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Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions (Text with EEA relevance)

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COMMISSION DIRECTIVE 2007/16/EC

of 19 March 2007

implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions

(Text with EEA relevance)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative

HAVING REGARD TO COUNCIL DIRECTIVE 85/611/EEC OF 20 DECEMBER 1985 ON THE COORDINATION OF LAWS, REGULATIONS AND ADMINISTRATIVE PROVISIONS RELATING TO UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES (UCITS) ⁽¹⁾, and in particular point (a) of Article 53a thereof,

Whereas:

- (1) Directive 85/611/EEC contains several definitions, sometimes interlinked, related to the assets which are eligible for investment by undertakings for collective investment in transferable securities, hereinafter 'UCITS', such as a definition of transferable securities and a definition of money market instruments.
- (2) Since the adoption of Directive 85/611/EEC, the variety of financial instruments traded on financial markets has increased considerably, leading to uncertainty in determining whether certain categories of financial instruments are encompassed by those definitions. Uncertainty in applying the definitions gives rise to divergent interpretations of the Directive.
- (3) In order to ensure a uniform application of Directive 85/611/EEC, to help Member States to develop a common understanding as to whether a given asset category is eligible for a UCITS and to ensure that the definitions are understood in a manner consistent with the principles underlying Directive 85/611/EEC, such as those governing risk-diversification and limits to exposure, the ability of the UCITS to redeem its units at the request of the unit-holders and to calculate its net asset value whenever units are issued or redeemed, it is necessary to provide competent authorities and market participants with more certainty in this respect. Greater certainty will also facilitate a better functioning of the notification procedure for the cross-border distribution of UCITS.
- (4) The clarifications provided by this Directive do not of themselves give rise to any new behavioural or operational obligations for competent authorities or market participants. Rather than establishing exhaustive lists of financial instruments and transactions, they elucidate basic criteria as an aid in assessing whether or not a class of financial instrument is covered by the various definitions.
- (5) The eligibility of an asset for a UCITS must be assessed not only with regard to whether it falls within the scope of the definitions as clarified by this text but also with regard to the other requirements of Directive 85/611/EEC. National competent authorities could work together through the Committee of European Securities Regulators (CESR) to develop common approaches on the practical, day-to-day application of those clarifications in the context of their supervisory duties, notably in connection with other requirements of Directive 85/611/EEC such as control or risk management procedures, and to ensure the smooth functioning of the product passport.
- (6) Directive 85/611/EEC defines transferable securities exclusively from a formal/legal point of view. Accordingly the definition of transferable securities is applicable to a wide range of financial products with differing features and different levels of liquidity. For each of those financial products, consistency between the definition of transferable securities and other provisions of the Directive should be ensured.
- (7) Closed end funds constitute an asset class which is not explicitly referred to as an eligible asset for a UCITS under Directive 85/611/EEC. However, the units of closed end funds are often treated as transferable securities and their admission to trading on a regulated market often gives grounds for such a treatment. It is therefore necessary to provide market participants and competent authorities with certainty as to whether units of closed end funds are covered by the definition of transferable securities. National competent authorities could work together through the CESR to develop common approaches as regards the practical, day-to-day application of the criteria applicable to closed end funds, notably in respect of minimum core standards in relation to corporate governance mechanisms.
- (8) Additional legal certainty is also necessary with regard to the categorisation, as transferable securities, of financial instruments which are linked to the performance of other assets, including assets which are not referred to by Directive 85/611/EEC itself, or which are backed by such assets. It should be made clear that if the linkage to the underlying or to another component of the instrument amounts to an element which has to be considered as an embedded derivative, the financial instrument falls in the subcategory of transferable securities embedding a derivative element. This has the consequence that the criteria for derivatives under Directive 85/611/EEC have to be applied in respect of that element.
- (9) In order to be covered by the definition of money market instruments in Directive 85/611/EEC, a financial instrument should fulfil certain criteria, notably it must normally be dealt in on the money market, it must be liquid and it must have a value which can be accurately determined at any time. It is necessary to ensure a uniform application of those criteria taking into account certain market practices. It is also necessary to clarify that the criteria have to be understood in coherence with other principles of Directive 85/611/EEC. The definition of money market instruments should extend to financial instruments which are not admitted to or dealt in on a regulated market and for which Directive 85/611/EEC sets out criteria in addition to the general criteria for money market instruments. It was therefore equally necessary to clarify those criteria in the light of investor protection requirements and taking into account principles of the Directive such as portfolio liquidity, as resulting from Article 37 thereof.
- (10) Under Directive 85/611/EEC financial derivative instruments are to be considered as liquid financial assets if they fulfil the criteria set out in that Directive. It is necessary to ensure a uniform application of those criteria and it is also necessary to make clear that the criteria have to be understood in a way which is consistent with other provisions of the Directive. It should also be made clear that if credit derivatives comply with those criteria, they are financial derivative instruments within the meaning of Directive 85/611/EEC and hence eligible for treatment as liquid financial assets.
- (11) The need for clarification is particularly pressing for derivatives on financial indices. There is currently a wide range of financial indices which function as the underlying for a derivative instrument. These indices may vary as regards their composition or the weighting of their components. In all cases it has to be ensured that the UCITS is able to fulfil its

obligations as regards portfolio liquidity, as resulting from Article 37 of Directive 85/611/EEC, and the calculation of the net asset value and that those obligations are not negatively affected by the features of the underlying of a derivative. It should be clarified that derivatives on financial indices whose composition is sufficiently diversified, which represent an adequate benchmark to the market to which they refer and which are subject to appropriate information regarding the index composition and calculation fall under the category of derivatives as liquid financial assets. National competent authorities could work together through the CESR to develop common approaches as regards the practical, day-to-day application of those criteria in respect of indices based on assets which are not individually identified as eligible assets in the Directive.

- (12) Directive 85/611/EEC recognises as a sub-category of transferable securities and money market instruments those which embed a derivative element. Embedding a derivative element into a transferable security or money market instrument does not transform the whole financial instrument into a financial derivative instrument which would fall outside the definitions of transferable security or money market instrument. Therefore, it is necessary to make clear whether a financial derivative can be considered embedded in another instrument. In addition, embedding a derivative into a transferable security or money market instrument entails the risk that the rules for derivatives imposed by Directive 85/611/EEC are bypassed. For that reason, the Directive requires identification of the embedded derivative element and compliance with those rules. Given the level of financial innovation, the identification of an embedded derivative element is not always evident. In order to achieve more certainty in this respect, criteria for identifying such elements should be laid down.
- (13) Pursuant to Directive 85/611/EEC, techniques and instruments relating to transferable securities or money market instruments for the purpose of efficient portfolio management do not fall under the definitions of transferable securities and money market instruments. To clarify the boundaries of those definitions it is necessary to set out criteria to identify the transactions which would fall under those techniques and instruments. It is also necessary to recall that those techniques and instruments have to be understood in coherence with the other obligations of a UCITS, particularly as regards its risk profile. That is to say, they must be consistent with the rules laid down by Directive 85/611/EEC on risk management and on risk diversification, as well as with its restrictions on short sales and borrowing.
- (14) Directive 85/611/EEC sets out criteria to define UCITS which replicate bond or share indices. UCITS which comply with those criteria are subject to a more flexible treatment as regards issuer concentration limits. It is therefore necessary to develop a clear understanding of those criteria and to ensure their uniform application in all Member States. That entails giving further clarification as to whether a UCITS can be considered to be an index-replicating UCITS, and thus more certainty about the conditions which justify the preferential treatment of index-replicating UCITS.
- (15) The Committee of European Securities Regulators has been consulted for technical advice.
- (16) The measures provided for in this Directive are in accordance with the opinion of the European Securities Committee,
- HAS ADOPTED THIS DIRECTIVE:

Article 1

Subject matter

This Directive lays down rules clarifying, for the purposes of their uniform application, the following terms:

1. transferable securities, as defined in Article 1(8) of Directive 85/611/EEC;
2. money market instruments, as defined in Article 1(9) of Directive 85/611/EEC;
3. liquid financial assets, as referred to in the definition of UCITS laid down in Article 1(2) of Directive 85/611/EEC, with respect to financial derivative instruments;
4. transferable securities and money market instruments embedding derivatives, as referred to in the fourth subparagraph of Article 21(3) of Directive 85/611/EEC;
5. techniques and instruments for the purpose of efficient portfolio management, as referred to in Article 21(2) of Directive 85/611/EEC;
6. index-replicating UCITS, as referred to in Article 22a(1) of Directive 85/611/EEC.

Article 2

Article 1(8) of Directive 85/611/EEC

Transferable securities

1. The reference in Article 1(8) of Directive 85/611/EEC to transferable securities shall be understood as a reference to financial instruments which fulfil the following criteria:
 - (a) the potential loss which the UCITS may incur with respect to holding those instruments is limited to the amount paid for them;
 - (b) their liquidity does not compromise the ability of the UCITS to comply with Article 37 of Directive 85/611/EEC;
 - (c) reliable valuation is available for them as follows:
 - (i) in the case of securities admitted to or dealt in on a regulated market as referred to in points (a) to (d) of Article 19(1) of Directive 85/611/EEC, in the form of accurate, reliable and regular prices which are either market prices or prices made available by valuation systems independent from issuers;

available by valuation systems independent from issuers;

- (ii) in the case of other securities as referred to in Article 19(2) of Directive 85/611/EEC, in the form of a valuation on a periodic basis which is derived from information from the issuer of the security or from competent investment research;
- (d) appropriate information is available for them as follows:
 - (i) in the case of securities admitted to or dealt in on a regulated market as referred to in points (a) to (d) of Article 19(1) of Directive 85/611/EEC, in the form of regular, accurate and comprehensive information to the market on the security or, where relevant, on the portfolio of the security;
 - (ii) in the case of other securities as referred to in Article 19(2) of Directive 85/611/EEC, in the form of regular and accurate information to the UCITS on the security or, where relevant, on the portfolio of the security;
- (e) they are negotiable;
- (f) their acquisition is consistent with the investment objectives or the investment policy, or both, of the UCITS pursuant to Directive 85/611/EEC;
- (g) their risks are adequately captured by the risk management process of the UCITS.

For the purposes of points (b) and (e) of the first subparagraph, and unless there is information available to the UCITS that would lead to a different determination, financial instruments which are admitted or dealt in on a regulated market in accordance with points (a), (b) or (c) of Article 19(1) of Directive 85/611/EEC shall be presumed not to compromise the ability of the UCITS to comply with Article 37 of Directive 85/611/EEC and shall also be presumed to be negotiable.

2. Transferable securities as referred to in Article 1(8) of Directive 85/611/EEC shall be taken to include the following:

- (a) units in closed end funds constituted as investment companies or as unit trusts which fulfil the following criteria:
 - (i) they fulfil the criteria set out in paragraph 1;
 - (ii) they are subject to corporate governance mechanisms applied to companies;
 - (iii) where asset management activity is carried out by another entity on behalf of the closed end fund, that entity is subject to national regulation for the purpose of investor protection;
- (b) units in closed end funds constituted under the law of contract which fulfil the following criteria:
 - (i) they fulfil the criteria set out in paragraph 1;
 - (ii) they are subject to corporate governance mechanisms equivalent to those applied to companies as referred to in point (a) (ii);
 - (iii) they are managed by an entity which is subject to national regulation for the purpose of investor protection;
- (c) financial instruments which fulfil the following criteria:
 - (i) they fulfil the criteria set out in paragraph 1;
 - (ii) they are backed by, or linked to the performance of, other assets, which may differ from those referred to in Article 19(1) of Directive 85/611/EEC.

