

The Undertakings for Collective Investments Law of 2012

Directive DI78-2012-20
of Cyprus Securities and Exchange Commission regarding master-feeder structures.

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The Securities and Exchange Commission, exercising the powers vested in subsection (7) of section 75, subsection (5) of section 77 and subsection (4) of section 79 of the Undertakings on Collective Investments Law of 2012 and for the purpose of partial harmonisation with the act of the European Union titled:

OJ: L 176, 10.07.2010, p. 28	‘Directive 2010/42/EU of 1 st 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’,
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Issues the following Directive:

PART I
INTRODUCTORY PROVISIONS

Short title	1. This Directive shall be cited as the Directive regarding the master-feeder structures of UCITS of 2012.
Interpretation 78(l) of 2012	2. Within the context of the Present Directive the following definitions shall apply: ‘Law’ means the Undertakings on Collective Investments Law of 2012. ‘Directive’ means this Directive. Terms used in this Directive and are not interpreted differently have the meaning attributed to them in the Law.
Scope of application	3. This Directive applies to the master-feeder structures of UCITS.

PART II

AGREEMENT AND INTERNAL CONDUCT OF BUSINESS RULES BETWEEN FEEDER UCITS AND MASTER UCITS

- Content of the agreement between the master UCITS and feeder UCITS
4. (1) The agreement between the master UCITS and feeder UCITS referred to in subsection (1) of section 75 of the Law, shall include the following information:
- (a) Regarding the access of information of the feeder UCITS to information about the master UCITS:
 - (i) How and when the master UCITS provides the feeder UCITS with a copy of its fund rules or instruments of incorporation, prospectus and key investor information or any amendment thereof;
 - (ii) How and when the master UCITS informs the feeder UCITS of a delegation of investment management and risk management functions to third parties in accordance with section 115 of the Law or article 13 of Directive 2009/65/EC;
 - (iii) Where applicable, how and when the master UCITS provides the feeder UCITS with internal operational documents, such as its risk management process and compliance reports;
 - (iv) What details of breaches by the master UCITS of the law, the fund rules or instruments of incorporation and the agreement between the master UCITS and the feeder UCITS the master UCITS shall notify the feeder UCITS of and the manner and timing thereof;
 - (v) Where the feeder UCITS uses financial derivative instruments for hedging purposes, how and when the master UCITS will provide the feeder UCITS with information about its actual exposure to financial derivative instruments to enable the feeder UCITS to calculate its own global exposure as envisaged in paragraph (a) of subsection (3) of section 73 of the Law;
 - (vi) A statement that the master UCITS informs the feeder UCITS of any other information-sharing arrangements entered into with third parties and where applicable, how and when the master UCITS makes those other information-sharing arrangements available to the feeder UCITS.
 - (b) Regarding the basis of investment and divestment by the

feeder UCITS:

- (i) A statement of which share classes of the master UCITS are available for investment by the feeder UCITS;
- (ii) The charges and expenses to be borne by the feeder UCITS, and details of any rebate or retrocession of charges or expenses by the master UCITS;
- (iii) If applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the feeder UCITS to the master UCITS.

(c) Regarding the standard dealing arrangements:

- (i) Coordination of the frequency and timing of the net asset value calculation process and the publication of prices of units;
- (ii) Coordination of transmission of dealing orders by the feeder UCITS, including, where applicable the role of transfer agents or any other third party;
- (iii) Where applicable, any arrangements necessary to take account of the fact that either or both UCITS are listed or traded on a secondary market;
- (iv) Where applicable, other appropriate measures to ensure compliance with the requirements of subsection (3) of section 75 of the Law;
- (v) Where the units of the feeder UCITS and the master UCITS are denominated in different currencies, the basis for conversion of dealing orders;
- (vi) Settlement cycles and payment details for purchases or subscriptions and repurchases or redemptions of units of the master UCITS including, where agreed between the parties, the terms on which the master UCITS may settle redemption requests by a transfer of assets in kind to the feeder UCITS, notably in the cases referred to in subsections (5) and (6) of section 75 of the Law;
- (vii) Procedures to ensure enquiries and complaints from unit-holders are handled appropriately;
- (viii) Where the fund rules or instruments of incorporation and prospectus of the master UCITS give it certain rights or powers in relation to unit-holders, and the master UCITS chooses to limit or forego the exercise of all or any such rights and

powers in relation to the feeder UCITS, a statement of the terms on which it does so.

