

Financial Services (Collective Investment Schemes)
**FINANCIAL SERVICES (COLLECTIVE INVESTMENT SCHEMES)
(CORPORATE RESTRUCTURING) REGULATIONS 2011**

2005-48

**Subsidiary
2011/192**

Subsidiary Legislation made under s. 53.

**FINANCIAL SERVICES (COLLECTIVE INVESTMENT
SCHEMES) (CORPORATE RESTRUCTURING)
REGULATIONS 2011**

(LN. 2011/192)

Commencement **13.10.2011**

Amending enactments	Relevant current provisions	Commencement date
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EU Legislation/International Agreements involved:

Directive 2009/65/EC

Directive 2010/42/EU

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In exercise of the powers conferred on me by section 53 of the Financial Services (Collective Investment Schemes) Act 2011 and in order to transpose into the law of Gibraltar 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, I have made the following Regulations—

Title and commencement.

1. These Regulations may be cited as the Financial Services (Collective Investment Schemes) (Corporate Restructuring) Regulations 2011 and come into operation on the day of publication.

PART I

PRELIMINARY AND INTERPRETATION

Interpretation.

2. In these Regulations and unless the context otherwise requires—

“CIS Regulations” means the Financial Services (Collective Investment Schemes) Regulations 2011;

“EEA State” is understood as including a reference to Gibraltar;

“rebalancing of the portfolio” means a significant modification of the composition of the portfolio of a UCITS;

“synthetic risk and reward indicators” means synthetic indicators within the meaning of Article 8 of Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website.

(2) Terms or expressions used by not defined in these Regulations that are also used in the CIS Regulations shall have the same meaning in these Regulations as they have in the CIS Regulations.

PART II

UCITS MERGERS

CHAPTER 1**CONTENT OF THE MERGER INFORMATION****General rules regarding the content of information to be provided to unit-holders.**

3.(1) Information to be provided to unit-holders pursuant to regulation 40(1) of the CIS Regulations–

- (a) shall be written in a concise manner and in non-technical language that enables unit-holders to make an informed judgement of the impact of the proposed merger on their investment: and
- (b) in the case of a proposed cross-border merger, the merging UCITS and the receiving UCITS, respectively, shall explain in plain language any terms or procedures relating to the other UCITS which differ from those commonly used in the other EEA State.

(2) The information to be provided to unit-holders of the merging UCITS shall–

- (a) meet the needs of investors who have no prior knowledge of the features of the receiving UCITS or of the manner of its operation;
- (b) draw their attention to the key investor information of the receiving UCITS and emphasise the desirability of reading that document.

(3) The information to be provided to unit-holders of the receiving UCITS pursuant to these Regulations shall focus on the operation of the merger and its potential impact on the receiving UCITS.

Specific rules regarding the content of information to be provided to unit-holders.

4.(1) The information to be provided in accordance with regulation 40(3)(b)(ii) of the CIS Regulations to unit-holders of the merging UCITS shall include–

- (a) details of any differences in the rights of unit-holders of the merging UCITS before and after the proposed merger takes effect;
- (b) where the key investor information of the merging UCITS and 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;
- (c) a comparison of all charges, fees and expenses for both UCITS, based on the amounts disclosed in their respective key investor information;
- (d) where 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;
- (e) where 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;
- (f) in cases where regulation 43 of the CIS Regulations permits costs associated with the preparation and the completion of the merger to be charged to either the merging or the receiving UCITS or any of their unit-holders, details of how those costs are to be allocated;
- (g) an explanation of whether the management or investment company of the merging UCITS intends to undertake any rebalancing of the portfolio before the merger takes effect.

(2) Information to be provided in accordance with regulation 40(3)(b)(ii) of the CIS Regulations to unit-holders of the receiving UCITS shall include an explanation of whether the management or investment company of the 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) Information to be provided in accordance with regulation 43(3)(b)(iii) of the CIS Regulations shall include—

- (a) details of how any accrued income in the respective UCITS is to be treated;

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- (b) an indication of how the report of the independent auditor or the depositary referred to in regulation 39(3) of the CIS Regulations may be obtained.

(4) Where the terms of the proposed merger include provisions for a cash payment in accordance with paragraphs (i) and (ii) of the definition of “merger” in regulation 2(1) of the CIS Regulations, the information to be provided to unit-holders of the merging UCITS shall contain details of that proposed payment, including when and how unit-holders of the merging UCITS will receive the cash payment.

(5) The information to be provided in accordance with regulation 40(3)(b)(iv) of the CIS Regulations shall include–

- (a) where required by law, the procedure by which unit-holders will be asked to approve the merger proposal, and what arrangements will be made to inform them of the outcome;
- (b) the details of any intended suspension of dealing in units to enable the merger to be carried out efficiently;
- (c) when the merger will take effect in accordance with regulation 44(1) of the CIS Regulations.

(6) Where by law, the merger proposal must be approved by unit-holders, the information may contain a recommendation by the respective management company or board of directors of the investment company as to the course of action.

(7) The information to be provided to the unit-holders of the merging UCITS shall include–

- (a) the period during which the unit-holders shall be able to continue making subscriptions and requesting redemptions of units in the merging UCITS;
- (b) the time when those unit-holders not making use of their rights granted pursuant to regulation 42(1) of the CIS Regulations within the relevant time limit, shall be able to exercise their rights as unit-holders of the receiving UCITS;
- (c) an explanation that in cases where the merger proposal must be approved by unit-holders of the merging UCITS and the proposal is approved by the necessary majority, 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 42(1) of the CIS Regulations within the relevant time limit, become unit-holders of the receiving UCITS.

(8) Where a summary of the key points of the merger proposal is provided at the beginning of the information document, it must cross-refer to the parts of the information document where further information is provided.

Key investor information document.

5.(1) 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.

(2) 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.

New unit-holders.

6.(1) The information document and the up-to-date key investor information of the receiving UCITS shall be provided to each purchaser or subscriber of units in either the merging or the receiving UCITS or other person requesting to receive copies of the fund rules or instruments of incorporation, prospectus or key investor information document of either UCITS.

(2) The information to be provided pursuant to sub-regulation (1) shall be provided between the date when the information document pursuant to regulation 40(1) of the CIS Regulations is provided to unit-holders and the date when the merger takes effect.

CHAPTER 2

METHOD OF PROVIDING THE INFORMATION

Method of providing the information to unit-holders.

7.(1) The merging and receiving UCITS shall provide the information pursuant to regulation 40(1) of the CIS Regulations to unit-holders on paper or in another durable medium.

(2) The information referred to in sub-regulation (1) may be provided to unit-holders using a durable medium other than paper subject to the following conditions—

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- (a) the provision of the information is appropriate to the context in which the business between the unit-holder and the merging or receiving UCITS or, where relevant, the respective management company is, or is to be, carried on;
- (b) 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 durable medium other than paper.

(3) For the purposes of sub-regulations (1) and (2), the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the merging and receiving UCITS or their respective management companies and the unit-holder is, or is to be, carried on where there is evidence that the unit-holder has regular access to the Internet.

(4) For the purposes of sub-regulation (3), the provision by the unit-holder of an e-mail address for the purposes of the carrying on of that business shall be treated as evidence that the unit-holder has regular access to the Internet.

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BETWEEN FEEDER UCITS AND MASTER UCITS****SECTION 1****CONTENT OF THE AGREEMENT BETWEEN MASTER UCITS
AND FEEDER UCITS****Access to information.**

8. The agreement between the master UCITS and the feeder UCITS referred to in the regulation 75(1) of the CIS Regulations shall include the following with regard to access to information—

- (a) how and when the master UCITS provides the feeder UCITS with a copy of its fund rules or instruments of incorporation, prospectus and key investor information or any amendment thereof;

- (b) how and when the master UCITS informs the feeder UCITS of a delegation of investment management and risk management functions to third parties in accordance with regulation 10 of the CIS Regulations;
- (c) where applicable, how and when the master UCITS provides the feeder UCITS with internal operational documents, such as its risk management process and its compliance reports;
- (d) what details of breaches by the master UCITS of the law, the fund rules or instruments of incorporation and the agreement between the master UCITS and the feeder UCITS the master UCITS shall notify the feeder UCITS of and the manner and timing thereof;
- (e) where the feeder UCITS uses financial derivative instruments for hedging purposes, how and when the master UCITS will provide the feeder UCITS with information about its actual exposure to financial derivative instruments to enable the feeder UCITS to calculate its own global exposure as envisaged by regulation 73(3)(a) of the CIS Regulations;
- (f) a statement that the master UCITS informs the feeder UCITS of any other information-sharing arrangements entered into with third parties and where applicable, how and when the master UCITS makes those other information-sharing arrangements available to the feeder UCITS.

