

UCITS IV

A further milestone on the way
towards a Single Market

Peter De Proft

Director General, EFAMA

Agenda

- Level 1 adoption process and timetable
- UCITS IV – main elements of the Efficiency Package
 - Management Company Passport
 - Supervision
 - Notification Procedure
 - Key Investor Information
 - Mergers
 - Master-Feeder Structures
- Level 2 Implementing Measures
- Madoff: depository in the cross-fire

Level 1 adoption process and timetable

- July 2005: Green Paper
- November 2006: White Paper

- July 2008: Commission's proposal
- January 2009: adoption by European Parliament
- April/May 2009: adoption by Council

- Summer/autumn 2009: entry into force
- July 2011: implementation into national law

Management Company Passport (I)

Clear allocation of responsibilities:

- Management Company supervisor: organization and operation of MC
- Fund supervisor: constitution and functioning of UCITS
 - Informed about MC's risk management and delegation arrangements
 - Receives attestation issued by MC supervisor specifying the types of funds which the MC is authorised to manage

Management Company Passport (II)

- Agreement between Management Company and Depositary to regulate flow of information
- Management Company fully responsible to deal with investors' complaints
 - No local contact point → **full passport!**
- Harmonisation at Level 2: risk management, conflicts of interest, rules of conduct

Supervisory cooperation

- A general obligation to cooperate
- Minimum degree of harmonization of supervisory powers
- Mutual notification in case of doubts about the legality of acts by an entity subject to the Directive
- Member States must introduce appropriate administrative measures and sanctions

Notification procedure (I)

- Regulator-to-regulator electronic communication
- Harmonized content of notification file
- Less translation requirements
- **Notification period: max. 10 working days**
- No power for host MS to question compliance with UCITS rules or impose any additional requirements

Notification procedure (II)

- Marketing/distribution arrangements not subject to UCITS Directive
- Adequacy of marketing/distribution arrangements should be checked after the UCITS has accessed the market
- If checked before, control should not prevent the UCITS from accessing the market

Key Investor Information

- New concept replacing the simplified prospectus
- Aim: clear, easy to understand + comparable pre-contractual information on key elements
- Fully harmonized document in terms of content and form
 - Details to be specified at Level 2
- No civil liability
- UCITS – MiFID overlap: intermediaries must provide key investor information to investors

Mergers (I)

- First legal EU-framework for UCITS mergers!
 - Taxation not addressed
- 3 techniques to be recognized by MS
- Scope: cross-border and domestic mergers
 - UCITS funds established in different MS
 - UCITS funds established in the same MS that merge into a newly constituted UCITS fund in another MS
 - UCITS funds in the same MS, but at least one of them is marketed cross-border

Mergers (II)

Procedure of regulatory approval:

- Authorization by the competent authority of the merging UCITS home Member State
- Exhaustive list of items to be included in the common draft terms of merger
- Impact on investors and investor information to be assessed by competent authorities of both merging and receiving UCITS
- Maximum authorization period: 30 working days
- Third-party control: depositary and auditors

Master-Feeder Structures (I)

- First EU-framework for UCITS master-feeder structures
- Feeder must invest min. 85%, only 1 master
- 15% may be used, inter alia, for derivative instruments for hedging purposes only
- Derivatives: feeder may calculate its global exposure by combining its own direct exposure with the
 - Master UCITS actual exposure (look-through), or
 - Master UCITS potential maximum global exposure (fund rules)

Master-Feeder Structures (II)

- Approval by the competent authority of the feeder UCITS home Member State
 - Master-feeder agreement
 - If managed by the same management company, internal conduct of business rules instead
 - Information-sharing agreements between depositaries and auditors
 - Information to investors
- Regulatory cooperation in cross-border structures

Level 2 Implementing Measures (I)

- Call for evidence published by CESR on 17 February 2009
- Deadline for comments by the industry: 31 March 2009
- Separate timing for KII: 2 public consultations
 - Mid-March for technical aspects
 - Summer for entire advice
- Open hearing in the summer to discuss outcomes of Phase II consumer testing

Level 2 Implementing Measures (II)

- Part I: management company passport and supervision
 - Advice by 30 October 2009
 - Measures on MCP to be adopted by July 2010
- Part II: Key Investor Information (separate process)
 - Advice by 30 October 2009
- Part III: mergers, master-feeder and notification
 - Advice ideally by 30 October 2009

- **Aim: simultaneous implementation of Level 1 and Level 2 provisions by July 2011**

Madoff: depositary in the cross-fire

- Madoff collapse: questions about role and liability of UCITS' depositaries
- COM/CESR investigate into national implementation + propose steps

→ **Separate process from UCITS IV!**

- EFAMA: support EU in fact finding and defend the industry against unjustified accusations

Conclusion

- UCITS IV = a further milestone on a long way towards a Single Market
- Challenges ahead in implementing the Directive
- We won an important battle, but not the war!