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EUROPEAN COMMISSION

Brussels, xxx
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Draft

COMMISSION REGULATION (EU) No .../..

of [...]

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

(Text with EEA relevance)

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (recast)¹, and in particular Article 95(2)(a), (b) and (c), Article 101(9) and Article 105 thereof,

Whereas:

- (1) Directive 2009/65/EC provides the Commission with implementing powers to specify and harmonise certain aspects of the new procedure for notification of marketing of units of UCITS in a host Member State. Such harmonisation should provide competent authorities with the necessary certainty as to how the new requirements will work and help to ensure that the new procedure functions smoothly.
- (2) In order to facilitate the notification procedure it is necessary to specify the form and content of the standard model notification letter to be used by a UCITS and the form and content of the attestation to be used by the competent authorities of Member States to confirm that the UCITS fulfils the conditions set out in Directive 2009/65/EC. Member States should be able to communicate both the notification letter and the attestation electronically.
- (3) Given the objective of Directive 2009/65/EC to ensure that a UCITS is able to market its units in other Member States subject to a notification procedure based on improved communication between the competent authorities of the Member States, it is necessary to set out a detailed procedure for the electronic transmission of the notification file between competent authorities.

¹ OJ L 302, 17.11.2009, p. 32.

- (4) Directive 2009/65/EC requires the competent authorities of the UCITS home Member State to verify if the notification file is complete before they transmit the complete file to the competent authorities of the Member State in which the UCITS proposes to market its units. It also provides a UCITS with the right to access the market of a host Member State immediately after the complete notification file has been transmitted by the competent authorities of the UCITS home Member State to the competent authorities of a Member State where the UCITS proposes to market its units. In order to ensure legal certainty it is necessary to establish when the transmission of the complete notification file is considered to have taken place. Moreover, the procedure for the use of electronic communication shall require competent authorities of the UCITS home Member State to make sure that transmission of the complete documentation has taken place, before they notify a UCITS about the transmission pursuant to Article 93(3) of Directive 2009/65/EC. It is also necessary to set out procedures for dealing with technical problems that occur in the process of the transmission of the notification file between competent authorities of the UCITS home and host Member State.
- (5) In order to simplify the transmission of the notification file as well as take into account technical innovations and the feasibility of developing more sophisticated systems for electronic communication, competent authorities may implement cooperative arrangements to improve the electronic communication of the notification file in particular in relation to system security and the use of encryptions mechanisms. Competent authorities should also coordinate arrangements for electronic communication within the Committee of European Securities Regulators.
- (6) Directive 2009/65/EC requires that Member States take the necessary administrative and organisational measures to facilitate cooperation. Enhanced co-operation between competent authorities is necessary to ensure that UCITS and management companies managing UCITS comply with Directive 2009/65/EC and to ensure the smooth functioning of the internal market and a high level of investor protection.
- (7) Directive 2009/65/EC provides that the competent authorities of one Member State may request the cooperation of the competent authorities of another Member State in a supervisory activity or for an on-the-spot verification or in an investigation on the territory of the latter. In particular, where a UCITS is managed by a management company situated in another Member State, it is essential to establish mechanisms for cooperation between competent authorities and detailed procedures to be applied when a competent authority needs to carry out an investigation or on-the-spot verification of an entity or person situated in another Member State.
- (8) A competent authority should have a right to request the co-operation of other competent authorities with respect to matters falling within the scope of its supervisory responsibilities. The requested authority should provide assistance even where the conduct under investigation is not considered an infringement in its own jurisdiction. The requested authority may refuse assistance in the cases listed in Article 101(6) of Directive 2009/65/EC.
- (9) Directive 2009/65/EC requires the competent authorities of Member States to immediately provide each other with the information required for the purpose of carrying out their duties. It is therefore appropriate to set out detailed rules on the

routine exchange of information and the exchange of information without prior request.

