BLACKROCK

The Committee of European Securities Regulators
11 - 13 avenue de Friedland
75008 Paris
FRANCE

31 March 2009

Dear Sirs,

Call for evidence on possible implementing measures concerning the future UCITS directive

Thank you for the opportunity to submit our views on the possible implementing measures concerning the future UCITS directive.

BlackRock is one of the world's largest publicly traded investment management firms. As at 31st December 2008, the assets under management of BlackRock were USD 1.3 trillion. The firm manages assets on behalf of institutions and individuals worldwide through a variety of equity, fixed income, cash management and alternative investment products. BlackRock is a premier provider of global investment management, risk management and advisory services to institutional and retail clients around the world.

As one of the largest cross border UCITS providers in Europe, with over USD 46 billion in UCITS funds under management, the issues surrounding Management Companies; the provision of client information; and fund mergers and master feeder structures has a direct impact on our business. Our response is therefore based on our experiences of the regulatory and commercial marketplace in respect of these matters. We welcome the opportunity to discuss these issues with CESR and our comments follow with regard to specific areas of interest.

BlackRock's view on the consultation paper (ref: CESR/09-179):

We continue to believe strongly in the UCITS brand, however, we are concerned that regulators outside of the EU might not be so familiar with UCITS. For example, following the implementation of UCITS III, we found that some Regulators were not familiar with the new regulations, which lead to confusion and complications when distributing funds on a global platform. Whilst CESR has not requested responses on the promotion of UCITS, we would take this opportunity to encourage CESR to enhance understanding amongst global regulators and the implementation of UCITS IV seems an ideal opportunity to globally enhance the brand.

In answer to the questions raised in the consultation paper, our initial thoughts are as follows:

1. Management Company Passport

We are concerned that regulatory harmonisation could, in effect, be frustrated buy the lack of a harmonised approach to certain aspects of taxation. Tax residency rules differ from country to country therefore consideration is needed as to the implications of these proposals for all Member States.

The key risk is that where the domicile of the Management Company differs from the domicile of the UCITS, either one of or both jurisdictions may argue that the operations of one entity in that jurisdiction cause the other entity to be tax resident in that country (e.g. where a UK Management Company manages a Luxembourg UCITS, the UK tax authorities may seek to argue that the Luxembourg UCITS is UK tax resident and therefore subject to UK tax).

A lack of tax clarity concerning such matters, or clarity from the tax authorities on individual countries which from a tax perspective does not support Management Company passporting, will slow down or prevent efficiencies that the funds industry could otherwise take advantage of at a time when such efficiencies are most needed.

Given that UCITS IV offers Management Companies the potential to passport their activities throughout the EU, we would also request that CESR encourages a broad understanding amongst Regulators of those Rules that are applicable to Management Companies in local Member States. For example, under the current proposals, a UK Management Company locally domiciled will be authorised and regulated by the Financial Services Authority for the conduct of its activities. However, if it manages a UCITS domiciled in Luxembourg, then some of its activities may be subject to review by the host state regulator (the CSSF) as part of the oversight they will have of the UCITS scheme.

Should Management Companies be subject to inspection or review in this way, then we would ask CESR to ensure that Regulators develop an understanding of local regulatory requirements throughout Member States. This avoids unnecessary complications and misunderstandings in respect of local conduct of business requirements, which goes someway to providing a consistent and harmonised approach.

Whilst Article 101 sets out quite detailed guidelines regarding cooperation between Member States, we are mindful that Regulators in Member States operate using different administrative procedures, so it is important that CESR

defines the process clearly. It will not be practicable to ensure complete convergence of administrative law and procedures as interpreted in each member state simply for the purposes of the Directive but it would be helpful to have a common set of steps. It would be helpful for Regulators to provide an easily accessible statement of the key administrative procedures and recourse for firms operating under passported arrangements in a common format.

2. Key Investor Information

We were supportive of CESR's paper (ref: CESR/07-669) which discussed the content and form of the Key Investor Information disclosures for UCITS and we were pleased to respond to the questions raised. Further, we note CESR's recent paper (ref: CESR/09-047) on the technical issues relating to the Key Information Document, to which we intend to respond.

We would encourage CESR to adopt a prescriptive approach to the guidance given in respect of the KII and support the use of a template to provide for the content and manner of the document. In order to ensure true harmonisation, we believe that the content must be prescribed, which will enable investors to understand the investment objective and policy, the nature and risks of the product and their commitment and associated costs. A prescriptive approach would result in a KII document that would allow meaningful comparisons across firms and reduce the likelihood of Member States adding jurisdictional content.

Whilst we agree that the KII should provide investors with essential elements necessary to invest in the fund, we also consider that a clear sign post referring readers to the main prospectus is important, in order to provide a further description of all factors related to the fund in question.

3. Fund Mergers and Master Feeder Structures

BlackRock welcomes and supports the inclusion of Master Feeder structures into the laws and regulations of UCITS. We are also supportive of the work CESR is undertaking to ensure that Unitholders receive quality information in respect of fund mergers. However, we would ask CESR to provide for a consistent approach, with no differentiation between cross border UCITS mergers and those undertaken within the same Member State. Again, it is important to ensure that a sound tax framework is included in the arrangements regarding mergers of UCITS.

