

# Open Hearing on initial orientations for deepening the single market for UCITS investment funds

## Welcome

Interpretation channels:

-  German 1
-  English 2
-  French 3

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# Session 1: Mergers

Opening Remarks

by

**María Dolores Montesinos**

Asset Management Unit, EC

# Objective & scope

- **Objective**: create a facilitating framework while ensuring effective protection of the rights of investors.
  - Principle: right to merge UCITS but subject to prior regulatory approval
  - Broad scope:
    - Three fund merger techniques:
      - Merger by absorption
      - Merger by creation of a new fund
      - Scheme of amalgamation
    - Cross-border & domestic fund mergers
    - Between UCITS of any type (or sub-funds)

# Merger approval (I)

- Regulatory approval:
  - Competent authority of dissolving UCITS
  - No veto possibility for receiving UCITS authority but to be informed if potential detriment to receiving UCITS' investors
- Criteria:
  - Compliance with provisions on fund mergers
  - Receiving UCITS notified for marketing
- Decision: within 15 working days
- Necessity to comply with other national law provisions

# Merger approval (II)

- Third-party control:
  - Dissolving UCITS depositary to check conformity with law and fund rules
  - Independent auditor to report on the assets valuation method and the calculation of the exchange ratio
- Information to competent authority:
  - Common draft terms of the proposed merger
  - Approval by depositary of draft terms
  - Draft auditor report
  - Information to be provided to dissolving UCITS' investors

# Investors' information & rights

- Investor information:
  - Enable investors to make informed decision on merger's impact
  - Sent at least 30 days before merger
  - Principles only - detailed content & format at Level 2
  - Receiving fund investors to be informed in certain cases.
- Investor rights:
  - Voting where provided by national law (75% max. threshold)
  - Exit free of charge (in certain cases, also receiving fund's investors)
  - Costs: not to be borne directly or indirectly by investors

# Session 1: Mergers

## Moderator:

**Jean Baptiste de Franssu**, Chief Executive Officer, INVESCO CE

## Panellists:

**Jella Susanne Benner-Heinacher**, Managing Director, German Shareholders Association, DSW

**Nathan Hall**, Senior Tax Manager, KPMG LLP

**Arnaud Oseredczuk**, Head of Asset Management, AMF, France

**Greet T'Jonck**, Deputy Director, Supervision of Financial Information and Markets, CBFA, Belgium

# Session 2: Pooling (master/feeder)

Opening Remarks

by

**Claus Tollmann**

Asset Management Unit, EC

# Initial orientation of DG MARKT

- Currently no harmonisation of virtual pooling
- Master-feeder instead of pooling in a broad sense
- Therefore, feeder may only invest into one master

# The feeder

- Authorisation as a UCITS
- Newly created UCITS or converted UCITS
- Minimum investment of 85 % into the master
- Up to 15 % in liquidity or in derivatives

# The master

- Authorisation as a UCITS to ensure
  - (i) investment only in eligible assets and
  - (ii) a high level of investor protection
- At least 2 feeder UCITS as investors
  - (i) only then pooling of assets
  - (ii) only then economies of scale

# The master

- Master may have different share classes/investment compartments if compatible with national law
- Master may neither invest into a feeder nor into another master (to avoid cascade effects)

# Choice of depositaries/auditors

- Master and feeder may have the same auditor
- Same depositary only, if master and feeder are situated in the same Member State (see art. 8 (1) and 15 (1) UCITS Directive)

# Costs

- Master may not charge feeder subscription or redemption fees
- Commissions by virtue of the investment into the master must be paid into the feeder's assets
- Disclosure of feeder's costs and of aggregate costs in prospectus and probably in key investor information

# Session 2: Pooling (master/feeder)

## Moderator:

**Pauline Leclerc-Glorieux**, Head of Department, Investment Services Providers and Products, Autorité des marchés financiers

## Panellists:

**Steffen Matthias**, Secretary General, EFAMA

**Grainne McEvoy**, Financial Regulator, Irish Financial Services Regulatory Authority, Financial Institutions and Funds Authorisation

**Guillaume Prache**, Vice-Chairman, Fédération des Associations Indépendantes de Défense des Epargnants pour la Retraite

**Julian Presber**, Managing Director, State Street Bank Luxembourg S.A.

**13.00-14.30 Lunch break**



**Next session at 14.30**

# Session 3: Private Placement

Opening Remarks

by

**Uwe Eiteljörge**

Asset Management Unit, EC

# Call for Evidence

1. Economic context / Single Market failure
2. Appropriate parameters of a possible private placement regime
3. Necessity for and potential design of a private placement regime at EU level

***Deadline: 30 June 2007***

# What is private placement?

- A specific sales method for investment products.
- A (non-)regulated space where buyers and sellers can conduct transactions if they, their transaction and possibly the object of the deal comply with certain conditions.
- A waiver of the requirements and rules that would apply in the event of public offerings.

# 1. Economic context / Single Market failure

- Identify and analyse of national concepts of private placement schemes
- Analyse the structure of relevant markets
- Identify potential single market failures

## 2. Parameters of an 'ideal' private placement regime

- Borderline between private placement and public offering
- Eligible products, investors, providers
- Other restrictions and requirements

# 3. The current EU framework

- Prospectus Directive 2003/71/EC
- Markets in Financial Instruments Directive 2004/39/EC (MiFID)
- Transparency Directive 2004/109/EC

# Session 3: Private Placement

## Moderator:

**Carlo Comporti**, Deputy to the Secretary General, The Committee of European Securities Regulators, CESR

## Panellists:

**Robbert Coomans**, Advisor to the Board, ABP Investments, NL

**Simon Gleeson**, Partner, Clifford Chance

**Alex Marshall**, Managing Director and Senior Counsel, Legal Department, Goldman Sachs International

**Sheila Nicoll**, Deputy Chief Executive, IMA

# THANK YOU FOR PARTICIPATING

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