

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 VIII

**MASTER-FEEDER STRUCTURES**

SECTION 1

**Scope and approval**

*Article 58*

1 A feeder UCITS is a UCITS, or an investment compartment thereof, which has been approved to invest, by way of derogation from Article 1(2)(a), Articles 50, 52 and 55, and Article 56(2)(c), at least 85 % of its assets in units of another UCITS or investment compartment thereof (the master UCITS).

2 A feeder UCITS may hold up to 15 % of its assets in one or more of the following:

- a ancillary liquid assets in accordance with the second subparagraph of Article 50(2);
- b financial derivative instruments, which may be used only for hedging purposes, in accordance with Article 50(1)(g) and Article 51(2) and (3);
- c movable and immovable property which is essential for the direct pursuit of the business, if the feeder UCITS is an investment company.

For the purposes of compliance with Article 51(3), the feeder UCITS shall calculate its global exposure related to financial derivative instruments by combining its own direct exposure under point (b) of the first subparagraph with either:

- a the master UCITS' actual exposure to financial derivative instruments in proportion to the feeder UCITS' investment into the master UCITS; or
- b the master UCITS' potential maximum global exposure to financial derivative instruments provided for in the master UCITS' fund rules or instruments of incorporation in proportion to the feeder UCITS investment into the master UCITS.

3 A master UCITS is a UCITS, or an investment compartment thereof, 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.

4 The following derogations for a master UCITS shall apply:

- a if a master UCITS has at least two feeder UCITS as unit-holders, Article 1(2)(a) and Article 3(b) shall not apply, giving the master UCITS the choice whether or not to raise capital from other investors;
- b If a master UCITS does not raise capital from the public in a Member State other than that in which it is established, but only has one or more feeder UCITS in that Member State, Chapter XI and the second subparagraph of Article 108(1) shall not apply.

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### Article 59

1 Member States shall ensure that the investment of a feeder UCITS into a given master UCITS which exceeds the limit applicable under Article 55(1) for investments into other UCITS be subject to prior approval by the competent authorities of the feeder UCITS home Member State.

2 The feeder UCITS shall be informed within 15 working days following the submission of a complete file, whether or not the competent authorities have approved the feeder UCITS' investment into the master UCITS.

3 The competent authorities of the feeder UCITS home Member State shall grant approval if the feeder UCITS, its depositary and its auditor, as well as the master UCITS, comply with all the requirements set out in this Chapter. For such purposes, the feeder UCITS shall provide to the competent authorities of its home Member State the following documents:

- a the fund rules or instruments of incorporation of the feeder UCITS and the master UCITS;
- b the prospectus and the key investor information referred to in Article 78 of the feeder and the master UCITS;
- c the agreement between the feeder and the master UCITS or the internal conduct of business rules referred to in Article 60(1);
- d where applicable, the information to be provided to unit-holders referred to in Article 64(1);
- e if the master UCITS and the feeder UCITS have different depositaries, the information-sharing agreement referred to in Article 61(1) between their respective depositaries; and
- f if the master UCITS and the feeder UCITS have different auditors, the information-sharing agreement referred to in Article 62(1) between their respective auditors.

Where the feeder UCITS is established in a Member State other than the master UCITS home Member State, the feeder UCITS shall also provide an attestation by the competent authorities of the master UCITS home Member State that the master UCITS is a UCITS, or an investment compartment thereof, which fulfils the conditions set out in Article 58(3)(b) and (c). Documents shall be provided by the feeder UCITS in the official language, or one of the official languages, of the feeder UCITS home Member State or in a language approved by its competent authorities.

## SECTION 2

### Common provisions for feeder and master UCITS

#### Article 60

1 Member States shall require that the master UCITS provide the feeder UCITS with all documents and information necessary for the latter to meet the requirements laid down in this Directive. For this purpose, the feeder UCITS shall enter into an agreement with the master UCITS.

The feeder UCITS shall not invest in excess of the limit applicable under Article 55(1) in units of that master UCITS until the agreement referred to in the first subparagraph has become effective. That agreement shall be made available, on request and free of charge, to all unit-holders.

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In the event that both master and feeder UCITS are managed by the same management company, the agreement may be replaced by internal conduct of business rules ensuring compliance with the requirements set out in this paragraph.

