

UCITS IV

How to merge UCITS?

November 2009

Further to the adoption of the recast UCITS Directive (“UCITS IV”) that is due to come into force in July 2011 and the CESR’s consultation paper published on 17 September 2009, mergers of UCITS domiciled in different EU countries of domicile will become a reality. But how will it work in practice?

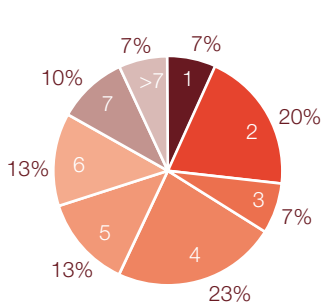
Background

Consolidation needs

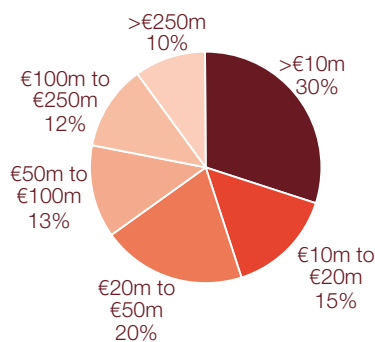
30% of European UCITS have less than 10 millions Euros of asset under management and 65% have less than 50 millions Euros. In addition, two third of the top 30 asset managers launched UCITS ranges domiciled in more than 3 different EU countries, 17% of them being present in 7 or more EU countries!

Obviously, such a fragmentation of vehicles does not allow the achievement of economies of scale as well as the optimal management of the TER, which is considered by all (and in particular by the EU Commission) as too high.

To ease the rationalization of UCITS on a pan-European basis, the new UCITS Directive that will enter into force on 1 July, 2011, will tend to harmonize the European regulatory framework related to merger of UCITS.



Source: Lipper - PwC analysis: Figures as at end 2008 on a sample out of 19,614 funds



Source: Lipper - PwC analysis: Top 30 cross-border promoters - figures end 2008

Scope of the UCITS IV merger provisions

UCITS only!

All types of UCITS (contractual, corporate and unit trusts) will be permitted to merge on a domestic and cross-border basis, even if those legal forms of UCITS are not all available in each EU Member State.

In addition, promoters will have the possibility to merge entire umbrella structures or only some of their investment compartments.

Non-UCITS, being by definition excluded from the scope of UCITS IV, will not be allowed to apply the UCITS IV merger provisions, either for merging two non-UCITS or for merging one non-UCITS with one UCITS. Non-UCITS will then remain subject to the existing legal and administrative difficulties in the European Union.

Types of merger

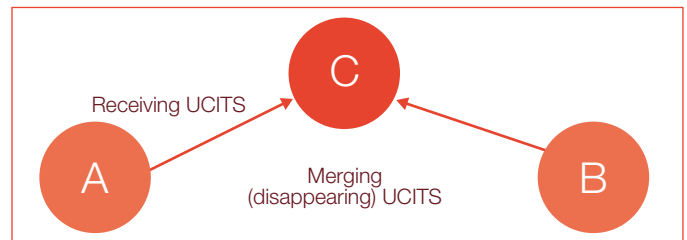
Although EU Member States may introduce other techniques in their national laws for pure domestic mergers, the following three merger schemes will be recognized at European level:

- The merger scheme whereby a UCITS, or some of its investment compartments thereof, transfer(s) all its assets and liabilities to another existing UCITS, without going into liquidation.
- The merger scheme whereby at least two UCITS, or some of their investment compartments thereof, transfer(s) all their assets and liabilities to a new UCITS which they form, without going into liquidation.
- One or more UCITS, or investment compartments thereof, which continue to exist until the liabilities have been discharged, transfer their net assets to another compartment of the same UCITS, to a UCITS which they form or to another existing UCITS or investment compartment thereof.

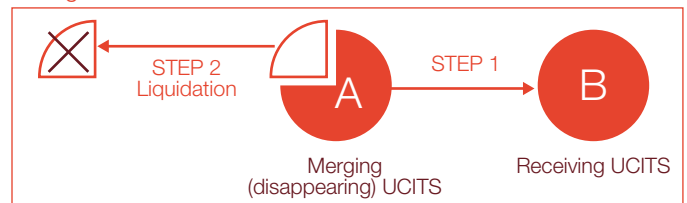
Merger by way of absorption



Merger by formation of new fund



Amalgamation scheme



Core requirements of UCITS IV

Competent regulators

Mergers will be subject to the authorization of the home regulator(s) of merging UCITS, the home regulator of the receiving UCITS being solely involved to safeguard the interests of the investors in the receiving UCITS in close cooperation with the competent regulator(s) of the merging UCITS.

