

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 2

**Third-party control, information of unit-holders and other rights of unit-holders**

*Article 43*

1 Member States shall require merging and receiving UCITS to provide appropriate and accurate information on the proposed merger to their respective unit-holders so as to enable them to make an informed judgement of the impact of the proposal on their investment.

2 That information shall be provided to unit-holders of the merging and of the receiving UCITS only after the competent authorities of the merging UCITS home Member State have authorised the proposed merger under Article 39.

It shall be provided at least 30 days before the last date for requesting repurchase or redemption or, where applicable, conversion without additional charge under Article 45(1).

3 The information to be provided to unit-holders of the merging and of the receiving UCITS, shall include appropriate and accurate information on the proposed merger such as to enable them to take an informed decision on the possible impact thereof on their investment and to exercise their rights under Articles 44 and 45.

It shall include the following:

- 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 depositary on request, and the right to request the repurchase or redemption or, where applicable, the conversion of their units without charge as specified in Article 45(1) 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, referred to in Article 78, of the receiving UCITS.

4 If the merging or the receiving UCITS has been notified in accordance with Article 93, the information referred to in paragraph 3 shall be provided in the official language, or one of the official languages, of the relevant UCITS host Member State, or in a language approved by

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its competent authorities. The UCITS required to provide the information shall be responsible for producing the translation. That translation shall faithfully reflect the content of the original.

[<sup>F15</sup> The Commission may adopt, by means of delegated acts in accordance with Article 112(2), (3) and (4), and subject to the conditions of Articles 112a and 112b, measures specifying the detailed content, format and method by which to provide the information referred to in paragraphs 1 and 3.]

[<sup>F2</sup> . . . . .]

[<sup>F36</sup> In order to ensure uniform conditions of application of this Article, ESMA may develop draft implementing technical standards to determine the conditions of applications of the delegated acts adopted by the Commission regarding the content, format and method by which the information referred to in paragraphs 1 and 3 of this Article is to be provided.

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** 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).
- F3** 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).