In the event of a liquidation, merger or division of a master UCITS it is important to align service level standards between the relevant regulators for such an approval. For example, in the UK the FSA has a standard one month service level standard for approving such an application. In other Member States there is not always such a time limit. In current market environments it has been seen quite

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important to protect shareholder interests in a fund which is rapidly decreasing in size which leaves remaining shareholders with additional costs. Holding up the closure or merger of a master fund simply because the feeder fund has not been approved for liquidation will not be in interest of shareholders generally and there needs to be adequate coordination of procedures in this respect.

Please find attached our detailed responses to the questions raised within the consultation.

Yours sincerely

Peter Head
Director - Funds Compliance
BlackRock Investment Management (UK) Limited

MANAGEMENT COMPANY			
Request for Advice	**Question**	**Article**	**Response**
1.2.1: Prudential rules and conflicts of interest	(a) Define procedures and arrangements to be implemented by the management company, having regard to the nature of UCITS managed by the management company (characteristics and complexity), that meet requirements of Article 12(1)(a); (b)Define the conditions for the structure and organisational requirements of a management company that are necessary for minimizing conflicts of interests as referred to in 12 para 1(b)	12	Management companies should be appropriately structured and resourced to ensure that there are adequate systems and controls in place. In addition, CESR should set consistent and prescriptive Conduct of Business Rules, to ensure a harmonised approach throughout Member States. We would welcome the ability to have consistency in terms of reporting to the governance bodies of UCITS funds wherever they are located. It is essential that the arrangements put in place include a comprehensive, robust tax framework. The key risk is that where the domicile of the management company differs from the domicile of the fund, either one of or both jurisdictions may argue that the operations of one entity in that jurisdiction cause the other entity to be tax resident in that country (e.g. where a UK management company manages a Luxembourg SICAV fund, the UK tax authorities may seek to argue that the Luxembourg fund is UK tax resident and therefore subject to UK tax). Where the management company covers multiple jurisdictions, it may not be commercially viable for all key personnel from all the jurisdictions to travel to Board / management meetings, leading to the risk that the management company is considered resident in

			other jurisdictions. Conversely the management company could cause the funds to be treated as resident where the management company is located. Tax residency rules differ from country to country therefore consideration is needed as to the implications of the proposals for all key jurisdictions. UK UCITS funds which are trusts may prove more complex as the rules surrounding the residency of trusts depends on whether you are considering the income or capital earned by the fund. Even where the tax residency of an entity (e.g. the fund) is not challenged, it is possible that the management company's domicile may seek to tax the profits of the fund in the first country on the basis that the fund represents a "permanent establishment" of the management company (or vice versa). If this is the case, then the profits of the fund entity may be subject to tax in the management company's country of domicile to the extent that they are attributable to the management company (although again the rules will vary from country to country).
1.2.2: Rules of conduct including conflicts of interest	(a) Advise on the rules that should specify the steps management companies should be expected to take pursuant to 14(2)(a);	14	Commercially there will be a need to identify the activities that the management company is responsible for and where those activities should be carried out (e.g. in which country should those activities take

	(b) Advise on the criteria according to which the conduct of its business by management company should be assessed by the competent authorities (according to 14(2)(b)); (c) Advise on the conditions and principles that will ensure that a management company employs effectively the resources and procedures necessary for the proper performance of its business activities.		place). These discussions / decisions should take into account the residency and permanent establishment issues noted above. FSA currently has the SYSC Rules which provides an appropriate regulatory foundation for Firms to conduct their business activities. CESR should ensure that there is consistency throughout member states providing a level playing field. Key considerations will be to ensure: • senior management oversight and responsibilities; • adequate resourcing; • specific oversight functions; • separation and segregation of duties; • conflicts of interest MiFID already requires Firms to have a detailed conflicts of interest policy and we would welcome a consistency of approach between MFID and UCITS in this respect.
1.2.3: Measures to be taken by depository of a UCITS managed by a management company on an investment company situated in another Member State	1. Advise on the specific conditions that a depository must meet to fulfil its duties regarding a UCITS managed by a management company situated in another country; 2. Advise on standard arrangements between the depository and management company and identify the particulars of the agreement	23,33	Given the principle that the depositary of a UCITS and the UCITS must be in the same member state, it follows on that the agreements that the depositary has with the management company and another member state should be subject to the law of the UCITS home state. For example the agreement between the depositary of a UK OEIC subject to English law and a Luxembourg management company should be subject to English law.

	between them that are required under Articles 23(6) and 33(6) and the regulation of the flow of information deemed necessary to allow the depository to discharge its duties; 3. Consider the need to regulate through level 2 the law applicable to the agreement in order to remove legal uncertainty (whether the agreement should be governed by law of UCITS home member state, management company home member state or of any other member state.		Where the fund is a corporate vehicle, consideration should be given as to whether this should be a tri-partite agreement between the depositary and the manager with acknowledgement by the fund of the terms. In the case of a tri-party agreement there will already be separate agreements between the fund and the manager and the depositary. In the case of non-corporate vehicles such as an FCP or a unit trust there is not normally a separate agreement as relationships are governed by the management regulations in respect of an FCP or the trust deed in respect of a unit trust. The level of access to information by a depositary should be the same for a management company in a home member state or in a third party member state. There are different corporate governance standards which apply to depositaries in EU member states. For example the role of oversight of the depositary (as opposed to its custody function) in a UK or Irish fund is more extensive than that of a Luxembourg fund where a number of the duties that the depositary of a UK or Irish fund will perform are actually performed by the auditors of a Luxembourg fund. It will be preferable to keep these corporate governance structures intact but to ensure that there is a common list of standard oversight functions that trustees, depositaries, auditors undertake and ensure that in total the agreements between the various parties actually reflect the oversight and controls that need to be carried out. It is

