MFSA

MALTA FINANCIAL SERVICES AUTHORITY

Consultation on the proposed new Regulations to transpose certain requirements of the UCITS IV Directive

5th May, 2011

Explanatory Note

The documents circulated by the MFSA for the purpose of consultation are in draft form and consist of proposals. Accordingly these proposals are not binding and are subject to changes and revisions following representations received not only from licence-holders and other involved parties, but also following the necessary review and vetting by the Office of the Attorney General and the relevant Minister to whom the MFSA is required by law to provide advice on financial services matters. It is important that persons involved in the consultation bear these considerations in mind.

This consultation is being exercised at the request and on behalf of the Ministry of Finance.

Background

Reference is made to the Feedback Statement issued on the 13th April 2011 wherein the Authority had advised that considering the replies received to its original consultation of the 14th March 2011, regarding the implementation of the UCITS Directive into Maltese law, the Authority became aware that this Directive is best applied through the Investment Services Rules. Consequently, the MFSA has reconsidered the approach of transposing the requirements of the Directive primarily through Legal Notices and it has decided that, in order to be in a position to effect any required clarifications to the applicable requirements without undue delay should the need arise, the main provisions of the Directive will be transposed by way of Investment Services Rules.

In light of this policy decision the only requirements of the UCITS IV Directive which will be transposed by means of Regulations will be those relating to: [a] the cross-border marketing of UCITS Schemes; [b] the Passporting rights of UCITS Management Companies; and [c] the mergers of UCITS Schemes.

Further to the above, the following three Legal Notices have been drafted:

- Investment Services Act (Marketing of UCITS) Regulations, 2011;
- Investment Services Act (Management Company Passport) Regulations, 2011; and

- Investment Services Act (UCITS Mergers) Regulations, 2011.

The purpose of this circular is to provide a summary of the requirements emanating from these three draft Regulations and to serve as a consultation document in this regard.

Investment Services Act (Marketing of UCITS) Regulations, 2011

The purpose of these proposed Regulations is to transpose the requirements of Articles 1, 2 (1) (b) and (e), 3, 91(1) and (3), 92, 93, 94, 96 and 108 of the UCITS Directive and Article 30 of the Implementing Directive [1].

These proposed draft Regulations:

a) deal with the procedures which must be followed by Maltese UCITS wishing to market their units in other EU/EEA Member States and by European UCITS which wish to market their units to investors in Malta;

b) establish the requirements with respect to the information which is to be provided to their respective investors by Maltese UCITS marketing their units in other EU/EEA Member States and by European UCITS marketing their units in Malta; and

c) stipulate which competent authority has regulatory jurisdiction to take action in case of breaches of the relevant requirements by UCITS which are marketing their units on a cross-border basis.

Investment Services Act (Management Company Passport) Regulations, 2011

The purpose of these proposed Regulations is to transpose and implement, in part, the provisions of articles 1(3), 2(1)(c) to (e) and (g), 17 to 21 and 109(1) to (3) of the UCITS Directive.

These proposed Regulations provide for the procedure relating to the obtaining of regulatory approval for a Maltese management company to establish a branch or to provide services on a cross border basis in another EU/EEA Member State and for a European management company to establish a branch or to provide management services on a cross border basis in Malta.

Furthermore, the proposed Regulations stipulate which competent authority has regulatory jurisdiction to take action in case of breaches of the relevant requirements by a management company which provides services on a cross-border basis or through the establishment of a branch in a Member State other than its Home Member State.

[1] Commission Directive 2010/42/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.

Investment Services Act (UCITS Mergers) Regulations, 2011

The purpose of these proposed Regulations is to transpose the requirements of Articles2(1)(q), 2(1)(r), 37 to 48 and 60 (5) of the UCITS Directive as herein defined, and articles 4, 5, 6, 22, and 23 of the Implementing Directive.

These proposed draft Regulations establish the regulatory requirements for

a) domestic mergers which are defined as mergers whereby the UCITS involved are all established in Malta or whereby at least one of the UCITS is marketing its units in other EU/EEA Member States in terms of the Investment Services Act (Marketing of UCITS) Regulations, 2011; and

b) cross border mergers which are defined as being mergers: [i] between a Maltese UCITS and a UCITS established in another Member State or EEA State; or [ii] between two UCITS established in other Member States or EEA States into a newly constituted UCITS established in Malta; or [iii] between two UCITS established in Malta into a newly constituted UCITS established in another Member State or EEA State.

These draft Regulations also address the costs and entry into effect of UCITS Mergers, the consequences thereof as well as the merger of master and feeder UCITS.

The Investment Services Act (UCITS Mergers) Regulations, 2011 apply to all UCITS established in Malta under whatever form, including UCITS established in terms as SICAVs or limited partnerships under the Companies Act. Accordingly, the provisions of Title I and Title II of Part VIII of the Companies Act shall apply *mutatis mutandis* to UCITS established as limited liability companies or partnerships *en commandite* or limited partnerships within the meaning of the Companies Act insofar as they are not inconsistent with the provisions of the draft regulations as set out specifically in draft regulation 2(3).

Comments

Interested parties are kindly asked to submit any comments which they may have in relation to the attached draft Regulations in writing, to the Director – Securities and Markets Supervision Unit, by e-mail on su@mfsa.com.mt by not later than the 19th May 2011.

Contacts

Any queries or requests for clarifications should be addressed as follows:

With respect to the Investment Services Act (Management Company Passport) Regulations, 2011 and the Investment Services Act (Marketing of UCITS) Regulations, 2011 to Mr. Christopher P. Buttigieg on telephone number 25485229 or by email at cbuttigieg@mfsa.com.mt; Dr. Isabelle Agius on telephone number 52485359 or by email at: iagius@mfsa.com.mt; or Dr. Sarah Pulis on telephone number 25485232 or by email: spulis@mfsa.com.mt.

With respect to the Investment Services Act (UCITS Mergers) Regulations, 2011 to Dr. Michelle Mizzi Buontempo on telephone number: 25485112 or by email on: mmizzibuontempo@mfsa.com.mt; or to Dr. Sarah Pulis on telephone number 25485232 or by email: spulis@mfsa.com.mt.

Communications Unit

Chairman, **Malta Financial Services Authority**	**Minister of Finance, the Economy and Investment**

L.N. ___ of 2011

INVESTMENT SERVICES ACT
(CAP. 370)

Investment Services Act (Marketing of UCITS) Regulations, 2011

IN exercise of the powers conferred by article 12 of the Investment Services Act, the Minister of Finance**,** the Economy and Investment, acting on the advice of the Malta Financial Services Authority, has made the following regulations:

PRELIMINARY

Citation, commencement and scope.

1. (1) The title of these regulations is the Investment Services Act, (Marketing of UCITS) Regulations, 2011.

(2) These regulations shall come into force on 1st July, 2011.

(3) These regulations provide for the requirements applicable to the marketing of Maltese UCITS in other Member States or EEA States, and to the marketing of European UCITS in Malta.

(4) These regulations have the purpose of implementing Articles 1, 2(1)(b) and (e), 3, 91(1) and (3), 92, 93, 94, 96 and 108 of Directive 2009/65/EC of the UCITS Directive and Article 30 of the Implementing Directive, and they shall be interpreted and applied accordingly.

Interpretation.

2. (1) In these regulations, unless the context otherwise requires -

"Act" means the Investment Services Act;

"closed ended scheme" means a collective investment scheme with fixed share capital, which complies with any additional criteria established in the Investment Services Rules issued by the competent authority in terms of the Act;

"ESMA" means the European Securities and Markets Authority established in terms of article 1 of Regulation (EU) No 1095/2010 of

the European Parliament and of the Council of 24 November, 2010;

"European management company" means a management company authorised by a European regulatory authority in a Member State or EEA State, other than Malta, and the regular business of which is the management of UCITS;

"European UCITS" means a UCITS authorised by a European regulatory authority in a Member State or EEA State, other than in Malta;

"Implementing Directive" means Commission Directive 2010/42/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;

"key investor information" shall have the same meaning assigned to it in the Investment Services Rules;

"Maltese management company" means a management company licensed by the competent authority, having its head office and registered office situated in Malta, and the regular business of which is the management of UCITS;

"Maltese UCITS" means

(a) an investment company, a partnership *en commandite* or a limited partnership with its registered office and head office situated in Malta and licensed in terms of the Act;

(b) where the UCITS is constituted as a common fund, a UCITS domiciled in Malta in terms of the Investment Services Act (Contractual Funds) Regulations, 2011 and licensed in terms of the Act;

L.N. 3 of 2011.

(c) where the UCITS is established as a unit trust, a unit trust whose proper law is the law of Malta;

"Member State" means a Member State of the European Union;

"Regulation No. 584/2010" means Commission Regulation (EU) No. 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot

verifications and investigations and the exchange of information between competent authorities;

"UCITS" means the undertaking for collective investment in transferable securities in terms of subregulation (2) of regulation 3 of these regulations. For the purpose of these Regulations, a UCITS shall also include subfunds thereof;

"UCITS Directive" means 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 includes any implementing measures that have been or may be issued thereunder;

"UCITS home Member State or EEA State" means the Member State or EEA State in which the UCITS is authorised pursuant to Article 5 of the UCITS Directive;

(2) For the purposes of these regulations:

(a) "common fund" shall be construed as referring to UCITS constituted as contractual funds and unit trusts; and

(b) "constitutional documents" shall be construed as referring to the fund rules, trust deeds and instruments of incorporation, as the case may be.

(3) Words and expressions which are also used in the Act but which are not defined herein shall have the same meaning as in the Act.

(4) In the event that any of these regulations conflicts with the provisions of the UCITS Directive, the latter shall prevail.

SCOPE

Scope.

3. (1) These regulations shall apply to Maltese UCITS wishing to market their units in a Member State or an EEA State, and also to European UCITS wishing to market their units in Malta, in terms of the UCITS Directive.

(2) For the purpose of these regulations, UCITS shall mean undertakings which are harmonised in accordance with the UCITS Directive and which have -

(a) as sole object the collective investment in transferable securities or in other liquid financial assets, as specified in the Investment Services Rules, of capital raised from the public and which operate on the principle of risk-spreading; and

(b) units which are, at the request of holders, repurchased or redeemed, directly or indirectly, out of those undertakings' assets. Action taken by a UCITS to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or redemption;

(3) The undertakings referred to in subregulation (2) may be constituted as –

(a) common funds which are managed either by Maltese or European management companies; or

(b) investment companies or limited partnerships with variable share capital.