- (d) Regarding the events affecting dealing arrangements:
 - (i) The manner and timing of a notification by either UCITS of the temporary suspension and the resumption of repurchase, redemption, purchase or subscription of units of that UCITS;
 - (ii) Arrangements for notifying and resolving pricing errors in the master UCITS.
- (e) Regarding the standard arrangements for the audit report:
 - (i) Where the feeder UCITS and the master UCITS have the same accounting years, the coordination of the production of their periodic reports;
 - (ii) Where the feeder UCITS and the master UCITS have different accounting years, arrangements for the feeder UCITS to obtain any necessary information from the master UCITS to enable it to produce its periodic reports on time and which ensure that the auditor of the master UCITS is in a position to produce an ad hoc report on the closing date of the feeder UCITS in accordance with subsections (2) and (3) of section 77 of the Law.
- (f) Regarding the changes to standing arrangements:
 - (i) The manner and timing of notice to be given by the master UCITS of proposed and effective amendments to its fund rules or instruments of incorporation, prospectus and key investor information, if these details differ from the standard arrangements for notification of unit-holders laid down in the master UCITS fund rules, instruments of incorporation or prospectus;
 - (ii) The manner and timing of notice by the master UCITS of a planned or proposed liquidation, merger or division;
 - (iii) The manner and timing of notice by either UCITS that it has ceased or will cease to meet the qualifying conditions to be a feeder UCITS or a master UCITS respectively;
 - (iv) The manner and timing of notice by either UCITS that it intends to replace its management company, its depositary, its auditor or any third party which is mandated to carry out investment management or risk management functions;

- (v) The manner and timing of notice of other changes to standing arrangements that the master UCITS undertakes to provide.

Applicable law

- 5. (1) Where the feeder UCITS and the master UCITS are established in the Republic, the agreement between them referred to in subsection (1) of section 75 of the Law, shall provide that the law of the Republic shall apply to the agreement and that both parties agree to the exclusive jurisdiction of the courts of the Republic.

(2) Where the feeder UCITS is established in the Republic and the master UCITS is established in another Member State, the agreement between them referred to in subsection (1) of section 75 of the Law, shall provide that the applicable law is either the law of the Republic or the law of the Member State where the master UCITS is established and that both parties agree to the exclusive jurisdiction of the courts of the Member State whose law they have stipulated to be applicable to the agreement.

Content of the internal conduct of business rules

- 6. The content of the internal conduct of business rules in accordance with subsection (1) of section 75 of the Law shall include the following information:

- (a) Regarding the mitigation or management of conflicts of interest situations:

Appropriate measures to mitigate or manage conflicts of interest that may arise between the master UCITS and the feeder UCITS, or between the feeder UCITS and other unit-holders of the master UCITS, to the extent that these are not sufficiently addressed by the measures applied by the management company in order to meet requirements of paragraph (b) of subsection (2) of section 112 and paragraph (c) of section 123 of the Law and of chapter IV of Part II of the Directive regarding Organisational Requirements, Conflicts of Interest, Conduct of Business, Risk Management and Content of the Agreement between a Depositary and Management Company of an Undertake of Collective Investments In Transferable Securities.

