof, the "receiving UCITS", in exchange for the issue to their unit-holders of units of the receiving UCITS and, if applicable, a cash payment not exceeding ten per centum of the net aset value of those units; or

(b) two or more UCITS or subfunds thereof, the "merging UCITS", on being dissolved without going into liquidation, transfer all of their assets and liabilities to a UCITS which they form or a subfund thereof, the "receiving UCITS", in exchange for the issue to their unit-holders of units in the receiving UCITS and, if applicable, a cash payment not exceeding ten per cent of the net asset value of those units.

(2) The competent authority shall recognise a transfer of assets resulting from a cross-border merger in accordance with Article 37(c) of the UCITS Directive.

Authorisation by the competent authority.

4. Where the merging UCITS is a Maltese UCITS, it shall apply to the competent authority to obtain prior written authorization to undergo such merger.

Information to be provided to the competent authority.

5. (1) In seeking the authorisation referred to in regulation 4, the merging UCITS shall provide the following information to the competent authority:

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

(b) an up-to-date version of the prospectus and the key investor information of the receiving UCITS, if this is established in a Member State or EEA State other than Malta;

(c) a statement by each of the custodians of the merging and the receiving UCITS confirming that they have verified that -

(i) the identification of the type of merger and

UCITS involved;

(ii) the planned effective date of the merger; and

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

are in accordance with the requirements of the UCITS Directive and the fund rules or instruments of incorporation of their respective UCITS; and

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

(2) The information referred to in sub-regulation (1) shall be provided in such a manner as to enable both the competent authority and the European regulatory authority of the Member State or EEA State where the receiving UCITS is authorized in terms of the UCITS Directive to read such information in the official language or in one of the official languages of Malta and of the Member State or EEA State where the receiving UCITS is authorized, or in a language approved by the competent authority and by such European regulatory authority.

(3) On receipt of all the information referred to in sub-regulation (1), the competent authority shall immediately transmit copies of this information to the European regulatory authority of the receiving UCITS. The competent authority and the European regulatory authority shall consider the potential impact of the proposed merger on the unit-holders of the merging UCITS and of the receiving UCITS respectively in order to assess whether appropriate information is being provided to unit-holders.

(4) The competent authority may, if it considers it necessary, require, in writing, that the information to unit-holders of the merging UCITS be clarified.

(5) Where the receiving UCITS is a Maltese UCITS, the competent authority may, if it considers it necessary, require in writing, and no later than fifteen working days after receipt from the European regulatory authority of the merging UCITS of the copies of the complete information referred to in sub-regulation (1), that the receiving UCITS modify the information to be provided to its unit-holders. The competent authority shall also send an indication of its dissatisfaction to the European regulatory authority of the merging UCITS.

(6) The competent authority shall, within twenty working days of being notified of the complete information modified in accordance with sub-regulation (5), inform the European regulatory authority of the merging UCITS as to whether it is satisfied with such modified information.

Authorisation by the competent authority.

6. Where a Maltese UCITS is the merging UCITS, the competent authority shall authorize the proposed merger in accordance with regulation 4 if the following conditions are met:

(a) the proposed merger complies with all the requirements of regulations 4 to 10;

(b) the receiving UCITS has been notified to market its units in Malta and in all other Member States or EEA States where the merging UCITS is authorized or has been notified to market its units in accordance with Article 93 of the UCITS Directive; and

(c) the competent authority and the European regulatory authority of the receiving UCITS are satisfied with the proposed information to be provided to unit-holders, or no indication of dissatisfaction has been received from the European regulatory authority of the receiving UCITS.

Request for additional information by the competent authority.

7. (1) If the competent authority considers that the information requested in regulation 5 is not complete or is not submitted in full, it shall request additional information within ten working days of receiving the said information.

(2) The competent authority shall inform the merging UCITS within twenty working days of submission of the complete information requested in regulation 5, whether or not the merger has been authorized.

(3) The competent authority shall also inform the European regulatory authority of the receiving UCITS of its decision to authorize the merger or otherwise.

(4) Where the receiving UCITS is a Maltese UCITS, the competent authority may allow the receiving UCITS to derogate from the applicable investment policies, objectives and restrictions as laid down in the Investment Services Rules transposing the requirements of Articles 52 to 55 of the UCITS Directive for a period of six months following the authorization of the merger.