Basis of investment and divestment by the feeder UCITS.

9. The agreement between a master UCITS and a feeder UCITS referred to in the regulation 75(1) of the CIS Regulations in relation to the basis of investment and divestment by the feeder UCITS shall include the following—

- (a) a statement of which share classes of the master UCITS are available for investment by the feeder UCITS;
- (b) the charges and expenses to be borne by the feeder UCITS, and details of any rebate or retrocession of charges or expenses by the master UCITS;
- (c) where applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the feeder UCITS to the master UCITS.

Standard dealing arrangements.

10. The agreement between the master UCITS and the feeder UCITS referred to in regulation 75(1) of the CIS Regulations in relation to standard dealing arrangements shall include the following—

- (a) coordination of the frequency and timing of the net asset value calculation process and the publication of prices of units;
- (b) coordination of transmission of dealing orders by the feeder UCITS, including, where applicable, the role of transfer agents or any other third party;
- (c) where applicable, any arrangements necessary to take account of the fact that either or both UCITS are listed or traded on a secondary market;
- (d) where necessary, other appropriate measures to ensure compliance with the requirements of regulation 75(4) of the CIS Regulations;
- (e) where the units of the feeder UCITS and the master UCITS are denominated in different currencies, the basis for conversion of dealing orders;
- (f) settlement cycles and payment details for purchases or subscriptions and repurchases or redemptions of units of the master UCITS including, where agreed between the parties, the terms on which the master UCITS may settle redemption requests by a transfer of assets in kind to the feeder UCITS, notably in the cases referred to in regulation 75(6) and (7) of the CIS Regulations;
- (g) procedures to ensure enquiries and complaints from unit-holders are handled appropriately;
- (h) where the fund rules or instruments of incorporation and prospectus of the master UCITS give it certain rights or powers in relation to unit-holders, and the master UCITS chooses to limit or forego the exercise of all or any such rights and powers in relation to the feeder UCITS, a statement of the terms on which it does so.

Events affecting dealing arrangements.

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11. The agreement between a master UCITS and a feeder UCITS referred to in regulation 75(1) of the CIS Regulations in relation to events affecting dealing arrangements shall include the following—

- (a) the manner and timing of a notification by either UCITS of the temporary suspension and the resumption of repurchase, redemption, purchase or subscription of units of that UCITS;
- (b) arrangements for notifying and resolving pricing errors in the master UCITS.

Standard arrangements for the audit report.

12. The agreement between a master UCITS and a feeder UCITS referred to in regulation 75(1) of the CIS Regulations in relation to standard arrangements for the audit report shall include the following—

- (a) where the feeder UCITS and the master UCITS have the same accounting years, the coordination of the production of their periodic reports;
- (b) where the feeder UCITS and the master UCITS have different accounting years—
 - (i) arrangements for the feeder UCITS to obtain any necessary information from the master UCITS to enable it to produce its periodic reports on time; and
 - (ii) which ensure that the auditor of the master UCITS is in a position to produce an ad hoc report on the closing date of the feeder UCITS in accordance with regulation 77(2)(a) of the CIS Regulations.

Changes to standing arrangements.

13. The agreement between a master UCITS and a feeder UCITS referred to in regulation 75(1) of the CIS Regulations in relation to changes to standing arrangements shall include the following—

- (a) the manner and timing of notice to be given by the master UCITS of proposed and effective amendments to its fund rules or instruments of incorporation, prospectus and key investor information document and if these details differ from the standard arrangements for notification of unit-holders laid down in the master UCITS fund rules, instruments of incorporation or prospectus;

- (b) the manner and timing of notice by the master UCITS of a planned or proposed liquidation, merger, or division;
- (c) the manner and timing of notice by either UCITS that it has ceased or will cease to meet the qualifying conditions to be a feeder UCITS or a master UCITS respectively;
- (d) the manner and timing of notice by either UCITS that it intends to replace its management company, its depositary, its auditor or any third party which is mandated to carry out investment management or risk management functions;
- (e) the manner and timing of notice of other changes to standing arrangements that the master UCITS undertakes to provide.

Choice of law.

14.(1) Where a feeder UCITS and a master UCITS are established in Gibraltar, the agreement between the master UCITS and the feeder UCITS referred to in regulation 75(1) of the CIS Regulations shall provide that the law of Gibraltar shall apply to the agreement and that both parties agree to the exclusive jurisdiction of the courts of Gibraltar.

(2) Where a feeder UCITS and a master UCITS are established in different EEA States, the agreement between the master UCITS and the feeder UCITS referred to in regulation 75(1) of the CIS Regulations shall provide that the applicable law shall be either the law of the EEA State in which the feeder UCITS is established or that it shall be that of the EEA State in which the master UCITS is established and that both parties shall agree to the exclusive jurisdiction of the courts of the EEA State whose law they have stipulated to be applicable to the agreement.

SECTION 2**CONTENT OF THE INTERNAL CONDUCT OF BUSINESS RULES****Conflicts of interest.**

15. A management company's internal conduct of business rules referred to in regulation 75(3) of the CIS Regulations shall include appropriate measures to mitigate conflicts of interest that may arise—

- (a) between the feeder UCITS and the master UCITS; or

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- (b) between the feeder UCITS and other unit-holders of the master UCITS,

to the extent that these are not sufficiently addressed by the measures applied by the management company in order to meet the requirements of regulations 9(2)(b) and 11(d) of the CIS Regulations and Part III of the Financial Services (Collective Investment Schemes) (Conduct of Business) Regulations 2011.

Basis of investment and divestment by the feeder UCITS.

16. The management company's internal conduct of business rules referred to in the regulation 75(3) of the CIS Regulations in relation to the basis of investment and divestment by the feeder UCITS shall include the following–

- (a) a statement of which share classes of the master UCITS are available for investment by the feeder UCITS;
- (b) the charges and expenses to be borne by the feeder UCITS, and details of any rebate or retrocession of charges or expenses by the master UCITS;
- (c) where applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the feeder UCITS to the master UCITS.

Standard dealing arrangements.

17. A management company's internal conduct of business rules referred to in the regulation 75(3) of the CIS Regulations relation to standard dealing arrangements shall include the following–

- (a) coordination of the frequency and timing of the net asset value calculation process and the publication of prices of units;
- (b) coordination of transmission of dealing orders by the feeder UCITS, including, if applicable, the role of transfer agents or any other third party;
- (c) where applicable, any arrangements necessary to take account of the fact that either or both UCITS are listed or traded on a secondary market;
- (d) appropriate measures to ensure compliance with the requirements of regulation 75(4) of the CIS Regulations;

- (e) where the feeder UCITS and the master UCITS are denominated in different currencies, the basis for conversion of dealing orders;
- (f) settlement cycles and payment details for purchases and redemptions of units of the master UCITS including, where agreed between the parties, the terms on which the master UCITS may settle redemption requests by a transfer of assets in kind to the feeder UCITS, notably in the cases referred to in regulation 75(6) and (7) of the CIS Regulations;
- (g) where the fund rules or instruments of incorporation and prospectus of the master UCITS give it certain rights or powers in relation to unit-holders, and the master UCITS chooses to limit or forego the exercise of all or any such rights and powers in relation to the feeder UCITS, a statement of the terms on which it does so.

Events affecting dealing arrangements.

18. A management company's internal conduct of business rules referred to in the regulation 75(3) of the CIS Regulations in relation to events affecting dealing arrangements shall include the following—

- (a) the manner and timing of notification by either UCITS of the temporary suspension and the resumption of the repurchase, redemption or subscription of units of UCITS;
- (b) arrangements for notifying and resolving pricing errors in the master UCITS.

Standard arrangements for the audit report.

19. A management company's internal conduct of business rules referred to in the regulation 75(3) of the CIS Regulations in relation to standard arrangements for the audit report shall include the following—

- (a) where the feeder UCITS and the master UCITS have the same accounting years, the coordination of the production of their periodic reports;
- (b) where the feeder UCITS and the master UCITS have different accounting years, arrangements for the feeder UCITS to obtain any necessary information from the master UCITS to enable it to produce its periodic reports on time and which ensure that

the auditor of the master UCITS is in a position to make an ad hoc report on the closing date of the feeder UCITS in accordance with regulation 77(2)(a) of the CIS Regulations.

CHAPTER 2

LIQUIDATION, MERGER OR DIVISION OF THE MASTER UCITS

SECTION 1

PROCEDURES IN THE EVENT OF A LIQUIDATION

Application for approval.