- (b) Regarding the basis of investment and divestment by the feeder UCITS:

- (i) A statement of which share classes of the master UCITS are available for investment by the feeder UCITS;

- (ii) The charges and expenses to be borne by the feeder UCITS and details of any rebate or retrocession of charges or expenses by the master UCITS;
 - (iii) Where applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the feeder UCITS to the master UCITS;
- (c) Regarding the standard dealing arrangements:
- (i) Coordination of the frequency and timing of the net asset value calculation process and the publication of prices of units;
 - (ii) Coordination of transmission of dealing orders by the feeder UCITS, including, if applicable, the role of transfer agents or any other third party;
 - (iii) Where applicable, any arrangements necessary to take account of the fact that either or both UCITS are listed or traded on a secondary market;
 - (iv) Appropriate measures to ensure compliance with the requirements of subsection (3) of section 75 of the Law.
 - (v) The basis for conversion of dealing orders where the feeder UCITS and the master UCITS are denominated in different currencies;
 - (vi) Settlement cycles and payment details for purchases and redemptions of units of the master UCITS including, where agreed between the parties, the terms on which the master UCITS may settle redemption requests by a transfer of assets in kind to the feeder UCITS, notably in the cases referred to in subsections (5) and (6) of section 75 of the Law;
 - (vii) Where the fund rules or instruments of incorporation and prospectus of the master UCITS give it certain rights or powers in relation to unit-holders and the master UCITS chooses to limit or forego the exercise of all or any such rights and powers in relation to the feeder UCITS, a statement of the terms on which it does so.
- (d) Regarding the events affecting dealing arrangements:
- (i) The manner and timing of notification by either UCITS of the temporary suspension and the resumption of the repurchase, redemption or subscription of units of UCITS;

- (ii) Arrangements for notifying and resolving pricing errors in the master UCITS.
- (e) Regarding the standard arrangements for the audit report:
 - (i) Where the feeder UCITS and the master UCITS have the same accounting years, the coordination of the production of their periodic reports;
 - (ii) Where the feeder UCITS and the master UCITS have different accounting years, arrangements for the feeder UCITS to obtain any necessary information from the master UCITS to enable it to produce its periodic reports on time and which ensure that the auditor of the master UCITS is in a position to make an ad hoc report on the closing date of the feeder UCITS in accordance with subsection (2) of section 77 of the Law.

PART III

PROVISION OF INFORMATION TO UNIT-HOLDERS

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| Manner of providing the information to unit-holders | 7. The feeder UCITS provides the information to unit-holders pursuant to subsection (1) of section 79 of the Law, in the same manner as prescribed by paragraph 8 of the Directive regarding Mergers of UCITS. |
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PART IV

DEPOSITARIES AND AUDITORS

CHAPTER I

DEPOSITARIES

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| Content of the information-sharing agreement between depositaries | 8. The information-sharing agreement between the depositary of the master UCITS and the depositary of the feeder UCITS, referred to in subsection (1) of section 76 of the Law, shall contain, at least, the following: <ul style="list-style-type: none">(a) The identification of the documents and categories of information which are to be routinely shared between both depositaries, and whether such information or documents are provided by one depositary to the other or made available on request;(b) The manner and timing, including any applicable deadlines, |
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of the transmission of information by the depositary of the master UCITS to the depositary of the feeder UCITS;

- (c) The coordination of the involvement of both depositaries, to the extent appropriate in view of their respective duties under national law, in relation to operational matters, including:
 - (i) The procedure for calculating the net asset value of each UCITS, including any measures appropriate to protect against the activities of market timing in accordance with subsection (3) of section 75 of the Law;
 - (ii) The processing of instructions by the feeder UCITS to purchase, subscribe, or request the repurchase or redemption of units in the master UCITS, and the settlement of such transactions, including any arrangement to transfer assets in kind;
- (d) The coordination of accounting year-end procedures;
- (e) What details of breaches by the master UCITS of the law and the fund rules or instruments of incorporation the depositary of the master UCITS shall provide to the depositary of the feeder UCITS and the manner and timing of their provision;
- (f) The procedure for handling ad hoc requests for assistance from one depositary to the other;
- (g) Identification of particular contingent events which ought to be notified by one depositary to the other on an ad hoc basis, and the manner and timing in which this will be done.