(4) These regulations shall not apply to –

(a) investment companies and limited partnerships, the assets of which are invested through the intermediary of subsidiary companies mainly otherwise than in transferable securities;

(b) collective investment schemes of the closed-ended type;

(c) collective investment schemes which raise capital without promoting the sale of their units to the public within the European Union or EEA States or any part thereof;

(d) collective investment schemes the units of which, under the constitutional documents, may be sold only to the public in third countries;

(e) categories of UCITS whose investment and borrowing policies do not conform with those specified in the provisions of the Investment Services Rules; or

(f) collective investment schemes that are not harmonised in accordance with the UCITS Directive.

(5) A Maltese UCITS which is subject to these regulations shall not convert itself into a collective investment scheme which would

not be subject to these regulations, and any purported conversion shall be null and void.

MARKETING OF MALTESE UCITS IN A MEMBER STATE OR IN AN EEA STATE

Marketing of Maltese UCITS.

4. (1) Where a Maltese UCITS proposes to market its units in a Member State or EEA State other than Malta, it shall first submit a written notification letter of its intention to the competent authority.

(2) The notification letter shall be made in the form and manner prescribed in Regulation No. 584/2010 and shall furthermore include the following information:

(a) information on the arrangements made for marketing of the units of the Maltese UCITS in the Member State or EEA State, including where relevant in respect of share classes; and

(b) an indication that the units of the Maltese UCITS will be marketed by the management company that manages the Maltese UCITS.

(3) The Maltese UCITS shall enclose the following documents with the notification letter:

(a) the latest version of its constitutional documents and its prospectus;

(b) where appropriate, its latest annual report and any subsequent half-yearly report translated in accordance with regulation 5; and

(c) the key investor information document as provided for in the Investment Services Rules and translated in accordance with regulation 5.

(4) The competent authority shall verify whether the information and documentation submitted by the Maltese UCITS in accordance with subregulations (2) and (3) is complete and, if satisfied, shall produce an attestation that the Maltese UCITS fulfils the conditions imposed by the UCITS Directive in the manner and form prescribed by Regulation No. 584/2010.

(5) The competent authority shall transmit the complete information and documentation referred to in subregulations (1), (2)

and (3) to the European regulatory authority of the Member State or EEA State in which the Maltese UCITS proposes to market its units, by not later than ten working days from the date of receipt of the notification letter accompanied by the complete documentation referred to in subregulation (3). The competent authority shall also transmit to such European regulatory authority the attestation issued pursuant to subregulation (4):

Provided that in transmitting the notification to the European regulatory authority of the Member State or EEA State, the competent authority shall comply with the requirements of the provisions of Regulation No. 584/2010.

(6) The notification letter referred to in subregulation (2), and the attestation referred to in subregulation (4) shall be provided in a language customary in the sphere of international finance, unless the competent authority and the European authority of the Member State or EEA State in which the Maltese UCITS wishes to market its units agree that the said documents be provided in an official language of both Member States.

(7) Upon transmission of the documentation, the competent authority shall immediately notify the Maltese UCITS thereof and the Maltese UCITS may commence marketing its units in the Member State or EEA State as from the date of such notification.

(8) For the purposes of the notification procedure under this regulation, the Maltese UCITS shall not be required by the European regulatory authority of the Member State or EEA State in which it wishes to market its units, to submit any additional documents, certificates or information other than those requested in this regulations .

(9) The European regulatory authority of the Member State or EEA State in which the Maltese UCITS intends to market its units shall have access by electronic means, to the documents referred to in subregulation (3) and, if applicable, to any translation thereof.

(10) The Maltese UCITS shall keep the documentation referred to in subregulation(3) and the translations thereof updated. The Maltese UCITS shall notify any amendments to the documents referred to in subregulation (3) to the European regulatory authority of the Member State or EEA State in which it is marketing its units and shall indicate where those documents can be obtained electronically.

(11) In the event of a change in the information regarding the

arrangements made for marketing communicated in the notification letter in accordance with subregulations (1) and (2), or a change regarding share classes to be marketed, the Maltese UCITS shall give written notice thereof to the European regulatory authority of the Member State or EEA State in which it is currently marketing its units prior to implementing the change.

Documents and information to be provided to investors by the Maltese UCITS.

5. (1) Where a Maltese UCITS markets its units in another Member State or EEA State, it shall provide investors within the territory of such Member State or EEA State with the key investor information document translated in the official language, or one of the official languages of the Member State or EEA State in which it is marketing its units or into a language approved by the European regulatory authority of such Member State or EEA State, together with the following information and documents prescribed hereunder:

(a) a prospectus;

(b) an annual report for each financial year; and

(c) a half-yearly report covering the first six months of the financial year.

(2) The information and documents prescribed in paragraphs (a) to (c) of subregulation (1) shall be provided to investors in the manner prescribed by the European regulatory authority of the Member State or EEA State in which the Maltese UCITS is marketing its units.

(3) The Maltese UCITS shall, at its discretion, translate the documents referred to in paragraphs (a) to (d) of subregulation (1) into the official language or one of the official languages of the Member State or EEA State in which it markets its units, into a language approved by the European regulatory authority of that Member State or EEA State or in a language customary in the sphere of international finance.

(4) The Maltese UCITS shall be responsible to provide accurate translations of the information or documents referred to in subregulation (1), and such translations shall faithfully reflect the content of the original information.

(5) The requirements prescribed in subregulations (1) to (4) shall also be applicable to any changes to the information and documents referred to therein.

(6) The frequency of the publication of the issue, sale, repurchase or redemption price of units of the Maltese UCITS in terms of subregulation 1(d) shall be subject to applicable provisions prescribed in the Investment Services Rules.

(7) The Maltese UCITS proposing to market its units in another Member State or EEA State, shall, in accordance with the laws, regulations and administrative provisions in force in that Member State or EEA State, take the measures necessary to ensure that facilities are available therein for making payments to unit holders, re-purchasing or redeeming units and making available the information which the Maltese UCITS is obliged to provide.

(8) For the purpose of pursuing its activities, the Maltese UCITS may use the same reference to its legal form in terms of subregulation (3) of article 3, in its designation in the Member State or EEA State in which it markets its units as it uses in Malta.

(9) A Maltese UCITS shall make public in an appropriate manner the issue, sale, repurchase or redemption price of its units each time it issues, sells, repurchases or redeems them, in accordance with Investment Services Rules.

Breaches by Maltese UCITS.

6. The competent authority shall take appropriate measures if it receives notification from the European regulatory authority of the Member State or EEA State in which the Maltese UCITS is marketing its units, that such European regulatory authority has clear and demonstrable grounds to believe that a Maltese UCITS, the units of which are being marketed within its territory, is in breach of the obligations arising from the provisions of the UCITS Directive, and which provisions do not however confer supervisory and regulatory powers on such European regulatory authority.

Supervision of Maltese UCITS marketing units in a Member State or EEA State other than Malta.

7. (1) The competent authority alone shall have the power to take action against a Maltese UCITS if it infringes the provisions of the Act, any Regulations issued thereunder or any applicable Investment Services Rules, as well as any regulation laid down in the constitutional documents or prospectus.

(2) Where the units of a Maltese UCITS are being marketed in a Member State or EEA State other than Malta, the competent authority shall, without delay, notify the European regulatory authority of that Member State or EEA State of any decision to withdraw the authorisation of the Maltese UCITS, or any other serious measure taken against a Maltese UCITS, or any suspension of the issue,

repurchase or redemption of the units of a Maltese UCITS imposed upon it.

(3) Where the units of the Maltese UCITS are marketed by a European management company, the competent authority shall also proceed to notify any measure taken in accordance with subregulation (2) to the European regulatory authority of the Member State or EEA State where the European management company is registered.

MARKETING OF EUROPEAN UCITS IN MALTA

Marketing of European UCITS in Malta.

8. (1) A European UCITS may market its units in Malta and shall be exempt from the provisions of Article 4 of the Act, provided that prior to commencement of its marketing in Malta, the competent authority has received from the European regulatory authority of the UCITS home Member State or EEA State a notification letter made in the form and manner prescribed in Regulation No. 584/2010, which notification letter shall furthermore include the following information:

(a) information on the arrangements made for marketing by the European UCITS of its units in Malta, including where relevant in respect of share classes; and

(b) an indication that the units of the European UCITS will be marketed by the management company that manages the European UCITS.

(2) Together with the notification letter, the European UCITS shall enclose the following:

(a) the latest version of its constitutional documents and its prospectus in Maltese or English;

(b) where appropriate, its latest annual report and any subsequent half-yearly report in Maltese or English;

(c) the key investor information document as provided for in the Investment Services Rules in Maltese or English; and

(d) an attestation drawn up by the European regulatory authority that the European UCITS fulfils the conditions of the UCITS Directive, prepared in the manner and form prescribed by Regulation No. 584/2010.

(3) The competent authority shall ensure that a European UCITS is able to market its units in Malta upon notification, in accordance with

subregulations (1) and (2).

(4) The European UCITS may access the Maltese market as from the date of notification to the competent authority by the European regulatory authority of the UCITS home Member State or EEA State in accordance with subregulations (1) and (2).

(5) The competent authority shall receive the complete documentation and information referred to in subregulation (1) and (2) from the European regulatory authority of the UCITS home Member State or EEA State in the manner prescribed by Articles 3 and 4 of Regulation No. 584/2010:

Provided that the notification letter and the attestation referred to in subregulations (1) and (2) shall be provided to the competent authority in a language customary in the sphere of international finance, unless the competent authority and the European regulatory authority of the UCITS home Member State or EEA State agree that said documents be provided in an official language of both Member States.

(6) For the purpose of the notification procedure set out in this regulation, the competent authority shall not request any additional documents, certificates or information other than those provided in this regulation. In addition, the competent authority shall not impose any additional requirements or administrative procedures on the European UCITS in respect of the field governed by the UCITS Directive.

(7) Any laws, regulations and administrative provisions which do not fall within the field governed by the UCITS Directive relating to the matters referred to in Schedule A to these Regulations and which are specifically relevant to the arrangements made for marketing of units in Malta by a European UCITS, shall be easily accessible and, for this purpose, shall, in a clear and unambiguous manner, be made available in the English language on the competent authority's website, which shall be regularly updated. Such information may be provided by the competent authority in the form of a narrative description , or a combination of a narrative description and a series of references or links to source documents.

(8) The competent authority shall have access by electronic means, to the documents referred to in subregulation (2) (a), (b) and (c) and, if applicable, to any translation thereof.