- (10) In order to ensure that the obligations set out in Directive 2009/65/EC and in this Regulation apply from the same date, this Regulation should apply from the same date as the national measures transposing Directive 2009/65/EC.
- (11) The Committee of European Securities Regulators, established by Commission Decision 2009/77/EC² has been consulted for technical advice.
- (12) The measures provided for in this Regulation are in accordance with the opinion of the European Securities Committee,

HAS ADOPTED THIS REGULATION:

CHAPTER I

Notification procedure

Article 1

Form and content of the notification letter

An undertaking for collective investment in transferable securities (UCITS) shall produce the notification letter as referred to in Article 93(1) of Directive 2009/65/EC in accordance with the model set out in Annex I to this Regulation.

Article 2

Form and content of the UCITS attestation

The competent authorities of the UCITS home Member State shall produce the attestation that the UCITS fulfils the conditions imposed by Directive 2009/65/EC as referred to in Article 93(3) of that Directive in accordance with the model set out in Annex II to this Regulation.

Article 3

Designated email address

1. Competent authorities shall designate an e-mail address for the purpose of transmitting the documentation referred to in Article 93(3) of Directive 2009/65/EC and for the purpose of the exchange of information related to the notification procedure set out in that Article.
2. Competent authorities shall inform the competent authorities of other Member States of the designated e-mail address and shall ensure that any modification of that e-mail address is immediately brought to their attention.

² OJ L 25, 29.1.2009, p. 18.

3. The competent authorities of the UCITS home Member State shall transmit all documents referred to in the second subparagraph of Article 93(3) of Directive 2009/65/EC to only the designated e-mail address of the competent authorities of the Member State in which the UCITS proposes to market its units.
4. Competent authorities shall establish a procedure to ensure that their designated e-mail address for receiving notifications is checked each working day.

Article 4
Transmission of the notification file

1. Competent authorities of the UCITS home Member State shall transmit the complete documentation referred to in the first and the second subparagraph of Article 93(3) of Directive 2009/65/EC to the competent authorities of a Member State in which the UCITS proposes to market its units, by e-mail.

Any attachment to the notification letter as specified in Annex I shall be listed in the e-mail and shall be provided in a format in common use that is capable of being viewed and printed.

2. The transmission of the complete documentation as referred to in the second subparagraph of Article 93(3) of Directive 2009/65/EC shall not be considered as having taken place only in any of the following cases:
 - (a) a document that has to be transmitted is missing, incomplete or is in a format other than that specified in paragraph 1;
 - (b) the competent authorities of the UCITS home Member State do not use the e-mail address designated by the competent authorities of the Member State in which the UCITS proposes to market its units pursuant to Article 3(1);
 - (c) the competent authorities of the UCITS home Member State have failed to transmit the complete documentation as a result of a technical failure in their electronic system.
3. Competent authorities of the UCITS home Member State shall ensure that the transmission of the complete documentation as referred to in Article 93(3) of Directive 2009/65/EC has taken place before they notify the UCITS about the transmission.
4. If the competent authorities of the UCITS home Member State are informed or become aware that the transmission of the complete documentation has not taken place, they shall immediately take steps to transmit the complete documentation.
5. Competent authorities may agree to replace the means by which the complete documentation referred to in the second subparagraph of Article 93(3) of Directive 2009/65/EC is transmitted by a more sophisticated method of electronic communication than e-mail, or to establish additional procedures to enhance the security of e-mails transmitted.

Any alternative method or enhanced procedure shall comply with the notification time limits set out in Chapter XI of Directive 2009/65/EC and shall not impair the ability of the UCITS to access the market of a Member State other than its home Member State.

Article 5

Receipt of the notification file

1. When the competent authorities of a Member State in which a UCITS proposes to market its units receive the documentation to be transmitted to them pursuant to Article 93(3) of Directive 2009/65/EC, they shall confirm to the competent authorities of the UCITS home Member State as soon as possible, but no later than five working days from the date of the receipt of such documentation whether or not:
 - (a) all attachments which have to be listed in accordance with Article 4(1) of this Regulation have been received; and
 - (b) the documentation which have to be transmitted to them can be viewed or printed.