3. Where a financial instrument covered by point (c) of paragraph 2 contains an embedded derivative component as referred to in Article 10 of this Directive, the requirements of Article 21 of Directive 85/611/EEC shall apply to that component.

Article 3

Article 1(9) of Directive 85/611/EEC

Instruments normally dealt in on the money market

1. The reference in Article 1(9) of Directive 85/611/EEC to money market instruments as instruments shall be understood as a reference to the following:
 - (a) financial instruments which are admitted to trading or dealt in on a regulated market in accordance with points (a), (b) and (c) of Article 19(1) of Directive 85/611/EEC;
 - (b) financial instruments which are not admitted to trading.
2. The reference in Article 1(9) of Directive 85/611/EEC to money market instruments as instruments normally dealt in on the money market shall be understood as a reference to financial instruments which fulfil one of the following criteria:
 - (a) they have a maturity at issuance of up to and including 397 days;
 - (b) they have a residual maturity of up to and including 397 days;
 - (c) they undergo regular yield adjustments in line with money market conditions at least every 397 days;
 - (d) their risk profile, including credit and interest rate risks, corresponds to that of financial instruments which have a maturity as referred to in points (a) or (b), or are subject to a yield adjustment as referred to in point (c).

Article 4

Article 1(9) of Directive 85/611/EEC

Liquid instruments with a value which can be accurately determined at any time

1. The reference in Article 1(9) of Directive 85/611/EEC to money market instruments as instruments which are liquid shall be understood as a reference to financial instruments which can be sold at limited cost in an adequately short time frame, taking into account the obligation of the UCITS to repurchase or redeem its units at the request of any unit holder.
2. The reference in Article 1(9) of Directive 85/611/EEC to money market instruments as instruments which have a value which can be accurately determined at any time shall be understood as a reference to financial instruments for which accurate and reliable valuations systems, which fulfil the following criteria, are available:
 - (a) they enable the UCITS to calculate a net asset value in accordance with the value at which the financial instrument held in the portfolio could be exchanged between knowledgeable willing parties in an arm's length transaction;
 - (b) they are based either on market data or on valuation models including systems based on amortised costs.
3. The criteria referred to in paragraphs 1 and 2 shall be presumed to be fulfilled in the case of financial instruments which are normally dealt in on the money market for the purposes of Article 1(9) of Directive 85/611/EEC and which are admitted to, or dealt in on, a regulated market in accordance with points (a), (b) or (c) of Article 19(1) thereof, unless there is information available to the UCITS that would lead to a different determination.

Article 5

Article 19(1)(h) of Directive 85/611/EEC

Instruments of which the issue or issuer is regulated for the purpose of protecting investors and savings