Draft terms of merger.

8. (1) The common draft terms of merger referred to in regulation 5(1)(a) shall be drawn up by the merging UCITS and the

receiving UCITS and shall set out the following particulars:

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

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

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

(d) the criteria adopted for valuation of the assets and, where applicable, the liabilities on the date for calculating the exchange ratio referred to in regulation 15;

(e) the calculation method of the exchange ratio;

(f) the planned effective date of the merger;

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

(h) in the case of a merger taking place in accordance with the provisions of regulation 3(1)(b), the fund rules or instruments of incorporation of the newly constituted receiving UCITS.

(2) The merging UCITS and the receiving UCITS may decide to include further items in the common draft terms of merger but the competent authority may not request the inclusion of any information other than that indicated in sub-regulation (1).

THIRD PARTY CONTROL, INFORMATION TO UNIT HOLDERS AND OTHER RIGHTS OF UNIT HOLDERS

Obligations of the custodian.

9. The custodian of the merging UCITS and the custodian of the receiving UCITS shall both verify the conformity of the following elements with the requirements of the UCITS Directive and the fund rules or instruments of incorporation of their respective UCITS:

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

(b) the planned effective date of the merger; and

(c) the rules applicable respectively to the transfer of assets and the exchange of units.

Obligations of the custodian or the auditor.

10. (1) Where the merging UCITS is a Maltese UCITS, it shall appoint either its custodian or an independent auditor for the purpose of validating the following:

(a) the criteria adopted for valuation of the assets and, where applicable, the liabilities on the date for calculating the exchange ratio of units of the merging UCITS into units of the receiving UCITS;

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

(c) the calculation method of the exchange ratio as well as the actual exchange ratio determined at the date for calculation of that ratio.

(2) The statutory auditor of the merging UCITS or the statutory auditor of the receiving UCITS shall be considered as an independent auditor for the purposes of sub-regulation (1).

(3) A copy of the reports of the auditors mentioned in sub-regulation (1) or, where applicable, of the custodian, shall be made available on request and free of charge to the unit-holders of both the merging UCITS and the receiving UCITS and to the competent authority and to the relative European regulatory authority, as applicable.

Information to investors.

11. (1) The merging UCITS and the receiving UCITS shall provide appropriate and accurate information on the proposed merger to their respective unit-holders so as to enable their respective unit-holders to make an informed judgment of the impact of the proposed merger on their investment and to exercise their rights under regulations 12 and 13.

(2) The information referred to in sub-regulation (1) shall be provided to the unit-holders of the merging UCITS and of the receiving UCITS only after the proposed merger has been approved by the competent authority in the case where the merging UCITS is a Maltese UCITS, or by the European regulatory authority of the home Member State of the merging UCITS, where the Maltese UCITS is the receiving UCITS and shall include the following information:

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

(b) the possible impact of the proposed merger on unit-holders, including but not limited to any material differences in respect of investment policy and strategy, costs, expected outcome, periodic reporting, possible dilution in performance,

and, where relevant, a prominent warning to investors that their tax treatment may be changed following the merger;

(c) any specific rights unit-holders have in relation to the proposed merger, including but not limited to the right to obtain additional information, the right to obtain a copy of the report of the independent auditor or the custodian on request, and the right to request the repurchase or redemption, or where applicable, the conversion of their units without charge, as specified in regulation 12, and the last date for exercising that right;

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

(e) a copy of the key investor information of the receiving UCITS.

(3) The information to be provided to unit-holders of the merging UCITS and the receiving UCITS in terms of this regulation shall be provided at least thirty days before the last date for requesting repurchase or redemption or, where applicable, conversion without additional charge in accordance with regulation 12.

(4) Where a Maltese UCITS is either a merging or a receiving UCITS and has been notified in another Member State in terms of Article 93 of the UCITS Directive, it shall provide the information referred to in sub-regulation (2) in the official language or in one of the official languages of the Member State in which it has been so notified, or in a language approved by the European regulatory authority of that Member State. The UCITS responsible for providing the information referred to in sub-regulation (2) shall also be responsible for producing the relative translation, and such translation shall faithfully reflect the contents of the original.