			recommended that the relevant trustee and depositary associations such as DATA in the UK agree a standard list of oversight functions. This would then complement the investment management functions set out in Annex II to the Directive. In the case of non-corporate vehicles it would be preferable not to weigh down the management regulations or the trust deed with additional operational control and oversight requirements but to have these set out in a separate agreement. The wording of the directive implies that it would be important to make sure that there is no issue with data transfer between jurisdictions. In principle this should not be an issue given the data should relate to portfolio management and not relate to personal data transfer. It should be noted, however, that the depositary in a number of jurisdictions can also fulfil the role of transfer agent/registrar and if they are acting in this additional role personal data of unitholder/shareholders will be held and which will need to be accessed by the manager. Only if this is to be considered a potential part of the depositary's role, rather than a separate issue should personal data transfer issues be of serious concern. The management of the depositary company and its agreements with the other entities will be key in

			determining the impact this will have on the above. For example, where will documents be signed? Will the depositary have the power to take decisions without referring to the fund or management company for approval?
1.2.4: Risk management	1. What should be the conditions that govern risk management processes that can be employed by management/investment companies? What are the criteria that competent authorities should take into account when determining whether the risk management process employed by the management company is adequate for monitoring and measuring at any time the risk of a position and its contribution to the overall risk profile of the portfolio. In particular: (a) advise of the categories of material risk that are relevant for UCITS (the identification of types of risks that should be addressed) (b) to advise on principles governing the identification of the particular material risks relevant for a particular UCITS related to each portfolio position and their	51	Currently, a UCITS manager is required to provide an Risk Management Paper (RMP), identifying and detailing the risks that it faces and how these are to be managed. However, there is an investment/derivative focus to the current document. CESR should consider widening the scope of the RMP submitted to the host state regulator to include wider operational issues as a means of demonstrating that there is an appropriate methodology for managing the risks identified, but ensure that this document remains at a high-level, to avoid unnecessary complications and burdens. The RMP is a public document and should therefore remain at a sufficiently high-level to ensure that it includes relevant technical information but is understandable to investors. In the questions we note that CESR is asked to advise on the categories of material risks. We note that the RMP is a technical document which reflects the firm's individual assessment of risks but it is also a document that can be requested by investors or potential investors. The consultation seems to suggest that we need to prepare a hierarchy of risks. Will this link into

	contribution to the overall risk profile of the portfolio (c) advise on the extent possible on requirements concerning risk measurement methods, such as the conditions for the use of different methodologies in relation to the identified types of risk and the specific criteria under which these methodologies might be used, (d) to establish principles for risk management processes to be employed in order to mitigate or otherwise manage the identified risks related to each portfolio position and their contribution to the overall risk profile of the portfolio. This could include requirements for management companies to ensure proper functioning of risk management processes, establishment of criteria for assessing the effectiveness of risk management processes, setting out principles for systems for operating risk limits, and or the definition of reporting and monitoring		presentation of risks that is being set out in the key investor information document? Potentially we have a process of identifying two levels of risks; (1) the material risks that are included in the KII and then (2) a broader risk assessment for a number of different criteria which the management company needs to cover in greater detail in the RMP. It is important to ensure that this risk assessment process does not become contradictory. As with the Management Company requirements, there should be consistency across jurisdictions to enable managers to run different fund ranges in a consistent manner. This is unlikely to be relevant from a tax perspective unless the management company / investment companies are required to perform the risk management process from the domicile of the fund. Again this may impact the taxation of the entities. Please see our comments above regarding tax residency and permanent establishments above. Due to the ever evolving nature of instrument types, it would be better to be principle-based than prescriptive, requiring the fund board or depositary to put in place such independent assessment with the same frequency as the valuation point, albeit with a time lag.

	obligations. 2. What should be the content of the detailed rules regarding the accurate and independent assessment of the value of OTC derivatives as referred to in Article 51(1); 3. What detailed rules should govern the content and the procedure to be followed by the management company for communicating the information mentioned in Article 51(1) to the competent authorities of its home state member.		
1.2.5: On-the-spot verification and investigation.	Define the content of the procedures to be followed when competent authorities intend to carry-out verification or an investigation on the territory of another member state.	101	Article 101 sets out quite detailed guidelines regarding cooperation between member states. As the various regulatory bodies in member states operate using different administrative procedures it is important to define the process clearly. It will not be practicable to ensure complete convergence of administrative law and procedures as interpreted in each member state simply for the purposes of this directive but it would be helpful to have a common set of steps. It would be helpful for regulators to provide easily an accessible statement of the key administrative procedures and recourse for firms operating under passported arrangements in a common format.
1.2.6: Exchange of information between	Define the content of the procedures to be followed when competent	105	No comments.

competent authorities.	authorities exchange information.		

