

# Luxembourg management companies and UCITS IV: practical implications and challenges



UCITS IV: Practical implications and  
challenges

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1. CESR – background and role
2. UCITS IV
  - Management company passport
  - Key Information Document
  - Mergers, master-feeder structures and notification procedure
3. Practical challenges
4. Next steps



# 1. CESR – background and role



- Independent committee of EU securities regulators
- Created by a Commission Decision of June 2001 following Lamfalussy report
- 2 committees created:
  - ESC (European Securities Committee) with a regulatory role (Level 2 of Lamfalussy process)
  - CESR with an advisory role towards the European Commission (Level 3 of the Lamfalussy process)
- Future developments
  - de Larosière report 2009
  - Draft Regulation on creation of ESMA (European Securities and Markets Authority) September 2009



## CESR's work on investment management

- 2003/2004: Lamfalussy process extended to UCITS Directive
- Expert Group given mandate in 2004
- ‘Consultative Working Group on Investment Management ’ set up to provide input from industry and investor perspectives
- Key achievements:
  - Simplification of the notification procedure in context of fund passport
  - Clarification of certain definitions in UCITS Directive: *Advice on eligible assets* + guidelines including *Hedge fund indices*
  - Advice to the European Commission on KID and management company passport



## 2. UCITS IV Directive



## UCITS IV Directive – legislative context

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- Initial orientations published by COM March 2007
- COM proposal adopted July 2008
- CESR advice requested on management company passport by October 2008
- Agreement between EP and Council January 2009
- COM mandate to CESR February 2009 (3 parts)
  - Management company passport
  - Key investor information
  - Fund mergers, master-feeder structures & notification
- UCITS IV Directive adopted by European Council June 2009



## UCITS IV: Management company passport

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- Organisational requirements and conflicts of interest
  - Aim for consistency with MiFID
- Rules of conduct
  - Aim for consistency with MiFID
- Depositaries
  - Focus on written agreement between depositary and management company
- Risk management (including risk measurement)
  - Risk Management Principles (Feb 2009) used as basis
- Supervisory co-operation
  - Based on CESR and IOSCO best practice



## UCITS IV: Key investor information

- CESR's initial advice to Commission – February 2008
- Technical consultation – March 2009
- Consumer testing exercise: March 2008 – May 2009
  - Groundbreaking project
  - Covered seven EU Member States
  - Results fed into CESR's final advice on KID
- CESR's advice delivered October 2009
  - Risk and charges methodologies December 2009



## UCITS IV: Key investor information

- Format and presentation
  - Max 2 sides of A4 except particularly complex UCITS
- Risk and reward
  - Synthetic risk and reward indicator with explanatory text
- Past performance
  - Up to 10 years' performance in bar chart
- Charges
  - Harmonised layout of charges in percentage terms
- Structured funds
  - Prospective scenarios to illustrate fund performance under different market conditions



## UCITS IV: Fund mergers, master-feeder structures and notification procedure

- Fund mergers
  - Greater economies of scale
  - Harmonised set of information for investors
- Master-feeder structures
  - Measures to protect feeder (but general principle of fair treatment)
- Notification procedure
  - Reduced time to market for notified funds
  - Possibility of electronic transmission
- Advice to Commission December 2009
- Separate work on development of centralised IT system



### 3. UCITS IV: Practical challenges



- Challenges
  - MiFID-style rules on organisational arrangements and rules of conduct
  - Additional focus on strategies for voting rights
  - New relationships with supervisory authorities
- Opportunities
  - Streamlining of business models
  - Centres of excellence
  - Level playing field cross-border



## Management company passport – challenges and opportunities

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- Delegation of activities to third parties
- MiFID or non-MiFID?
- Due diligence
  - Nature of functions to be taken into account
  - Appropriate monitoring by management company
- Liability of management company for compliance unaffected
- Avoidance of ‘letter box’ entities
- Third parties may not be used to circumvent requirements



## KII – challenges and opportunities

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- Challenges
  - Format and length constraints
  - Focus on key information for retail investor
  - New approach to risk and reward disclosure
  - Past performance – ‘MiFID+’ approach
- Opportunities
  - Better engagement with end investors
  - Greater harmonisation → smoother cross-border notification
  - More clarity on liability



## Notification procedure – challenges and opportunities

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- Opportunities
  - Notification on regulator-to-regulator basis
  - Standardised notification letter
  - Quicker time-to-market
  - Easier access to information on host state marketing rules
- Challenges
  - Ensuring access to updated documentation



## Next steps

- COM preparing L2 measures on basis of CESR advice
- CESR to work on certain issues at L3
  - KID
  - Risk measurement
- L2 measures to be adopted by July 2010
- Transposition deadline July 2011



## Contact

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