1. The reference in Article 19(1)(h) of Directive 85/611/EEC to money market instruments, other than those dealt in on a regulated market, of which the issue or the issuer is itself regulated for the purpose of protecting investors and savings, shall be understood as a reference to financial instruments which fulfil the following criteria:
 - (a) they fulfil one of the criteria set out in Article 3(2) and all the criteria set out in Article 4(1) and (2);
 - (b) appropriate information is available for them, including information which allows an appropriate assessment of the credit risks related to the investment in such instruments, taking into account paragraphs 2, 3 and 4 of this Article;
 - (c) they are freely transferable.
2. For money market instruments covered by the second and the fourth indents of Article 19(1)(h) of Directive 85/611/EEC, or for those which are issued by a local or regional authority of a Member State or by a public international body but are not guaranteed by a Member State or, in the case of a federal State which is a Member State, by one of the members making up the federation, appropriate information as referred to in point (b) of paragraph 1 of this Article shall consist in the following:
 - (a) information on both the issue or the issuance programme and the legal and financial situation of the issuer prior to the issue of the money market instrument;
 - (b) updates of the information referred to in point (a) on a regular basis and whenever a significant event occurs;
 - (c) the information referred to in point (a), verified by appropriately qualified third parties not subject to instructions from the issuer;
 - (d) available and reliable statistics on the issue or the issuance programme.
3. For money market instruments covered by the third indent of Article 19(1)(h) of Directive 85/611/EEC, appropriate information as referred to in point (b) of paragraph 1 of this Article shall consist in the following:
 - (a) information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the money market instrument;
 - (b) updates of the information referred to in point (a) on a regular basis and whenever a significant event occurs;
 - (c) available and reliable statistics on the issue or the issuance programme or other data enabling an appropriate assessment of the credit risks related to the investment in such instruments.
4. For all money market instruments covered by the first indent of Article 19(1)(h) of Directive 85/611/EEC except those referred to in paragraph 2 of this Article and those issued by the European Central Bank or by a central bank from a Member State, appropriate information as referred to in point (b) of paragraph 1 of this Article shall consist in information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the money market instrument.

Article 6

Article 19(1)(h) of Directive 85/611/EEC

Establishment which is subject to and complies with prudential rules considered by the competent authorities to be at least as stringent as those laid down by Community law

The reference in the third indent of Article 19(1)(h) of Directive 85/611/EEC to an establishment which is subject to and complies with prudential rules considered by the competent authorities to be at least as stringent as those laid down by Community law shall be understood as a reference to an issuer which is subject to and complies with prudential rules and fulfils one of the following criteria:

criteria.

1. it is located in the European Economic Area;
2. it is located in the OECD countries belonging to the Group of Ten;
3. it has at least investment grade rating;
4. it can be demonstrated on the basis of an in-depth analysis of the issuer that the prudential rules applicable to that issuer are at least as stringent as those laid down by Community law.

Article 7

Article 19(1)(h) of Directive 85/611/EEC

Securitisation vehicles which benefit from a banking liquidity line

1. The reference in the fourth indent of Article 19(1)(h) of Directive 85/611/EEC to securitisation vehicles shall be understood as a reference to structures, whether in corporate, trust or contractual form, set up for the purpose of securitisation operations.
2. The reference in the fourth indent of Article 19(1)(h) of Directive 85/611/EEC to banking liquidity lines shall be understood as a reference to banking facilities secured by a financial institution which itself complies with the third indent of Article 19(1)(h) of Directive 85/611/EEC.

