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**CSSF REGULATION NO. 10-5 TRANSPOSING COMMISSION DIRECTIVE
2010/44/EU OF 1 JULY 2010 IMPLEMENTING DIRECTIVE 2009/65/EC OF
THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AS REGARDS
CERTAIN PROVISIONS CONCERNING FUND MERGERS, MASTER-FEEDER
STRUCTURES AND NOTIFICATION PROCEDURE**

(Mémorial A – No. 239 of 24 December 2010)

as amended by

- CSSF Regulation N° 11-04 amending CSSF Regulation N° 10-5 transposing Commission Directive 2010/44/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure

**CHAPTER I:
GENERAL**

First Article

Subject matter

This Regulation states the implementing measures of the Law of 17 December 2010 relating to undertakings for collective investment, by laying down the detailed rules for the implementation concerning:

(1) the detailed content, form and the method by which appropriate information shall be provided by merging UCITS and receiving UCITS to their respective unitholders on a merger in order to enable unitholders to make an informed judgment of the impact of a merger on their investment and to exercise their right to approve mergers and the right to request, without any charges other than those retained by the UCITS to meet disinvestment costs, the repurchase or redemption of their units or, where possible, to convert them into units in another UCITS with a similar investment policy and managed by the same management company or by another company with which the management company is linked by common management or control, or by a substantial direct or indirect holding;

(2) the content of the agreement or of the internal conduct of business rules into which the feeder UCITS shall enter into with the master UCITS and the application procedures for approval in the event of a liquidation, merger or division of a master UCITS;

(3) the information to be included in the information-sharing agreement which the depositaries enter into if the master and feeder UCITS have different depositaries in order to ensure the fulfilment of the duties of both depositaries and to identify the types of irregularities which are deemed to have a negative impact on the feeder UCITS and about which the depositary of the master UCITS has to inform the competent authorities

of the master UCITS' home Member State, the feeder UCITS or, where applicable, the management company and the depositary of the feeder UCITS;

(4) the content of the information-sharing agreement which the *réviseurs d'entreprises agréés* (approved statutory auditors) or, as the case may be, the independent auditor(s) shall enter into if the master UCITS does not have the same *réviseur d'entreprises agréé* (approved statutory auditor) or, as the case may be, independent auditor(s) as the feeder UCITS;

(5) the form and method by which information shall be provided by a feeder UCITS to its unitholders which already pursues activities as a UCITS, including those of a feeder UCITS of a different master UCITS; and

(6) the complete information on the laws, regulations and administrative provisions which are specifically relevant to the measures taken with a view to the marketing within their territory of units of UCITS established in another Member State which shall be readily accessible remotely by electronic means as well as any other means in order to facilitate access by the competent UCITS host Member State to the information and the notification letter that a UCITS which proposes to market its units in a Member State other than the UCITS home Member State, shall first be submitted to the competent authorities of its home Member State.

Article 2

Definitions

For the purpose of this Regulation, the following definitions shall apply:

(1) "CSSF" means the *Commission de Surveillance du Secteur Financier* (the Commission for the Supervision of the Financial Sector);

(2) "synthetic risk and reward indicators" means synthetic indicators within the meaning of Article 8 of Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website;

(3) "Directive 2009/65/EC" means the Directive of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

(4) "Law of 17 December 2010 relating to undertakings for collective investment" means the Law of 17 December 2010 relating to undertakings for collective investment and transposing Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast), and amending the Law of 20 December 2002 relating to undertakings for collective investment, as amended; the Law of 3 February 2007 relating to specialised investment funds, as amended; and Article 156 of the Law of 4 December 1997 on income tax;

(5) "rebalancing of the portfolio" means a significant modification of the composition of the portfolio of a UCITS.

CHAPTER II :
UCITS MERGERS

Section 1

Content of the merger information

Article 3

General rules regarding the content of information to be provided to unitholders

(1) The information to be provided to unitholders pursuant to Article 72, paragraph (1) of the Law of 17 December 2010 relating to undertakings for collective investment shall be written in a concise manner and in non-technical language that enables unitholders to make an informed judgment of the impact of the proposed merger on their investment.

In the case of a proposed cross-border merger, the merging UCITS established in Luxembourg or the receiving UCITS established in Luxembourg shall explain in plain language any term or procedure relating to the other UCITS which differ from those commonly used in Luxembourg.

(2) The information to be provided to the unitholders of the merging UCITS established in Luxembourg shall meet the needs of investors who have no prior knowledge of the features of the receiving UCITS or of the manner of its operation. It shall draw their attention to the key investor information of the receiving UCITS and emphasise the desirability of reading it.

(3) The information to be provided to the unitholders of the receiving UCITS established in Luxembourg shall focus on the operation of the merger and its potential impact on the receiving UCITS established in Luxembourg.

