

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 41

Member States shall require that the depositaries of the merging and of the receiving UCITS verify the conformity 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.

Article 42

1 The law of the merging UCITS home Member States shall entrust either a depositary or an independent auditor, approved in accordance with Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts⁽¹⁾, to validate the following:

- a 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);
- b where applicable, the cash payment per unit; and
- c the calculation method of the exchange ratio as well as the actual exchange ratio determined at the date for calculating that ratio, as referred to in Article 47(1).

2 The statutory auditors of the merging UCITS or the statutory auditor of the receiving UCITS shall be considered independent auditors for the purposes of paragraph 1.

3 A copy of the reports of the independent auditor, or, where applicable, the depositary 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 their respective competent authorities.

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).

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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 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.

[^{F15} 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.]

[^{F2}]

[^{F36} 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

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- (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).

Article 44

Where the national laws of Member States require approval by the unit-holders of mergers between UCITS, Member States shall ensure that such approval does not require more than 75 % of the votes actually cast by unit-holders present or represented at the general meeting of unit-holders.

The first paragraph shall be without prejudice to any presence quorum provided for under national laws. Member States shall impose neither more stringent presence quorums for cross-border than for domestic mergers nor more stringent presence quorums for UCITS mergers than for mergers of corporate entities.

Article 45

1 The laws of Member States shall provide that unit-holders of both the merging and the receiving UCITS 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 UCITS 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 Article 43 and shall cease to exist five working days before the date for calculating the exchange ratio referred to in Article 47(1).

2 Without prejudice to paragraph 1, for mergers between UCITS and by way of derogation from Article 84(1), Member States may allow the competent authorities to require or to allow the temporary suspension of the subscription, repurchase or redemption of units provided that such suspension is justified for the protection of the unit-holders.

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- (1) [OJ L 157, 9.6.2006, p. 87.](#)