Third party control

The depositary of each of the merging and the receiving UCITS will have to confirm, by way of separate written statements, the compliance of the draft terms of the merger with the UCITS IV provisions and the UCITS legal documentation, as regards the type of the merger, the merger date and the transfer of assets.

Either a depositary or an independent auditor (the statutory auditor of the receiving or the merging UCITS being considered as independent) will have to validate the exchange ratio calculation methodology, the actual exchange ratio and any cash payment per unit. Only one single report will be accepted for all the UCITS involved.

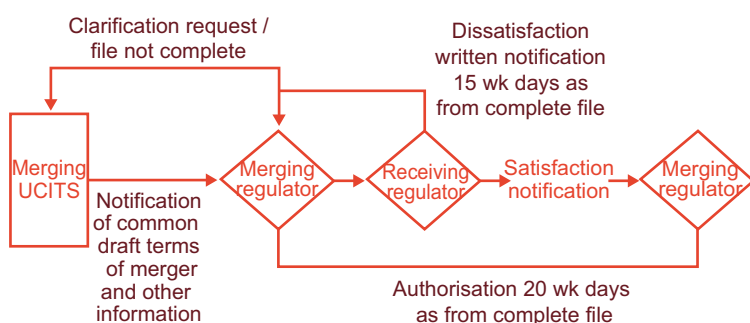
Merger approval process

The merger approval process will be based on a regulator-to-regulator approach.

The merging UCITS will have to file its home regulator (the "Merging Regulator") with a set of harmonized documents, including the draft terms of the merger, the up-to-date prospectus and KID, each depositary's statement and translated information intended to be provided to the receiving and merging UCITS investors.

The Merging Regulator will then have to confirm the completeness of the filing or ask additional information within 10 working days as from the initial filing.

Once complete, the merger file will be immediately transmitted by the Merging Regulator to the receiving UCITS regulator (the "Receiving Regulator") and the authorization will have to be granted within 20 working days.



Investors' rights

Investors will obviously have the right to be appropriately informed (background and rationale of the merger, possible impacts on investors, description of investors' rights, merger process, date of the merger and KID of the receiving UCITS).

Since the potential impacts of the merger on the investors in the receiving UCITS will differ from those on the investors in the merging UCITS, UCITS IV does not require all investors to be given identical information.

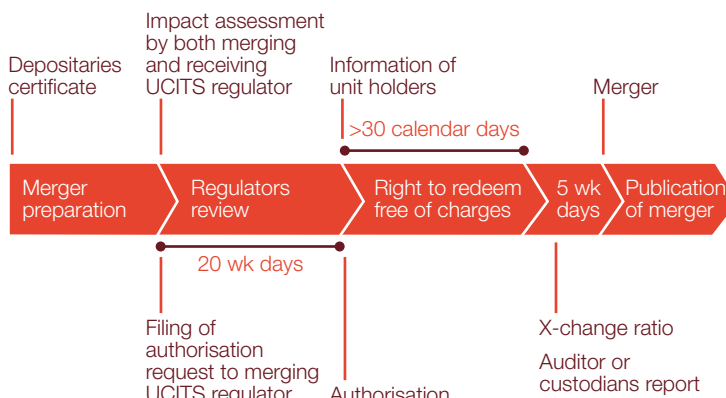
The appropriateness and accuracy of the information provided to the merging and receiving investors will be approved by the Merging Regulator in close cooperation with the Receiving Regulator.

Approved information will be provided to all investors at least 30 calendar days before the last date for requesting the repurchase of their units.

During this 30 days period of time, investors in both the merging and the receiving UCITS will be able to request the repurchase (or, where possible, the conversion) of their units free of charges (except related disinvestment costs). This repurchase right will only cease to exist five working days before the date for calculating the exchange ratio.

In the case where the merger decision would be subject to the vote of the investors, such decision will not be subject to a majority of more than 75% of the present and represented investors.

Main business implications for the UCITS industry



Focus on the preparatory work/tasks

Before making a merger decision, the promoter should in-depth review and analyze the key dimensions and key factors to be taken into account including distribution, tax and regulatory issues.

The promoter will have to analyze the different merger schemes to choose the more appropriate one.

A smooth project management would facilitate the merger and avoid possible regulatory and operational issues upon transfer.

To guarantee an efficient time-to-market, the promoter should pay particular attention to the completeness and accuracy of the merger file.

The KID of the receiving UCITS must be up-dated (including empty shelves if need be) and communicated to investors prior to the merger decision.

The promoter will have to ensure prior alignment of the investment policies of the merging and receiving UCITS and each of the portfolio to avoid possible investment breaches.