KEY INVESTOR INFORMATION			
Request for Advice	**Question**	**Article**	**Response**
2.2.1: Content and presentation of KII	1. What is the KII to contain and how should this be harmonised? How should level2 measures fulfil the requirements of the UCITS IV directive to specify the content and form of the KII in a detailed and exhaustive manner such that the document is sufficient for investors to make informed decisions about planned investments? This should be taken to include the methodologies CESR considers necessary for delivering the information disclosers CESR proposes for the KII (e.g. the methodologies for risk, performance, and charges disclosures). CESR should be clear as to the requisite degree of harmonisation it considers necessary for these supporting methodologies. 2. What sort of cross-references to other documents or 'signposts' might be permitted, apart from those which are directly referred to in the Directive, given that Article 78 states that *"These elements shall be*	78	We would encourage CESR to adopt a prescriptive approach to the guidance given in respect of the KII document and support the use of a template to provide for the content and manner of the document. In order to ensure true harmonisation, we believe that there needs to be a prescribed content, which will enable investors to understand the investment objective and policy, the nature and risks of the product and their commitment and associated costs. A prescriptive approach would result in a document that would allow meaningful comparisons across firms and reduce the likelihood of additional jurisdictional content. Whilst we agree that the KII should provide investors with essential elements necessary to invest in the fund, a clear sign post referring readers to the main prospectus is important in order to provide a further description of all factors related to the fund in question. We would encourage CESR to adopt a prescriptive approach to the guidance given in respect of the KII document and support the use of a template to provide for the content and manner of the document

	understandable by investor without any reference to other documents" 3. To what extent and in what way should the level2 measures harmonise the detailed presentation of key investor information (such as the layout of the document, its length, headings to be used for sections, etc.)? (Detailed supporting material should be provided relevant to the approach proposed; for instance if CESR considers templates should be used in the implementing measures to harmonise presentation of the KII, then CESR should provide such templates as it thinks necessary in its advice). What supporting work does CESR consider necessary at level3? How should the measures at level2 balance the flexibility necessary for allowing the KII to effectively cover the specific characteristics of particular funds or groups of funds, with the necessary harmonisation of the document? 4. How should the KII reflect all the characteristics of the special cases outlined under Article78(7)(b) that are relevant for the retail investor		The KII should reflect the key elements of the fund in question and if a template format was followed, essential fund data could be provided in a standardised format. As such, it should make no difference as to the characteristics of a particular fund, as following a template will ensure that investors are provided with consistent information. It may be appropriate to require specific tax disclosure in the KII e.g. information regarding taxation of the fund, management company etc (or the KII should refer investors to this information in another document, e.g. the prospectus, for example). Where it is included in the KII, this tax information should be specific and provide sufficient detail to investors as may be necessary, without providing them advice as to how they will be taxed on their investment (as always, investors should seek their own tax advice).

	making an investment decision, for instance the characteristics of master feeder structures?		
2.2.2: Specific conditions to be met when providing KII in a durable medium other than paper	Advise on the specific conditions which need to be met when providing KII in a durable medium other than on paper or be means of a website which does not constitute a durable medium.	81	The directive on distance marketing of financial services(i.e. Directive 2005/65/EC of 23 September 2002) contains a definition of a durable medium other than on paper. In our experience this has worked satisfactorily and we would recommend that this definition is reflected in the KII requirements.
2.2.3: Specific conditions when providing the prospectus in a durable medium.	Advise on the specific conditions which need to be met when providing the prospectus in a durable medium other than on paper or be means of a website which does not constitute a durable medium.	75	As above

FUND MERGERS AND MASTER FEEDERS			
Request for Advice	**Question**	**Article**	**Response**
3.1: Merger of UCITS - Information Letter	With regard to the five kinds of information listed in Article43(3)(a)-(e) which the merging and receiving UCITS have to provide to their investors, advise on: (a) Which information should be considered useful and indispensable with regard to the background and the rationale of the proposed merger? (b) What could be the other considerations than those already expressly mentioned in Article43(3)(b) that would be useful and indispensable with regard to the possible impact of the proposed merger? (c) Which density of information (amount of detail) CESR would consider useful and indispensible with regard to the considerations that should be part of the information letter in order to describe the possible impact of the merger on unitholders? (d) What could be other specific	43	We would recommend that any letter contains a comparative table setting out key characteristics to be compared between the two funds. As a minimum this should include the following items: • investment objective and policy, • material differences in investment policy, • name of fund, • jurisdiction of fund, • corporate structure of fund, • regulatory status, • listing, • manager of fund, • depositary of fund, • custodian of fund (if different to depositary), • administrator of fund • auditor of fund, • legal advisors to the fund, • sales/initial, redemption or switch charges, • redemption charge, • annual management charge, • any other charges such as distribution fees • TER, • minimum investment and subsequent investment, • dealing days,