(5) 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.

(6) 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.

(7) In the period between the date when the information referred to in sub-regulation (1) is provided to unit-holders and the date on which the merger takes effect, such information 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 UCITS 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.

(8) A Maltese UCITS shall also comply with the requirements on information set out in the Schedule.

Rights of unit-holders.

12. (1) The unit-holders in a merging UCITS and in a receiving UCITS shall both have the right to request, without any charge other than those retained by the UCITS to meet disinvestment costs, the repurchase or redemption of their units or, where possible, to convert them into units in another UCTIS with similar investment policies and managed by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding. That right shall become effective from the moment that the unit-holders of the merging UCITS and those of the receiving UCITS have been informed of the proposed merger in accordance with regulation 11(1) and (2) and shall cease to exist five working days before the date for calculating the exchange ratio.

(2) Without prejudice to subregulation (1) and by way of derogation from the obligation of the UCITS to repurchase or redeem its units at the request of any unit-holder, the competent authority may require or allow the temporary suspension of the subscription, repurchase or redemption of units if such suspension is deemed justified for the protection of the unit-holders.

Approval by unit-holders. Cap. 386.

13. (1) Where a Maltese UCITS is registered as a company under the Companies Act, the approval of unit-holders which is required in order for a merger of that UCITS to take place shall not exceed 75% of the votes actually cast by unit-holders present or represented at the general meeting of the unit-holders.

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(2) The provisions of this regulation shall apply notwithstanding the relevant provisions of the Companies Act and anything contained in the UCITS memorandum or articles of association.

(3) The information on the proposed merger which is to be provided to unit-holders, before they grant their approval thereto in terms of subregulation (1), may contain a recommendation by the management company of the UCITS or the Board of Directors of the UCITS itself as to the course of action to be taken.

COSTS AND ENTRY INTO EFFECT OF MERGER

Costs of merger.

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

Domestic merger or cross-border merger where the receiving UCITS is a Maltese UCITS.

15. (1) In the case of a domestic merger or in the case of a cross border merger where the receiving UCITS is a Maltese UCITS, the following shall apply:

(a) where the UCITS concerned are established as companies, partnerships *en comandite* or limited partnerships:

(i) the merger shall not take effect before the lapse of three months from the last publication of the statement relating to the extraordinary resolution approving the merger required in terms of the Companies Act;

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(ii) the date for calculating the ratio for exchange of units of the merging UCITS into units of the receiving UCITS shall not be later than one working day from date on which the approval is granted to the merger by the competent authority or, in the case of a cross border merger where the receiving UCITS is a Maltese UCITS, by the European regulatory authority of the merging UCITS as the case may be;

(iii) the date for determining the relevant net asset value for cash payments, where applicable, shall not be later than one working day from the date on which the approval is granted to the merger by the competent authority or, in the case of a cross border merger where the receiving UCITS is a Maltese UCITS, by the European regulatory authority of the merging UCITS as the case may be;

(b) where the UCITS concerned are established as contractual funds or unit trusts:

(i) the merger shall come into effect on the date on which the approval is granted to the merger by the competent authority or, in the case of a cross border merger where the receiving UCITS is a Maltese UCITS, by the European regulatory authority of the merging UCITS as the case may be;

(ii) the date for calculating the ratio for exchange of units of the merging UCITS into units of the receiving UCITS shall not be later than one working day from the date on which the approval is granted to the merger by the competent authority or, in the case of a cross border merger where the receiving UCITS is a Maltese UCITS, by the European regulatory authority of the merging UCITS as the case may be;

(iii) the date for determining the relevant net asset value for cash payments, where applicable, shall not be later than one working day from the date on which the approval is granted to the merger by the competent authority or, in the case of a cross border merger where the receiving UCITS is a Maltese UCITS, by the European regulatory authority of the merging UCITS as the case may be.

(2) The competent authority shall ensure that, where applicable, the dates referred to in sub-regulation (1) are set after the approval of the merger by unit-holders of the receiving UCITS or the merging UCITS.

(3) Where the receiving UCITS is a Maltese UCITS, the entry into effect of the merger shall be notified to the competent authority and to the European regulatory authority of the merging UCITS and shall be made public by a notice on the website of the competent authority.