2 The master and the feeder UCITS shall take appropriate measures to coordinate the timing of their net asset value calculation and publication in order to avoid market timing in their units, preventing arbitrage opportunities.

3 Without prejudice to Article 84, if a master UCITS temporarily suspends the repurchase, redemption or subscription of its units, whether at its own initiative or at the request of its competent authorities, each of its feeder UCITS is entitled to suspend the repurchase, redemption or subscription of its units notwithstanding the conditions laid down in Article 84(2) within the same period of time as the master UCITS.

4 If a master UCITS is liquidated, the feeder UCITS shall also be liquidated, unless the competent authorities of its home Member State approve:

- a the investment of at least 85 % of the assets of the feeder UCITS in units of another master UCITS; or
- b the amendment of its fund rules or instruments of incorporation in order to enable the feeder UCITS to convert into a UCITS which is not a feeder UCITS.

Without prejudice to specific national provisions regarding compulsory liquidation, the liquidation of a master UCITS shall take place no sooner than three months after the master UCITS has informed all of its unit-holders and the competent authorities of the feeder UCITS home Member State of the binding decision to liquidate.

5 If a master UCITS merges with another UCITS or is divided into two or more UCITS, the feeder UCITS shall be liquidated, unless the competent authorities of the feeder UCITS home Member State grant 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 85 % 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.

No merger or division of a master UCITS shall become effective, unless the master UCITS has provided all of its unit-holders and the competent authorities of its feeder UCITS home Member States with the information referred to, or comparable with that referred to, in Article 43 by 60 days before the proposed effective date.

Unless the competent authorities of the feeder UCITS home Member State has granted approval pursuant to point (a) of the first subparagraph, 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.

[<sup>F16</sup> The Commission may adopt, by means of delegated acts [<sup>F2</sup>in accordance with Article 112a], measures specifying:]

- a the content of the agreement or of the internal conduct of business rules referred to in paragraph 1;
- b which measures referred to in paragraph 2 are deemed appropriate; and
- c the procedures for the required approvals pursuant to paragraphs 4 and 5 in the event of a liquidation, merger or division of a master UCITS.

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[<sup>F3</sup>Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 112(2).]

[<sup>F47</sup> In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of application of the delegated acts adopted by the Commission regarding the agreement, measures and procedures referred to in paragraph 6.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with the Article 15 of Regulation (EU) No 1095/2010.]

#### **Textual Amendments**

- F1** Substituted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F2** Substituted by Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions (Text with EEA relevance).
- F3** Deleted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F4** Inserted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).

### SECTION 3

#### **Depositaries and auditors**

##### *Article 61*

1 Member States shall require that, if the master and the feeder UCITS have different depositaries, those depositaries enter into an information-sharing agreement in order to ensure the fulfilment of the duties of both depositaries.

The feeder UCITS shall not invest in units of the master UCITS until such agreement has become effective.

Where they comply with the requirements laid down in this Chapter, neither the depositary of the master UCITS nor that of the feeder UCITS shall be found to be in

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breach of any rules that restrict the disclosure of information or relate to data protection where such rules are provided for in a contract or in a law, regulation or administrative provision. Such compliance shall not give rise to any liability on the part of such depositary or any person acting on its behalf.

Member States shall require that the feeder UCITS or, when applicable, the management company of the feeder UCITS be in charge of communicating to the depositary of the feeder UCITS any information about the master UCITS which is required for the completion of the duties of the depositary of the feeder UCITS.

2 The depositary of the master UCITS shall immediately inform the competent authorities of the master UCITS home Member State, the feeder UCITS or, where applicable, the management company and the depositary of the feeder UCITS about any irregularities it detects with regard to the master UCITS which are deemed to have a negative impact on the feeder UCITS.

[<sup>F13</sup> The Commission may adopt, by means of delegated acts [<sup>F2</sup>in accordance with Article 112a], measures further specifying the following:

- a the particulars that need to be included in the agreement referred to in paragraph 1; and
- b the types of irregularities referred to in paragraph 2 which are deemed to have a negative impact on the feeder UCITS.]