	rights than those already expressly mentioned in Article43(3)(c)? (e) Which relevant procedural aspects should be contained in the information letter? 2. With regard to Article43(3)(e) which refers to the key investor information of the other UCITS involved in the proposed mergers, CESR is invited to clarify whether the KII of the other UCITS should be an integral part of the information letter or a standalone document attached to the information letter containing the information referred to in Artcile43(3)(a)to(d). 3. Bearing in mind that the competent authorities cannot oblige the merging and the receiving UCITS to provide other information to their unitholders that those listed on Article43(3), but that the merging and the receiving UCITS are free to add, on a voluntary basis, further information, CESR is invited to advise on the form in which the information letter and the additional information should be provided.		• subscription and redemption procedures, • payment of redemption proceeds, • description of taxation of the fund and typical unitholder (e.g. UK distributor or reporting status), • risk profile of fund, • borrowing, • type of share/units i.e. distributing or accumulating, • income distribution or allocation date, • equalisation, • annual accounting period. In terms of procedural aspects the following issues should be addressed: • a statement as to whether the portfolio of the merging fund is going to be realigned prior to the merger date and the expected costs of any such realignment, • the treatment of any income and whether this will be distributed as at the date of the merger or carried across into the receiving fund, • whether there will be any period of suspension during the merger period, • the relevant conversion formula for calculating the allocation of units in the receiving fund should be stated,

	4. CESR is encouraged to draft a standard information letter. <u>Format of information letter:</u> CESR encouraged to specify the format of the information letter. <u>The way to provide the information letter:</u> 1. The new UCITS directive does not in general harmonise the way documents and information need to be provided to investors and to competent authorities. Only some specific provisions (Article81(1) for KII) harmonise this. The delegation clause in Article43(5) gives the Commission the power (without obliging it) to harmonise the way the information letter needs to be provided. CESR is invited to consider the priority that should be given to this measure bearing in mind its usefulness in ensuring that investors actually become aware of the proposed merger and can easily read the information letter. 2. Article43 does not expressly require and specific form for the		• a contact address for obtaining information as to the number and value of new shares/units issued in the receiving fund. • provision for how the costs of the merger are to borne, • provision of relevant tax information to investors (Please see earlier comments in response to question 2.2.1). Consideration is also needed as to how the arrangements put in place in relation to the merger of UCITS under these proposals would interact with the provisions of the Mergers Directive (90/434/EEC). The Directive does not, however, apply to trusts and therefore the application of the proposed rules plus the existing EU rules to these entities needs careful consideration (under general trust law the liabilities of a trust are the responsibility of the Trustee). Again, it will be important to ensure that a sound tax framework is included in the arrangements regarding mergers of UCITS.

	information letter; it only requires such information to be provided to investors. However, by contrast to Article81(1) the use of another durable medium than paper is not expressly permitted. CESR is requested to reflect whether merging or receiving UCITS are obliged to use a specific form for providing the information letter and on any practical questions that need to be dealt with at level2 in this regard.		
3.2.1: Content of the agreement/internal conduct of business rules between feeder and master UCITS.	1. Advise on the elements which need to be covered by the agreement between feeder and master UCITS and to clarify how certain issues need to be stipulated in order to satisfy the requirements under Article60(1). While preparing its advice CESR should take into account certain specific requirements (e.g. whether feeder and master UCITS are established in the same or in different member states). 2. Provide a draft model agreement. 3. Advise on any restrictions regarding the choice of applicable	60	In respect of choice of law we would recommend that the choice of law to be that of the master fund given this is the fund in which all the effective investment management decisions are made. As to the contents of the agreement between the master fund and the feeder fund we recommend that reference to the following issues is included: • dealing process and whether this is on an estimated or confirmed dealing basis, • whether investment will be made into non fee-bearing share classes, • whether feeder funds invest in accumulating or distributing share classes, • the feeder fund should take into account dealing days in the master fund in order to align dealing

	law. <u>Content of internal conduct of business rules</u> 1. If the feeder and master UCITS are managed by the same management company. They can replace the agreement by internal conduct of business rules. (a) given the specific circumstances of both master and feeder UCITS being managed by the same management company, CESR is invited to recommend any useful or indispensible modifications of the content of the internal conduct of business rules compared of an agreement, (b) CESR is encouraged to provide draft internal conduct of business rules.		days between the two funds, • alignment of prospectus powers such that if prospectus powers are utilised in the master (e.g. business days, refuse subscriptions, defer redemptions, frequent dealing charge etc) that these can also be utilised in the feeder, • flexibility to allow for changes to the underlying sub-fund in the master for example where the daily NAV is deferred, • aligning settlement cycles to avoid liquidity issues e.g. if we take a feeder fund into a fund which settles on a trade date plus 3 days (T+3) basis, then if the feeder fund executes deals into the master fund on a confirmed basis on a T+1 basis then the feeder fund's settlement cycle needs to be made on T+4, • market timing issues must be respected, • where there are different currencies between the feeder fund and the master fund the process of hedging local currency in the feeder fund will need to be established as well as a flow of information between the two funds and their currency hedging agent to allow this to happen, • the NAV error threshold should be aligned where possible as otherwise there is a potential mismatch between the level at which shareholders are to be compensated in each fund for NAV errors, • the valuation and pricing policy needs to be

