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

CHAPTER VI

MERGERS OF UCITS

SECTION 1

Principle, authorisation and approval

Article 37

For the purposes of this Chapter, a UCITS shall include investment compartments thereof.

Article 38

1 Member States shall, subject to the conditions set out in this Chapter and irrespective of the manner in which UCITS are constituted under Article 1(3), allow for cross-border and domestic mergers as defined in Article 2(1)(q) and (r) in accordance with one or more of the merger techniques provided for in Article 2(1)(p).

2 The merger techniques used for cross-border mergers as defined in Article 2(1)(q) must be provided for under the laws of the merging UCITS home Member State.

The merger techniques used for domestic mergers as defined in Article 2(1)(r) must be provided for under the laws of the Member State, in which the UCITS are established.

Article 39

1 Mergers shall be subject to prior authorisation by the competent authorities of the merging UCITS home Member State.

2 The merging UCITS shall provide the following information to the competent authorities of its home Member State:

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, referred to in Article 78, of the receiving UCITS, if established in another Member State;

c a statement by each of the depositaries of the merging and the receiving UCITS confirming that, in accordance with Article 41, they have verified compliance of the particulars set out in points (a), (f) and (g) of Article 40(1) with the requirements of this Directive and the fund rules or instruments of incorporation of their respective UCITS; and

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

That information shall be provided in such a manner as to enable the competent authorities of both the merging and the receiving UCITS home Member State to read

them in the official language or one of the official languages of that Member State or those Member States, or in a language approved by those competent authorities.

3 Once the file is complete, the competent authorities of the merging UCITS home Member State shall immediately transmit copies of the information referred to in paragraph 2 to the competent authorities of the receiving UCITS home Member State. The competent authorities of the merging and the receiving UCITS home Member State shall, respectively, consider the potential impact of the proposed merger on unit-holders of the merging and the receiving UCITS to assess whether appropriate information is being provided to unit-holders.

If the competent authorities of the merging UCITS home Member State consider it necessary, they may require, in writing, that the information to unit-holders of the merging UCITS be clarified.

If the competent authorities of the receiving UCITS home Member State consider it necessary, they may require, in writing, and no later than 15 working days of receipt of the copies of the complete information referred to in paragraph 2, that the receiving UCITS modify the information to be provided to its unit-holders.

In such a case, the competent authorities of the receiving UCITS home Member State shall send an indication of their dissatisfaction to the competent authorities of the merging UCITS home Member State. They shall inform the competent authorities of the merging UCITS home Member State whether they are satisfied with the modified information to be provided to the unit-holders of the receiving UCITS within 20 working days of being notified thereof.

4 The competent authorities of the merging UCITS home Member State shall authorise the proposed merger if the following conditions are met:

a the proposed merger complies with all of the requirements of Articles 39 to 42;

b the receiving UCITS has been notified, in accordance with Article 93, to market its units in all Member States where the merging UCITS is either authorised or has been notified to market its units in accordance with Article 93; and

c the competent authorities of the merging and the receiving UCITS home Member State are satisfied with the proposed information to be provided to unit-holders, or no indication of dissatisfaction from the competent authorities of the receiving UCITS home Member State has been received under the fourth subparagraph of paragraph 3.

5 If the competent authorities of the merging UCITS home Member State consider that the file is not complete, they shall request additional information within 10 working days of receiving the information referred to in paragraph 2.

The competent authorities of the merging UCITS home Member State shall inform the merging UCITS, within 20 working days of submission of the complete information, in accordance with paragraph 2, whether or not the merger has been authorised.

The competent authorities of the merging UCITS home Member State shall also inform the competent authorities of the receiving UCITS home Member State of their decision.

6 Member States may, in accordance with the second subparagraph of Article 57(1), provide for a derogation from Articles 52 to 55 for receiving UCITS.

Article 40

1 Member States shall require that the merging and the receiving UCITS draw up common draft terms of merger.

The common draft terms of merger shall set out the following particulars:

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

b the background to and rationale for the proposed merger;

c the expected impact of the proposed merger on the unit-holders of both the merging 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 as referred to in Article 47(1);

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 pursuant to point (p)(ii) of Article 2(1) and, where applicable, point (p)(iii) of Article 2(1), the fund rules or instruments of incorporation of the newly constituted receiving UCITS.

The competent authorities shall not require that any additional information is included in the common draft terms of mergers.

2 The merging UCITS and the receiving UCITS may decide to include further items in the common draft terms of merger.