20.(1) No later than two months after the date on which the master UCITS informed it of the binding decision to liquidate, a feeder UCITS shall submit to the Authority the following—

- (a) where the feeder UCITS intends to invest at least 85% of its assets in units of another master UCITS in accordance with regulation 75(6)(a) of the CIS Regulations—
 - (i) its application for approval for that investment;
 - (ii) its application for approval of the proposed amendments to its fund rules or instrument of incorporation;
 - (iii) the amendments to its prospectus and its key investor information in accordance with regulations 89 and 97 of the CIS Regulations respectively;
 - (iv) the other documents required pursuant to regulation 74(3) of the CIS Regulations;
- (b) where the feeder UCITS intends to convert into a UCITS that is not a feeder UCITS in accordance with regulation 75(6)(b) of the CIS Regulations—
 - (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 in accordance with regulations 89 and 97 of the CIS Regulations respectively;

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

(2) Notwithstanding sub-regulation (1), where a master UCITS informed the feeder UCITS of its binding decision to liquidate more than five months before the date at which the liquidation is to start, the feeder UCITS shall submit to the Authority its application or notification in accordance with either sub-regulation (1)(a), (b) or (c) at the latest three months before that date.

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

Approval.

21.(1) A feeder UCITS shall be informed whether the Authority has granted the required approvals within 15 working days following the complete submission of documents referred to in sub-regulation 20(1)(a) or (b) respectively.

(2) On receiving the Authority's approval pursuant to sub-regulation (1), the feeder UCITS shall inform the master UCITS of the fact.

(3) A feeder UCITS shall take the necessary measures to comply with the requirements of regulation 79 of the CIS Regulations as soon as possible after the Authority has granted the necessary approvals pursuant to regulation 20(1)(a) above.

(4) Where the payment of liquidation proceeds of a master UCITS is to be executed before the date on which the feeder UCITS is to start to invest in either a different master UCITS pursuant to regulation 20(1)(a) or in accordance with its new investment objectives and policy pursuant to regulation 20(1)(b), the Authority, where it is the competent authority of the feeder UCITS, shall grant approval subject to the following conditions—

- (a) the feeder UCITS shall receive the proceeds of the liquidation—
- (i) in cash; or
 - (ii) some or all of the proceeds as a transfer of assets in kind where the feeder UCITS so wishes and where the agreement between the feeder UCITS and master UCITS or the internal conduct of business rules and the binding decision to liquidate provide for it;

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- (b) any cash held or received in accordance with this sub-regulation may be re-invested only for the purpose of efficient cash management before the date on which the feeder UCITS is to start to invest either in a different master UCITS or in accordance with its new investment objectives and policy.

(5) Where sub-regulation (4)(a)(ii) applies, the feeder UCITS may realise any part of the assets transferred in kind for cash at any time.

SECTION 2**PROCEDURES IN THE EVENT OF A MERGER OR DIVISION****Application for approval.**

22.(1) No later than one month after the date on which the feeder UCITS received the information of the planned merger or division in accordance with regulation 75(8) of the CIS Regulations, a feeder UCITS shall submit to the 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) where applicable, its application for approval of the proposed amendments to its fund rules or instrument of incorporation;
 - (iii) where applicable, the amendments to its prospectus and its key investor information in accordance with regulations 89 and 97 of the CIS Regulations respectively;
- (b) where a feeder UCITS intends to become a feeder UCITS of another master UCITS as a result of the proposed merger or division of the master UCITS or where the feeder UCITS intends to invest at least 85% 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;

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- (iii) the amendments to its prospectus and its key investor information in accordance with regulations 89 and 97 of the CIS Regulations respectively;
 - (iv) the other documents required pursuant to regulation 74(3) of the CIS Regulations;
 - (c) where the feeder UCITS intends to convert into a UCITS that is not a feeder UCITS in accordance with regulation 75(6)(b) of the CIS Regulations—
 - (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 document in accordance with regulations 89 and 97 of the CIS Regulations respectively;
 - (d) where the feeder UCITS intends to be liquidated, a notification of that intention.
- (2) The following should be taken into account for the purpose of sub-regulation (1)(a) and (b)—
 - (a) the expression "continues to be a feeder UCITS of the same master UCITS" refers to cases where -
 - (i) the master UCITS is the receiving UCITS in a proposed merger;
 - (ii) the master UCITS is to continue materially unchanged as one of the resulting UCITS in a proposed division;
 - (b) the expression "becomes a feeder UCITS of another master UCITS resulting from the merger or division of the master UCITS" refers to cases where—
 - (i) a master UCITS is the merging UCITS and, due to the merger, the feeder UCITS becomes a unit-holder of the receiving UCITS;
 - (ii) a feeder UCITS becomes a unit-holder of a UCITS resulting from a division that is materially different to the master UCITS.