Applicable law

9. (1) Where the feeder UCITS and the master UCITS have concluded an agreement in accordance with subsection (1) of section 75 of the Law, the agreement between the depositaries of the master UCITS and the feeder UCITS provides that the law applying to that agreement, in accordance with paragraph 5 of the Directive, shall also apply to the information-sharing agreement between both depositaries and that both depositaries agree to the exclusive jurisdiction of the courts of that Member State.

(2) Where the agreement between the feeder UCITS and the master UCITS has been replaced by internal conduct of business rules in accordance with the last sentence of subsection (1) of section 75 of the Law, the agreement between the depositaries of the master UCITS and the feeder UCITS provides that the law applying to the information-sharing agreement between both depositaries shall be either that of the Member State in which the

feeder UCITS is established, or, where different that of the Member State in which the master UCITS is established and that both depositaries agree to the exclusive jurisdiction of the courts of the Member State whose law is applicable to the information-sharing agreement.

Reporting of irregularities by the depositary of the master UCITS

10. The irregularities referred to in subsection (4) of section 76 of the Law, which the depositary of the master UCITS detects in the course of carrying out its function under the national law and which may have a negative impact on the feeder UCITS shall include, but are not limited to:
 - (a) Errors in the net asset value calculation of the master UCITS;
 - (b) Errors in transactions for or settlement of the purchase, subscription or request to repurchase or redeem units in the master UCITS undertaken by the feeder UCITS;
 - (c) Errors in the payment or capitalisation of income arising from the master UCITS, or in the calculation of any related withholding tax;
 - (d) Breaches of the investment objectives, policy or strategy of the master UCITS, as described in its fund rules or instrument of incorporation, prospectus or key investor information;
 - (e) Breaches of investment and borrowing limits set out in national law or in the fund rules, instruments of incorporation, prospectus or key investor information.

CHAPTER II

AUDITORS

Information-sharing agreement between auditors

11. The information-sharing agreement between the auditor of the master UCITS and the auditor of the feeder UCITS referred to in subsection (1) of section 77 of the Law, shall include, but are not limited to:
 - (a) The identification of the documents and categories of information which are to be routinely shared between both auditors;
 - (b) Whether the information or documents are to be provided by one auditor to the other or made available on request;
 - (c) The manner and timing, including any applicable deadlines, of the transmission of information by the auditor of the

master UCITS to the auditor of the feeder UCITS;

- (d) The coordination of the involvement of each auditor in the accounting year-end procedures for the respective UCITS;
- (e) Identification of matters that shall be treated as irregularities disclosed in the audit report of the auditor of the master UCITS for the purposes of subsection (3) of section 77 of the Law.
- (f) The manner and timing for handling ad hoc requests for assistance from one auditor to the other, including a request for further information on irregularities disclosed in the audit report of the auditor of the master UCITS;
- (g) Provisions on the preparation of the audit reports referred to in subsections (2) and (3) of section 77 and in subsection (1) of section 58 of the Law, and the manner and timing for the provision of the audit report for the master UCITS and drafts of it to the auditor of the feeder UCITS;
- (h) Where the feeder UCITS and the maser UCITS have different accounting year-end dates, the manner and timing by which the auditor of the master UCITS is to make the ad hoc report required by subsection (2) of section 77 of the Law and to provide it and drafts of it to the auditor of the feeder UCITS.

Applicable law

12. (1) Where the feeder UCITS and the master UCITS have concluded an agreement in accordance with subsection (1) of section 75 of the Law, the agreement between the auditors of the master UCITS and the feeder UCITS provides that the law of the Member State applying to that agreement in accordance with paragraph 5 of the Directive, shall also apply to the information-sharing agreement between both auditors and that both auditors agree to the exclusive jurisdiction of the courts of that Member State.