[<sup>F4</sup> In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of application of the delegated acts adopted by the Commission regarding the agreement, measures and types of irregularities referred to in paragraph 3.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.]

#### Textual Amendments

- F1** Substituted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F2** Substituted by Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions (Text with EEA relevance).
- F4** Inserted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).

#### Article 62

1 Member States shall require that if the master and the feeder UCITS have different auditors, those auditors enter into an information-sharing agreement in order to ensure the

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fulfilment of the duties of both auditors, including the arrangements taken to comply with the requirements of paragraph 2.

The feeder UCITS shall not invest in units of the master UCITS until such agreement has become effective.

2 In its audit report, the auditor of the feeder UCITS shall take into account the audit report of the master UCITS. If the feeder and the master UCITS have different accounting years, the auditor of the master UCITS shall make an ad hoc report on the closing date of the feeder UCITS.

The auditor of the feeder UCITS shall, in particular, report on any irregularities revealed in the audit report of the master UCITS and on their impact on the feeder UCITS.

3 Where they comply with the requirements laid down in this Chapter, neither the auditor of the master UCITS nor that of the feeder UCITS shall be found to be in breach of any rules that restrict the disclosure of information or relate to data protection where such rules are provided for in a contract or in a law, regulation or administrative provision. Such compliance shall not give rise to any liability on the part of such auditor or any person acting on its behalf.

[<sup>F1</sup>4 The Commission may adopt, by means of delegated acts [<sup>F2</sup>in accordance with Article 112a], measures specifying the content of the agreement referred to in the first subparagraph of paragraph 1.]

#### Textual Amendments

- F1** Substituted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F2** Substituted by Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions (Text with EEA relevance).

## SECTION 4

### Compulsory information and marketing communications by the feeder UCITS

#### Article 63

1 Member States shall require that, in addition to the information provided for in Schedule A of Annex I, the prospectus of the feeder UCITS contains the following information:

- a a declaration that the feeder UCITS is a feeder of a particular master UCITS and as such permanently invests 85 % or more of its assets in units of that master UCITS;
- b the investment objective and policy, including the risk profile and whether the performance of the feeder and the master UCITS are identical, or to what extent and for which reasons they differ, including a description of investment made in accordance with Article 58(2);

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- c a brief description of the master UCITS, its organisation, its investment objective and policy, including the risk profile, and an indication of how the prospectus of the master UCITS may be obtained;
- d a summary of the agreement entered into between the feeder UCITS and the master UCITS or of the internal conduct of business rules pursuant to Article 60(1);
- e how the unit-holders may obtain further information on the master UCITS and the agreement entered into between the feeder UCITS and the master UCITS pursuant to Article 60(1);
- f a description of all remuneration or reimbursement of costs payable by the feeder UCITS by virtue of its investment in units of the master UCITS, as well as of the aggregate charges of the feeder UCITS and the master UCITS; and
- g a description of the tax implications of the investment into the master UCITS for the feeder UCITS.

2 In addition to the information provided for in Schedule B of Annex I, the annual report of the feeder UCITS shall include a statement on the aggregate charges of the feeder UCITS and the master UCITS.

The annual and the half-yearly reports of the feeder UCITS shall indicate how the annual and the half-yearly report of the master UCITS can be obtained.

3 In addition to the requirements laid down in Articles 74 and 82, the feeder UCITS shall send the prospectus, the key investor information referred to in Article 78 and any amendment thereto, as well as the annual and half-yearly reports of the master UCITS, to the competent authorities of its home Member State.

4 A feeder UCITS shall disclose in any relevant marketing communications that it permanently invests 85 % or more of its assets in units of such master UCITS.

5 A paper copy of the prospectus, and the annual and half-yearly reports of the master UCITS shall be delivered by the feeder UCITS to investors on request and free of charge.