			reviewed. The feeder fund will either need to follow late pricing or next day pricing. Next day pricing may not always be allowed under the laws or business practices of all member states, • liaison between transfer agents responsible for account opening in the respective funds, particularly in respect of AML requirements to determine whether there are any look through requirements, • set up an agreed dealing process and service level between the master fund and feeder fund.
3.2.2: Appropriate measures to avoid market timing	1. Advise on measures needed to avoid "market timing" of other arbitrage opportunities. 2. Take into account different circumstances for master and feeder UCITS listed at a stock exchange or for whom a platform for secondary trading exists on the one side and for master and feeder UCITS whose units can only be subscribed as well as specific circumstances of certain member states or certain markets.	60	The feeder fund dealing deadline must be prior to or at the same time as the master fund dealing deadline for avoidance of dilution into the master fund. This is relevant from a tax perspective only where what is required would impact the tax residency of the entities involved (or causes permanent establishment issues). Please refer to our comments above regarding these. For example, if the feeder fund entity has certain obligations in the jurisdiction of the master fund (to help mitigate "market timing" opportunities), such that it is considered to have "substance" in the jurisdiction of the master fund, this may give rise to permanent establishment or tax residency issues.
3.2.3: Procedures for	Advise on the elements of the	60	In the event a liquidation merger or division of a master

approvals in case of liquidation, merger or division of the master UCITS.	procedure for approvals referred to in Article60(4)(a) and (b) (approval of the investment of at least 85% of the assets of the feeder UCITS in units of another UCITS or approval or the amendment of fund rules or instruments of incorporation in order to enable the feeder UCITS to convert into UCITS which is not a feeder UCITS). While preparing its advice CESR is encouraged to reflect particularly on the following elements: (a) time frames in which the feeder UCITS may use one of the options mentioned in points (a) and (b) above; (b) conditions which should be applied; (c) time periods for granting approval; (d) additional time period for cases in which the competent authorities refused the feeder UCITS' application for approval under Article60(4)(a)and(b); (e) need for specific rules on the exchange of information between competent authorities with		UCITS it is important to align service level standards between the relevant regulators for such an approval. For example in the FSA there is a standard one month service level standard for approving such an application. In other member states there is not always such a time limit. In current market environments it has been seen quite important to protect shareholder interests in a fund which is rapidly decreasing in size which leaves remaining shareholders with additional costs. Holding up the closure or merger of a master fund simply because the feeder fund has not been approved for liquidation will not be in interest of shareholders generally and there needs to be adequate coordination of procedures on this. The alignment of steps (both regulatory and operational) to be taken by the feeder and master fund and the speed of investment/disinvestment is necessary to avoid performance or shareholder dilution in one or other fund. In this respect it would be helpful if the regulators could agree standard information that will need to be provided in respect of liquidation termination of a sub-fund and copies provided to regulators of the feeder funds. Typical requirements for non-commercially viable schemes typically include: • The name of the authorised fund, • The size of the authorised fund,

	regard to the liquidation of the mater UCITS of the feeder and the master UCIST are established in different member states. <u>Merger or division of master UCITS:</u> CESR is invited to advise on the elements of the procedure for approvals referred to in Article60(5)(a) to (c). Advice should reflect the following issues: (a) time frames in which the feeder UCITS may use one of the options mentioned in (a) to (c); (b) conditions which should apply; (c) possible ways to ensure protection of the feeder UCITS investors and provide certainty for the master UCITS by requiring that the approval procedure for the alternative measures under Article60(5)(b) and (c) be completed sufficiently in advance of the time period pursuant to the last sentence of Article4591) in order to allow the feeder UCITS to request free of charge redemption units before the		• The number of unitholders, • Whether the dealings in units have been suspended, • Why the request is being made, • What consideration has been made to the fund entering into a merger with another UCITS and the reasons why the merger is not feasible, • Where the unitholders have been informed of intention to seek termination winding up and revocation if not when they will be informed, • Description of any liquidity issues affecting underlying assets in the terminating fund and how these may affect the likely time to realise assets on termination, • Provision of a copy of the letter to unitholders/shareholders, • Details of any proposed preferential switching rights offered or to be offered, • Details of any proposed rebate of charges to be made to unitholders who recently purchased units, • Where the costs of winding up or termination will fall, • The depository's/auditor's statement as to whether having taken reasonable care to ascertain that the merger is not feasible and explaining what steps have been considered that would result in a fund not needing to wind up or terminate,

	merger takes effect; (d) Time periods for requesting and granting approval; (e) Additional time period for cases in which the competent authorities refused the feeder UCITS application for approval under Article60(5)(a) to (c); (f) Elements which competent authorities have to check and conditions under which they have to grant approval of the feeder UCITS applies for approval in order to stay invested in the master UCITS or to become a feeder UCITS of another UCITS resulting from the merger or division; (g) Need for specific rules regarding the exchange of information between competent authorities if the feeder and the master UCITS are established in different member states.		• Confirmation that the depositary/auditor will not or does not expect to qualify its report, • The preferred date for the termination to revoke authorisation of the date of the commencement of winding up or termination, • Any additional relevant information, in particular as to any tax consequences. It is key that the arrangements put in place provide for a comprehensive, robust tax framework. Please refer to our comments above.
3.2.4: agreements between depositories.	1. Advise on: (a) the useful and indispensable elements to be covered by the agreement between the depositories of the feeder and the master UCITS	61	The law chosen should be the same as law of the agreement between the master and the feeder. Consequently if the law of the master fund is chosen as the main applicable law then the agreements between the two depositories should be the law of the depository