(2) Where the agreement between the feeder UCITS and the master UCITS has been replaced by internal conduct of business rules in accordance with the last sentence of subsection (1) of section 75 of the Law, the agreement between the auditors of the master UCITS and the feeder UCITS provides that the law applying to the information-sharing agreement between both auditors shall be either that of the Member State in which the feeder UCITS is established or, where different, that of the Member State in which the master UCITS is established and that both auditors agree to the exclusive jurisdiction of the courts of the Member State whose law is applicable to the information-sharing agreement.

PART V

LIQUIDATION, MERGER OR DIVISION OF THE MASTER UCITS

CHAPTER I

LIQUIDATION

- Application for approval
13. (1) The feeder UCITS, which is established in the Republic, shall submit to the Commission, no later than two months after the date on which the master UCITS informed it of the binding decision to liquidate, the following:
- (a) Where the feeder UCITS intends to invest at least 85% of its assets in units of another master UCITS in accordance with paragraph (a) of subsection (5) of section 75 of the Law:
 - (i) Its application for approval for that investment;
 - (ii) Its application for approval of the proposed amendments to its fund rules or instrument of incorporation;
 - (iii) The amendments to its prospectus and its key investor information in accordance with subsection (1) of section 55, subsection (7) of section 56 and section 65 of the Law, respectively;
 - (iv) The other documents required pursuant to subsections (3) and (4) of section 74 of the Law.
 - (b) Where the feeder UCITS intends to convert into a UCITS that is not a feeder UCITS in accordance with paragraph (b) of subsection (5) of section 75 of the Law:
 - (i) Its application for approval of the proposed amendments to its fund rules or instrument of incorporation;
 - (ii) The amendments to its prospectus and its key investor information in accordance with subsection (1) of section 55, subsection (7) of section 56 and section 65 of the Law, respectively.
 - (c) Where the feeder UCITS intends to be liquidated, a notification of that intention.

(2) By way of derogation from subparagraph (1), where the master UCITS informed the feeder UCITS of its binding decision to

liquidate more than five months before the date at which the liquidation will start, the feeder UCITS shall submit to the Commission its application or notification in accordance with subparagraphs (a), (b) and (c) of paragraph (1) at the latest three months before that date.

(3) The feeder UCITS established in the Republic, shall inform its unit-holders of its intention to be liquidated without undue delay.

Approval

14.

(1) The feeder UCITS shall be informed within fifteen (15) working days following the complete submission of the documents referred to in points (a) and (b) of subparagraph (1) of paragraph 13 of the Directive, whether the Commission has granted the required approvals.

(2) On receiving the Commission's approval the feeder UCITS shall inform the master UCITS in accordance with subparagraph (1).

(3) The feeder UCITS shall take necessary measures to comply with the requirements of section 79 of the Law, as soon as possible after the Commission has granted the necessary approvals pursuant to point (a) of subparagraph (1) of paragraph 13 of the Directive.

(4) Where the payment of liquidation proceeds of the master UCITS is to be executed before the date on which the feeder UCITS is to start to invest in either a different master UCITS pursuant to point (a) of subparagraph (1) of paragraph 13 of the Directive or in accordance with its new investment objectives and policy pursuant to point (b) of subparagraph (1) of paragraph 13 of the Directive, the Commission shall grant approval to the feeder UCITS subject to the following conditions:

(a) The feeder UCITS shall receive the proceeds of the liquidation:

- (i) in cash; or
- (ii) some or all of the proceeds as a transfer of assets in kind where the feeder UCITS so wishes and where the agreement between the feeder UCITS and master UCITS or the internal conduct of business rules and the binding decision to liquidate provide for

it.

- (b) Any cash held or received in accordance with point (a) of this paragraph, may be re-invested only for the purpose of efficient cash management before the date on which the feeder UCITS is to start to invest either in a different master UCITS or in accordance with its new investment objectives and policy.

