



Aviva Investors' Response to the consultation paper on CESR's technical advice to the EC on level 2 measures relating to mergers of UCITS, master-feeder UCITS structures and cross-border notification of UCITS

Aviva plc is the world's fifth-largest¹ insurance group, the largest insurance services provider in the UK and is one of the leading providers of life and pension products in Europe and is actively growing its long-term savings businesses in Asia Pacific and the USA. Aviva's main business activities are long-term savings, fund management and general insurance.

Aviva Investors is the global asset management business of Aviva plc, managing assets in excess of £222² billion across a range of funds and asset classes. The business operates under a single brand with 1,430 employees in 20 locations across North America, United Kingdom, Continental Europe, and Asia Pacific.

Please note that we ask for our submission to remain private and therefore, not be made available for public inspection.

We would like to ask some general questions in relation to how soon we can start using the UCITS IV provisions. Do we have to wait until all Member States have implemented UCITS IV? What if a Member State has not transposed the Directive by the implementation date?

Please find below our answers to the specific questions raised.

Section I – Mergers of UCITS

Contents and format of the information

As a general question in relation to mergers, we would be grateful if CESR would clarify how these provisions relate to mergers within one Member State that are not cross-border. Will such mergers be subject to local requirements only or will they be subject to the UCITS IV rules?

1. Do you agree with CESR's proposals for specifying the information to be given to unitholders? Is there any other information that is essential for them?

Yes, these seem reasonable.

2. Do you agree that a summary of the key points of the merger proposal should be optional?

No, we do not agree that the summary should be optional. We believe that a summary should be compulsory and also that the key points must include a fair summary and not exclude any negative aspects e.g. increase in charges.

3. Should there be more detail at level 2 about what ought to be included in the description of the rights of unitholders?

For the purposes of standardisation, yes there should be more detail at level 2.

¹ Based on gross worldwide premiums for the year ended 31 December 2008

² As at 30 June 2009

4. Do you agree with the proposed treatment of the KID of the receiving UCITS?

Yes, this seems reasonable.

5. Would the proposals in Box 1 lead to additional costs for UCITS or management companies? Please quantify your estimates for one-off and ongoing costs. What would be the benefits of the proposals (e.g. compared to no prescription at level 2 on this issue)?

Mergers between UCITS in different Member States will cost more than mergers within a Member State because of additional costs of translation and information on tax considerations / change of tax treatment and possibly legal changes. However the costs of mergers between Member States can be reduced by having as much standardisation as possible and the proposals in Box 1 contribute to standardisation.

Providing the information

6. Do you agree with CESR's assessment that the potential costs and benefits of a harmonised procedure do not support the case for providing advice on level 2 measures on this issue?

Given the complexities and differences between Member States as set out by CESR, it seems unlikely that a harmonised procedure could be achieved, irrespective of whether the potential costs outweigh the benefits. However, we support maximum harmonisation where achievable.

We would be grateful if CESR could clarify whether the requirement to write to both the merging and receiving UCITS extends to mergers within one Member State.

Section II – Master-Feeder Structures

Agreement between feeder and master UCITS

7. Do you agree with CESR's proposals for specifying the content of the agreement?

Yes, these seem reasonable.

8. Are all the points listed in Box 2 appropriate elements to be included in an agreement? Are there others that should be required to be included?

Yes, these seem appropriate. We are not aware of other elements that should be included.

9. Which option do you prefer in relation to the national law and jurisdiction applicable to cross-border agreements?

We prefer option A as this provides certainty. This is necessary with regard to pricing errors, for example, since one Member State's national law may specify different thresholds of materiality.

10. Do you agree that measures to protect the interests of other unitholders in a master UCITS should be left to national law and regulation?

Yes we agree, although it is important to have equal treatment of unitholders in each Member State and therefore we support standardisation.

11. What would be the additional costs of the proposals in Boxes 2 and 3? Please quantify your estimates for one-off and ongoing costs. What would be the benefits of the proposals, compared to no prescription at level 2 on this issue?

Any additional costs would not be material.

12. Do you agree with CESR's proposals in relation to internal conduct of business rules? If not, what should be required by such rules?

Yes, these seem reasonable. It is important that the outcome is the same for investors whether the feeder UCITS and master UCITS are managed by the same management company or not.

13. What would be the additional costs of the proposals in Box 4? Please quantify your estimates for one-off and ongoing costs. What would be the benefits of the proposals, compared to no prescription at level 2 on this issue?

Any additional costs are unlikely to be material.