(4) A merger which has taken effect as provided for in sub-regulation (1) shall not be declared null and void.

CONSEQUENCES OF MERGER

Consequences of a merger.

16. (1) A merger effected in accordance with regulation 3(1) shall have the following consequences:

(a) all the assets and liabilities of the merging UCITS shall be transferred to the receiving UCITS or, where applicable, to the custodian of the receiving UCITS;

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

(c) the merging UCITS shall cease to exist on the entry into effect of the merger.

Confirmation that transfer of assets and liabilities is complete.

17. The management company of a Maltese UCITS that is a receiving UCITS shall confirm to the custodian of the said receiving UCITS that transfer of assets and liabilities is complete. Where no management company has been appointed, the said receiving UCITS shall give such confirmation directly to its custodian.

MERGER OF MASTER AND FEEDER UCITS

Mergers of master and feeder UCITS.

18. (1) If a master UCITS merges with another UCITS or is divided into two or more UCITS, the feeder UCITS shall be liquidated, unless, where the feeder UCITS is a Maltese UCITS, the competent authority grants its approval to the feeder UCITS to:

(a) continue to be a feeder UCITS of the master UCITS or another UCITS resulting from the merger or division of the master UCITS;

(b) invest at least eighty-five per cent of its assets in units of another master UCITS not resulting from the merger or the division; or

(c) amend its fund rules or its instruments of incorporation in order to convert into a UCITS which is not a feeder UCITS.

(2) A merger or division of a master UCITS shall not become effective unless the master UCITS has provided all of its unit-holders and the European regulatory authorities of its feeder UCITS, or, where the feeder UCITS is a Maltese UCITS, the competent authority, with the information referred to or comparable with that referred to in regulation 11 up to sixty days prior to the proposed effective date of the merger or division, as the case may be.

(3) Where the feeder UCITS is a Maltese UCITS, unless the competent authority has granted its approval in terms of sub-regulation (1)(a), the master UCITS shall enable the feeder UCITS to repurchase or redeem all units in the master UCITS before the merger or division of the master UCITS becomes effective.

Information to be submitted to the competent authority by feeder UCITS.

19. (1) Where the feeder UCITS is a Maltese UCITS it shall, not later than one month after the date on which such feeder UCITS received the information of the planned merger or division referred to in regulation 18(1), submit to the competent authority 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) its application for approval of the proposed amendments to its fund rules or instrument of incorporation, where applicable; and

(iii) the amendments to its prospectus and its key investor information, where applicable;

(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 per cent 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 investors information; and

(iv) any other document as required in terms of Investment Services Rules;

(c) where the feeder UCITS intends to convert into a UCITS that is not a feeder UCITS:

(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; and

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

(2) Notwithstanding the requirements of this regulation, in cases where the master UCITS provided the information referred to, or comparable with, the information in regulation 11 to a feeder

UCITS which is a Maltese UCITS more than four months prior to the proposed effective date of merger, such feeder UCITS shall submit to the competent authority its application or notification in accordance with sub-regulation (1) not later than three months prior to the proposed effective date of the merger or division of the master UCITS.

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

(4) For the purposes of this regulation, the expression "continues to be a feeder UCITS of the same master UCITS" shall refer 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.

(5) For the purposes of this regulation, 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.

Approval by the competent authority.

20. (1) Where the feeder UCITS is a Maltese UCITS, it shall be notified within fifteen working days following the complete submission of the documents referred to in regulation 19(1)(a) to (c), whether the competent authority has granted the approval required in terms of regulation 18. The feeder UCITS shall inform the master UCITS of such approval upon receipt.

(2) After the feeder UCITS has been notified that the competent authority has granted the necessary approvals pursuant to regulation 19(1)(b), such feeder UCITS shall take the necessary measures to comply with the applicable Investment Services Rules without undue delay.

Right of feeder UCITS to request repurchase and redemption of units.