Article 4

Specific rules regarding the content of information to be provided to unitholders

(1) The information to be provided in accordance with Article 72, paragraph (3), point b) of the Law of 17 December 2010 relating to undertakings for collective investment to the unitholders of the merging UCITS established in Luxembourg shall also include:

- a) details of any differences in the rights of unitholders of the merging UCITS established in Luxembourg before and after the proposed merger takes effect;
- b) if the key investor information of the merging UCITS and the receiving UCITS show synthetic risk and reward indicators in different categories, or identify different material risks in the accompanying narrative, a comparison of those differences;
- c) a comparison of all charges, fees and expenses for both UCITS, based on the amounts disclosed in their respective key investor information;
- d) if the merging UCITS established in Luxembourg applies a performance-related fee, an explanation of how it will be applied up to the point at which the merger becomes effective;
- e) if the receiving UCITS applies a performance-related fee, how it will subsequently be applied to ensure fair treatment of those unitholders who previously held units in the merging UCITS established in Luxembourg;

- f) in cases where Article 74 of the Law of 17 December 2010 relating to undertakings for collective investment permits costs associated with the preparation and completion of the merger to be charged to either the merging or the receiving UCITS or any of their unitholders, details of how those costs are to be allocated;
- g) an explanation of whether the investment company established in Luxembourg or the management company of the merging UCITS established in Luxembourg intends to undertake any rebalancing of the portfolio before the merger takes effect.

(2) The information to be provided in accordance with Article 72, paragraph (3), point b) of the Law of 17 December 2010 relating to undertakings for collective investment to the unitholders of the receiving UCITS established in Luxembourg shall also include an explanation of whether the investment company established in Luxembourg or the management company of the receiving UCITS established in Luxembourg expects the merger to have any material impact on the portfolio of the receiving UCITS established in Luxembourg, and whether it intends to undertake any rebalancing of the portfolio either before or after the merger takes effect.

(3) In accordance with Article 72, paragraph (3), point c) of the Law of 17 December 2010 relating to undertakings for collective investment, merging UCITS and/or receiving UCITS established in Luxembourg shall provide certain information to their respective unitholders. This information shall also include:

- a) details of how any accrued income in the respective UCITS is to be treated;
- b) an indication of how the report of the *réviseur d'entreprises agréé* (approved statutory auditor) or, as the case may be, the independent auditor referred to in Article 71, paragraph (3) of the Law of 17 December 2010 relating to undertakings for collective investment may be obtained.

(4) The information to be provided in accordance with Article 72, paragraph (3), point d) of the Law of 17 December 2010 relating to undertakings for collective investment shall include:

- a) where relevant, whether, under the provisions of Article 66, paragraph (4) of the Law of 17 December 2010 relating to undertakings for collective investment applicable to the merging UCITS established in Luxembourg and, where applicable, to the receiving UCITS established in Luxembourg, unitholders are required to approve the merger proposal, the procedure by which unitholders will be asked to approve the merger proposal, and what arrangements will be made to inform them of the outcome;
- b) the details of any intended suspension of dealing in units to enable the merger to be carried out efficiently;
- c) when the merger will take effect in accordance with Article 75, paragraph (1) of the Law of 17 December 2010 relating to undertakings for collective investment.

(5) If the terms of the proposed merger include provisions for a cash payment in accordance with Article 1, point 20) a) and b) of the Law of 17 December 2010 relating to undertakings for collective investment, the information to be provided to unitholders of the merging UCITS established in Luxembourg shall contain all details of such proposed payment, and shall include in particular when and how unitholders of the merging UCITS established in Luxembourg will receive the cash payment.

(6) In cases where, according to the provisions of Article 66, paragraph (4) of the Law of 17 December 2010 relating to undertakings for collective investment applicable to the merging UCITS established in Luxembourg and, as the case may be to the receiving UCITS established in Luxembourg, the merger proposal must be approved by the unitholders, the information may contain a recommendation by the respective management company or board of directors of the investment company established in Luxembourg as to the course of action.

(7) The merging UCITS established in Luxembourg shall inform the unitholders on:

- a) the period during which the unitholders shall be able to continue making subscriptions and requesting redemptions of units in the merging UCITS established in Luxembourg;
- b) the time when those unitholders not making use of their rights granted pursuant to Article 73, paragraph (1) of the Law of 17 December 2010 relating to undertakings for collective investment, within the relevant time limit, shall be able to exercise their rights as unitholders of the receiving UCITS;
- c) an explanation that in cases where the merger proposal must be approved by the unitholders of the merging UCITS established in Luxembourg according to the provisions of Article 66, paragraph (4) of the Law of 17 December 2010 relating to undertakings for collective investment applicable to the UCITS established in Luxembourg and the proposal is approved by the necessary majority, those unitholders who vote against the proposal or who do not vote at all, and who do not make use of their rights granted pursuant to Article 73, paragraph (1) of the Law of 17 December 2010 relating to undertakings for collective investment within the relevant time limit, shall become unitholders of the receiving UCITS.

(8) If a summary of the key points of the merger proposal is provided at the beginning of the information document, it must cross-refer to the parts of the information document where further information is provided.

Article 5

Key investor information

(1) An up-to-date version of the key investor information of the receiving UCITS shall be provided to existing unitholders of the merging UCITS established in Luxembourg.

(2) The key investor information of the receiving UCITS established in Luxembourg shall be provided to existing unitholders of the receiving UCITS established in Luxembourg where it has been amended for the purpose of the proposed merger.

Article 6

New unitholders

Between the date when the information document pursuant to Article 72, paragraph (1) of the Law of 17 December 2010 relating to undertakings for collective investment is provided to unitholders and the date when the merger takes effect, the merging and/or receiving UCITS established in Luxembourg shall provide the information document and the up-to-date key investor information of the receiving UCITS to each person who purchases or subscribes units in either the merging or the receiving UCITS or asks to

receive copies of the fund rules or instruments of incorporation, prospectus or key investor information of either UCITS.