The confirmation may be sent by e-mail to the competent authorities of the UCITS home Member State, using the address designated pursuant to Article 3(1) unless the relevant competent authorities have agreed on a more sophisticated method for the acknowledgement of receipt.

2. Where the competent authorities of the UCITS home Member State have not received confirmation from the competent authorities of a Member State in which the UCITS proposes to market its units within the time limits specified in paragraph 1, they shall contact the competent authorities of the Member State in which the UCITS proposes to market its units and verify that the transmission of the complete documentation has taken place.

CHAPTER II

SUPERVISORY COOPERATION

SECTION 1

PROCEDURE FOR ON-THE-SPOT VERIFICATIONS AND INVESTIGATIONS

Article 6

Request for assistance for on-the-spot verifications and investigations

1. A competent authority intending to carry out an on-the-spot verification or investigation on the territory of another Member State ('the requesting authority')

shall submit a written request to the competent authority of that other Member State ('the requested authority'). The request shall contain the following:

- (a) the reasons for the request, including the legal provisions applicable in the jurisdiction of the requesting authority on which the request is based;
 - (b) the scope of the on-the-spot verification or the investigation;
 - (c) the actions already undertaken by the requesting authority;
 - (d) any actions to be taken by the requested authority;
 - (e) the proposed methodology of the on-the-spot verification or investigation and the requesting authority's reasons for choosing it.
2. The request shall be submitted sufficiently in advance of the on-the-spot verification or investigation.
 3. Where a request for assistance for an on-the-spot verification or investigation is urgent, it may be transmitted by e-mail and subsequently confirmed in writing.
 4. The requested authority shall acknowledge receipt of the request without undue delay.
 5. The requesting authority shall make available any information that has been requested by the requested authority in order to enable the requested authority to provide the necessary assistance.
 6. The requested authority shall transmit without undue delay any information and documents that are available to it as are relevant or useful to the requesting authority, in light of the reasons for and scope of the on-the-spot verification or the investigation.
 7. The requested authority and the requesting authority shall reassess the necessity of the on-the-spot verification and investigation in light of the documents and information transmitted pursuant to paragraph 5 or 6.
 8. The requested authority shall decide whether it carries out the on-the-spot verification or investigation itself or whether it allows the requesting authority to carry out the on-the-spot verification or investigation, or whether it allows auditors or other experts to carry out the on-the-spot verification or investigation.
 9. The requested authority and the requesting authority shall agree on issues related to the allocations of costs of on-the-spot verification or investigation.

Article 7

Carrying out of the on-the-spot verification and investigation by the requested authority

1. Where the requested authority has decided to carry out the on-the-spot verification or investigation itself, it shall do so in accordance with the procedure provided for in the law of the Member State on whose territory the on-the-spot verification or investigation is to be conducted.

2. Where the requesting authority has requested that its own officials accompany the officials of the requested authority carrying out the verification or investigation in accordance with Article 101(5) of Directive 2009/65/EC, the requesting authority and the requested authority shall agree on practical arrangements for such participation.

Article 8

Carrying out of the on-the-spot verification and investigation by the requesting authority

1. Where the requested authority has decided to allow the requesting authority to carry out the on-the-spot verification or investigation, such on-the-spot verification or investigation shall be carried out in accordance with the procedure provided for in the law of the Member State on whose territory the on-the-spot verification or investigation is to be conducted.
2. Where the requested authority has decided to allow the requesting authority to carry out the on-the-spot verification or investigation, it shall provide the necessary assistance to facilitate that on-the-spot verification or investigation.
3. If the requesting authority discovers material information relevant for the discharging of duties of the requested authority during its on-the-spot verification or investigation, it shall without undue delay transmit this information to the requested authority.

