

Mr Lamberto Cardia
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Group
Committee of European Securities Regulators
11-13 avenue de Friedland
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Dear Mr Cardia

Consultation Paper on CESR's technical advice on mergers of UCITS, master-feeder UCITS structures and cross-border notification of UCITS

We are grateful for the opportunity to comment on the Consultation Paper and would commend CESR for its efforts in maintaining progress and momentum around the proposed enhancements in each of these highly technical areas. Our detailed comments are included in the next section.

Who are BlackRock?

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BlackRock is a member of EFAMA, the Investment Management Association in the UK, ALFI in Luxembourg and IFIA in Dublin.

Summary Comments on the Consultation Paper

BlackRock is broadly supportive of the approach taken in the majority of the areas, although there are a number of areas which in our view require moderate attention to ensure the most practical outcome is reached, in particular around information provided to unitholders in connection with mergers, the content of master-feeder agreements and information provided by host-state competent authorities in respect of non-harmonised marketing requirements.

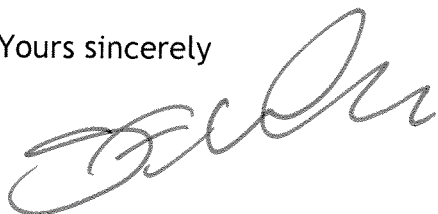
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We disagree with certain elements of the proposed notifications protocols such that there may be a situation where notifications are rejected or marketing activities prohibited through omissions that are no fault of the UCITS or management company itself, or where the non-harmonised requirements are not sufficiently detailed on the competent authority's website.

Finally, it is encouraging that CESR recognise in the Consultation Paper the tax considerations that need to be resolved in order for UCITS to take advantage of the proposed procedural enhancements. We note the recommendation that the Commission should keep this issue under review.

We trust that CESR will find these comments helpful and we would be pleased to discuss any particular aspect directly.

Yours sincerely



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BlackRock response to Specific Questions

Section I - Mergers of UCITS

1.1: Contents and Format of the Information

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 to them?

We agree with CESR's recommendation that the information provided to unitholders concerning the merger shall be written in a brief manner and in non-technical language to assist their understanding of the proposal.

We would also support the notion that unitholders of the merging and receiving UCITS will have different information requirements, and in particular that unitholders of the receiving UCITS will already be familiar with the features of the UCITS.

In order to encourage unitholders to properly peruse the information provided, it would seem sensible to present it in such a way as to make it visually appealing. In our response to CESR's Call for Evidence on possible implementing measures of the future UCITS Directive [Ref. CESR/09-179], we recommended the inclusion of a comparative table setting out key characteristics in respect of the merging and receiving UCITS and the types of information to be included, based on our practical experience of conducting cross-border mergers.

With regard to the proposal in Box 1, paragraph 4 (b), we strongly disagree with the proposal for the inclusion of 'a profile of the typical investor for whom the UCITS is designed'. A UCITS may be designed for a multiple of different investor types and efforts to create a definition that is sufficiently wide to capture each of these may render the description of little use to recipients of the information.

In Box 1, paragraph 5(c), it may also be appropriate to set out clearly to what extent the costs of the merger are estimated and whether the figure is expressed as a maximum or other basis.

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

We agree that the UCITS should be afforded the discretion to create a summary document where this might be considered to be useful to unitholders, particularly in the case of complex mergers. The requirement in Box 1 that information provided is written in clear, non-technical language should be sufficient to enable unitholders to gain an understanding of the proposals in respect of non-complex transactions, without the need for repetition in a summary. Where a summary is provided, the UCITS should ensure there is appropriate 'sign-posting' to the more detailed information.

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

No. It is our view that Article 43(3)(c) of the Directive requires sufficient level of detail, including the provision of a statement that the unitholder has the right to obtain additional information.

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

We agree that there should be flexibility on whether the KID is provided as a stand-alone document or as part of the merger information document. This should be determined at the discretion of the UCITS, although if an integrated document is prepared, it should be ensured that a prominent reference is included on the front cover or table of contents.

5. Would the proposals in Box 1 lead to additional costs for UCITS or management companies? What would be the benefit of the proposals (e.g. compared to no prescription at level on this issue)?

The provisions of the Directive and implementing measures in Box 1, particularly those which require that unitholders in the receiving UCITS are also provided with information about the merger will inevitably lead to an increase in costs, especially in respect of printing and mailing, due to the larger population of unitholders which must be included. It is difficult to provide precise quantum on the potential additional costs involved since this would depend on the relative number of shareholders in the receiving UCITS which could vary considerably depending on the fund. The impact would be more acute where a UCITS with a small unitholder base is merged into a UCITS with a significantly larger unitholder base and there is a risk that the costs of the merger could be disproportionate and detract from the intended efficiencies the transaction could deliver.

It is important therefore that a practical approach is adopted, both in terms of the volume of information required in respect of unitholders of the receiving UCITS and the medium in which the information may be provided. In this respect, permitting notices to be published to the firm's website should the unitholder so elect could be one potential solution.

1.2: 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 issues on this issue?

We agree that in view of the differing requirements under Member States' national laws, prescription at level 2 is likely to achieve little, although we would

support a recommendation for a post-implementation review of different practices relating to the service of documents to investors.

Section II - Master-Feeder Structures

2.1 Agreement between feeder and master UCITS

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

We agree with CESR's proposals that the content of the agreement should be based on a general list of topics which should be included without detailed prescription. We would also concur with the views of many EFAMA members that elements of Box 2, notably points 2 - 5, may be subject to periodic change, and therefore to avoid having to update the agreement too regularly, these should be covered by a separate service level agreement.

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?

We consider that the points listed in Box 2 are appropriate elements to be included in an agreement.

We would also recommend that the agreement include an indication of whether the feeder will invest in non-fee paying share classes or if not, the nature of any rebate arrangement which may exist in relation to charges.

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

We would be in favour of Option B, that the relevant national law of home-state of either the master or the feeder or a third-country may be selected, as determined by the relevant parties, so as to take into account specific circumstances which may be relevant.

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?

We agree.

11. What would be the additional costs of the proposals in Boxes 2 and 3? What would be the benefits of the proposals, compared to no prescription at level 2 on this issue?

We believe there would be some benefit in harmonisation of arrangements between master and feeder UCITS to the extent that a standard template for an agreement might be developed, although the operational specifics should be

negotiated separately as noted above. There will inevitably be additional costs to the industry in preparing such agreements.

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?

We agree.

13. What would be the additional costs of the proposals in Box 4? What would be the benefits of the proposals, compared to no prescription at level 2 on this issue?

We believe any additional costs should be minimal as the management company should already have sufficient conduct of business rules to mitigate conflicts of interest that might arise.

2.2 Measures to avoid market timing

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

We agree that the internal conduct of business rules of the UCITS should describe the measures through which the risk of market timing may be mitigated and the relevant standards included in the service level agreement between the feeder and the master.

2.3 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?

We agree with CESR's analysis.

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?

We would consider it unlikely, particularly where the master and feeder are managed by the same management company (or management companies belonging to the same group).

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?

Under normal circumstances, yes.

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

This would depend on the nature of the feeder and the underlying unitholder base, in particular whether the feeder is marketed within a specific country or in multiple countries in a particular region. Generally, where administration of UCITS is outsourced, service providers will typically require up to 5 business days notice in order to prepare the data extract and then a further 24-48 hours in order to validate the data once produced. Given that there may also be translations into the language of the home-state of the feeder, 10 business days in total would not seem an unreasonable estimate. The period may be longer where the competent authority requires changes to the content of the notification to shareholders of the feeder and the changes need to be reflected in multiple language versions.

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

This may be appropriate but would depend entirely on the circumstances, for instance if the feeder had already considered contingency arrangements. In any event, the facts would need to be communicated to shareholders at the point-of-sale.

- (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?

Yes.

- 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?**

The existence of harmonised provisions concerning notification and approvals relating to the liquidation of the master UCITS would ensure the manner in which alternative plans are executed is consistent. However, in practice the relatively short space of time available may in certain circumstances make it more likely that liquidation is the most viable option.

Merger or sub-division of the master UCITS

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

In broad terms, yes, although the requirement that the feeder should notify shareholders within 5 business days of approval of the competent authority of its intention to pursue an alternative options is unrealistic. 10 business days would be more reasonable.

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

Yes, although internal product governance processes would inevitably need to be reviewed and potentially refined to fast-track the process.

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

See answer to 17(b)

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

Yes, although it should still allow redemptions.

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? What would be the benefits of the proposals, compared to no prescription at level 2 on this issue?

The existence of harmonised provisions concerning notification and approvals relating to changes to the master UCITS would ensure the manner in which alternative plans are executed is consistent. However, in practice the relatively short space of time available may in certain circumstances make it more likely that liquidation is the most viable option.

2.4 Agreements between depositaries

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

We agree with CESR's approach to indicate the areas that should be covered by the agreement, rather than being prescriptive as to precise contents and format. As CESR note, the general lack of harmonisation concerning the duties of depositaries would make any other approach difficult to implement.

Similar to our comments under question 7, we would recommend that the more operational aspects of the relationship between the two parties are covered under a service level agreement to enable updates to be implemented as required. By way of an example, the agreement should enforce the provision of information from the master depositary to the feeder depositary but the manner of transmission (including applicable deadlines) should reside in the service level agreement.

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

Yes, although it should be clear that the level 2 measures would apply only to the extent that these are consistent with national provisions concerning the duties of the depositary.

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

If there exists no agreement between the master and feeder, we would be in favour of Option B, that the relevant national law of home-state of either the master or the feeder may be selected, as determined by the relevant parties, so as to take into account specific circumstances which may be relevant.

24. What would be the additional costs of the proposals? What would be the benefits of the proposals, compared to no prescription at level 2 on this issue?

From the perspective of the UCITS or the management company, the only additional costs which are immediately apparent are those relating to the fees of the depositary which might be increased as a result of the additional obligations.

2.5 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?

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 agree since the feeder would be treated in the same way as any other unitholder in the master.

27. What would be the additional costs of the proposals? What would be the benefits of the proposals, compared to no prescription at level 2 on this issue?

None envisaged.

2.6 Agreements between auditors

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

We agree.

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

If there exists no agreement between the master and feeder, we would be in favour of Option B, that the relevant national law of home-state of either the master or the feeder may be selected, as determined by the relevant parties, so as to take into account specific circumstances which may be relevant.

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?

It seems likely that feeder UCITS would organise themselves so as to have year-end accounting periods that are in close proximity to each other, particularly those operated by the same management company (or companies in the same group). However, the year-end of the feeder would potentially need to occur after that of the master to ensure that any income distribution declared by the master fund was included in the income distributed by the feeder.

31. What would be the additional costs of the proposals? What would be the benefits of the proposals, compared to no prescription at level 2 on this issue?

From the perspective of the UCITS or the management company, the only additional costs which are immediately apparent and might arise are those relating to the fees of the auditors which might be increased as a result of the additional obligations, particularly where accounting processes and/or reporting standards are not completely aligned between Member States.

2.7 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?

We agree.

2.8 Transfers of assets in kind

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

We agree that it would be difficult to prescribe a harmonised procedure in view of the different national regimes applicable and therefore support CESR's assertions here.

Section III - Notifications

3.1 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?

We agree and would echo the comments of respondents to the call for evidence that information should be easily accessible and the relevant area of the competent authority's website readily identifiable, through links from the home page. Our experience of successfully navigating host-state competent authorities' websites is varied.

We disagree with the closing comments in paragraph 9 such that the published information cannot be relied upon as exhaustive and must be without prejudice to other provisions of national law, since this would place the UCITS in an entirely unfair position. Whilst there should be recognition that such discrepancies might occur, it would be more helpful if the level 2 measures could prescribe that a remediation process should be activated in the event that omissions are detected.

In Box 10(e), we would recommend that it is also made clear where financial promotions are subject to the prior authorisation of the competent authority and the service levels which apply to such authorisations.

In Box 10(g), we would recommend that it is also made clear that facilities made available to unitholders could include the appointment of a local paying or facilities agent or other functionary, and the exact nature of the duties which must be performed and/or the facilities or information provided.

It is also important that there is information on whether nominee/omnibus account structures are permitted under national laws and if not, full details of the regulatory requirements should be disclosed.

35. What would be the additional costs of the proposals? What would be the benefits of the proposals, compared to no prescription at level 2 on this issue?

The potential benefits of the proposals are not insubstantial and could result in reduced legal costs of engaging with local counsel, and more efficient and swifter time to market.

3.2 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?

We would agree in principle since the UCITS should then only be required to lodge updated documentation in a central location, although it is assumed that host-state authorities would need to be notified that amended documents have been submitted. We would agree with CESR's comments in paragraph 15 that a full cost benefits analysis of such a solution would need to be undertaken and in particular, from where the development and ongoing costs would be met.

As noted in paragraph 17, an alternative would be that CESR prescribe additional level 2 measures requiring the UCITS to publish documentation on its website when marketing into host-states, which is already a requirement in many States in lieu of a local representative office or facilities agent. However, this would be disproportionate if national law required the employment of local agents.

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?

These can vary depending on the host-state concerned and in particular, in regard to presentation of the constitutional documents and other information required.

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

The proposals would introduce greater consistency and a central location from which official documentation relating to the UCITS could be retrieved would undoubtedly be helpful both to host-state authorities and the UCITS. However, the potential benefit of providing access to the general public is unclear, since the large majority of investors might prefer to access documents directly from the UCITS or the promoter if this portal is more ‘user-friendly’ and visually appealing, and/or also provided access to a wider range of products other than just UCITS, for instance, pensions and other savings products. We would recommend that any analysis of the potential development work required to create a central repository for UCITS documentation is conducted in parallel with a programme of consumer testing to determine whether there would indeed be any appetite for use of such a system by the general public.

3.3 Standard notification letter and attestation

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

We strongly support a consistent and harmonised standard for the notification letter and attestation, the former of which can currently differ between Member States, particularly with regard to the entity authorised to execute the documents. However, we are concerned that the notification process may be impacted by the host-state authorisation of the information provided under Part B (non-harmonised part), which could mean the whole notification is classified as incomplete. We would recommend that there is a clear distinction made between the notification made in connection with the harmonised standards and those relating to the non-harmonised areas which should be validated separately.

We would also recommend that the notifications made in Part A refer to sub-fund compartments rather than separate unit classes, although these might be a requirement under Part B.

40. Do you have any comments on the draft attestation letter?

No specific comments.

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?

None of which we are aware.

3.4 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?

In principle, we support the proposal for a common transmission method for notifications between competent authorities.

We do not agree with paragraph 7 of Box 11 as this would appear to unjustly penalise the UCITS for an omission that may not be of its making. If the error or omission is the fault of the UCITS but does not involve a breach of host-state marketing laws, does not prejudice shareholders and can be resolved simply, then the UCITS should be able to continue to access that market. If, however, the UCITS fails to take the corrective action, including provision of a revised notification letter if applicable, within a reasonable amount of time, for instance 5 business days, then it would not seem unreasonable that the home-state authority should serve final notice of the required cessation of marketing in the relevant host-state, perhaps within a period of 24 hours from the issue of the notice.

43. Do you agree with the proposed procedures in Box 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?

We agree that the proposed use of e-mail to transmit notifications is reasonable in the absence of an alternative medium.

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

See our answer to question 42.

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

We would assert that to ensure the standards are applied consistently and on a harmonised basis, level 2 measures appear to be the most suitable method of implementation.