(9) The European UCITS shall keep the documentation referred to

in subregulation (2) and the translations thereof up to date. In addition it shall notify the competent authority of any amendments to the documents referred to in subregulation (2) and shall indicate where such documentation can be obtained electronically.

(10) In the event of a change in the information regarding the arrangements made for marketing communicated in the notification letter in accordance with subregulation (1), or a change regarding share classes to be marketed, the European UCITS shall give written notice thereof to the competent authority prior to implementation of the change.

Documents and information to be provided to Maltese investors by the European UCITS.

9. (1) Where a European UCITS markets its units in Malta, it shall provide investors in Malta, with the key investor information document in English or in Maltese and with the following information and documents prescribed hereunder:

(a) a prospectus;

(b) an annual report for each financial year; and

(c) a half-yearly report covering the first six months of the financial year.

(2) The information and documents prescribed in paragraphs (a) to (c) of subregulation (1) shall be provided to investors in the manner prescribed by the Investment Services Rules. This information and documentation shall be translated, at the choice of the European UCITS, into the official language or one of the official languages of Malta, into a language approved by the competent authority or into a language customary in the sphere of international finance.

(3) The European UCITS shall be responsible for providing accurate translations of the information referred to in subregulations (1) and (2), which translation shall faithfully reflect the content of the original information.

(4) The requirements prescribed in subregulations (1) to (3) shall also be applicable to any changes to the information and documents referred to therein.

(5) The European UCITS marketing its units in Malta, shall, in accordance with the laws, regulations and administrative provisions in force in Malta, take the measures necessary to ensure that facilities are available in Malta for making payments to unit holders, re-purchasing or redeeming units and making available the information which the European UCITS is obliged to provide.

(6) For the purpose of pursuing its activities, the European UCITS may use the same reference to its legal form in its designation in Malta as it uses in the home Member State or EEA State in which it is authorised.

(7) A European UCITS marketing its units in Malta shall, in an appropriate manner, make public the issue, sale, repurchase or redemption price of its units each time it issues, sells, repurchases or redeems them, in accordance with Investment Services Rules.

Breaches by European UCITS.

10. (1) The European regulatory authority of the UCITS home Member State or EEA State shall have the sole power to take action against a European UCITS marketing its units in Malta, if the European UCITS infringes any law, regulation or administrative provision of the UCITS home Member State or EEA State or any regulation laid down in constitutional documents. However, the competent authority may nonetheless take action against that European UCITS if it infringes any laws, regulations and administrative provisions in force in Malta, falling outside the scope of the UCITS Directive or the requirements set out in Articles 92 and 94 of the said Directive.

(2) Where the competent authority has clear and demonstrable grounds to believe that a European UCITS, the units of which are being marketed in Malta, is in breach of the obligations arising from the provisions of the Act, these Regulations or the Investment Services Rules, which do not confer supervisory and regulatory powers on the competent authority, the competent authority shall refer those finding to the European regulatory authority of the UCITS home Member State or EEA State, which shall take appropriate measures.

(3) If, despite the measures taken by the European regulatory authority of the UCITS home Member State or EEA State, or because such measures prove to be inadequate, or because the European regulatory authority of the UCITS home Member State or EEA State fails to act within a reasonable timeframe, the European UCITS persists in acting in a manner that is clearly prejudicial to the interests of the Maltese investors, the competent authority may, as a consequence, take either of the following actions:

(a) after informing the European regulatory authority of the UCITS home Member State or EEA State, the competent authority may take all the appropriate measures needed in order to protect investors, including the possibility of

preventing the European UCITS concerned from carrying out any further marketing of its units in Malta; or

(b) if necessary, bring the matter to the attention of ESMA.

(4) The competent authority shall, without delay, inform the European Commission and ESMA of any measure taken pursuant to paragraph (a) of subregulation (2).

MISCELLANEOUS

Repeals.

L.N. 207 of 2004.

11. The Undertakings for Collective Investments in Transferable Securities and Management Companies Regulations, 2004 are hereby being repealed.

Schedule A
(Regulation 8)

The following categories of information on the relevant laws, regulations and administrative provisions are to be made available on the competent authority's website in terms of regulation 8(7):

(a) the definition of the term "marketing of UCITS" or the equivalent legal term either as stated in national legislation or as developed in practice;

(b) requirements for the contents, format and manner of presentation of marketing communications, including all compulsory warnings and restrictions ofn the use of certain words or phrases;

(c) without prejudice to Chapter IX of the UCITS Directive, details of any additional information required to be disclosed to investors;

(d) details of any exemptions from rules or requirements governing arrangements made for marketing applicable in Malta with respect to certain classes of UCITS or certain categories of investors;

(e) requirements for any reporting or transmission of information to the competent authority and the procedure for lodging updated versions of required documents;

(f) requirements for any fees or other sums to be paid to the competent authority or any other statutory body in Malta either when marketing commences or periodically thereafter;

(g) requirements in relation to the facilities to be made available for the purposes of making payments to unit holders, repurchasing or redeeming units and making available the information which UCITS are required to provide to unit holders;

(h) conditions for the termination of marketing of units of UCITS in Malta by a European UCITS;

(i) detailed contents of the information required by Malta to be included in part B of the notification letter as referred to in Article 1 of Regulation No. 584/2010;

(j) the email address designated for the purposes of receiving notification of updates and amendments to the documents referred to in regulation 4(3).

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Chairman
Malta Financial Services Authority

Minister of Finance, the Economy and Investment

L.N. ___ of 2011

INVESTMENT SERVICES ACT
(CAP. 370)

Investment Services Act (UCITS Management Company Passport) Regulations, 2011

IN exercise of the powers conferred by article 12 of the Investment Services Act, the Minister of Finance**,** the Economy and Investment, acting on the advice of the Malta Financial Services Authority, has made the following regulations:

PRELIMINARY

Citation, commencement and scope.

1. (1) The title of these regulations is the Investment Services Act (UCITS Management Company Passport) Regulations, 2011.

(2) These regulations shall come into force on the 1 July 2011.

(3) These regulations shall apply to Maltese management companies and to European management companies providing services in Malta through the establishment of a branch or under the freedom to provide services.

(4) These regulations transpose and implement, in part, the provisions of articles 1(3), 2(1)(c) to (e) and (g), 17 to 21 and 109(1) to (3) of the UCITS Directive and they shall be interpreted and applied accordingly.

Interpretation.

2. (1) In these regulations, unless the context otherwise requires -

"Act" means the Investment Services Act;

"branch" means a place of business which is part of the management company, which has no legal personality and which provides the services for which the management company has been authorised;

"ESMA" means the European Securities and Markets Authority established by Regulation (EU) No. 1095/2010 of the European Parliament and of the Council of the 24 November 2010

"European management company" means a management company authorised by a European regulatory authority in a Member State or EEA State other than Malta and the regular business of which is the management of UCITS;

"European management company home Member State or EEA State" means the Member State or EEA State in which the European management company has its registered office;

"European management company host Member State or EEA State" means the Member State or EEA State, other than the home Member State or EEA State within the territory of which a European management company has a branch or provides services;

"European UCITS" means a UCITS authorised by a European regulatory authority in a Member State or EEA State other than Malta;

"home Member State or EEA State" means the Member State or EEA State in which the registered office and head office of the management company is situated;

"host Member State or EEA State" means the Member State or EEA State, other than the home Member State or EEA State, within the territory of which a management company has a branch or provides services;

"key investor information" shall have the same meaning assigned to it in the Investment Services Rules;

"Maltese management company" means a management company licensed by the competent authority with its head office and registered office situated in Malta and the regular business of which is the management of UCITS;

"Maltese UCITS" means

(a) an investment company, a partnership *en commandite* or a limited partnership with its registered office and head office situated in Malta and licensed in terms of the Act;

(b) where the UCITS is constituted as a common fund, a UCITS domiciled in Malta in terms of the Investment Services Act (Contractual Funds) Regulations, 2011 and licensed in terms of the Act;

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(c) where the UCITS is established as a unit trust, a unit trust whose proper law is the law of Malta;

"Tribunal" means the Financial Services Tribunal established in terms of the Malta Financial Services Authority Act;

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"UCITS" means undertakings for collective investment in transferable securities in terms of regulation 3 of the Investment Services Act (Passporting of UCITS) Regulations, 2011;

"UCITS Directive" means 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);

"UCITS home Member State or EEA State" means the Member State or EEA State in which a UCITS is authorised pursuant to Article 5 of the UCITS Directive.

(2) Words and expressions which are also used in the Act shall have the same meaning as in the Act.

(3) In the event that any of these regulations conflict with the provisions of the UCITS Directive, the latter shall prevail.

FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES BY MALTESE MANAGEMENT COMPANIES

Freedom of establishment of Maltese management companies –

3. (1) Where a Maltese management company decides to establish a branch in a Member State or EEA State other than Malta, it shall notify the competent authority accordingly.

branch.

(2) A notification in terms of subregulation (1) shall be accompanied by the following information and documentation:

(a) the Member State or EEA State within the territory of which the Maltese management company plans to establish a branch;

(b) a programme of operations setting out the activities and services as prescribed in the applicable Investment Services Rules which shall be carried out by such branch;

(c) the proposed organisational structure of the branch, including a description of the risk management process in place and a description of the procedures and arrangements implemented to ensure a suitable investor complaints procedure in terms of the Investment Services Rules;

(d) the address of the proposed branch in the host Member State or EEA State from where documents may be obtained; and

(e) the names of the persons responsible for the management of the branch.

(3) The competent authority shall communicate the information in subregulation (2) and details of the Maltese investor compensation scheme to the European regulatory authority of the Member State or EEA State where the Maltese management company intends to establish a branch within two months of receiving such information. The competent authority shall also inform the Maltese management company of such communication accordingly.

(4) Where the branch of the Maltese management company will carry out the activity of collective portfolio management pursuant to the Investment Services Rules, the notification made in accordance with subregulations (1) and (2) shall also include an attestation that the Maltese management company has been licensed to pursue such activity in terms of the UCITS Directive, a description of the scope of the Maltese management company's licence and details of any restriction on the types of UCITS that the Maltese management company is licensed to manage.

(5) Where the competent authority has sufficient reason to doubt the adequacy of the administrative structure or the financial situation of a Maltese management company, taking into account the activities

for which it has been licensed, it may refuse to make the communication referred to in subregulation (3) and shall, within two months from the date of receipt of the notice referred to in subregulation (1), give the Maltese management company reasons for such refusal.