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(3) Notwithstanding sub-regulation (1), where a master UCITS provided the information referred to in, or comparable with, regulation 40 of the CIS Regulations to the feeder UCITS more than four months before the proposed effective date, the feeder UCITS shall submit to the Authority its application or notification in accordance with one of sub-regulation (1)(a) to (d) at the latest three months before the proposed effective date of the merger or division of the master UCITS.

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

Approval.

23.(1) A feeder UCITS shall be informed by the Authority within 15 working days following the complete submission of the documents referred to in regulation 22(1)(a) to (c) respectively, whether it has granted the required approvals.

(2) Upon receipt of the information that the Authority has granted approval according to sub-regulation (1), the feeder UCITS shall inform the master UCITS of the fact.

(3) Further to the feeder UCITS being informed that the Authority has granted it the necessary approvals pursuant to regulation 22(1)(b), the feeder UCITS shall take the necessary measures to comply with the requirements of regulation 79 of the CIS Regulations without undue delay.

(4) Where regulation 22(1)(b) and (c) apply, and the Authority has not granted the necessary approvals required pursuant to regulation 22(1) by the working day preceding the last day on which the feeder UCITS can request repurchase and redemption of its units in the master UCITS before the merger or division is given effect, the feeder UCITS—

- (a) shall exercise the right to request repurchase and redemption of its units in the master UCITS in accordance with regulation 75(7) and regulation 42(1) of the CIS Regulations;
- (b) shall exercise the right referred to in paragraph (a) to ensure that the right of its own unit-holders to request repurchase or redemption of their units in the feeder UCITS according to regulation 79(1)(d) of the CIS Regulations is not affected,

provided that prior to exercising the right referred to in paragraph (a), the feeder UCITS shall consider available alternative solutions which may help to avoid or reduce transaction costs or other negative impacts for its own unit-holders.

(5) Where a 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; or
- (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 paragraph (b) applies, the feeder UCITS may realise any part of the transferred assets for cash at any time.

(6) The Authority, where it is the competent authority of the feeder UCITS, shall grant approval on the condition that any cash held or received in accordance with sub-regulation (5) may be re-invested only for the purpose of efficient cash management before the date on which the feeder UCITS is to start to invest either in the new master UCITS or in accordance with its new investment objectives and policy.

CHAPTER 3

DEPOSITARIES AND AUDITORS

SECTION 1

DEPOSITARIES

Content of the information-sharing agreement between depositaries.

24. An information-sharing agreement between the depositary of the master UCITS and the depositary of the feeder UCITS referred to in regulation 76(1) to (4) of the of the CIS Regulations shall include the following—

- (a) the identification of the documents and categories of information which are to be routinely shared between both depositaries, and whether such information or documents are provided by one depositary to the other or made available on request;
- (b) the manner and timing, including any applicable deadlines, of the transmission of information by the depositary of the master UCITS to the depositary of the feeder UCITS;

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- (c) the coordination of the involvement of both depositaries, to the extent appropriate in view of their respective duties under national law, in relation to operational matters, including—
 - (i) the procedure for calculating the net asset value of each UCITS, including any measures appropriate to protect against the activities of market timing in accordance with regulation 75 (4) of the CIS Regulations;
 - (ii) the processing of instructions by the feeder UCITS to purchase, subscribe or request the repurchase or redemption of units in the master UCITS, and the settlement of such transactions, including any arrangement to transfer assets in kind;
- (d) the coordination of accounting year-end procedures;
- (e) details of breaches by the master UCITS of the law and the fund rules or instrument of incorporation which the depositary of the master UCITS is to provide to the depositary of the feeder UCITS and the manner and timing of their provision;
- (f) the procedure for handling ad hoc requests for assistance from one depositary to the other;
- (g) identification of particular contingent events which ought to be notified by one depositary to the other on an ad hoc basis, and the manner and timing in which this will be done.

Choice of the applicable law.

25.(1) Where a feeder UCITS and a master UCITS have concluded an agreement in accordance with regulation 75(1) to (3) of the CIS Regulations, the agreement between the depositaries of the master UCITS and the feeder UCITS shall provide that the law of the EEA State applying to that agreement in accordance with regulation 14 shall also apply to the information-sharing agreement between both depositaries and that both depositaries agree to the exclusive jurisdiction of the courts of that EEA State.

(2) Where the agreement between a feeder UCITS and a master UCITS has been replaced by internal conduct of business rules in accordance with regulation 75(3) of the CIS Regulations, the agreement between the depositaries of the master UCITS and the feeder UCITS shall provide—

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- (a) that the law applying to the information-sharing agreement between both depositaries shall be either that of the EEA State in which the feeder UCITS is established or, where different, that of the EEA State in which the master UCITS is established; and
- (b) that both depositaries agree to the exclusive jurisdiction of the courts of the EEA State whose law is applicable to the information-sharing agreement.

Reporting of irregularities by the depositary of the master UCITS.

26. The irregularities referred to in regulation 76(5) of the CIS Regulations which the depositary of the master UCITS detects in the course of carrying out its function under the law and which may have a negative impact on the feeder UCITS shall include, but are not limited to—

- (a) errors in the net asset value calculation of the master UCITS;
- (b) errors in transactions for or settlement of the purchase, subscription or request to repurchase or redeem units in the master UCITS undertaken by the feeder UCITS;
- (c) errors in the payment or capitalisation of income arising from the master UCITS, or in the calculation of any related withholding tax;
- (d) breaches of the investment objectives, policy or strategy of the master UCITS, as described in its fund rules or instrument of incorporation, prospectus or key investor information document;
- (e) breaches of investment and borrowing limits set out in national law or in the fund rules, instruments of incorporation, prospectus or key investor information document.

SECTION 2**AUDITORS****Information-sharing agreement between auditors.**

27.(1) The information-sharing agreement referred to in regulation 77(1) of the CIS Regulations between the auditor of the master UCITS and the auditor of the feeder UCITS shall include the following—

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- (a) the identification of the documents and categories of information which are to be routinely shared between both auditors;
- (b) whether the information or documents referred to in paragraph (a) are to be provided by one auditor to the other or made available on request;
- (c) the manner and timing, including any applicable deadlines, of the transmission of information by the auditor of the master UCITS to the auditor of the feeder UCITS;
- (d) the coordination of the involvement of each auditor in the accounting year-end procedures for the respective UCITS;
- (e) identification of matters that are to be treated as irregularities disclosed in the audit report of the auditor of the master UCITS for the purposes of regulation 77(2)(b) of the CIS Regulations;
- (f) the manner and timing for handling ad hoc requests for assistance from one auditor to the other, including a request for further information on irregularities disclosed in the audit report of the auditor of the master UCITS.

(2) The agreement referred to in sub-regulation (1) shall include provisions on the preparation of the audit reports referred to in regulations 77(2) and 88 of the CIS Regulations and the manner and timing for the provision of the audit report for the master UCITS and drafts of it to the auditor of the feeder UCITS.

(3) Where the feeder UCITS and the master UCITS have different accounting year-end dates, the agreement referred to in sub-regulation (1) shall include the manner and timing by which the auditor of the master UCITS is to make the ad hoc report required by the regulation 77(2)(a) of the CIS Regulations and to provide it and drafts of it to the auditor of the feeder UCITS.

Choice of the applicable law.

28.(1) Where a feeder UCITS and a master UCITS have concluded an agreement in accordance with regulation 75(1) to (3) of the CIS Regulations, the agreement between the auditors of the master UCITS and the feeder UCITS shall provide that—

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- (a) the law of the EEA State applying to that agreement in accordance with regulation 14 shall also apply to the information-sharing agreement between both auditors; and
- (b) both auditors agree to the exclusive jurisdiction of the courts of that EEA State.

(2) Where the agreement between a feeder UCITS and a master UCITS has been replaced by internal conduct of business rules in accordance with regulation 75(3) of the CIS Regulations, the agreement between the auditors of the master UCITS and the feeder UCITS shall provide that—

- (a) the law applying to the information-sharing agreement between both auditors shall be either that of the EEA State in which the feeder UCITS is established or, where different, that of the EEA State in which the master UCITS is established; and
- (b) both auditors agree to the exclusive jurisdiction of the courts of the EEA State whose law is applicable to the information-sharing agreement.