Section 2

Method of providing the information

Article 7

Method of providing the information to unitholders

(1) The merging and/or the receiving UCITS shall provide the information pursuant to Article 72, paragraph (1) of the Law of 17 December 2010 relating to undertakings for collective investment to unitholders on paper or in another durable medium.

(2) Where the information shall be provided to all or certain unitholders using a durable medium other than paper, the following conditions shall be fulfilled:

- a) the provision of the information shall be appropriate to the context in which the business between the unitholder and the merging or receiving UCITS or, where relevant, the respective management company is, or is to be, carried on;
- b) the unitholder to whom the information is to be provided, when offered the choice between information on paper or in another durable medium, specifically chooses the durable medium other than paper.

(3) For the purposes of paragraphs (1) and (2) above, the provision of information by means of electronic communication shall be treated as appropriate to the context in which the business between the merging or receiving UCITS established in Luxembourg or their respective management companies and the unitholder is, or is to be, carried on if there is evidence that the unitholder has regular access to the Internet. The provision by the unitholder of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

CHAPTER III:
MASTER-FEEDER STRUCTURES

Section 1

Agreement and internal conduct of business rules between feeder UCITS and master UCITS

Sub-section 1: Content of the agreement between master UCITS and feeder UCITS

Article 8

Access to information

The agreement between the master UCITS and the feeder UCITS referred to in Article 79, paragraph (1) sub-paragraph one of the Law of 17 December 2010 relating to undertakings for collective investment shall include the following with regard to access to information:

- a) how and when the master UCITS provides the feeder UCITS with a copy of its fund rules or instruments of incorporation, prospectus and key investor information or any amendment thereof;
- b) how and when the master UCITS informs the feeder UCITS of a delegation of investment management and risk management functions to third parties in accordance with Article 110 of the Law of 17 December 2010 relating to undertakings for collective investment;
- c) where applicable, how and when the master UCITS provides the feeder UCITS with internal operational documents, such as its risk management process and its compliance reports;
- d) what details of breaches by the master UCITS of the law, the fund rules or instruments of incorporation or the agreement between the master UCITS and the feeder UCITS the master UCITS shall notify the feeder UCITS of and the manner and timing thereof;
- e) where the feeder UCITS uses financial derivative instruments for hedging purposes, how and when the master UCITS will provide the feeder UCITS with information about its actual exposure to financial derivative instruments to enable the feeder UCITS to calculate its own global exposure as envisaged by point a) of Article 77, paragraph (2) sub-paragraph two of the Law of 17 December 2010 relating to undertakings for collective investment;
- f) a statement that the master UCITS informs the feeder UCITS of any other information-sharing arrangements entered into with third parties and where applicable, how and when the master UCITS makes those other information-sharing arrangements available to the feeder UCITS.

Article 9

Basis of investment and disinvestment by the feeder UCITS

The agreement between the master UCITS and the feeder UCITS referred to in Article 79, paragraph (1) sub-paragraph one of the Law of 17 December 2010 relating to

undertakings for collective investment shall include the following with regard to the basis of investment and disinvestment by the feeder UCITS:

- a) a statement of which share classes of the master UCITS are available for investment by the feeder UCITS;
- b) the charges and expenses to be borne by the feeder UCITS, and details of any rebate or retrocession of charges or expenses by the master UCITS;
- c) if applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the feeder UCITS to the master UCITS.

Article 10

Standard dealing arrangements

The agreement between the master UCITS and the feeder UCITS referred to in Article 79, paragraph (1) sub-paragraph one of the Law of 17 December 2010 relating to undertakings for collective investment shall include the following with regard to standard dealing arrangements:

- a) coordination of the frequency and timing of the net asset value calculation process and the publication of prices of units;
- b) coordination of transmission of dealing orders by the feeder UCITS, including, where applicable, the role of transfer agents or any other third party;
- c) where applicable, any arrangements necessary to take account of the fact that either or both UCITS are listed or traded on a secondary market;
- d) where necessary, other appropriate measures to ensure compliance with the requirements of Article 79, paragraph (2) of the Law of 17 December 2010 relating to undertakings for collective investment;
- e) where the units of the feeder UCITS and the master UCITS are denominated in different currencies, the basis for conversion of dealing orders;
- f) settlement cycles and payment details for purchases or subscriptions and repurchases or redemptions of units of the master UCITS including, where agreed between the parties, the terms on which the master UCITS may settle redemption requests by a transfer of assets in kind to the feeder UCITS, notably in the cases referred to in Article 79, paragraphs (4) and (5) of the Law of 17 December 2010 relating to undertakings for collective investment;
- g) procedures to ensure enquiries and complaints from unitholders are handled appropriately;
- h) where the fund rules or instruments of incorporation and prospectus of the master UCITS give it certain rights or powers in relation to unitholders, and the master UCITS chooses to limit or forego the exercise of all or any such rights and powers in relation to the feeder UCITS, a statement of the terms on which it does so.

Article 11

Events affecting dealing arrangements

The agreement between the master UCITS and the feeder UCITS referred to in Article 79, paragraph (1) sub-paragraph one of the Law of 17 December 2010 relating to

undertakings for collective investment shall include the following with regard to events affecting dealing arrangements:

- a) the manner and timing of a notification by either UCITS of the temporary suspension and the resumption of repurchase, redemption, purchase or subscription of units of that UCITS;
- b) arrangements for notifying and resolving pricing errors in the master UCITS.