Focus on the transfer

The same above-described rules will be applicable for cross-border and domestic mergers including contribution of one investment compartment in another one. Consequently, national rules related to the "merger" of investment compartments may become less flexible (since the depositary and the auditor will have to intervene, investors in both investment compartments will have the opportunity to request the redemption of their units during a 30 days period of time, etc).

A merger implies potential migration issues that must be considered prior to the merger.

In case of merger between two UCITS being incorporated under the form of a company, the existing agreements may remain in force (no re-negotiation impacts).

Performance track record may be kept, subject to certain conditions, at least from a marketing perspective.

Focus on the investors

The rules in connection with the merger decision and the way in which information should be provided to investors would still be subject to national laws (no harmonization): the promoter will have to comply with specific local requirements and manage possible divergent rules.

In the case where the merger decision would be subject to the vote of the investors, such decision will not be subject to a majority of more than 75% of the present and represented shareholders. The merger decision will then bind the investors being not in favour of the merger and having not requested the repurchase of their units during the 30 days period of time.

Focus on the distribution footprint

The preparatory work based on distribution footprint will be key.

Relevant notifications (within the EU) and prior registrations (outside the EU) must be approved before merging.

Potential registration issues outside the EU must be considered prior to merger.

Focus on the tax issues

Merger may be considered as a redemption and subscription into a new fund and thus be a taxable event for the investors in their home country as long as no tax relief/deferral is available. A check on a case by case basis, country by country, is needed.

Before merging, EU Savings Directive impacts (tax and reporting duties) should be assessed as they can trigger a reportable/ taxable event where the EU Savings Directive is applicable.

Merger may qualify as a transfer of going concern and therefore, be out of the scope of VAT. This will need to be confirmed at a national level, as conditions may vary from one EU Member State to the other.

Why PricewaterhouseCoopers?

PricewaterhouseCoopers has one of Europe's leading networks of UCITS specialists, based not only in the key asset management centres but also throughout the EU. Our complementary skills in areas such as regulations, tax, HR, restructuring, market reporting, risk and operations enable you to undertake the holistic analyses needed to make the most of the possibilities of UCITS IV. Every promoter's set of circumstances is different, and only strategies based on detailed appraisals will yield the full efficiencies the directive makes possible. We have been part of the evolution of the UCITS market since the first directive in 1985, and have closely tracked the development of the latest directive. For these reasons, we have the insights and expertise that you need.

For further information, please contact:

Thierry Blondeau

European Coordinator

PricewaterhouseCoopers (Luxembourg)

Thomas Steinbauer

PricewaterhouseCoopers (Austria)

+43 1 50188 3639

thomas.steinbauer@at.pwc.com

Emmanuèle Attout

PricewaterhouseCoopers (Belgium)

+32 2 710 40 21

emmanuele.attout@be.pwc.com

Eric Sidot

PricewaterhouseCoopers (France)

+33 1 56 57 1298

eric.sidot@fr.pwc.com

Stefan Peetz

PricewaterhouseCoopers (Germany)

+49 69 95 85 2279

stefan.peetz@de.pwc.com

Ken Owens

PricewaterhouseCoopers (Ireland)

+353 1 7928542

ken.owens@ie.pwc.com

Giovanni Stefanin

PricewaterhouseCoopers (Italy)

+39 02 91605210

giovanni.stefanin@it.pwc.com

Thierry Blondeau

PricewaterhouseCoopers (Luxembourg)

+352 49 48 48 57 79

thierry.blondeau@lu.pwc.com

Martin Eleveld

PricewaterhouseCoopers (Netherlands)

+31 20 5684317

martin.eleveld@nl.pwc.com

Enrique Fernandez Albarracin

Landwell – PricewaterhouseCoopers

Abogados y Asesores Fiscales (Spain)

+34 915 684 504

enrique.fernandez.albarracin@

es.landwellglobal.com

Susanne Sundvall

PricewaterhouseCoopers (Sweden)

+46 8 55533273

susanne.sundvall@se.pwc.com

Patrick Meyer

PricewaterhouseCoopers (Switzerland)

+41 58 792 2554

patrick.k.meyer@ch.pwc.com

Sally Cosgrove

PricewaterhouseCoopers (UK)

+44 20 780 40669

sally.cosgrove@uk.pwc.com

Koen Vanderheyden

DLA Piper (Belgium)

+32 2 500 65 52

koen.vanderheyden@dlapiper.com

www.pwc.com

This publication has been prepared by specialists across the PricewaterhouseCoopers network, who are a part of our global Asset Management industry group. The global Asset Management sub-sectors are:

Hedge funds Private equity Real estate Traditional investment management

This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PricewaterhouseCoopers does not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.

© 2009 PricewaterhouseCoopers. All rights reserved. 'PricewaterhouseCoopers' refers to the network of member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity.