

CESR-Consultation on UCITS IV Level 2: Fund Mergers, Master-Feeder and Notification

BEAMA response

Mergers

The way of working as proposed by CESR closely ties in with the method which is already being followed in Belgium.

The Working Group points out that the responsibilities lie mainly with the Board of Directors of ManCo and to a lesser extent with the UCI Board of Directors.

Attention should be paid to avoiding any needless increase of the cost of a merger:

- The KID document already contains a substantial part of the information to be provided to the shareholders within the framework of a merger.
There is no need to repeat this information in the notification of the merger to all of the shareholders, for this causes the cost of a merger to go up needlessly.
- As for mentioning changes concerning the shareholders' rights in the notification, this should be limited to the changes that have been made to 'fundamental' shareholders' rights.

One should avoid that the cost of a merger becomes an element which is determining for the decision whether or not to merge. This would run counter to the purpose of making economies of scale in UCITS IV.

Master-Feeder

Box 2: Agreement

According to the Working Group, the law that is applicable logically should be the law as it exists in the Member State in which the Master has been established. In our opinion, the worst solution certainly would be to leave room for making a choice.

As for the question which law should apply, problems may arise however if there are several feeders.

Box 4: Single Manco Master-Feeder

In spite of the difficulty to sign an agreement when Master and Feeder are managed by the same ManCo (both parties being the same), we think that it is fundamentally important for the internal conduct of business rules to contain the same elements as an agreement (box 2).

Box 5: Liquidation

The Working Group draws the attention on the problem which arises in case of immediate liquidation of the Master, which makes it impossible for the Feeder to carry out the redemptions due to the blocking imposed by the Master.

The time schedules as proposed may pose a problem within the context of Belgian corporate law.

An equal treatment of all shareholders must be guaranteed at any rate. Exclusive information flows between Master and Feeder are problematic.

Box 8: Reporting by Master's depositary

The Working Group is in favour of a very strict regulation as for the timing and the information details to be provided to the Feeder by the Master and the Master's depositary.

Moreover, one must make sure that the other Masters' shareholders are treated equally.

Notification

Model Notification Letter

3.3. Part B non-harmonised part: reference is made to the details of paying agent. Not every country however has the obligation to indicate a paying agent. Some have the obligation to designate a preferred distributor or do not call the agent/representative a 'paying agent'. It might be better to indicate the 'paying agent or other mandatory representative'.