Article 8

Articles 1(2) and 19(1)(g) of Directive 85/611/EEC

Liquid financial assets with respect to financial derivative instruments

1. The reference in Article 1(2) of Directive 85/611/EEC to liquid financial assets shall be understood, with respect to financial derivative instruments, as a reference to financial derivative instruments which fulfil the following criteria:
 - (a) their underlyings consist in one or more of the following:
 - (i) assets as listed in Article 19(1) of Directive 85/611/EEC including financial instruments having one or several characteristics of those assets;
 - (ii) interest rates;
 - (iii) foreign exchange rates or currencies;
 - (iv) financial indices;
 - (b) in the case of OTC derivatives, they comply with the conditions set out in the second and third indents of Article 19(1)(g) of Directive 85/611/EEC.
2. Financial derivative instruments as referred to in Article 19(1)(g) of Directive 85/611/EEC shall be taken to include instruments which fulfil the following criteria:
 - (a) they allow the transfer of the credit risk of an asset as referred to in point (a) of paragraph 1 of this Article independently from the other risks associated with that asset;
 - (b) they do not result in the delivery or in the transfer, including in the form of cash, of assets other than those referred to in Article 19(1) and (2) of Directive 85/611/EEC;
 - (c) they comply with the criteria for OTC-derivatives laid down in the second and third indents of Article 19(1)(g) of Directive 85/611/EEC and in paragraphs 3 and 4 of this Article;
 - (d) their risks are adequately captured by the risk management process of the UCITS, and by its internal control mechanisms in the case of risks of asymmetry of information between the UCITS and the counterparty to the credit derivative resulting from potential access of the counterparty to non-public information on firms the assets of which are used as underlyings by credit derivatives.
3. For the purposes of the third indent of Article 19(1)(g) of Directive 85/611/EEC, the reference to fair value shall be understood as a reference to the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction.
4. For the purposes of the third indent of Article 19(1)(g) of Directive 85/611/EEC, the reference to reliable and verifiable valuation shall be understood as a reference to a valuation, by the UCITS, corresponding to the fair value as referred to in paragraph 3 of this Article, which does not rely only on market quotations by the counterparty and which fulfils the following criteria:
 - (a) the basis for the valuation is either a reliable up-to-date market value of the instrument, or, if such a value is not available, a pricing model using an adequate recognised methodology;
 - (b) verification of the valuation is carried out by one of the following:
 - (i) an appropriate third party which is independent from the counterparty of the OTC-derivative, at an adequate frequency and in such a way that the UCITS is able to check it;
 - (ii) a unit within the UCITS which is independent from the department in charge of managing the assets and which is adequately equipped for such purposes

adequately equipped for such purpose.

5. The reference in Articles 1(2) and 19(1)(g) of Directive 85/611/EEC to liquid financial assets shall be understood as excluding derivatives on commodities.

Article 9

Article 19(1)(g) of Directive 85/611/EEC

Financial indices

1. The reference in point (g) of Article 19(1) of Directive 85/611/EEC to financial indices shall be understood as a reference to indices which fulfil the following criteria:

- (a) they are sufficiently diversified, in that the following criteria are fulfilled:
 - (i) the index is composed in such a way that price movements or trading activities regarding one component do not unduly influence the performance of the whole index;
 - (ii) where the index is composed of assets referred to in Article 19(1) of Directive 85/611/EEC, its composition is at least diversified in accordance with Article 22a of that Directive;
 - (iii) where the index is composed of assets other than those referred to in Article 19(1) of Directive 85/611/EEC, it is diversified in a way which is equivalent to that provided for in Article 22a of that Directive;
- (b) they represent an adequate benchmark for the market to which they refer, in that the following criteria are fulfilled:
 - (i) the index measures the performance of a representative group of underlyings in a relevant and appropriate way;
 - (ii) the index is revised or rebalanced periodically to ensure that it continues to reflect the markets to which it refers following criteria which are publicly available;
 - (iii) the underlyings are sufficiently liquid, which allows users to replicate the index, if necessary;
- (c) they are published in an appropriate manner, in that the following criteria are fulfilled:
 - (i) their publication process relies on sound procedures to collect prices and to calculate and to subsequently publish the index value, including pricing procedures for components where a market price is not available;
 - (ii) material information on matters such as index calculation, rebalancing methodologies, index changes or any operational difficulties in providing timely or accurate information is provided on a wide and timely basis.

2. Where the composition of assets which are used as underlyings by financial derivatives in accordance with Article 19(1) of Directive 85/611/EEC does not fulfil the criteria set out in paragraph 1 of this Article, those financial derivatives shall, where they comply with the criteria set out in Article 8(1) of this Directive, be regarded as financial derivatives on a combination of the assets referred to in points (i), (ii) and (iii) of Article 8(1)(a).

Article 10

Article 21(3) of Directive 85/611/EEC, fourth subparagraph

Transferable securities and money market instruments embedding derivatives

1. The reference in the fourth subparagraph of Article 21(3) of Directive 85/611/EEC to transferable securities embedding a derivative shall be understood as a reference to financial instruments which fulfil the criteria set out in Article 2(1) of this Directive and which contain a component which fulfils the following criteria:

- (a) by virtue of that component some or all of the cash flows that otherwise would be required by the transferable security which functions as host contract can be modified according to a specified interest rate, financial instrument price, foreign exchange rate, index of prices or rates, credit rating or credit index, or other variable, and therefore vary in a way similar to a stand-alone derivative;
- (b) its economic characteristics and risks are not closely related to the economic characteristics and risks of the host contract;
- (c) it has a significant impact on the risk profile and pricing of the transferable security.