(6) A Maltese management company which pursues activities through a branch within the territory of another Member State or EEA State shall comply with the applicable provisions on conduct of business in force in that Member State or EEA State.

(7) A branch of a Maltese management company shall not commence business unless:

(a) the European regulatory authority in the Member State or EEA State in which the Maltese management company proposes to establish a branch has notified the Maltese management company of the receipt of the communication referred to in subregulation (3) from the competent authority; or

(b) two months have elapsed from the date on which the competent authority has transmitted the communication referred to in subregulation (3) and the Maltese management company has not received any communication from such European regulatory authority.

(8) Where the Maltese management company plans a change in any of the particulars communicated in accordance with paragraphs (b) to (e) of subregulation (2), written notice of such change shall be given to the competent authority and to the European regulatory authority of the Member State or EEA State in which the branch is established not less than one month prior to the implementation of such change, and the provisions of subregulations (3), (4), (5) and (7) shall apply.

(9) In the event of a change in the particulars communicated in accordance with subregulation (2) and (3), the competent authority shall inform the European regulatory authority accordingly. The competent authority shall update the attestation referred to subregulation (4) and shall, without delay, inform the European regulatory authority of the Member State or EEA state in which the branch is established whenever there is a change in the scope of a Maltese management company's authorisation or in the details of any restriction on the types of UCITS that a Maltese management company is licensed to manage.

Freedom of establishment of Maltese management companies – services.

4. (1) A Maltese management company wishing to exercise the right to provide services in a Member State or EEA State other than Malta for the first time shall submit to the competent authority a notice containing the following information:

(a) the Member State or EEA State within the territory of which the Maltese management company intends to operate;

(b) a programme of operations stating the activities and services in terms of the Investment Services Rules which the Maltese management company intends to carry out, including a description of the risk management process implemented by the Maltese management company and a description of the procedures and arrangements implemented in accordance with the Investment Services Rules.

(2) The competent authority shall, within one month of receiving the information referred to in subregulation (1), forward it to the European regulatory authority of the Member State or EEA State where the Maltese management company intends to provide services. The competent authority shall also communicate to such European regulatory authority the details of any applicable compensation scheme intended to protect investors.

(3) Where a Maltese management company intends to carry out the activity of collective portfolio management pursuant to the applicable Investment Services Rules, the competent authority shall, together with the information prescribed in subregulations (1) and (2), also provide the European regulatory authority of the Member State or EEA State where the Maltese management company intends to provide services with an attestation that the Maltese management company has been licensed pursuant to the provisions of the UCITS Directive, a description of the scope of the Maltese management company's authorisation and the details of any restriction on the types of UCITS that the Maltese management company is licensed to manage.

(4) Notwithstanding the provisions of regulation 6 hereunder and regulation 4 of the Investment Services Act (Passporting of UCITS) Regulations, 2011, upon expiration of the period prescribed in subregulation (2), the Maltese management company may commence to provide the service or services in question in the European host Member State or EEA State.

(5) A Maltese management company which pursues activities

under the freedom to provide services shall comply with the provisions of the Act, any applicable Regulations issued thereunder and the Investment Services Rules.

(6) Where the content of the information communicated in accordance with paragraph (b) of subregulation (1) is amended, a Maltese management company shall give prior written notice of such amendment to the competent authority and to the European regulatory authority of the Member State or EEA State where the Maltese management company is providing services.

(7) The competent authority shall update the information contained in the attestation referred to in subregulation (3) and shall inform the European regulatory authority of the Member State or EEA State where the Maltese management company is providing services whenever there is a change in the scope of the Maltese management company's licence or in the details of any restriction on the types of UCITS that the Maltese management company is licensed to manage.

Activity of collective portfolio management on a cross-border basis by Maltese management companies.

5. (1) A Maltese management company which pursues the activity of collective portfolio management on a cross-border basis by establishing a branch or under the freedom to provide services shall comply with the provisions of the Act, any applicable Regulations issued thereunder and the Investment Services Rules and the requirements prescribed thereunder shall not be any stricter than those applicable to Maltese management companies conducting their activities only within the territory of Malta.

(2) The competent authority shall be responsible for supervising the compliance of a Maltese management company with the regulatory requirements referred to in subregulation (1).

(3) In addition to the requirements of subregulation (1), a Maltese management company which pursues the activity of collective portfolio management of a European UCITS on a cross-border basis by establishing a branch in another Member State or EEA State or in accordance with the freedom to provide services shall also comply with the applicable provisions in force in the UCITS home Member State or EEA State implementing the provisions of the UCITS Directive on the constitution and functioning of UCITS, and in particular it shall comply with the requirements applicable to:

(a) the setting up and authorisation of the UCITS;

(b) the issuance and redemption of units and shares;

(c) investment policies and limits, including calculation of total exposure and leverage;

(d) restrictions on borrowing, lending and uncovered sales;

(e) the valuation of assets and the accounting of the UCITS;

(f) the calculation of the issue price and, or redemption price and rules regarding errors in the calculation of the net asset value and related investor compensation;

(g) the distribution or reinvestment of the income;

(h) the disclosure and reporting requirements of the UCITS, including the prospectus, the key investor information and periodic reports;

(i) the arrangements made for marketing;

(j) the relationship with unit-holders;

(k) the merging and restructuring of UCITS;

(l) the winding up and liquidation of the UCITS;

(m) where applicable, the content of the unit-holder register;

(n) the licencing and supervision fees regarding the UCITS; and

(o) the exercise of unit-holders' voting rights and other unit-holders' rights in relation to paragraphs (a) to (m).

(4) A Maltese management company shall comply with the obligations set out in the prospectus and in the instruments of incorporation of the European UCITS which it manages and such documents shall be consistent with the requirements of the applicable law as referred to in subregulations (1) and (3).

(5) A Maltese management company shall adopt and implement all arrangements and organisational decisions necessary to ensure compliance with the applicable provisions relating to the constitution and functioning of the European UCITS. The Maltese management company shall also be responsible for compliance with the obligations set out in the prospectus and in the instruments of incorporation of the European UCITS.

(6) The competent authority shall supervise the adequacy of the arrangements and organisation of a Maltese management company in order to ensure that such Maltese management company is in a position to comply with the obligations and rules applicable to the constitution and functioning of all the European UCITS it manages.

Management of European UCITS by Maltese management companies.

6. (1) A Maltese management company which intends to manage a European UCITS shall apply to the European regulatory authority of the UCITS home Member State or EEA State and shall provide the said European regulatory authority with the following documentation:

(a) the written agreement with the custodian pursuant to the applicable Investment Services Rules; and

(b) information on delegation arrangements regarding functions of investment management and administration referred to in the Investment Services Rules:

Provided that, where the Maltese management company already manages UCITS of the same type in the same European Member State or EEA State, reference to the documentation already provided shall be sufficient.

(2) A Maltese management company shall notify any subsequent material modifications of the documentation referred to in subregulation (1) to the European regulatory authority of the UCITS home Member State or EEA State.

(3) In so far as necessary to enable the European regulatory authority of the UCITS home Member State or EEA State to ensure compliance with the rules for which it is responsible, the competent authority shall, upon specific request by that European regulatory authority, provide clarifications and information within 10 working days of the initial request with regards to the following:

(a) the documentation referred to in subregulation (1); and

(b) on the basis of the attestation provided by the competent authority pursuant to regulations 3 and 4, information as to whether the type of UCITS for which authorisation is requested falls within the scope of a Maltese management company's licence.

(4) Following prior consultation with the competent authority, the European regulatory authority of the UCITS home Member State or

EEA State may refuse the application of a Maltese management company to manage that UCITS only if:

(a) the Maltese management company does not comply with the fund rules applicable in the UCITS home Member State or EEA State and for which the European regulatory authority in the UCITS home Member State or EEA State is responsible to ensure compliance;

(b) the Maltese management company is not licensed by the competent authority to manage the type of UCITS for which authorisation is requested in terms of subregulation (1);

(c) the Maltese management company has failed to provide the European regulatory authority in the UCITS home Member State or EEA State with the documentation referred to in subregulation (1).

Marketing of UCITS by Maltese management companies.

7. Where a Maltese management company duly licensed, proposes, without establishing a branch, only to market the units of Maltese or European UCITS it manages in a Member State or EEA State different from the UCITS home Member State or EEA State, such marketing shall be subject only to the requirements prescribed in the Investment Services Act (Passporting of UCITS) Regulations, 2011.

Breaches by Maltese management companies.

8. (1) Where a Maltese management company which has a branch or provides services within the territory of another Member State or EEA State is in breach of the rules in force in that Member State or EEA State, the European regulatory authority of that Member State or EEA State shall require the Maltese management company to put an end to such breach. The European regulatory authority shall also notify the competent authority in writing detailing such breach.

(2) Where a Maltese management company refuses to provide the European regulatory authority of the Member State or EEA State in which it has established a branch in terms of regulation 3 or in which it provides services in terms of regulation 4, with information requested by and falling within the remit of that European regulatory authority or fails to take the necessary steps to put an end to a breach reported pursuant to subregulation (1), the European regulatory authority of the said Member State or EEA State shall notify the competent authority in writing. The competent authority shall, as soon as possible, take all appropriate measures to ensure that the Maltese management company provides the information requested by the European regulatory authority or remedies the breach reported by the said European regulatory authority.

(3) The competent authority shall communicate the nature of any measures taken against the Maltese management company in terms of subregulation (2) to the European regulatory authority concerned.

(4) Where, a Maltese management company continues to refuse to provide the information requested by the European regulatory authority in the host Member State or EEA State or persists in its breaches of legal or regulatory rules despite the measures taken by the competent authority or due to the inadequacy or unavailability of such measures in Malta, the competent authority shall be notified of any measures taken by the European regulatory authority of the host Member State or EEA State against the Maltese management company.

(5) The competent authority shall consult the European regulatory authority of the host Member State or EEA State before withdrawing the licence of the Maltese management company in accordance with the provisions of this regulation.

FREEDOM OF ESTABLISHMENT AND FREEDOM TO PROVIDE SERVICES BY EUROPEAN MANAGEMENT COMPANIES

Freedom of establishment of European management companies – branch.

9. (1) Where a European management company wishes to establish a branch in Malta, the following conditions shall be complied with:

(a) the European management company has provided the European regulatory authority in its home Member State or EEA State with the following documentation:

(i) a notification of its intention to establish a branch in Malta;

(ii) a programme of operations identifying the activities and services which the European management company seeks to carry on through the branch in Malta and the proposed organisational structure of the branch, including a description of the risk management process implemented by the European management company and a description of the procedures and arrangements implemented to ensure a suitable investor complaints procedure in terms of article 15 of the UCITS Directive;

(iii) the address of the proposed branch in the territory of Malta from where documents may be obtained;

(iv) the names of those responsible for the management of the branch.