	and, if appropriate, the way they should be stipulated in order to satisfy the requirements under Article61(1), (b) on a need to take account of specific circumstances (e.g. whether the depositories of the feeder and the master UCITS are established in the same or in different member states). 2. CESR is encouraged to provide a draft model agreement. 3. Article61(1) does not lay down whether and how the depositaries of the master and feeder UCITS may choose the applicable law for the agreement. Given that the competent authorities of the feeder UCITS have to check the agreement, CESR is invited to reflect on any restrictions regarding the choice of the applicable law.		of the master fund. A contractual or service level agreement will be required between depositaries outlining the information required to be shared between depositaries and when it is to be shared. This can be anticipated to be complicated where there are differences in detail between the regulatory regimes in the two members states involved. This includes: • anti money laundering, • banking secrecy, • late trading/ market timing/ frequent trading, • approach to contributions in kind, • approach to NAV errors, • approach to detail that is provided as a response to fund auditor requests. As noted above in 1.2.3 the key risks from a tax perspective are in relation to tax residency and permanent establishment matters. For example, where documents are signed may cause a tax residency risk (the UK tax authorities, for example, may place significance on this, for example) although this will vary from country to country. The arrangements therefore in relation to depositary agreements will need to take account of these factors.

3.2.5: Irregularities the depositary of the master UCITS has to report.	1. When carrying out its tasks, the depositary of the master UCITS may not only detect irregularities in the master UCITS business that are directly related to the aforementioned tasks of the depositary (e.g. detect that the valuation is not in l9ine with the law of fund rules), but by chance the depositary may become aware of other irregularities in the course of carrying out its tasks. Advise on whether also those irregularities that the depositary detected in the course of carrying out its tasks should be relevant in this context. 2. CESR invited to provide a list of irregularities the depositary of a UCITS may detect and to categorise these irregularities.	61	Irregularities that the depositary of the Master UCITS may detect will be relevant in this context. These may include irregularities relating to: • prospectus compliance, • regulatory compliance, • valuation, • market timing/ late trading/ frequent trading, • anti money laundering, • conflicts of interest.
3.2.6: Agreement between Auditors.	1. CESR is invited to advise the Commission on the useful and indispensable elements to be covered by the agreement between the auditors of the feeder and the master UCITS and, if appropriate, the way they should be stipulated in order to satisfy the requirements under Article62(1). While preparing	62	The choice of law for the agreement between the auditors should be the same as the choice of law between depositories of the master and feeder fund.

	its advice CESR is encouraged to reflect particularly on the necessary arrangements which would allow the auditor of the feeder UCITS to take into account the audit report of the master UCITS and on other specific circumstances (e.g. whether the auditors of the feeder and the master UCITS are established in the same or in different member states). 2. CESR is encouraged to provide a draft model agreement. 3. Article62(1) does not lay down whether and how the auditors of the master and the feeder UCITS may choose the applicable law for the agreement. Given that the competent authorities of the feeder UCITS has to check the agreement, CESR is invited to advise on any restrictions regarding the choice of the applicable law.		
3.2.7: Format and the way to provide information on a conversion into a feeder UCITS or on a change of the master UCITS.	CESR is invited to specify the format of the letter. 1. The new UCITS directive does not, in general, harmonise the way documents and information need to be provided to investors and to	64	In respect of the information to be provided we would recommend that a similar comparative table is used as recommended for the merger of a sub-fund - see 3.1 above.

	competent authorities. Only some specific provisions (notably Article81(1) for KII) harmonise this. The delegation clause in Article64(4) gives the Commission the power (without obligation) to harmonise the way the information letter needs to be provided. CESR is invited to consider the priority that should be given to this measure bearing in mind its usefulness in ensuring that investors actually become aware of the conversion or change of the master UCITS; 2. Article64(1) does not expressly require any specific form for the information letter; it only requires such information to be provided to investors. However, by contrast to Article81(1) the use of a durable medium other than paper is not expressly permitted. CESR is invited to reflect whether the feeder UCITS should be obliged to use a specific form for providing the information letter and on any practical questions which need to be dealt with at level2 in this respect.		
3.2.8: Contributions in	CESR is invited to advise on the	64	Contributions in Kind can be a cost effective way for a

kind.	procedure for valuing and auditing a contribution in kind while reflecting, in particular, on the following elements: (a) similarities between a merger and a contribution in kind which may justify modelling the procedures for a contribution in kind on Article42; (b) role of the depositaries of the feeder and master UCITS in a contribution in kind; (c) the date for valuing the assets and liabilities of the feeder and the master UCITS and for calculating the exchange ratio; (d) the effective date for the contribution in kind.		subscriber to invest and also for a fund manager to receive assets. It is not appropriate to handle contributions in kind in the same way as a UCITS merger as the additional costs and timings resulting from communications with shareholders would invalidate the cost effectiveness and timeliness of the proposed transaction. Note there are currently quite different procedures between member states in respect of contributions in kind for example in the case of the UK or Irish UCITS this has to be approved by the depository whereas in Luxembourg this has to be approved by the auditor. Again this refers to the differences in corporate governance of UCITS between different EU member states. Ideally there should be a commonality between the information that has to be reviewed but not necessarily the format or sign-off between member states i.e. not at a maximum harmonisation level. For example it would be extremely difficult to force UK or Irish auditors to take on an additional role without significant discussion and delay or vice-versa to force Luxembourg depositories to carry out this role when there is already a well established procedure with Luxembourg auditors. Accordingly the valuation of the contribution in kind and issuance of fund shares of either the master or feeder fund should be reviewed, but this does not