2. Money market instruments which fulfil one of the criteria set out in Article 3(2) and all the criteria set out in Article 4(1) and (2) thereof and which contain a component which fulfils the criteria set out in paragraph 1 of this Article shall be regarded as money market instruments embedding a derivative.

3. A transferable security or a money market instrument shall not be regarded as embedding a derivative where it contains a component which is contractually transferable independently of the transferable security or the money market instrument. Such a component shall be deemed to be a separate financial instrument.

Article 11

Article 21(2) of Directive 85/611/EEC

Techniques and instruments for the purpose of efficient portfolio management

1. The reference in Article 21(2) of Directive 85/611/EEC to techniques and instruments which relate to transferable securities and which are used for the purpose of efficient portfolio management shall be understood as a reference to techniques and

and which are used for the purpose of efficient portfolio management shall be understood as a reference to techniques and instruments which fulfil the following criteria:

- (a) they are economically appropriate in that they are realised in a cost-effective way;
- (b) they are entered into for one or more of the following specific aims:
 - (i) reduction of risk;
 - (ii) reduction of cost;
 - (iii) generation of additional capital or income for the UCITS with a level of risk which is consistent with the risk profile of the UCITS and the risk diversification rules laid down in Article 22 of Directive 85/611/EEC;
- (c) their risks are adequately captured by the risk management process of the UCITS.

2. Techniques and instruments which comply with the criteria set out in paragraph 1 and which relate to money market instruments shall be regarded as techniques and instruments relating to money market instruments for the purpose of efficient portfolio management as referred to in Article 21(2) of Directive 85/611/EEC.

Article 12

Article 22a(1) of Directive 85/611/EEC

Index replicating UCITS

1. The reference in Article 22a(1) of Directive 85/611/EEC to replicating the composition of a stock or debt securities index shall be understood as a reference to replication of the composition of the underlying assets of the index, including the use of derivatives or other techniques and instruments as referred to in Article 21(2) of Directive 85/611/EEC and Article 11 of this Directive.

2. The reference in the first indent of Article 22a(1) of Directive 85/611/EEC to an index whose composition is sufficiently diversified shall be understood as a reference to an index which complies with the risk diversification rules of Article 22a of that Directive.

3. The reference in the second indent of Article 22a(1) of Directive 85/611/EEC to an index which represents an adequate benchmark shall be understood as a reference to an index whose provider uses a recognised methodology which generally does not result in the exclusion of a major issuer of the market to which it refers.

4. The reference in the third indent of Article 22a(1) of Directive 85/611/EEC to an index which is published in an appropriate manner shall be understood as a reference to an index which fulfils the following criteria:

- (a) it is accessible to the public;
- (b) the index provider is independent from the index-replicating UCITS.

Point (b) shall not preclude index providers and the UCITS forming part of the same economic group, provided that effective arrangements for the management of conflicts of interest are in place.

Article 13

Transposition

1. Member States shall adopt and publish, by 23 March 2008 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

They shall apply those provisions from 23 July 2008.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 14

Entry into force

This Directive shall enter into force on the third day following its publication in the *Official Journal of the European Union*.

Article 15

Addressees

This Directive is addressed to the Member States.

Done at Brussels, 19 March 2007.

For the Commission

Christa MacGRIFF


(¹) OJ L 375, 31.12.1985, p. 3. Directive as last amended by Directive 2005/1/EC of the European Parliament and of the Council (OJ L 79, 24.3.2005, p. 9).

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