21. (1) In the cases referred to in paragraphs of regulation 19(1)(b) and (c), where the feeder UCITS is a Maltese UCITS it shall exercise the right to request repurchase and redemption of units in the master UCITS in accordance with the requirements of regulations 12(1) and 18(1), where the competent authority has not granted the necessary approvals required pursuant to regulation 19 by the working day preceding the last day on which such feeder UCITS can request repurchase and redemption of its units in the master UCITS before the merger or division is effected. In addition, the feeder UCITS shall also exercise such 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 in terms of the applicable Investment Services Rules is not affected.

(2) A feeder UCITS shall, prior to exercising the right referred to in sub-regulation (1) hereof, consider available alternative solutions which may help to avoid or reduce transaction costs or other negative impacts for its own unit-holders.

(3) 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:

Provided that, where regulation 19(1)(a) applies, the feeder UCITS may realize any part of the transferred assets for cash at any time.

(4) Where the feeder UCITS is a Maltese UCITS, the competent authority shall grant its approval in terms of regulation 18 on condition that any cash held or received in accordance with sub-regulation (3) may be re-invested only for the purpose of efficient cash management before the date on which such feeder UCITS is to start to invest either in the new master UCITS or in accordance with its new investment objectives and policy.

SCHEDULE

(Regulation 11)

Information to be provided by Maltese UCITS which are in the process of merging.

1. General

1.1 The information to be provided to unit-holders by the Maltese UCITS regarding the proposed merger shall be written in a concise manner and in non-technical language that enables unit-holders to make an informed judgment of the impact of the proposed merger on their investment.

In case of a proposed cross-border merger, the Maltese UCITS 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.

1.2 The information to be provided to unit-holders of a Maltese UCITS shall also include:

(i) details of how any accrued income in the Maltese UCITS is to be treated; and

(ii) an indication of how the report of the independent auditor or the custodian as referred to in regulation 10(3) may be obtained.

2. Additional Information to be provided by the Maltese UCITS when it is the merging UCITS

2.1 Where the Maltese UCITS is the merging UCITS, the information to be provided to its unit-holders 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. The attention of such investors shall be drawn to the key investor information of the receiving UCITS and shall emphasise the desirability of reading such document.

2.2 Where the Maltese UCITS is the merging UCITS, the information to be provided to the unit-holders shall also include:

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

(ii) if the key investor information of the merging UCITS and that of 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;

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

(iv) 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;

(v) 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;

(vi) in the case of self-managed UCITS, details of costs associated with the preparation and completion of the merger to be charged to either the merging UCITS or the receiving UCITS or any of their unit-holders, including details of how those costs are to be allocated;

(vii) an explanation of whether the management company, or where this is not appointed, the investment company of the merging UCITS intends to undertake any rebalancing of the portfolio before the merger takes effect;

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

(ix) the time when those unit-holders not making use of their rights granted pursuant to

regulation 12(1), within the relevant time limit, shall be able to exercise their rights as unit-holders of the receiving UCITS; and

(x) an explanation that in cases where the merger proposal must be approved by the unit-holders in accordance with the applicable laws, 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 regulation 12(1) within the relevant time limit, shall become unit-holders of the receiving UCITS.

2.3 Where the Maltese UCITS is the merging UCITS and the proposed terms of merger include provisions for a cash payment in accordance with the requirements of the UCITS Directive, the information which it provides to unit-holders shall contain details of that proposed payment, including when and how unit-holders of the merging UCITS will receive such cash payment.

3. Additional Information to be provided by the Maltese UCITS when it is the receiving UCITS

3.1 The information to be provided to unit-holders by the Maltese UCITS, when it is the receiving UCITS shall also include an explanation of whether the management company or the investment company of such 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.

3.2 Where the Maltese UCITS is the receiving UCITS, the information which it must provide to its unit-holders shall focus on the operation of the merger and its potential impact on the receiving UCITS.

4. Method of providing the Information to Unit-Holders

4.1 The information which a Maltese UCITS is required to provide to its unit-holders so as to enable them to make an informed judgement of the impact of the proposed merger on their investment shall be provided on paper or in another durable medium.

4.2 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:

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

(ii) 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 medium other than paper.

4.3 For the purposes of this Schedule, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the Maltese UCITS or its management company and the unit-holder is, or is to be, carried on if there is evidence that the unit-holder has regular access to the Internet. The provision by the unit-holder of an email address for the purposes of the carrying on of that business shall be treated as such evidence.

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