(b) the competent authority has received from the European regulatory authority of the home Member State or EEA State of the European management company:

(i) the information in paragraph (a);

(ii) details of any compensation scheme of which the European management company is a member and which is intended to protect investors;

(iii) where the European management company wishes to pursue the activity of collective portfolio management in terms of Annex II of the UCITS Directive, an attestation that the European management company has been so authorised pursuant to the provisions of the UCITS Directive, a description of the scope of the authorisation of the European management company and details of any restriction on the types of UCITS that the European management company is authorised to manage.

(2) A European management company pursuing activities through a branch within the territory of Malta shall comply with the provisions of the Investment Services Rules on conduct of business, and the competent authority shall be responsible for supervising compliance thereof.

(3) A branch of a European management company shall not commence business in Malta unless:

(a) it has been informed by the competent authority of the applicable provisions in force in accordance with subregulation (1) of this regulation and that it may establish the branch in Malta; or

(b) two months have elapsed from the date of receipt by the competent authority of the information and the documents referred to in subregulation (2) by the European authority in the home Member State or EEA State of the European management company.

(4) Where the European management company plans a change in any of the particulars referred to in subparagraphs (ii) to (iv) of paragraph (a) of subregulation (1), it shall give written notice of that change to the competent authority not less than one month prior to the implementation of such change, and the provisions of subregulation (3) of this regulation shall apply.

(5) In the event of a change to any of the particulars notified to the competent authority in accordance with paragraph (a) and subparagraph (ii) of paragraph (b) of subregulation (1), the competent authority shall receive notification thereof from the European regulatory authority of the home Member State or EEA State of the European management company.

(6) The competent authority shall be notified by the European regulatory authority of the European management company home Member State or EEA State whenever there is a change in the scope of the authorisation of the European management company or in the details of any restriction on the types of UCITS that a European management company is authorised to manage.

Freedom of establishment of European management companies – services.

10.(1) Where a European management company wishes to exercise the right to provide services in Malta for the first time, the following service conditions shall be complied with:

(a) the European management company has provided the European regulatory authority of its home Member State or EEA State with the following documentation:

(i) a notification of its intention to provide services in Malta;

(ii) a programme of operations stating the activities and services envisaged, including a description of the risk management process implemented by the European management company and a description of the procedures and arrangements implemented pursuant to article 15 of the UCITS Directive;

(b) the competent authority has received from the European regulatory authority of the home Member State or EEA State of the European management company:

(i) the information in paragraph (a); and

(ii) details of any applicable compensation scheme

intended to protect investors.

(2) Where a European management company wishes to pursue the activity of collective portfolio management as referred to in Annex II of the UCITS Directive, the European regulatory authority of the home Member State or EEA State of the European management company shall enclose with the documentation and information notified to the competent authority in accordance with subregulation (1) an attestation that the European management company has been authorised, a description of the scope of the authorisation of the European management company and details of any restriction on the types of UCITS that such company is authorised to manage.

(3) The European management company may commence to provide the service or services in respect of which it wishes to exercise the right to provide services in Malta upon receipt by the competent authority of all the documentation required in terms of subregulation (1).

(4) Where the content of the information communicated in accordance with subparagraph (ii) of paragraph (a) of subregulation (1) is amended, a European management company shall give prior written notice of such amendment to the competent authority.

(5) The competent authority shall be informed by the European regulatory authority of the home Member State or EEA State of the European management company whenever there is a change in the scope of the authorisation of a European management company or in the details of any restriction on the types of UCITS that a European management company is authorised to manage.

Activity of collective portfolio management on a cross-border basis by European management companies.

11.(1) A European management company which pursues the activity of collective portfolio management of a Maltese UCITS on a cross-border basis by establishing a branch in Malta or in exercise of the freedom to provide services shall comply with the Act, any applicable Regulations and the Investment Services Rules, and in particular such European management company shall comply with the requirements applicable to:

(a) the setting up and licencing of the UCITS;

(b) the issuance and redemption of units and shares;

(c) investment policies and limits, including calculation of total exposure and leverage;

(d) restrictions on borrowing, lending and uncovered sales;

(e) the valuation of assets and the accounting of the UCITS;

(f) the calculation of the issue or redemption price and rules regarding errors in the calculation of the net asset value and the related investor compensation;

(g) the distribution or reinvestment of income;

(h) the disclosure and reporting requirements of the UCITS, including the prospectus, the key investor information and periodic reports;

(i) the arrangements made for marketing;

(j) the relationship with unit-holders;

(k) the merging and restructuring of UCITS;

(l) the winding up and liquidation of the UCITS;

(m) where applicable, the content of the unit-holder register;

(n) the licencing and supervision fees regarding the UCITS; and

(o) the exercise of unit-holders' voting rights and other unit-holders' rights in relation to paragraphs (a) to (m) above.

(2) A European management company shall comply with the obligations set out in the prospectus and in the instruments of incorporation of the Maltese UCITS which it wishes to manage. Such documents shall be consistent with the requirements referred to in, subregulation (1).

(3) The competent authority shall be responsible for supervising compliance of the European management company with the requirements of subregulations (1) and (2).

(4) A European management company shall adopt and implement all the arrangements and organisational decisions necessary to ensure compliance with the applicable provisions relating to the constitution and functioning of the Maltese UCITS. The European management company shall also be responsible for compliance with the obligations set out in the prospectus and in the instruments of incorporation of the

Maltese UCITS.

(5) A European management company duly authorised in its home Member State or EEA State in terms of the UCITS Directive shall not be subject to any additional requirements applicable in Malta in respect of the subject matter of the UCITS Directive, except in the cases expressly specified by the UCITS Directive.

Management of Maltese UCITS by European management companies.

12. (1) A European management company which intends to manage a Maltese UCITS shall provide the competent authority with the following documentation:

(a) the written agreement with the custodian in accordance with the applicable Investment Services Rules; and

(b) information on the delegation arrangements regarding the functions of investment management and administration in accordance with the applicable Investment Services Rules:

Provided that, where a European management company already manages other Maltese UCITS of the same type, reference to the documentation already provided to the competent authority shall be sufficient.

(2) The European management company shall notify any subsequent material modifications of the documentation referred to in subregulation (1) to the competent authority.

(3) In so far as necessary to ensure compliance with the rules for which it is responsible, the competent authority may ask the European regulatory authority of the home Member State or EEA State of the European management company for clarifications and information with regards to the following:

(a) the documentation referred to in subregulation (1); and

(b) on the basis of the attestation provided by the European regulatory authority of the European management company home Member State or EEA State pursuant to regulations 9 and 10, information as to whether the type of UCITS for which authorisation for management is requested falls within the scope of the authorisation of the European management company.

(4) The competent authority may refuse the application of a European management company to manage a Maltese UCITS only if:

(a) the European management company does not comply with the provisions of regulation 11;

(b) the European management company is not authorised by the European regulatory authority of its home Member State or EEA State to manage the type of UCITS for which the authorisation is being requested; or

(c) the European management company has failed to provide the competent authority with the documentation referred to in subregulation (1) .

(5) The competent authority shall consult with the European regulatory authority of the European management company home Member State or EEA State prior to refusing an application.

Reporting to the competent authority.

13.(1) The competent authority may, for statistical purposes, require a European management company which has established a branch in Malta in terms of these regulations, to report periodically on its activities in Malta.

(2) The competent authority may require a European management company pursuing business in Malta through the establishment of a branch or under the freedom to provide services, to provide the information necessary for the monitoring of its compliance with the applicable provisions for which it is responsible in terms of the Act, any applicable Regulations issued thereunder and the Investment Services Rules.

(3) The requirements prescribed in subregulation (2) shall not be more stringent than those which the competent authority would impose on Maltese management companies for the monitoring of their compliance with the same standards.

(4) A European management company which provides collective portfolio management on a cross-border basis to a Maltese UCITS pursuant to the provisions of these regulations shall ensure, that the procedures and arrangements implemented by the said European management company pursuant to the applicable provisions of the Investment Services Rules on investor complaints shall be such as to enable the competent authority to obtain, directly from the European management company, the information referred to in this regulation.

Breaches by European Management Companies.

14. (1) Where a European management company which has a branch or provides services in Malta is in breach or is likely to breach the provisions of the Act or of any regulations or Investment Services

Rules made thereunder, the competent authority shall require, in writing, the European management company concerned to put an end to the breach and shall inform the European regulatory authority of the European management company home Member State or EEA State of such request.

(2) Where the European management company concerned refuses to provide the competent authority with the information falling under its responsibility or fails to take the necessary steps to put an end to the breach referred to in subregulation (1), the competent authority shall inform the European regulatory authority of the European management company home Member State or EEA State accordingly.

(3) Where a European management company continues in its refusal to provide information requested by the competent authority in terms of regulation 13 or persists in its breach of legal or regulatory requirements despite the measures taken by the European regulatory authority of the European management company home Member State or EEA State or due to the inadequacy or unavailability of such measures in the said Member State or EEA State, the competent authority may take either of the following actions:

(a) after informing the European regulatory authority of the European management company home Member State or EEA State, take appropriate measures, including measures under articles 13 to 16B of the Act in order to prevent or penalize further irregularities and, in so far as necessary, to prevent that European management company from initiating any further transactions in Malta; or

(b) where it considers that the European regulatory authority of the European management company home Member State or EEA State has not acted adequately, refer the matter to ESMA.

(4) The competent authority shall ensure that it is possible to serve the legal documents necessary in order to enforce the aforementioned measures.

(5) Where the service provided within the territory of Malta is the management of a Maltese UCITS, the competent authority may require the European management company to cease managing that Maltese UCITS.

(6) The competent authority shall inform the European regulatory authority of the European management company home Member State

or EEA State of any measures taken pursuant to subregulation (3) and which involve measures and penalties or restrictions on the activities of the European management company concerned.

(7) Any action taken pursuant to subregulations (2), (3) and (5) involving measures or penalties shall be properly justified and communicated to the European management company concerned.

(8) In cases where following the procedure outlined in this regulation would result in delays that could prejudice the interests of investors and others for whom services are provided, the competent authority may, prior to initiating such procedure, take any precautionary measures it may deem necessary:

Provided that, ESMA, the European Commission and the European regulatory authorities of all other Member States or EEA States concerned shall be informed of such measures as soon as possible.