Article 12

Standard arrangements for the audit report

The agreement between the master UCITS and the feeder UCITS referred to in Article 79, paragraph (1) sub-paragraph one of the Law of 17 December 2010 relating to undertakings for collective investment shall include the following with regard to standard arrangements for the audit report:

- a) where the feeder UCITS and the master UCITS have the same accounting years, the coordination of the production of their periodic reports;
- b) where the feeder UCITS and the master UCITS have different accounting years, arrangements for the feeder UCITS to obtain any necessary information from the master UCITS to enable it to produce its periodic reports on time and which ensure that the independent auditor of the master UCITS is in a position to produce an *ad hoc* report on the closing date of the feeder UCITS in accordance with Article 81, paragraph (2), sub-paragraph one of the Law of 17 December 2010 relating to undertakings for collective investment.

Article 13

Changes to standing arrangements

The agreement between the master UCITS and the feeder UCITS referred to in Article 79, paragraph (1) sub-paragraph one of the Law of 17 December 2010 relating to undertakings for collective investment shall include the following with regard to changes to standing arrangements:

- a) the manner and timing of notice to be given by the master UCITS of proposed and effective amendments to its fund rules or instruments of incorporation, prospectus and key investor information, if these details differ from the standard arrangements for notification of unitholders laid down in the master UCITS fund rules, instruments of incorporation or prospectus;
- b) the manner and timing of notice by the master UCITS of a planned or proposed liquidation, merger, or division;
- c) the manner and timing of notice by either UCITS that it has ceased or will cease to meet the qualifying conditions to be a feeder UCITS or a master UCITS respectively;
- d) the manner and timing of notice by either UCITS that it intends to replace its management company, its depositary, its *réviseur d'entreprises agréé* (approved statutory auditor) (or, as the case may be, its independent auditor) or any third party which is mandated to carry out investment management or risk management functions;
- e) the manner and timing of notice of other changes to standing arrangements that the master UCITS undertakes to provide.

Article 14

Choice of the applicable law

(1) Where the feeder UCITS and the master UCITS are established in Luxembourg, the agreement between the master UCITS and the feeder UCITS referred to in Article 79, paragraph (1) sub-paragraph one of the Law of 17 December 2010 relating to undertakings for collective investment shall provide that the Luxembourg law shall apply to the agreement and that both parties agree to the exclusive jurisdiction of the Luxembourg courts.

(2) Where the feeder UCITS and the master UCITS are established in different Member States but one of them is established in Luxembourg, the agreement between the master UCITS and the feeder UCITS referred to in Article 79, paragraph (1) sub-paragraph one of the Law of 17 December 2010 relating to undertakings for collective investment or Article 60 paragraph (1) sub-paragraph one of Directive 2009/65/EC shall provide that the applicable law shall be either the law of the Member State in which the feeder UCITS is established or that it shall be that of the Member State in which the master UCITS is established and that both parties agree to the exclusive jurisdiction of the courts of the Member State whose law they have stipulated to be applicable to the agreement.

Subsection 2: Content of the internal conduct of business rules

Article 15

Conflicts of interest

The management company's internal conduct of business rules referred to in Article 79, paragraph (1) sub-paragraph three of the Law of 17 December 2010 relating to undertakings for collective investment shall include appropriate measures to mitigate conflicts of interest that may arise between the feeder UCITS and the master UCITS, or between the feeder UCITS and other unitholders of the master UCITS, to the extent that these are not sufficiently addressed by the measures applied by the management company in order to meet requirements of Article 109, paragraph (1), point b) and Article 111, point d) of the Law of 17 December 2010 relating to undertakings for collective investment and Chapter III of CSSF Regulation No. 10-4 transposing Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company.

Article 16

Basis of investment and divestment by the feeder UCITS

The management company's internal conduct of business rules referred to in Article 79, paragraph (1) sub-paragraph three of the Law of 17 December 2010 relating to undertakings for collective investment shall include at least the following with regard to the basis of investment and divestment by the feeder UCITS:

- a) a statement of which share classes of the master UCITS are available for investment by the feeder UCITS;
- b) the charges and expenses to be borne by the feeder UCITS, and details of any rebate or retrocession of charges or expenses by the master UCITS;
- c) where applicable, the terms on which any initial or subsequent transfer of assets may be made from the feeder UCITS to the master UCITS.

Article 17

Standard dealing arrangements

The management company's internal conduct of business rules referred to in Article 79, paragraph (1) sub-paragraph three of the Law of 17 December 2010 relating to undertakings for collective investment shall include at least the following with regard to standard dealing arrangements:

- a) coordination of the frequency and timing of the net asset value calculation process and the publication of prices of units;
- b) coordination of transmission of dealing orders by the feeder UCITS, including, if applicable, the role of transfer agents or any other third party;
- c) where applicable, any arrangements necessary to take account of the fact that either or both UCITS are listed or traded on a secondary market;
- d) appropriate measures to ensure compliance with the requirements of Article 79, paragraph (2) of the Law of 17 December 2010 relating to undertakings for collective investment;
- e) where the feeder UCITS and the master UCITS are denominated in different currencies, the basis for conversion of dealing orders;
- f) settlement cycles and payment details for purchases and redemptions of units of the master UCITS including, where agreed between the parties, the terms on which the master UCITS may settle redemption requests by a transfer of assets in kind to the feeder UCITS, notably in the cases referred to in Article 79, paragraphs (4) and (5) of the Law of 17 December 2010 relating to undertakings for collective investment;
- g) where the fund rules or instruments of incorporation and prospectus of the master UCITS give it certain rights or powers in relation to unitholders, and the master UCITS chooses to limit or forego the exercise of all or any such rights and powers in relation to the feeder UCITS, a statement of the terms on which it does so.