			necessarily have to be performed by the depositary. If there is a contribution in kind into the feeder fund then this should be done in accordance with the prospectus of the feeder fund. If there is a contribution in kind into the master fund then this should be done in accordance with the prospectus of the master fund. The effective date of a contribution in kind should be in accordance with the normal subscription on that date although in practice this will take place after the normal daily cycle. Contributions in kind are likely to have tax implications, the extent of which will depend on the jurisdictions involved (including where the relevant assets are based, where the transaction is effected etc). For example, in the UK, UK stamp duty may arise on this transaction, there may be capital gains tax implications (both of the above may vary depending on whether or not the two entities involved in the transaction are corporate entities). The transaction may also give rise to a deemed capital gain under UK tax law. The implications in relation to non-UK tax regimes will vary. However, for example, a transaction such as this may have implications for the German tax reporting requirements under German tax law. The proposals relating to contributions in kind will,

			therefore, need to consider the possible tax implications involved and factor these in accordingly.
3.3.1: Scope of information on national law to be published by UCITS host member state.	CESR is invited to advise on the scope of information that that should constitute standardised overview of non-harmonised national provisions governing arrangements made for marketing of UCITS that fall within the supervisory powers of the UCITS host member state.	91	The standard information that would be useful to have set out in a template when seeking to register a fund in another EU member state should include the following items: • a standard template document with headings and indications of the level and detail of information that is required is recommended if a plan setting out the details of arrangements for marketing funds is required, • Many member states require a paying agent to be appointed. Full details of the requirements of the paying agent agreement and role of the paying agent must be provided as well as a statement of the obligatory provisions that such an agreement must contain. • Any distribution plan should in particular specify what information on the method of purchase and redemption and disclosure of evidence of title is required. In practice we have found there are vast differences between member states in their attitude to evidence of title. We have examples requiring extensive disclosure on commissions and tariffs as well as the process for holding units through nominee omnibus structures and puts considerable emphasis on the disclosing

			equivalents between local nominee structures and other nominee structures. In addition, it is important to specify whether nominee/omnibus structures are not permitted under domestic law This is the case in some member states. Where nominee/omnibus structures are not permitted by national law then full details of local regulatory requirements of holding of shares on the fund's main register must be given, • Details of regulatory costs on initial and ongoing filing must be clearly stated, • A clear statement as to whether local distribution agreements must contain specific terms and the statement of standard clauses that need to be contained and confirmation as to whether and how agreements have to be lodged with the local regulator, • Details of ongoing filing and notification requirements if these are in addition to those to be handled between home state and host state regulators, • Any other disclosure requirements.
3.3.2: Facilities and procedures providing for the access of a host member states to statutory documents of a UCITS and other information.	1. CESR is invited to advise on the definition of common standards and the content of relevant procedures that will facilitate access for UCITS host member states to documents referred to in Article93(2) in accordance with the provisions of	93	No comment

	Article93(7). In particular CESR is invited to assess the need for the general database at the national or EU level containing obligatory disclosures of UCITS notified for cross-border marketing. 2. CESR is invited to advise on the shape of common standards and procedures for notification by UCITS of changes to documents referred to in Article93(2) to competent authorities of a host member states.		
3.3.3: Model notification letter and the attestation.	1. CESR is invited to define the list of particulars and elements which need to be included in the notification letter. CESR is also invited to advise on a format that would be easily adaptable for the purpose of electronic communication. The format of the letter should identify enclosed obligatory documents or translation thereof in a clear way. 2. CESR is invited to design a model attestation that will confirm that the UCITS fulfils the conditions imposed by the directive. Information and elements of the model attestation should be exhaustive for the purpose of the attestation as referred to in	93	This is primarily an issue for European regulators. We would urge CESR to also liaise with the regulatory authorities in non EU member states such as FINMA in Switzerland, SFC in Hong Kong, the Taiwanese regulator, the Chilean and Peruvian pension fund regulators and other key jurisdictions in which UCITS are registered for approval to ensure that they are fully aware of the change of notification requirements within Europe and to agree if possible a common format with these regulators. We are aware of instances where there has been a mismatch on expectation between regulators as to the format in which attestation documents are to be provided and it would be extremely helpful and useful for the development of the UCITS brand if this could become a more streamlined process, although we recognise that non EU regulators do not directly fall within CESR's

	Article93(3). The model attestation should be easily adaptable for the purpose of electronic communication.		competence.
3.3.4: Procedures for electronic transmission of the notification file and the exchange of information between competent authorities for the purpose of the notification procedure.	CESR is requested to advise on: (a) procedures that should be put in place to facilitate electronic communication of notification files between host and home authorities, including in particular the procedure for confirmation of transmission of the file by home authorities; (b) procedures that should be put in place to exchange information between competent authorities for the purpose of the notification; (c) technical arrangements that should be put on place to facilitate electronic communication of notification files and exchange of other information related to the notification procedure between host and home authorities; (d) procedures that should be put in place to deal with situations where host authorities establish	93	This is primarily an issue for regulators but it would be helpful to have common format of notification file and electronic process. We have had experience of their being difficulties in accessing domestic regulators' electronic communication websites, and delays in obtaining electronic access keys etc. This should be harmonised and simplified as much as possible.

	that notification file is incomplete or technical problems occur.		