CHAPTER 4**MANNER OF PROVIDING THE INFORMATION TO UNIT-
HOLDERS****Manner of providing the information to unit-holders.**

29. A feeder UCITS shall provide information to unit-holders pursuant to regulation 79(1) of the CIS Regulations in the same manner as prescribed by regulation 7.

PART IV**NOTIFICATION PROCEDURE****Scope of the information to be made accessible by EEA States in
accordance with regulation 106(2) of the CIS Regulations.**

30.(1) The following categories of information on the relevant laws, regulations and administrative provisions shall be made accessible in accordance with regulation 106(2) of the CIS Regulations—

- (a) the definition of the term "marketing of units of UCITS" or the equivalent legal term either as stated in national legislation or as developed in practice;

- (b) requirements for the contents, format and manner of presentation of marketing communications, including all compulsory warnings and restrictions on the use of certain words or phrases;
- (c) without prejudice to Part IX of the CIS Regulations, details of any additional information required to be disclosed to investors;
- (d) details of any exemptions from rules or requirements governing arrangements made for marketing applicable in Gibraltar for certain UCITS, certain share classes of UCITS or certain categories of investors;
- (e) requirements for any reporting or transmission of information to the Authority, and the procedure for lodging updated versions of required documents;
- (f) requirements for any fees or other sums to be paid to the Authority or any other statutory body in Gibraltar, either when marketing commences or periodically thereafter;
- (g) requirements in relation to the facilities to be made available to unit-holders as required by regulation 107 of the CIS Regulations;
- (h) conditions for the termination of marketing of units of UCITS in Gibraltar by a UCITS situated in another EEA State;
- (i) detailed contents of the information required to be included in Part B of the notification letter as referred to in Article 1 of Commission Regulation (EU) No 584/2010 of 1 July 2010 implementing Directive 2009/65;
- (j) the e-mail address designated for the purpose of regulation 32.

(2) The information listed in sub-regulation (1) shall be supplied in the form of a narrative description, or a combination of a narrative description and a series of references or links to source documents.

UCITS host EEA State's access to documents.

31.(1) An electronic copy of each document referred to in regulation 108(2) of the CIS Regulations shall be made available by the UCITS concerned in an electronic format in common use on a website of the

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UCITS, or a website of the management company that manages that UCITS, or on another website designated by the UCITS in the notification letter submitted in accordance with regulation 108(1) of the CIS Regulations.

(2) A UCITS shall give access to the website referred to in sub-regulation (1) to its host EEA State.

Updates of documents.

32.(1) The Authority shall designate an e-mail address for the purpose of receiving notification of updates and amendments to the documents referred to in regulation 108(2) of the CIS Regulations, pursuant to regulation 108(7) of those Regulations.

(2) A UCITS may notify any update or amendment to the documents referred to in regulation 108(2) of the CIS Regulations, pursuant to regulation 108(7) of those Regulations, by e-mail to be sent to the e-mail address referred to in sub-regulation (1) and the e-mail notifying such an update or amendment may either describe the update or the amendment that has been made, or provide a new version of the document as an attachment.

(3) Any document attached to the e-mail referred to in sub-regulation (2), shall be provided by UCITS in a commonly used electronic format.

Development of common data processing systems.

33.(1) In order to facilitate access by the competent authority of a UCITS' host EEA State to the information or documents referred to in regulation 108(1), (2) and (3) of the CIS Regulations, for the purpose of regulation 108(7) of those Regulations, the Authority may coordinate with the other competent authorities the establishment of sophisticated electronic data processing and central storage systems common to all EEA States.

(2) The coordination referred to in sub-regulation (1) shall take place in the Committee of European Securities Regulators.

PART V**FINAL PROVISIONS****Offences.**

34.(1) It shall be an offence for any person to be responsible for any act or omission contrary to the provisions of these Regulations.

(2) Any person found guilty of an offence contrary to sub-regulation (1)

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shall be punishable on summary conviction by a fine not exceeding level 5 on the standard scale.

(3) The Authority may take into account any offence committed contrary to sub-regulation (1) when deciding whether to grant, renew, revoke or suspend any permit, licence or authorisation to the person responsible for the offence and material to the facts giving rise to the offence.

(4) Nothing in this regulation applies to the Authority.