Article 18

Events affecting dealing arrangements

The management company's internal conduct of business rules referred to in Article 79, paragraph (1) sub-paragraph three of the Law of 17 December 2010 relating to undertakings for collective investment shall include at least the following with regard to events affecting dealing arrangements:

- a) the manner and timing of notification by either UCITS of the temporary suspension and the resumption of the repurchase, redemption or subscription of units of UCITS;
- b) arrangements for notifying and resolving pricing errors in the master UCITS.

Article 19

Standard arrangements for the audit report

The management company's internal conduct of business rules referred to in Article 79, paragraph (1) sub-paragraph three of the Law of 17 December 2010 relating to undertakings for collective investment shall include at least the following with regard to standard arrangements for the audit report:

- a) where the feeder UCITS and the master UCITS have the same accounting years, the coordination of the production of their periodic reports;
- b) where the feeder UCITS and the master UCITS have different accounting years, arrangements for the feeder UCITS to obtain any necessary information from the master UCITS to enable it to produce its periodic reports on time and which ensure that the internal auditor of the master UCITS is in a position to make an *ad hoc* report on the closing date of the feeder UCITS in accordance with Article 81, paragraph (2) sub-paragraph one of the Law of 17 December 2010 relating to undertakings for collective investment.

Section 2

Liquidation, merger or division of the master UCITS

Sub-section 1: Procedures in the event of a liquidation

Article 20

Application for approval

(1) The feeder UCITS established in Luxembourg shall submit to the CSSF no later than two months after the date on which the master UCITS informed it of the binding decision to liquidate, the following:

- a) where the feeder UCITS intends to invest at least 85% of its assets in units of another master UCITS in accordance with Article 79, paragraph (4), point a) of the Law of 17 December 2010 relating to undertakings for collective investment:
 - i) its application for approval for that investment;
 - ii) its application for approval of the proposed amendments to its fund rules or instrument of incorporation;
 - iii) the amendments to its prospectus and its key investor information in accordance with Articles 155, paragraph (1) and 163 of the Law of 17 December 2010 relating to undertakings for collective investment, respectively;
 - iv) the other documents required pursuant to Article 78, paragraph (3) of the Law of 17 December 2010 relating to undertakings for collective investment;
- b) where the feeder UCITS intends to convert into a UCITS that is not a feeder UCITS in accordance with Article 79, paragraph (4), point b) of the Law of 17 December 2010 relating to undertakings for collective investment:
 - i) its application for approval of the proposed amendments to its fund rules or instrument of incorporation;
 - ii) the amendments to its prospectus and its key investor information in accordance with Articles 155, paragraph (1) and 163 of the Law of 17 December 2010 relating to undertakings for collective investment, respectively;
- c) where the feeder UCITS intends to be liquidated, a notification of that intention.

(2) By way of derogation from paragraph (1), where the master UCITS informed the feeder UCITS established in Luxembourg of its binding decision to liquidate more than five months before the date at which the liquidation will start, the feeder UCITS established in Luxembourg shall submit to the CSSF its application or notification in accordance with one of the points a), b) or c) of paragraph (1) at the latest three months before that date.

(3) The feeder UCITS established in Luxembourg shall inform its unitholders of its intention to be liquidated without undue delay.

Article 21

Approval

(1) The feeder UCITS established in Luxembourg shall be informed within 15 working days following the complete submission of the documents referred to in point a) or b) of Article 20, paragraph (1) of the present Regulation respectively, whether the CSSF has granted the required approvals.

(2) On receiving the CSSF's approval pursuant to paragraph (1), the feeder UCITS established in Luxembourg shall inform the master UCITS of it.

(3) The feeder UCITS established in Luxembourg shall take necessary measures to comply with the requirements of Article 83 of the Law of 17 December 2010 relating to undertakings for collective investment as soon as possible after the CSSF has granted the necessary approvals pursuant to Article 20, paragraph (1), point a) of this Regulation.

(4) Where the payment of liquidation proceeds of the master UCITS is to be executed before the date on which the feeder UCITS established in Luxembourg is to start to invest in either a different master UCITS pursuant to Article 20, paragraph (1), point a) of this Regulation or in accordance with its new investment objectives and policy pursuant to Article 20, paragraph (1), point b) of this Regulation, the CSSF shall grant approval subject to the following conditions:

- a) the feeder UCITS shall receive the proceeds of the liquidation:
 - i) in cash; or
 - ii) some or all of the proceeds as a transfer of assets in kind where the feeder UCITS established in Luxembourg so wishes and where the agreement between the feeder UCITS established in Luxembourg and the master UCITS or the internal conduct of business rules and the binding decision to liquidate provide for it;
- b) any cash held or received in accordance with this paragraph may be re-invested only for the purpose of efficient cash management before the date on which the feeder UCITS is to start to invest either in a different master UCITS or in accordance with its new investment objectives and policy.

Where point a) ii) of the first subparagraph applies, the feeder UCITS may realise any part of the assets transferred in kind for cash at any time.