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

CHAPTER II

PROCEDURES IN THE EVENT OF A MERGER OR DIVISION

- Application for approval
- 15. (1) The feeder UCITS established in the Republic, shall submit to the Commission, no later than one month after the date on which the feeder UCITS received the information of the planned merger or division in accordance with subsection (6) of section 75 of the Law, the following:
 - (a) Where the feeder UCITS intends to continue to be a feeder UCITS of the same master UCITS:
 - (i) its application for approval thereof;
 - (ii) where applicable, its application for approval of the proposed amendments to its fund rules or instrument of incorporation;
 - (iii) Where applicable, the amendments to its prospectus and its key investor information in accordance with subsection (1) of section 55, subsection (7) of section 56 and section 65 of the Law, respectively.
 - (b) Where the feeder UCITS intends to become a feeder UCITS of another master UCITS resulting from the proposed merger or division of the master UCITS or where the feeder UCITS intends to invest at least 85% of its assets in units of another master UCITS not resulting from the merger or division:
 - (i) its application for approval of that investment;
 - (ii) its application for approval of the proposed amendments to its fund rules or instrument of incorporation;

- (iii) the amendments to its prospectus and its key investor information in accordance with subsection (1) of section 55, subsection (7) of section 56 and section 65 of the Law, respectively;
 - (iv) The other documents required pursuant to subsections (3) and (4) of section 75 of the Law.
- (c) Where the feeder UCITS intends to convert into a UCITS that is not a feeder UCITS in accordance with paragraph (b) of subsection (5) of section 75 of the Law:
- (i) its application for approval of the proposed amendments to its fund rules or instrument of incorporation;
 - (ii) the amendments to its prospectus and its key investor information in accordance with subsection (1) of section 55, subsection (7) of section 56 and section 65 of the Law, respectively.
- (d) Where the feeder UCITS intends to be liquidated, it shall notify that intention.

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

The expression 'continues to be a feeder UCITS of the same master UCITS' refers 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.

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.

(3) By way of derogation of subparagraph (1), in cases where the master UCITS provided the information referred to in or comparable to section 92 of the Law, to the feeder UCITS, more than four (4) months before the proposed effective date, the feeder

UCITS established in the Republic, shall submit to the Commission its application or notification in accordance with one of the points (a) to (d) of subparagraph (1), at the latest three months before the proposed effective date of the merger or division of the master UCITS.

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

Approval

16. (1) The Commission shall inform the feeder UCITS within fifteen (15) working days following the complete submission of the documents referred to in points (a) to (c) of subparagraph (1) of paragraph 15 of the Directive, whether it has granted the required approval.

(2) Upon receipt of the information that the competent authorities have granted approval according to subparagraph (1), the feeder UCITS shall inform the master UCITS of it.

(3) After the feeder UCITS has been informed that the Commission has granted the necessary approvals pursuant to point (b) subparagraph (1) of paragraph 15 of the Directive, the feeder UCITS shall take the necessary measures to comply with the requirements of section 79 of the Law without undue delay.

(4) In the cases of points (b) and (c) of subparagraph (1) of paragraph 15 of the Directive, the feeder UCITS shall exercise the right to request repurchase and redemption of its units in the master UCITS in accordance with the last sentence of subsection (6) of section 75 and subsection (1) of section 93 of the Law, where the Commission has not granted the necessary approvals required pursuant to paragraph 15 of the Directive, by the working day preceding the last day on which the feeder UCITS can request repurchase and redemption of its units in the master UCITS before the merger or division is effected.

The feeder UCITS shall also exercise this right in order to ensure that the right of its own unit-holders to request repurchase or redemption of their units in the feeder UCITS according to paragraph (d) of subsection (1) of section 79 of the Law.

Before exercising the right referred to in the first subparagraph, the feeder UCITS shall consider available alternative solutions which may help to avoid or reduce transaction costs or other negative

impacts for its own unit-holders.

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

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

Where point (b) of this subparagraph applies, the feeder UCITS may realise any part of the transferred assets for cash at any time.

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

PART VI

FINAL PROVISIONS

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| Entry into force | 17. This Directive enters into force from the date of its publication in the Official Gazette of the Republic. |
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