Measures to avoid market timing

14. Do you agree with CESR's proposed approach to prevention of market timing?

We agree with CESR's recommendation that the agreement between feeder and master UCITS or internal conduct of business rules should specifically address what appropriate measures are necessary to ensure compliance with the level 1 text that requires the master and feeder to co-ordinate the timing of their NAV calculations and price publication to avoid market timing in their unit dealing. It is up to management to guard against market timing, as they currently do. Arrangements will need to take account of time differences between Member States.

Liquidation, merger or division of a master UCITS

15. Do you agree with CESR's analysis of the issues relating to liquidation, merger or division of a master UCITS?

Generally, yes, CESR's analysis seems reasonable.

16. Do you consider it likely that in practice a feeder UCITS would not become aware of the master's intention to liquidate, merge or sub-divide before receiving formal notice of the proposal?

This is possible if the feeder and master are not in the same group, however it is not likely to happen frequently.

17. Do you agree with CESR's proposals in Box 5 for dealing with the liquidation of a master UCITS? In particular:

(a) is two months long enough in which to prepare a proposal for an option other than liquidation of the feeder?

Yes, we think that two months is long enough.

(b) how quickly can the feeder make information for unitholders available once the competent authority's approval is received?

We think this can be done in one month.

(c) would you expect the feeder to suspend subscriptions during any period in which it is unable to make new investments?

The feeder should stay open but new investors should be advised of the proposals before subscribing. Any information regarding proposals should be sent to new investors as promptly as it is sent to existing investors.

(d) does the proposed time extension in paragraph 10 strike a fair balance between the interests of investors and the practical needs of the feeder?

We have no specific comments to make.

18. Does the proposed procedure in Box 5 make it more or less likely that feeder UCITS would pursue an alternative option to liquidation? What would be the additional costs of the proposals? Please quantify your estimates for one-off and ongoing costs. What would be the benefits of the proposals, compared to no prescription at level 2 on this issue?

We do not think that the proposed procedure would make any difference.

19. Do you agree with CESR's proposals in Box 6 for dealing with the merger or division of a master UCITS? In particular:

(a) is one month long enough in which to prepare a proposal for an option other than liquidation of the feeder?

Yes, we think that one month is long enough.

(b) how quickly can the feeder make information for unitholders available once the competent authority's approval is received?

We think this can be done in one month.

(c) would you expect the feeder to suspend subscriptions during any period in which it is unable to make new investments?

The feeder should stay open but new investors should be advised of the proposals before subscribing. Any information regarding proposals should be sent to new investors as promptly as it is sent to existing investors.

(d) does the proposed time extension in paragraph 10 strike a fair balance between the interests of investors and the practical needs of the feeder UCITS?

We have no specific comments to make.

20. Does the proposed procedure in Box 6 make it more or less likely that feeder UCITS would pursue an alternative option to liquidation? What would be the additional costs of the proposals? Please quantify your estimates for one-off and ongoing costs. What would be the benefits of the proposals, compared to no prescription at level 2 on this issue?

We do not think that the proposed procedure would make any difference.

Agreements between depositaries

21. Do you agree with CESR's proposals for defining the content of the depositaries' agreement?

We have no specific comments to make.

22. Does Box 7 cover the right issues? Should other issues be addressed?

We have no specific comments to make.

23. Which option do you prefer in relation to the national law and jurisdiction applicable to crossborder agreements? Would you prefer the law of the master depositary's home State to be applicable in every case?

We have no specific comments to make.

24. What would be the additional costs of the proposals in Box 7? Please quantify your estimate of one-off and ongoing costs. What would be the benefits of these proposals, compared to no prescription at level 2 on this issue?

We have no specific comments to make.

Reporting by the master UCITS depositary

25. Do you agree with CESR's proposals in relation to the irregularities to be reported by the depositary?

Yes we agree.

26. Do you agree that the interests of other unitholders in a master UCITS will be adequately protected under national laws if these proposals are implemented?

We have no specific comments to make.

27. What would be the additional costs of the proposals in Box 8? Please quantify your estimate of one-off and ongoing costs. What would be the benefits of these proposals, compared to no prescription at level 2 on this issue?

We have no specific comments to make.

Agreements between auditors

28. Do you agree with CESR's proposals in relation to auditor agreements?

We have no specific comments to make.

29. Which option do you prefer in relation to the national law and jurisdiction applicable to crossborder agreements?

We have no specific comments to make.

30. Do you foresee that feeder UCITS will generally align their accounting periods with those of their master, or are there good reasons for having different accounting year-end dates?

Although it may be preferable to align the feeder's accounting period with that of the master, there are good reasons for having different accounting year-ends. Both funds may already be in existence and have different accounting year-ends and it might be cheaper to operate with this mismatch than to set up a new fund with a matching accounting period.

31. What would be the additional costs of the proposals in Box 9? Please quantify your estimate of one-off and ongoing costs. What would be the benefits of these proposals, compared to no prescription at level 2 on this issue?