Sub-section 2: Procedures in the event of a merger or division

Article 22

Application for approval

(1) The feeder UCITS established in Luxembourg shall submit to the CSSF, no later than one month after the date on which the feeder UCITS received the information

of the planned merger or division in accordance with Article 79, paragraph (5) subparagraph two of the Law of 17 December 2010 relating to undertakings for collective investment, the following:

- a) where the feeder UCITS intends to continue to be a feeder UCITS of the same master UCITS:
 - i) its application for approval thereof;
 - ii) where applicable, its application for approval of the proposed amendments to its fund rules or instrument of incorporation;
 - iii) where applicable, the amendments to its prospectus and its key investor information in accordance with Articles 155, paragraph (1) and 163 of the Law of 17 December 2010 relating to undertakings for collective investment, respectively;
- b) where the feeder UCITS intends to become a feeder UCITS of another master UCITS resulting from the proposed merger or division of the master UCITS or where the feeder UCITS intends to invest at least 85% of its assets in units of another master UCITS not resulting from the merger or division:
 - i) its application for approval of that investment;
 - ii) its application for approval of the proposed amendments to its fund rules or instruments of incorporation;
 - iii) the amendments to its prospectus and its key investor information in accordance with Articles 155, paragraph (1) and 163 of the Law of 17 December 2010 relating to undertakings for collective investment, respectively;
 - iv) the other documents required pursuant to Article 78, paragraph (3) of the Law of 17 December 2010 relating to undertakings for collective investment;
- c) where the feeder UCITS intends to convert into a UCITS that is not a feeder UCITS in accordance with Article 79 paragraph (4), point b) of the Law of 17 December 2010 relating to undertakings for collective investment:
 - i) its application for approval of the proposed amendments to its fund rules or instrument of incorporation;
 - ii) the amendments to its prospectus and its key investor information in accordance with Articles 155, paragraph (1) and 163 of the Law of 17 December 2010 relating to undertakings for collective investment, respectively;
- d) where the feeder UCITS intends to be liquidated, a notification of that intention.

(2) For the purpose of the application of points a) and b) of paragraph (1) the following should be taken into account:

- (a) The expression "continues to be a feeder UCITS of the same master UCITS" refers to cases where:
 - (i) the master UCITS is the receiving UCITS in a proposed merger;
 - (ii) the master UCITS is to continue materially unchanged as one of the resulting UCITS in a proposed division.

(b) The expression "becomes a feeder UCITS of another master UCITS resulting from the merger or division of the master UCITS" refers to cases where:

- (i) the master UCITS is the merging UCITS and, due to the merger, the feeder UCITS becomes a unitholder of the receiving UCITS;
- (ii) the feeder UCITS becomes a unitholder of a UCITS resulting from a division that is materially different to the master UCITS.

(3) By way of derogation from paragraph (1), in cases where the master UCITS provided the information referred to in or comparable with Article 43 of Directive 2009/65/EC to the feeder UCITS established in Luxembourg more than four months before the proposed effective date, the feeder UCITS established in Luxembourg shall submit to the CSSF its application or notification in accordance with one of the points a) to d) of paragraph (1) of this Article at the latest three months before the proposed effective date of the merger or division of the master UCITS.

(4) The feeder UCITS established in Luxembourg shall inform its unitholders of its intention to be liquidated without undue delay.

Article 23

Approval

(1) The feeder UCITS established in Luxembourg shall be informed within 15 working days following the complete submission of the documents referred to in Article 22, paragraph (1), points a) to c) of this Regulation, respectively, whether the CSSF has granted the required approvals.

(2) Upon receipt of the information that the CSSF has granted approval according to paragraph (1), the feeder UCITS established in Luxembourg shall inform the master UCITS of it.

(3) After the feeder UCITS established in Luxembourg has been informed that the CSSF has granted the necessary approvals pursuant to Article 22, paragraph (1), point b) of this Regulation, the feeder UCITS established in Luxembourg shall take the necessary measures to comply with the requirements of Article 83 of the Law of 17 December 2010 relating to undertakings for collective investment without undue delay.

(4) "In the cases of Article 22, paragraph (1), points b) and c) of this Regulation, the feeder UCITS established in Luxembourg shall exercise the right to request repurchase and redemption of its units in the master UCITS in accordance with Article 79, paragraph (5) sub-paragraph three and Article 73, paragraph (1) of the Law of 17 December 2010 relating to undertakings for collective investment, respectively Article 60, paragraph (5) sub-paragraph three, and with Article 45, paragraph (1) of Directive 2009/65/EC, where the CSSF has not granted the necessary approvals required pursuant to Article 22, paragraph (1) of this Regulation by the working day preceding the last day on which the feeder UCITS can request repurchase and redemption of its units in the master UCITS before the merger or division is effected."¹

The feeder UCITS established in Luxembourg shall also exercise this right in order to ensure that the right of its own unitholders to request repurchase or redemption of their units in the feeder UCITS according to Article 83, paragraph (1), point d) of the Law of 17 December 2010 relating to undertakings for collective investment is not affected.

¹ Regulation CSSF N° 11-04

Before exercising the right referred to in the first sub-paragraph, the feeder UCITS shall consider available alternative solutions which may help to avoid or reduce transaction costs or other negative impacts for its own unitholders.

(5) Where the feeder UCITS requests repurchase or redemption of its units in the master UCITS, it shall receive one of the following:

- a) the repurchase or redemption proceeds in cash;
- b) some or all of the repurchase or redemption proceeds as a transfer in kind where the feeder UCITS so wishes and where the agreement between the feeder UCITS and the master UCITS provides for it.

Where point b) of the first sub-paragraph applies, the feeder UCITS established in Luxembourg may realise any part of the transferred assets for cash at any time.

(6) The CSSF shall grant approval on the condition that any cash held or received in accordance with paragraph (5) may be re-invested only for the purpose of efficient cash management before the date on which the feeder UCITS established in Luxembourg is to start to invest either in the new master UCITS or in accordance with its new investment objectives and policy.

Section 3

Depositaries and auditors

Sub-section 1: Depositaries

Article 24

Content of the information-sharing agreement between depositaries

The information-sharing agreement between the depositary of the master UCITS and the depositary of the feeder UCITS referred to in Article 80, paragraph (1) of the Law of 17 December 2010 relating to undertakings for collective investment shall include the following:

- a) the identification of the documents and categories of information which are to be routinely shared between both depositaries, and whether such information or documents are provided by one depositary to the other or made available on request;
- b) the manner and timing, including any applicable deadlines, of the transmission of information by the depositary of the master UCITS to the depositary of the feeder UCITS;
- c) the coordination of the involvement of both depositaries, to the extent appropriate in view of their respective duties under national law, in relation to operational matters, including:
 - i) the procedure for calculating the net asset value of each UCITS, including any measures appropriate to protect against the activities of market timing in accordance with Article 60, paragraph (2) of Directive 2009/65/EC;
 - ii) the processing of instructions by the feeder UCITS to purchase, subscribe or request the repurchase or redemption of units in the master UCITS, and the settlement of such transactions, including any arrangement to transfer assets in kind;
- d) the coordination of accounting year-end procedures;

- e) what details of breaches by the master UCITS of the law and the fund rules or instrument of incorporation the depositary of the master UCITS shall provide to the depositary of the feeder UCITS and the manner and timing of their provision;
- f) the procedure for handling *ad hoc* requests for assistance from one depositary to the other;
- g) identification of particular contingent events which ought to be notified by one depositary to the other on an *ad hoc* basis, and the manner and timing in which this will be done.

Article 25

Choice of the applicable law

(1) Where the feeder UCITS and the master UCITS have concluded an agreement in accordance with Article 79, paragraph (1) of the Law of 17 December 2010 relating to undertakings for collective investment or Article 60, paragraph (1) of Directive 2009/65/EC, the agreement between the depositaries of the master UCITS and the feeder UCITS shall provide that the law of the Member State applying to that agreement in accordance with Article 14 of this Regulation shall also apply to the information-sharing agreement between both depositaries and that both depositaries agree to the exclusive jurisdiction of the courts of that Member State;

(2) Where the agreement between the feeder UCITS and the master UCITS has been replaced by internal conduct of business rules in accordance with Article 79, paragraph (1) sub-paragraph three of the Law of 17 December 2010 relating to undertakings for collective investment or the third subparagraph of Article 60 paragraph (1) of Directive 2009/65/EC, the agreement between the depositaries of the master UCITS and the feeder UCITS shall provide that the law applying to the information-sharing agreement between both depositaries shall be either that of the Member State in which the feeder UCITS is established or, where different, that of the Member State in which the master UCITS is established, and that both depositaries agree to the exclusive jurisdiction of the courts of the Member State whose law is applicable to the information-sharing agreement.

Article 26

Reporting of irregularities by the depositary of the master UCITS

The irregularities referred to in Article 80, paragraph (2) of the Law of 17 December 2010 relating to undertakings for collective investment which the depositary of the master UCITS detects in the course of carrying out its function under the national law and which may have a negative impact on the feeder UCITS shall include, but are not limited to:

- a) errors in the net asset value calculation of the master UCITS;
- b) errors in transactions for or settlement of the purchase, subscription or request to repurchase or redeem units in the master UCITS undertaken by the feeder UCITS;
- c) errors in the payment or capitalisation of income arising from the master UCITS, or in the calculation of any related withholding tax;
- d) breaches of the investment objectives, policy or strategy of the master UCITS, as described in its fund rules or instrument of incorporation, prospectus or key investor information;

- e) breaches of investment and borrowing limits set out in national law or in the fund rules, instruments of incorporation, prospectus or key investor information.

Sub-section 2: Auditors

Article 27

Information-sharing agreement between *réviseurs d'entreprises agréés* (approved statutory auditors) (or, as the case may be, between the *réviseur d'entreprises agréé* (approved statutory auditor) and the independent auditor)

(1) The information-sharing agreement between the *réviseur d'entreprises agréé* (approved statutory auditor) of the master UCITS and the *réviseur d'entreprises agréé* (approved statutory auditor) of the feeder UCITS referred to in Article 81, paragraph (1) of the Law of 17 December 2010 relating to undertakings for collective investment shall include the following:

- a) the identification of the documents and categories of information which are to be routinely shared between both *réviseurs d'entreprises agréés* (approved statutory auditors);
- b) whether the information or documents referred to in point a) are to be provided or made available on request;
- c) the manner and timing, including any applicable deadlines, of the transmission of information by the *réviseur d'entreprises agréé* (approved statutory auditor) of the master UCITS to the *réviseur d'entreprises agréé* (approved statutory auditor) of the feeder UCITS;
- d) the coordination of the involvement of each *réviseur d'entreprises agréé* (approved statutory auditor) in the accounting year-end procedures for the respective UCITS;
- e) identification of matters that shall be treated as irregularities disclosed in the audit report of the *réviseur d'entreprises agréé* (approved statutory auditor) of the master UCITS for the purposes of Article 81, paragraph (2) subparagraph 2 of the Law of 17 December 2010 relating to undertakings for collective investment;
- f) the manner and timing for handling *ad hoc* requests for assistance from one *réviseur d'entreprises agréé* (approved statutory auditor) to the other, including a request for further information on irregularities disclosed in the audit report of the *réviseur d'entreprises agréé* (approved statutory auditor) of the master UCITS.