## SECTION 5

### **Conversion of existing UCITS into feeder UCITS and change of master UCITS**

#### *Article 64*

1 Member States shall require that a feeder UCITS which already pursues activities as a UCITS, including those of a feeder UCITS of a different master UCITS, shall provide the following information to its unit-holders:

- a a statement that the competent authorities of the feeder UCITS home Member State approved the investment of the feeder UCITS in units of such master UCITS;
- b the key investor information referred to in Article 78 concerning the feeder and the master UCITS;
- c the date when the feeder UCITS is to start to invest in the master UCITS or, if it has already invested therein, the date when its investment will exceed the limit applicable under Article 55(1); and
- d a statement that the unit-holders have the right to request within 30 days the repurchase or redemption of their units without any charges other than those retained by the UCITS to cover disinvestment costs; that right shall become effective from the moment the feeder UCITS has provided the information referred to in this paragraph.

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That information shall be provided at least 30 days before the date referred to in point (c) of the first subparagraph.

2 In the event that the feeder UCITS has been notified in accordance with Article 93, the information referred to in paragraph 1 shall be provided in the official language, or one of the official languages, of the feeder UCITS host Member State or in a language approved by its competent authorities. The feeder UCITS shall be responsible for producing the translation. That translation shall faithfully reflect the content of the original.

3 Member States shall ensure that the feeder UCITS does not invest into the units of the given master UCITS in excess of the limit applicable under Article 55(1) before the period of 30 days referred to in the second subparagraph of paragraph 1 has elapsed.

[<sup>F14</sup> The Commission may adopt, by means of delegated acts [<sup>F2</sup> in accordance with Article 112a], measures specifying:

- a the format and the manner in which to provide the information referred to in paragraph 1; or
- b in the event that the feeder UCITS transfers all or parts of its assets to the master UCITS in exchange for units, the procedure for valuing and auditing such a contribution in kind and the role of the depositary of the feeder UCITS in that process.]

[<sup>F45</sup> In order to ensure uniform conditions of application in which the information is provided, ESMA may develop draft implementing technical standards to determine the conditions of application of the delegated acts adopted by the Commission regarding the format and the manner of the information provided and procedure referred to in paragraph 4.

Power is conferred on the Commission to adopt the implementing technical standards referred to in the first subparagraph in accordance with Article 15 of Regulation (EU) No 1095/2010.]

#### Textual Amendments

- F1** Substituted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).
- F2** Substituted by Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions (Text with EEA relevance).
- F4** Inserted by Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) (Text with EEA relevance).



## SECTION 6

### **Obligations and competent authorities**

#### *Article 65*

1 The feeder UCITS shall monitor effectively the activity of the master UCITS. In performing that obligation, the feeder UCITS may rely on information and documents received from the master UCITS or, where applicable, its management company, depositary and auditor, unless there is reason to doubt their accuracy.

2 Where, in connection with an investment in the units of the master UCITS, a distribution fee, commission or other monetary benefit is received by the feeder UCITS, its management company, or any person acting on behalf of either the feeder UCITS or the management company of the feeder UCITS, the fee, commission or other monetary benefit shall be paid into the assets of the feeder UCITS.

#### *Article 66*

1 The master UCITS shall immediately inform the competent authorities of its home Member State of the identity of each feeder UCITS which invests in its units. If the master UCITS and the feeder UCITS are established in different Member States, the competent authorities of the master UCITS home Member State shall immediately inform those of the feeder UCITS home Member State of such investment.

2 The master UCITS shall not charge subscription or redemption fees for the investment of the feeder UCITS into its units or the divestment thereof.

3 The master UCITS shall ensure the timely availability of all information that is required in accordance with this Directive, other Community law, the applicable national law, the fund rules or the instruments of incorporation to the feeder UCITS or, where applicable, its management company, and to the competent authorities, the depositary and the auditor of the feeder UCITS.

#### *Article 67*

1 If the master UCITS and the feeder UCITS are established in the same Member State, the competent authorities shall immediately inform the feeder UCITS of any decision, measure, observation of non-compliance with the conditions of this Chapter or of any information reported pursuant to Article 106(1) with regard to the master UCITS or, where applicable, its management company, depositary or auditor.

2 If the master UCITS and the feeder UCITS are established in different Member States, the competent authorities of the master UCITS home Member State shall immediately communicate any decision, measure, observation of non-compliance with the conditions of this Chapter or information reported pursuant to Article 106(1) with regard to the master UCITS or, where applicable, its management company, depositary or auditor, to the competent authorities of the feeder UCITS home Member State. The latter shall then immediately inform the feeder UCITS.