(9) The competent authority shall take all appropriate measures to safeguard the interests of investors. Such measures may include decisions preventing a European management company from initiating any further transactions within the territory of Malta.

(10) A European management company shall have a right to appeal to the Financial Services Tribunal in terms of the Act from a decision of the competent authority to take measures in accordance with subregulation (3).

Notification by the competent authority.

15. The competent authority shall inform ESMA and the European Commission of the number and type of cases of refusal in terms of regulation 3 and regulation 12 and of any measures taken in accordance with subregulations (3) and (4) of regulation 14.

CO-OPERATION WITH EUROPEAN REGULATORY AUTHORITIES IN OTHER EUROPEAN MEMBER STATES OR EEA STATES

Co-operation with European regulatory authorities.

16.(1) The competent authority shall provide the European regulatory authorities of other Member States or EEA States with all information concerning the management and ownership of a Maltese management company which is likely to facilitate its supervision as well as any other information which is likely to facilitate the monitoring of such Maltese management company. Further, the competent authority shall also cooperate with the European regulatory authorities in other

Member States or EEA States in order to ensure that such European regulatory authorities collect the information required in terms of subregulations (2) to (4) of regulation 13.

(2) The competent authority shall notify the European regulatory authority of a UCITS home Member State or EEA State without delay of any problems identified in a Maltese management company which may materially affect the ability of such Maltese management company to perform its duties properly with respect to that UCITS or of any breach of the requirements prescribed under these regulations.

_____ _____

Chairman **Minister of Finance, the Economy**
Malta Financial Services Authority **and Investment**

L.N. ___ of 2011

INVESTMENT SERVICES ACT
(CAP. 370)

Investment Services Act (UCITS Mergers) Regulations, 2011

IN exercise of the powers conferred by article 12 of the Investment Services Act, the Minister of Finance, the Economy and Investment, acting on the advice of the Malta Financial Services Authority as the competent authority for the purposes of the Act, has made the following regulations:

Citation, commencement and scope.

1. (1) The title of these regulations is the Investment Services Act (UCITS Merger) Regulations, 2011.

(2) These regulations shall come into force on the 1 July 2011.

(3) The objective of these regulations is to transpose Articles 2(1)(q), 2(1)(r), 37 to 48 and 60 (5) of the UCITS Directive as herein defined, and Articles 4, 5, 6, 22, and 23 of the Implementing Directive as herein defined, and they shall be interpreted and applied accordingly.

Interpretation.

2. (1) In these regulations, unless the context otherwise requires:

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"the Act" means the Investment Services Act

"cross border merger" means a merger:

(a) between a Maltese UCITS and a UCITS established in another Member State or EEA State; or

(b) between two UCITS established in other Member States or EEA States into a newly constituted UCITS established in Malta; or

(c) between two UCITS established in Malta into a newly constituted UCITS established in another Member State or EEA State;

"custodian" means an institution entrusted with the duties of a depsoitary in

terms of the UCITS Directive and includes a custodian licensed in terms of the Act;

"domestic merger" means a merger:

(a) between two or more UCITS established in Malta; or

(b) between two or more UCITS established in Malta where at least one of the UCITS has notified the competent authority that it intends to market its units in another Member State or EEA State pursuant to the Investment Services Act (Marketingof UCITS) Regulations, 2011;

"European UCITS" means a UCITS which is established and authorised in accordance with the laws of another Member State or EEA state;

"feeder UCITS" means a a UCITS or subfund thereof which has been approved to invest at least eighty five per cent of its assets in units of another UCITS or subfund thereof in temrs of the UCITS Directive;

"Implementing Directive" means Commission Directive 2010/42/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;

"the Regulation" means Commission Regulation (EU) No.583/2010, specifying the form and contents of key investor information;

"key investor information" shall have the same meaning as is assigned to it in the Investment Services Act (Key Investor Information) Regulations, 2011;

"management company" means a company authorised by its supervisory authority within the meaning of article 6 of the UCITS Directive and the regular business of which is the management of UCITS.

"Maltese UCITS" means

(a) an investment company, a partnership *en commandite* or a limited partnership with its registered office and head office situated in Malta and licensed in terms of the Act;

(b) where the UCITS is constituted as a common fund, a UCITS domiciled in Malta in terms of the Investment Services Act (Contractual Funds) Regulations, 2011 and licensed in terms of the Act;

(c) where the UCITS is established as a unit trust, a unit trust whose proper law is the law of Malta;

"master UCITS" means a UCITS which:

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(a) has, among its unit-holders, at least one feeder UCITS;

(b) is not itself a feeder UCITS; and

(c) does not hold units of a feeder UCITS;

"merger" means an operation by two or more UCITS in accordance with one of the merger techniques provided for in regulation 3, and which may be a cross-border merger or a domestic merger as herein defined;

"UCITS" means undertakings for collective investment in transferable securities which are harmonized in accordance with the UCITS Directive, or a subfund of such undertaking, and includes an open ended investment company or a unit trust to which the UCITS Directive applies;

"UCITS Directive" means Directive 2009/65/EC of the European Parliament and of the council of the 13th July, 2009 on the coordination lf laws, regualtions and adminsitrative provisions relating to unertakings for collective investment in transferable securities (UCITS) (recast);

(2) Words and expressions used in the Act shall, in these regulations, have the same meaning as in the Act.

(3) In addition to the requirements set out in these regulations, the provisions of Title I and Title II of Part VIII of the Companies Act shall apply *mutatis mutandis* to UCITS established as limited liability companies or partnerships *en commandite* or limited partnerships within the meaning of the Companies Act insofar as they are not inconsistent with the provisions of these regulations, and:

(a) any reference to a "company being acquired" shall be construed as referring to the "merging UCITS";

(b) any reference to "acquiring company" shall be construed as referring to the "receiving UCITS";

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(c) any reference to "shareholders" shall be construed as referring to "unit holders";

(d) in the case of a merger by formation of a new UCITS as described in regulation 3(a):

(i) any reference to "merging companies" shall be construed as referring to the "merging UCITS";

(ii) any reference to "the new company" shall be construed as referring to the "receiving UCITS";

(iii) any reference to "commercial partnerships to be substituted" shall be construed as referring to the "merging UCITS"; and

(iv) any reference to "the new commercial partnership" shall be construed as reference to the "receiving UCITS";

(e) any reference to "commercial partnership being acquired" shall be construed as referring to the "merging UCITS"; and

(f) any reference to the "acquiring commercial partnership" shall be construed as referring to the "receiving UCITS":

Provided that:

(i) notwithstanding the provisions of Title I of Part VII of the Companies Act, in the case of UCITS established in Malta in the form of a partnership, a merger may only take place between UCITS established as partnerships *en comandite* or limited partnerships;

(ii) for the purposes of Articles 338 (1) and 350 of the Companies Act, the Registrar of Companies shall only register the documents indicated therein after the necessary regulatory approvals for the merger have been obtained from the competent authority in terms of these Regulations or from the European regulatory authority, in terms of the UCITS Directive, as the case may be; and

(iii) where the Maltese UCITS is established as a limited liability company, the provisions of Article 344(2) of the Companies Act shall not apply.

AUTHORISATION OF UCITS MERGERS

Merger techniques.

3. (1) A domestic merger or a cross-border merger where a Maltese UCITS is the merging UCITS may be effected in the following manner:

(a) one or more UCITS or subfunds thereof, the "merging UCITS",

on being dissolved without going into liquidation, transfer all of their assets and liabilities to another existing UCITS, or subfunds thereof, the "receiving UCITS", in exchange for the issue to their unit-holders of units of the receiving UCITS and, if applicable, a cash payment not exceeding ten per centum of the net aset value of those units; or

(b) two or more UCITS or subfunds thereof, the "merging UCITS", on being dissolved without going into liquidation, transfer all of their assets and liabilities to a UCITS which they form or a subfund thereof, the "receiving UCITS", in exchange for the issue to their unit-holders of units in the receiving UCITS and, if applicable, a cash payment not exceeding ten per cent of the net asset value of those units.

(2) The competent authority shall recognize a transfer of assets resulting from a cross-border merger in accordance with article 37(c) of the UCITS Directive.

Authorisation by the competent authority

4. Where the merging UCITS is a Maltese UCITS, it shall apply to the competent authority to obtain prior written authorization to undergo such merger.

Information to be provided to the competent authority.

5. (1) In seeking the authorisation referred to in regulation 4, the merging UCITS shall provide the following information to the competent authority:

(a) the common draft terms of the proposed merger duly approved by the merging UCITS and the receiving UCITS;

(b) an up to date version of the prospectus and the key investor information of the receiving UCITS, if this is established in a Member State or EEA State other than Malta;

(c) a statement by each of the custodians of the merging and the receiving UCITS confirming that they have verified that: :

(i) the identification of the type of merger and UCITS involved;

(ii) the planned effective date of the merger; and

(iii) the rules applicable, respectively, to the transfer of assets and the exchange of units;

are in accordance with the requirements of the UCITS Directive and the fund rules or instruments of incorporation of their respective UCITS; and

(d) the information on the proposed merger that the merging UCITS and the receiving UCITS intend to provide to their respective unit-holders.

(2) The information referred to in subregulation (1) shall be provided in such a manner as to enable both the competent authority and the European regulatory authority of the Member State or EEA State where the receiving UCITS is authorized in terms of the UCITS Directive to read such information in the official language or in one of the official languages of Malta and of the Member State or EEA State where the receiving UCITS is authorized, or in a language approved by the competent authority and by such European regulatory authority.

(3) On receipt of all the information referred to in subregulation (1), the competent authority shall immediately transmit copies of this information to the European regulatory authority of the receiving UCITS. The competent authority and the European regulatory authority shall consider the potential impact of the proposed merger on the unit-holders of the merging UCITS and of the receiving UCITS respectively in order to assess whether appropriate information is being provided to unit-holders.

(4) The competent authority, may, if it considers it necessary, require, in writing, that the information to unit-holders of the merging UCITS be clarified.

(5) Where the receiving UCITS is a Maltese UCITS, the competent authority may, if it considers it necessary, require in writing, and no later than fifteen working days after receipt from the European regulatory authority of the merging UCITS of the copies of the complete information referred to in subregulation (1), that the receiving UCITS modify the information to be provided to its unit-holders. The competent authority shall also send an indication of its dissatisfaction to the European regulatory authority of the merging UCITS.