We have no specific comments to make.

Change of feeder UCITS objective

32. Do you agree that it is not necessary for CESR to provide advice on level 2 measures on this issue?

Yes, we agree.

33. Do you agree that it is not necessary for CESR to provide advice on level 2 measures on this issue?

Yes, we agree.

Section III - Notifications

Scope of the information to be published by each Member State

34. Do you agree with CESR's proposals in relation to publication of marketing information?

Yes we agree and we welcome these proposals, particularly (b) and (c).

35. What would be the additional costs of the proposal in Box 10? Please quantify your estimates for one-off and ongoing costs. What would be the benefits of this proposal, compared to no prescription at level 2?

There might be additional costs of each Member State regulator to compile, publish and maintain this information. For the UCITS, after an initial embedding period, costs would be reduced as there would be one central source of information requirements for each Member State and, in theory, less need for local legal advice. The benefits are increased certainty of requirements, standardisation of documentation and processes and reduction of time and resources required for the notification process.

Facilitating host State access to notification documentation

36. Do you support the development of a centralised IT system to facilitate the notification procedure and provide a central repository for fund documents? Could the OAM developed under the Transparency Directive be adapted for this purpose?

Yes, we support the general concept of a centralised IT system to facilitate the notification procedure. We are unable to comment on whether the Officially Appointed Mechanism (OAM) could be adapted for this purpose.

37. What are the current costs of the notification process? What would be the additional costs (direct or indirect) to stakeholders other than competent authorities of developing a centralised system? Please quantify your estimate of one-off and ongoing costs.

Currently, the costs of the notification process vary by Member State. On average, the current notification cost is approximately EUR 3,000 in our experience. We have found that the costs can be highest in Italy (approximately EUR 10,000) where we need to appoint a lawyer and registration is carried out at two levels (the Bank of Italy and CONSOB).

Please note that these figures include registration costs but do not take into account translation costs which can be very high for the first registration.

We cannot comment on costs of developing a centralised system, but, if the process for adding documents to a centralised system were simple, it is possible that there would be a reduction in costs to UCITS.

38. What would be the benefits of these proposals, compared to no prescription at level 2?

The benefits are increased certainty of requirements, standardisation of processes and reduction of costs and of time required for the notification process.

Standard notification letter and attestation

39. Do you consider the notification letter (Annex I) satisfactory? Are there any other matters that it ought to cover?

Yes, this seems reasonable.

40. Do you have any comments on the draft attestation letter (Annex II)?

We have no specific comments to make.

41. Do you consider that use of the proposed letters would generate any additional costs, compared to the existing procedure following the CESR Guidelines? What would be the additional benefits, again compared to the existing procedure?

Once changes to processes have been embedded, it is likely that use of the proposed letters would reduce costs rather than generate any additional costs.

Electronic transmission of notification files

42. Do you support the development of a dedicated electronic system to effect transmission of notifications between competent authorities? What would be the costs and benefits of such a system to UCITS and their management companies?

If notification by email is sufficient, then development of a dedicated electronic system must first be subject to cost benefit analysis. Whether development costs are met by competent authorities or UCITS, ultimately these costs are likely to be passed to UCITS investors (via regulatory fees then UCITS charges).

43. Do you agree with the proposed procedures in Boxes 11 and 12 for use of e-mail to transmit notifications, if no dedicated system is made available? Do you consider that any additional measures are desirable, and what would be their costs and benefits?

The proposed procedures seem reasonable. We note that there is the presumption that documents have been sent successfully unless notified to the contrary and we support this as it speeds up the process. It is possible that there are capacity constraints in receiving large numbers of emails with multiple large attachments at one email address. This should be investigated by competent authorities if they have not already done so.

44. Does the proposed procedure for transmission and acknowledgement of receipt give sufficient certainty to UCITS that wish to access the market of another Member State? Does it give adequate protection to investors in a host State, in the event that an incomplete notification takes place?

The advantage of the proposed procedure is that a UCITS is not delayed by home and host Member State competent authorities' own administrative delays. Provided that a UCITS is entitled to rely on its electronic systems (for proof of sending documents attached to email to the home state competent authority) then yes the proposed procedure gives sufficient certainty.

We consider that this should be adequate protection for investors in the host State. Even if there is a delay in the notification from the home State competent authority arriving in the host State, it is important that this is not detrimental to the rights of investors e.g. compensation schemes should apply from the date of notification by the home State, even if the host State then notifies a problem to the home State and the home State has to ask the UCITS to cease marketing.

45. Should CESR develop level 3 guidelines in this area instead of advising the use of level 2 measures?

We have no specific comments to make.