Article 9

Carrying out of the on-the-spot verification and investigation by auditors or experts

1. Where the requested authority has decided to allow auditors or experts to carry out on-the-spot verification or investigation, such on-the-spot verification or investigation shall be carried out in accordance with the procedure provided for in the law of the Member State on whose territory the on-the-spot verification or investigation is to be conducted.
2. Where the requested authority has decided to allow auditors or experts to carry out on-the-spot verification or investigation, it shall provide the necessary assistance to facilitate those auditors or experts in the performance of their tasks.
3. Where the requesting authority proposes to appoint auditors or experts, it shall transmit any relevant information on the identity and professional qualifications of such auditors or experts to the requested authority.

The requested authority shall promptly notify the requesting authority whether it accepts the proposed appointment.

Where the requested authority does not accept the proposed appointment or the requesting authority does not propose the appointment of auditors or experts, the requested authority shall have the right to propose auditors or experts.

4. Where the requested authority and the requesting authority do not agree on the appointment of auditors or experts, the requested authority shall decide whether it

carries out the on-the-spot verification or investigation itself or whether it allows the requesting authority to carry out the on-the-spot verification or investigation.

5. Unless the requested authority and the requesting authority otherwise agree, the authority that has proposed the appointed auditors or experts, shall bear the relevant costs.
6. If, whilst carrying out on-the-spot verification or investigation the auditors or experts discover material information relevant for the discharging of duties of the requested authority, they shall transmit this information promptly to the requested authority.

Article 10

Requests for assistance in interviews with persons situated in another Member State

1. Where the requesting authority considers it necessary to conduct interviews with persons situated in the territory of another Member State, it shall submit a written request to the competent authorities of that other Member State.
2. The request shall contain the following:
 - (a) the reasons for the request, including the legal provisions applicable in the jurisdiction of the requesting authority on which the request is based;
 - (b) the scope of the interviews;
 - (c) the actions already undertaken by the requesting authority;
 - (d) any actions to be taken by the requested authority;
 - (e) the proposed methodology to be used in the interviews and the requesting authority's reasons for choosing it.
3. The request shall be submitted sufficiently in advance of the interviews.
4. Where a request for assistance for conducting interviews with persons situated in the territory of another Member State is urgent, it may be transmitted by e-mail and subsequently confirmed in writing.
5. The requested authority shall acknowledge receipt of the request without undue delay.
6. The requesting authority shall make available any information that has been requested by the requested authority in order to enable the requested authority to provide the necessary assistance.
7. The requested authority shall transmit without undue delay any information and documents that are available to it as are relevant or useful to the requesting authority, in light of the reasons for and scope of the interviews.
8. The requested authority and the requesting authority shall reassess the need for conducting interviews in light of the documents and information transmitted pursuant to paragraph 6 or 7.

9. The requested authority shall decide whether it conducts the interviews itself or whether it allows the requesting authority to conduct the interviews.
10. The requested authority and the requesting authority shall agree on issues related to the allocations of costs for conducting the interviews.
11. The requesting authority may take part in the interviews requested in accordance with paragraph 1. Before and during the interviews, the requesting authority may submit questions to be asked.

Article 11

Specific provisions related to on-the-spot verifications and investigations

1. The competent authorities of the management company's home Member State and the competent authorities of the UCITS home Member State shall notify each other of any on-the-spot verifications and investigations to be undertaken with regard to the management company or the UCITS subject to their respective supervision. Upon such notification, the notified competent authority may request without undue delay the notifying competent authority to include in the scope of on-the-spot verification or investigation the matters falling within the scope of supervision of the notified authority
2. The competent authorities of the management company's home Member State may request the assistance of the competent authority of the UCITS home Member State with regard to the on-the-spot verification and investigation of a depositary of a UCITS where necessary to discharge its supervisory duties with regard to the management company.
3. The competent authorities of the UCITS home Member State and the competent authorities of the management company's home Member State shall agree on the procedures for sharing the results of the on-the-spot verification and investigations carried out with respect to the management company and the UCITS that are subject to their supervision.
4. Where necessary, the competent authorities of the UCITS home Member State and the competent authorities of the management company's home Member State shall agree on further actions that need to be taken with regard to the on-the-spot verification or investigation.

SECTION 2 EXCHANGE OF INFORMATION

Article 12

Routine exchange of information

1. The competent authorities of the UCITS home Member State shall immediately inform the competent authorities of the UCITS host Member States and, where the UCITS is managed by a management company situated in a Member State other than

the UCITS home Member State, the competent authorities of the management company's home Member State of:

- (a) any decision to withdraw the authorisation for a UCITS;
 - (b) any decision imposed upon a UCITS regarding the suspension of the issue, re-purchase or redemption of its units;
 - (c) any other serious measure taken against a UCITS.
2. Where a UCITS is managed by a management company situated in a Member State other than the UCITS home Member State, the competent authorities of the management company's home Member State shall immediately notify the competent authorities of the UCITS home Member State that the ability of a management company to properly perform its duties with respect to the UCITS it manages may be materially adversely affected or that the management company does not fulfil the requirements set out in Chapter III of Directive 2009/65/EC.
3. Where a UCITS is managed by a management company situated in a Member State other than the UCITS home Member State, the competent authorities of the UCITS home Member State and the management company's home Member State shall facilitate the exchange of information required for the purposes of carrying out their duties under Directive 2009/65/EC, including the establishment of appropriate information flows. This shall include the exchange of information necessitated by:
- (a) the procedures for the authorisation of a management company to pursue activities within the territory of another Member State pursuant to Articles 17 and 18 of Directive 2009/65/EC;
 - (b) the procedures for the authorisation of a management company to manage a UCITS authorised in a Member State other than the management company's home Member State, pursuant to Article 20 of Directive 2009/65/EC;
 - (c) the on-going supervision of management companies and UCITS.

Article 13

Unsolicited exchange of information

Competent authorities shall communicate all relevant information likely to be of material interest with regard to the discharge of duties under Directive 2009/65/EC to other competent authorities, without prior request and undue delay.

CHAPTER III

FINAL PROVISIONS

Article 14
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from 1 July 2011.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission
The President
José Manuel Barroso

ANNEX I
NOTIFICATION LETTER

(Article 1 of Commission Regulation (EU) No 2010/xxx implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of 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 (OJ L xxx, xx.x.2010, p. X)

NOTIFICATION OF INTENTION TO MARKET UNITS OF UCITS

IN _____

(the host Member State)

PART A

Name of the UCITS: _____

UCITS home Member State: _____

Legal form of the UCITS (please tick appropriate one box):

common fund

unit trust

investment company

Does the UCITS have compartments? Yes / No

Name of the UCITS and/or compartment(s) to be marketed in the host Member State	Name of share class(es) to be marketed in the host Member State ³	Duration ⁴	Code numbers ⁵

³ If the UCITS intends to market only certain share classes, it should list only those classes
⁴ If applicable
⁵ If applicable (e.g. ISIN)

Name of the management company / self-managed investment company

Management company's home Member State: _____

Address and registered office / domicile if different from address

Details of management company's website: _____

Details of contact person at the management company

Name / Position: _____

Telephone number: _____

E-mail address: _____

Fax number: _____

Duration of the company, if applicable: _____

Scope of activities of the management company in the UCITS host Member State

Additional information about the UCITS (if necessary)

Attachments:

1) The latest version of the fund rules or instruments of incorporation, translated if necessary in accordance with Article 94(1)(c) of Directive 2009/65/EC.

(Title of document or name of electronic file attachment)

2) The latest version of the prospectus, translated if necessary in accordance with Article 94(1)(c) of Directive 2009/65/EC.

(Title of document or name of electronic file attachment)

3) The latest version of the key investor information, translated if necessary in accordance with Article 94(1)(b) of Directive 2009/65/EC.

(Title of document or name of electronic file attachment)

4) The latest published annual report and any subsequent half-yearly report, translated if necessary in accordance with Article 94(1)(c) of Directive 2009/65/EC.

(Title of document or name of electronic file attachment)

Note:

The latest versions of the required documents listed above must be attached to this letter for onward transmission by the competent authorities of the UCITS home Member State, even if copies have previously been provided to that authority. If any of the documents have previously been sent to the competent authorities of the UCITS host Member State and remain valid, the notification letter may refer to that fact.

Indicate where the latest electronic copies of the attachments can be obtained in future:

PART B

The following information is provided in conformity with the national laws and regulations of the UCITS host Member State in relation to the marketing of units of UCITS in that Member State.

UCITS shall refer to the website of the competent authorities of each Member State for details of which items of information shall be provided in this section. A list of relevant website addresses is available at www.cesr.eu

1. Arrangements made for marketing of units of UCITS

Units of the UCITS / UCITS compartments will be marketed by:

- the management company that manages the UCITS
- any other management company authorised under Directive 2009/65/EC
- credit institutions
- authorised investment firms or advisers
- other bodies

1) _____

2) _____

3) _____

2. Arrangements for the provision of facilities to unit-holders in accordance with Article 92 of Directive 2009/65/EC:

Details of paying agent (if applicable):

Name: _____

Legal form: _____

Registered office: _____

Address for correspondence (if different): _____

Details of any other person from whom investors may obtain information and documents:

Name: _____

Address: _____

Manner in which the issue, sale, repurchase or redemption price of units of UCITS will be made public

3. Other information required by the competent authorities of the host Member State in accordance with Article 91(3) of Directive 2009/65/EC

Include (if required by the UCITS host Member State)

- details of any additional information to be disclosed to unit-holders or their agents;
- in case a UCITS makes use of any exemptions from rules or requirements applicable in the UCITS host Member State in relation to marketing arrangements for the UCITS, a specific share class or any category of investors, details of the use made of such exemptions;

If required by the UCITS host Member State, evidence of payment due to the competent authorities of the host Member State

PART C

Confirmation by the UCITS

We hereby confirm that the documents attached to this notification letter contain all relevant information as provided for in the Directive 2009/65/EC. The text of each document is the same as that previously submitted to the competent authorities of the home Member State, or is a translation that faithfully reflects that text.

(The notification letter shall be signed by an authorised signatory of the UCITS or a third person empowered by a written mandate to act on behalf of the notifying UCITS, in a manner which the competent authorities of the UCITS home Member State accept for certification of documents. The signatory shall state his/her full name and capacity, and shall ensure the confirmation is dated.)

Annex II
UCITS ATTESTATION

(Article 2 of Commission Regulation (EU) No 2010/xxx implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of 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 (OJ L xxx, xx.x.2010, p. X)

_____ is the competent authority in:
(name of the competent authorities of the UCITS home Member State)

(the UCITS home Member State)

Address: _____

Telephone number: _____

E-mail address: _____

Fax number: _____

that carries out the duties provided for in Article 97(1) of Directive 2009/65/EC .

For the purpose of Article 93(3) of Directive 2009/65/EC,

_____ certifies that
(name of competent authority, as above)

(name of UCITS, i.e. the name of the common fund, unit trust or investment company)

is established in: (name of its home Member State)

was set up on: (date of approval of the fund rules or instrument of incorporation of the UCITS)

has registry number (if applicable UCITS registry number in its home Member State)

registered with (if applicable name of the authority responsible for the register)

is based at:

(for investment companies only, address of the UCITS' head office)

is: (please tick appropriate one box)

either a common fund / unit trust

List of all compartments approved in the home Member State, if applicable	
Serial no.	Name
1	
2	
3	
....	

managed by the management company:

(name and address of the management company)

or an investment company :

List of all compartments approved in the home Member State, if applicable	
Serial no.	Name
1	
2	
3	
....	

that: (please tick appropriate one box)

either has designated a management company

(name and address of the designated management company)

or is self-managed

and fulfils the conditions set out in Directive 2009/65/EC

(The attestation shall be signed and dated by a representative of the competent authority of the UCITS home Member State in a manner that is accepted for the certification by that authority. The signatory shall state his or her full name and capacity.)