(6) The competent authority shall, within twenty working days of being notified of the complete information modified in accordance with subregulation (5), inform the European regulatory authority of the merging UCITS as to whether it is satisfied with such modified information.

Authorisation by the competent authority.

6. Where a Maltese UCITS is the merging UCITS , the competent authority shall authorize the proposed merger in accordance with regulation 4 if the following conditions are met:

(a) the proposed merger complies with all the requirements of regulations 4 to 10;

(b) the receiving UCITS has been notified to market its units in Malta and in all other Member States or EEA States where the merging UCITS is authorized or has been notified to market its units in accordance with Article 93 of the UCITS Directive; and

(c) the competent authority and the European regulatory authority of the receiving UCITS are satisfied with the proposed information to be provided to unit-holders, or no indication of dissatisfaction has been received from the European regulatory authority of the receiving UCITS.

Request for additional information by the competent authority.

7. (1) If the competent authority considers that the information requested in regulation 5 is not complete or is not submitted in full, it shall request additional information within ten working days of receiving the said information.

(2) The competent authority shall inform the merging UCITS within twenty working days of submission of the complete information requested in regulation 5, whether or not the merger has been authorized.

(3) The competent authority shall also inform the European regulatory authority of the receiving UCITS of its decision to authorize the merger or otherwise.

(4) Where the receiving UCITS is a Maltese UCITS, the competent authority may allow the receiving UCITS to derogate from the applicable investment policies, objectives and restrictions as laid down in the Investment Services Rules transposing the requirements of articles 52 to 55 of the UCITS Directive for a period of six months following the authorization of the merger.

Draft terms of merger.

8. (1) The common draft terms of merger referred to in regulation 5(1)(a) shall be drawn up by the merging UCITS and the receiving UCITS and shall set out the following particulars:

(a) an identification of the type of merger and the UCITS involved;

(b) the background to and the rationale for the proposed merger;

(c) the expected impact of the proposed merger on the unit-holders of both the merging UCITS and the receiving UCITS;

(d) the criteria adopted for valuation of the assets and, where applicable, the liabilities on the date for calculating the exchange ratio referred to in regulation 15;

(e) the calculation method of the exchange ratio;

(f) the planned effective date of the merger;

(g) the rules applicable respectively to the transfer of assets and the exchange of units; and

(h) in the case of a merger taking place in accordance with the provisions of regulation 3(1)(b), the fund rules or instruments of incorporation of the newly constituted receiving UCITS.

(2) The merging UCITS and the receiving UCITS may decide to include further items in the common draft terms of merger but the competent authority may not request the inclusion of any information other than that indicated in subregulation (1).

THIRD PARTY CONTROL, INFORMATION TO UNIT HOLDERS AND OTHER RIGHTS OF UNIT HOLDERS

Obligations of the custodian.

9. The custodian of the merging UCITS and the custodian of the receiving UCITS shall both verify the conformity of the following elements with the requirements of the UCITS Directive and the fund rules or instruments of incorporation of their respective UCITS:

(a) the identification of the type of merger and the UCITS involved;

(b) the planned effective date of the merger and

(c) the rules applicable respectively to the transfer of assets and the exchange of units.

Obligations of the custodian or the Auditor.

10. (1) Where the merging UCITS is a Maltese UCITS it shall appoint either its custodian or an independent auditor for the purpose of validating the following:

(a) the criteria adopted for valuation of the assets and, where applicable, the liabilities on the date for calculating the exchange ratio of units of the merging UCITS into units of the receiving UCITS;

(b) the cash payment per unit, where applicable; and

(c) the calculation method of the exchange ratio as well as the actual exchange ratio determined at the date for calculation of that ratio.

(2) The statutory auditor of the merging UCITS or the statutory auditor of the receiving UCITS shall be considered as an independent auditor for the purposes of subregulation (1).

(3) A copy of the reports of the auditors mentioned in subregulation (1), or where applicable, of the custodian, shall be made available on request and free of charge to the unit-holders of both the merging UCITS and the receiving UCITS and to the competent authority and to the relative European regulatory authority, as applicable.

Information to investors.

11. (1) The merging UCITS and the receiving UCITS shall provide appropriate and accurate information on the proposed merger to their respective unit-holders so as to enable their respective unit-holders to make an informed judgment of the impact of the proposed merger on their investment and to exercise their rights under regulations 12 and 13.

(2) The information referred to in subregulation (1) shall be provided to the unit-holders of the merging UCITS and of the receiving UCITS only after the proposed merger has been approved by the competent authority in the case where the merging UCITS is a Maltese UCITS or, by the European regulatory authority of the home Member State of the merging UCITS, where the Maltese UCITS is the receiving UCITS and shall include the following information:

(a) the background to and the rationale for the proposed merger;

(b) the possible impact of the proposed merger on unit-holders, including but not limited to any material differences in respect of investment policy and strategy, costs, expected outcome, periodic reporting, possible dilution in performance, and, where relevant, a prominent warning to investors that their tax treatment may be changed following the merger;

(c) any specific rights unit-holders have in relation to the proposed merger, including but not limited to the right to obtain additional information, the right to obtain a copy of the report of the independent auditor or the custodian on request, and the right to request the repurchase or redemption, or where applicable, the conversion of their units without charge, as specified in regulation 12, and the last date for exercising that right;

(d) the relevant procedural aspects and the planned effective date of the merger; and

(e) a copy of the key investor information of the receiving UCITS.

(3) The information to be provided to unit-holders of the merging UCITS and the receiving UCITS in terms of this regulation shall be provided at least thirty days before the last date for requesting repurchase or redemption or, where applicable, conversion without additional charge in accordance with regulation 12.

(4) Where a Maltese UCITS is either a merging or a receiving UCITS and has been notified in another Member State in terms of Article 93 of the UCITS Directive, it shall provide the information referred to in subregulation (2) in the official language or in one of the official languages of the Member State in which it has been so notified, or in a language approved by the European regulatory authority of that Member State. The UCITS responsible for providing the information referred to in subregulation (2) shall also be responsible for producing the relative translation, and such translation shall faithfully reflect the contents of the original.

(5) An up-to-date version of the key investor information of the receiving UCITS shall be provided to existing unit-holders of the merging UCITS.

(6) The key investor information of the receiving UCITS shall be provided to existing unit-holders of the receiving UCITS where it has been amended for the purpose of the proposed merger.

(7) In the period between the date when the information referred to in subregulation (1) is provided to unit-holders and the date on which the merger takes effect, such information and the up-to-date key investor information of the receiving UCITS shall be provided to each person who purchases or subscribes units in either the merging UCITS 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.

(8) A Maltese UCITS shall also comply with the requirements on information set out in the Schedule to these regulations.

Rights of unit-holders.

12. (1) The unit-holders in a merging UCITS and in a receiving UCITS shall both have the right to request, without any charge 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 UCTIS with similar investment policies and managed by the same management company or by any other company with which the management company is linked by common management or control, or by a substantial direct or indirect holding. That right shall become effective from the moment that the unit-holders of the merging UCITS and those of the receiving UCITS have been informed of the proposed merger in accordance with subregulations (1) and (2) of regulation 11 and shall cease to exist five working days before the date for calculating the exchange ratio.

(2) Without prejudice to subregulation (1) and by way of derogation from the obligation of the UCITS to repurchase or redeem its units at the request of any unit-holder , the competent authority may require or allow the temporary suspension of the subscription, repurchase or redemption of units if such suspension is deemed justified for the protection of the unit-holders.

Approval by unit-holders.

13. (1) Where a Maltese UCITS is registered as a company under the Companies Act, the approval of unit-holders which is required in order for a merger of that UCITS to take place shall not exceed 75% of the votes actually cast by unit-holders present or represented at the general meeting of the unit-holders.

(2) The provisions of this regulation shall apply notwithstanding the relevant provisions of the Companies Act and anything contained in the UCITS memorandum or articles of association.

(3) The information on the proposed merger which is to be provided to unit-holders before they grant their approval thereto in terms of subregulation (1), may contain a recommendation by the management company of the UCITS or the board of Directors of the UCITS itself as to the course of action to be taken.

COSTS AND ENTRY INTO EFFECT OF MERGER

Costs of merger.

14. Except in cases where UCITS have not designated a management company, any legal, advisory or administrative costs associated with the preparation and the completion of the merger shall not be charged to the merging UCITS, the receiving UCITS or to any of their unit-holders.

15. (1) In the case of a domestic merger or in the case of a cross border merger where the receiving UCITS is a Maltese UCITS, the following shall apply:

(a) where the UCITS concerned are established as companies, *partnerships en comandite* or limited partnerships:

(i) the merger shall not take effect before the lapse of three months from the last publication of the statement relating to the extraordinary resolution approving the merger required in terms of the Companies Act.

(ii) the date for calculating the ratio for exchange of units of the merging UCITS into units of the receiving UCITS shall not be later than one working day from date on which the approval is granted to the merger by the competent authority or, in the

case of a cross border merger where the receiving UCITS is a Maltese UCITS, by the European regulatory authority of the merging UCITS as the case may be.

(iii) the date for determining the relevant net asset value for cash payments, where applicable shall not be later than one working day from the date on which the approval is granted to the merger by the competent authority or, in the case of a cross border merger where the receiving UCITS is a Maltese UCITS, by the European regulatory authority of the merging UCITS as the case may be.

(b) where the UCITS concerned are established as contractual funds or unit trusts:

(i) the merger shall come into effect on the date on which the approval is granted to the merger by the competent authority or, in the case of a cross border merger where the receiving UCITS is a Maltese UCITS, by the European regulatory authority of the merging UCITS as the case may be.

(ii) the date for calculating the ratio for exchange of units of the merging UCITS into units of the receiving UCITS shall not be later than one working day from the date on which the approval is granted to the merger by the competent authority or, in the case of a cross border merger where the receiving UCITS is a Maltese UCITS, by the European regulatory authority of the merging UCITS as the case may be.

(iii) the date for determining the relevant net asset value for cash payments, where applicable shall not be later than one working day from the date on which the approval is granted to the merger by the competent authority or, in the case of a cross border merger where the receiving UCITS is a Maltese UCITS, by the European regulatory authority of the merging UCITS as the case may be.

(2) The competent authority shall ensure that, where applicable, the dates referred to in subregulation (1) are set after the approval of the merger by unit-holders of the receiving UCITS or the merging UCITS.

(3) Where the receiving UCITS is a Maltese UCITS, the entry into effect of the merger shall be notified to the competent authority and to the European regulatory authority of the merging UCITS and shall be made public by a notice on the website of the competent authority.