(2) The agreement referred to in paragraph (1) shall include provisions on the preparation of the audit reports referred to in Article 81, paragraph (2) and Article 154, paragraph (1) of the Law of 17 December 2010 relating to undertakings for collective investment and the manner and timing for the provision of the audit report for the master UCITS and drafts of it to the *réviseur d'entreprises agréé* (approved statutory auditor) of the feeder UCITS.

(3) “Where the feeder UCITS and the master UCITS have different accounting year-end dates, the agreement referred to in paragraph (1) shall include the manner and timing by which the *réviseur d'entreprises agréé* (approved statutory auditor) of the master UCITS is to make the *ad hoc* report required by Article 81, paragraph (2) of the Law of 17 December 2010 relating to undertakings for collective investment,

respectively by Article 62, paragraph (2) sub-paragraph one of Directive 2009/65/EC and to provide it and drafts of it to the *réviseur d'entreprises agréé* (approved statutory auditor) of the feeder UCITS.”²

Article 28

Choice of the applicable law

(1) Where the feeder UCITS and the master UCITS have concluded an agreement in accordance with Article 79, paragraph (1) of the Law of 17 December 2010 relating to undertakings for collective investment or Article 60, paragraph (1) of Directive 2009/65/EC, the agreement between the *réviseur d'entreprises agréé* (approved statutory auditor) or, as the case may be, the independent auditor of the master UCITS and the feeder UCITS shall provide that the law of the Member State applying to that agreement in accordance with Article 14 of this Regulation shall also apply to the information-sharing agreement between both *réviseurs d'entreprises agréés* (approved statutory auditors) (or, as the case may be, between the *réviseur d'entreprises agréé* (approved statutory auditor) and the independent auditor) and that both *réviseurs d'entreprises agréés* (approved statutory auditors) (or, as the case may be, the *réviseur d'entreprises agréé* (approved statutory auditor) and the independent auditor) agree to the exclusive jurisdiction of the courts of that Member State.

(2) Where the agreement between the feeder UCITS and the master UCITS has been replaced by internal conduct of business rules in accordance with Article 79, paragraph (1) sub-paragraph three of the Law of 17 December 2010 relating to undertakings for collective investment, the agreement between the *réviseur d'entreprises agréé* (approved statutory auditor) or, as the case may be, the independent auditor of the master UCITS and the feeder UCITS shall provide that the law applying to the information-sharing agreement between both *réviseurs d'entreprises agréés* (approved statutory auditors) or, as the case may be, between the *réviseur d'entreprises agréé* (approved statutory auditor) and the independent auditor shall be either that of the Member State in which the feeder UCITS is established or, where different, that of the Member State in which the master UCITS is established, and that both *réviseurs d'entreprises agréés* (approved statutory auditors) (or, as the case may be, the *réviseur d'entreprises agréé* (approved statutory auditor) and the independent auditor) agree to the exclusive jurisdiction of the courts of the Member State whose law is applicable to the information-sharing agreement.

Section 4

Manner of providing the information to unitholders

Article 29

Manner of providing the information to unitholders

The feeder UCITS established in Luxembourg shall provide the information to unitholders pursuant to Article 83, paragraph (1) of the Law of 17 December 2010 relating to undertakings for collective investment in the same manner as prescribed by Article 7 of this Regulation.

² Regulation CSSF N° 11-04

CHAPTER IV:
NOTIFICATION PROCEDURE

Article 30

UCITS host Member State's access to documents

(1) UCITS established in Luxembourg shall ensure that an electronic copy of each document referred to in Article 54, paragraph (2) of the Law of 17 December 2010 relating to undertakings for collective investment is made available on a website of the UCITS, or a website of the management company that manages that UCITS, or on another website designated by the UCITS in the notification letter submitted in accordance with Article 54, paragraph (1) of the Law of 17 December 2010 relating to undertakings for collective investment, or in any updates of it. Any document made available on a website shall be provided in an electronic format in common use.

(2) UCITS established in Luxembourg shall ensure that the UCITS host Member State has access to the website referred to in paragraph (1).

Article 31

Updates of documents

Any document attached to the e-mails in relation to updates or amendments to the documents referred to in Article 54, paragraph (2) of the Law of 17 December 2010 relating to undertakings for collective investment shall be provided by the UCITS in a commonly used electronic format.

Article 32

Publication

This Regulation will be published in the *Mémorial* and on the website of the CSSF. This Regulation will become effective for UCITS governed by the Law of 17 December 2010 relating to undertakings for collective investment as from the day of its coming into force.

Luxembourg, 20 December 2010

COMMISSION DE SURVEILLANCE DU SECTEUR FINANCIER

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