(4) A merger which has taken effect as provided for in subregulation (1) shall not be declared null and void.

CONSEQUENCES OF MERGER

Consequences of a merger.

16. (1) A merger effected in accordance with regulation 3(1) shall have the following consequences:

(a) all the assets and liabilities of the merging UCITS shall be transferred to the receiving UCITS or, where applicable, to the custodian of the receiving UCITS;

(b) the unit-holders of the merging UCITS shall become unit-holders of the receiving UCITS and, where applicable, they shall be entitled to a cash payment not exceeding 10 per centum of the net asset value of their units in the merging UCITS; and

(c) the merging UCITS shall cease to exist on the entry into effect of the merger.

17. The management company of a Maltese UCITS that is a receiving UCITS shall confirm to the custodian of the said receiving UCITS that transfer of assets and liabilities is complete. Where no management company has been appointed, the said receiving UCITS shall give such confirmation directly to its custodian.

MERGER OF MASTER AND FEEDER UCITS.

Mergers of master and feeder UCITS.

18. (1) If a master UCITS merges with another UCITS or is divided into two or more UCITS, the feeder UCITS shall be liquidated, unless, where the feeder UCITS is a Maltese UCITS , the competent authority grants its approval to the feeder UCITS to:

(a) continue to be a feeder UCITS of the master UCITS or another UCITS resulting from the merger or division of the master UCITS;

(b) invest at least eighty five per cent of its assets in units of another master UCITS not resulting from the merger or the division; or

(c) amend its fund rules or its instruments of incorporation in order to convert into a UCITS which is not a feeder UCITS.

(2) A merger or division of a master UCITS shall not become effective unless the master UCITS has provided all of its unit-holders and the European regulatory authorities of its feeder UCITS, or, where the feeder UCITS is a Maltese UCITS, the competent authority, with the information referred to or comparable with that referred to in regulation 11 up to 60 days prior to the proposed effective date of the merger or division, as the case may be.

(3) Where the feeder UCITS is a Maltese UCITS, unless the competent authority has granted its approval in terms of paragraph (a) of subregulation (1), the master UCITS shall enable the feeder UCITS to repurchase or redeem all units in the master UCITS before the merger or division of the master UCITS becomes effective.

Information to be submitted to the competent authority by feeder UCITS.

19. (1) Where the feeder UCITS is a Maltese UCITS it shall, not later than one month after the date on which such feeder UCITS received the information of the planned merger or division referred to in subregulation (1) of regulation 18, submit to the competent authority 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) its application for approval of the proposed amendments to its fund rules or instrument of incorporation, where applicable; and

(iii) the amendments to its prospectus and its key investor information, where applicable.

(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 per cent 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 investors information; and

(iv) any other document as required in terms of Investment Services Rules.

(c) where the feeder UCITS intends to convert into a UCITS that is not a feeder UCITS :

(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; and

(d) where the feeder UCITS intends to be liquidated, a notification of that intention.

(2) Notwithstanding the requirements of this regulation, in cases where the master UCITS provided the information referred to, or comparable with, the information in regulation 11 to a feeder UCITS which is a Maltese UCITS more than four months prior to the proposed effective date of merger, such feeder UCITS shall submit to the competent authority its application or notification in accordance with subregulation (1) not later than three months prior to the proposed effective date of the merger or division of the master UCITS.

(3) The feeder UCITS shall inform its unit-holders and the master UCITS of its intention to be liquidated without undue delay.

(4) For the purposes of this regulation, the expression "continues to be a feeder UCITS of the same master UCITS" shall refer to cases where:

(a) the master UCITS is the receiving UCITS in a proposed merger;

(b) the master UCITS is to continue materially unchanged as one of the resulting UCITS in a proposed division.

(5) For the purposes of this regulation, the expression "becomes a feeder UCITS of another master UCITS resulting from the merger or division of the master UCITS" refers to cases where:

(a) the master UCITS is the merging UCITS and, due to the merger, the feeder UCITS becomes a unit-holder of the receiving UCITS;

(b) the feeder UCITS becomes a unit-holder of a UCITS resulting from a division that is materially different to the master UCITS.

Approval by the competent authority.

20. (1) Where the feeder UCITS is a Maltese UCITS, it shall be notified within fifteen working days following the complete submission of the

documents referred to in paragraphs (a) to (c) of subregulation 1 of regulation 19, whether the competent authority has granted the approval required in terms of regulation 18. The feeder UCITS shall inform the master UCITS of such approval upon receipt.

(2) After the feeder UCITS has been notified that the competent authority has granted the necessary approvals pursuant to regulation 19(1)(b), such feeder UCITS shall take the necessary measures to comply with the applicable Investment Services Rules without undue delay.

Right of feeder UCITS to request repurchase and redemption of units.

21. (1) In the cases referred to in paragraphs (b) and (c) of subregulation (1) of regulation 19, where the feeder UCITS is a Maltese UCITS it shall exercise the right to request repurchase and redemption of units in the master UCITS in accordance with the requirements of regulations 12(1) and 18(1), where the competent authority has not granted the necessary approvals required pursuant to regulation 19 by the working day preceding the last day on which such feeder UCITS can request repurchase and redemption of its units in the master UCITS before the merger or division is effected. In addition, the feeder UCITS shall also exercise such right in order to ensure that in order to ensure that the right of its own unit-holders to request repurchase or redemption of their units in the feeder UCITS in terms of the applicable Investment Services Rules is not affected.

(2) A feeder UCITS shall, prior to exercising the right referred to in subregulation (1), consider available alternative solutions which may help to avoid or reduce transaction costs or other negative impacts for its own unit-holders.

(3) 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:

Provided that, where paragraph (a) of subregulation (1) of regulation 19 applies, the feeder UCITS may realize any part of the transferred assets for cash at any time.

(4) Where the feeder UCITS is a Maltese UCITS, the competent authority shall grant its approval in terms of regulation 18 on condition that any cash held or received in accordance with subregulation (4) may be re-invested only for the purpose of efficient cash management before the date on

which such feeder UCITS is to start to invest either in the new master UCITS or in accordance with its new investment objectives and policy.

SCHEDULE

(Regulation 11)

Information to be provided by Maltese UCITS which are in the process of Merging.

1. General

1.1. The information to be provided to unit-holders by the Maltese UCITS regarding the proposed merger shall be written in a concise manner and in non-technical language that enables unit-holders to make an informed judgment of the impact of the proposed merger on their investment.

In case of a proposed cross-border merger, the Maltese UCITS shall explain in plain language any terms or procedures relating to the other UCITS which differ from those commonly used in the other Member State.

1.2. The information to be provided to unit-holders of a Maltese UCITS shall also include:

i. details of how any accrued income in the Maltese UCITS is to be treated; and

ii. an indication of how the report of the independent auditor or the custodian as referred to in regulation 10(3) of may be obtained

2. Additional Information to be provided by the Maltese UCITS when it is the merging UCITS

2.1. Where the Maltese UCITS is the merging UCITS, the information to be provided to its unit-holders 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. The attention of such investors shall be drawn to the key investor information of the receiving UCITS and shall emphasise the desirability of reading such document.

2.2. Where the Maltese UCITS is the merging UCITS, the information to be provided to the unit-holders shall also include:

i. details of any differences in the rights of unit-holders of such Maltese UCITS as the merging UCITS before and after the proposed merger takes effect;

ii. if the key investor information of the merging UCITS and that of 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;

iii. a comparison of all charges, fees and expenses for both UCITS, based on the amounts disclosed in their respective key investor information;

iv. if the merging UCITS applies a performance-related fee, an explanation of how it will be applied up to the point at which the merger becomes effective;

v. if the receiving UCITS applies a performance-related fee, how it will subsequently be applied to ensure fair treatment of those unit-holders who previously held units in the merging UCITS;

vi. in the case of self-managed UCITS, details of costs associated with the preparation and completion of the merger to be charged to either the merging UCITS or the receiving UCITS or any of their unit-holders, including details of how those costs are to be allocated;

vii. an explanation of whether the management company, or where this is not appointed, the investment company of the merging UCITS intends to undertake any rebalancing of the portfolio before the merger takes effect;

viii. the period during which unit-holders shall be able to continue making subscriptions and requesting redemptions of units in the merging UCITS;

ix. the time when those unit-holders not making use of their rights granted pursuant to subregulation (1) of regulation 12, within the relevant time limit, shall be able to exercise their rights as unit-holders of the receiving UCITS; and

x. an explanation that in cases where the merger proposal must be approved by the unit-holders in accordance with the applicable laws , those unit-holders who vote against the proposal or who do not vote at all, and who do not make use of their rights granted pursuant to subregulation (1) of regulation 12 within the relevant time limit, shall become unit-holders of the receiving UCITS.

2.3. Where the Maltese UCITS is the merging UCITS and the proposed terms of merger include provisions for a cash payment in accordance with the requirements of the UCITS Directive, the information which it provides to unit-holders shall contain details of that proposed payment, including when and how unit-holders of the merging UCITS will receive such cash payment

3. Additional Information to be provided by the Maltese UCITS when it is the receiving UCITS

3.1. The information to be provided to unit-holders by the Maltese UCITS, when it is the receiving UCITS shall also include an explanation of whether the management company or the investment company of such receiving UCITS expects the merger to have any material impact on the portfolio of the receiving UCITS, and whether it intends to undertake any rebalancing of the portfolio either before or after the merger takes effect.

3.2. Where the Maltese UCITS is the receiving UCITS, the information which it must provide to its unit-holders shall focus on the operation of the merger and its potential impact on the receiving UCITS.

4. Method of providing the Information to Unit-Holders

4.1. The information which a Maltese UCITS is required to provide to its unit-holders so as to enable them to make an informed judgement of the impact of the proposed merger on their investment shall be provided on paper or in another durable medium.

4.2. Where the information is to be provided to all or certain unit-holders using a durable medium other than paper, the following conditions shall be fulfilled:

i. the provision of the information is appropriate to the context in which the business between the unit-holder and the Maltese UCITS or, where relevant, the management company is, or is to be, carried on;

ii. the unit-holder to whom the information is to be provided, when offered the choice between information on paper or in another durable medium, specifically chooses the medium other than paper.

4.3. For the purposes of this Schedule, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the Maltese UCITS or its management company and the unit-holder is, or is to be, carried on if there is evidence that the unit-holder has regular access to the Internet. The provision by the unit-holder of an email address for the purposes of the carrying on of that business shall be treated as such evidence.