A&L Goodbody

CP119 Central Bank Consultation on amendments to (and consolidation of) the Central Bank UCITS Regulations

On 29 March 2018, the Central Bank of Ireland (the Central Bank) published a consultation paper which includes proposals to amend and consolidate the Central Bank UCITS Regulations[1] (CP119), which is the statutory instrument that forms the basis for the Irish regulatory framework for UCITS.

The amendments are set out in sections I-IV. Helpfully, the draft amending and consolidating Central Bank UCITS Regulations (**CBI UCITS Regulations**) are appended to CP119.

Key amendments to the CBI UCITS Regulations are listed below.

- Annual Audit Report
- Accounts
- Structured Products
- Share Class Provisions
- Redemptions
- Performance Fees
- Money Market Funds.

The CBI UCITS Regulations will also be consolidated with the first amending CBI UCITS Regulations and the second amending CBI UCITS Regulations.

What are the CBI UCITS Regulations?

The CBI UCITS Regulations are the Irish statutory instruments which implement the Central Bank's regulatory framework for UCITS. The CBI UCITS Regulations were introduced on 1 November 2015. They replaced the Central Bank UCITS Notices, and were amended in 2016 and 2017. They are supplemented by Central Bank regulatory guidance and by Central Bank UCITS Q&As.

The CBI UCITS Regulations complement the UCITS Regulations which are the Irish regulations that transpose the UCITS Directive into Irish law. The UCITS Directive is supported by EU UCITS Regulations, ESMA Guidance, ESMA opinions and ESMA Q&As.

[1] Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015 (as amended).

Proposed changes by section

Section I – amendments from a review of the CBI UCITS Regulations

- Aligning equivalence provisions for third country credit institutions with CRR[2]. This impacts on the categories of depositaries who are eligible for holding deposits belonging to a UCITS.
- Clarifying that the requirement for the holding of ancillary liquidity applies in the case of any single credit institution.
- Clarifying that the first annual audited accounts of each UCITS must be prepared within 18 months of the incorporation/ establishment of the UCITS, that this applies at umbrella level and that these accounts must include all sub-funds launched at that date.
- Deleting requirements for the maintenance of company secretarial materials because they are set out in the Companies Act 2014 and do not need to be repeated.
- Requiring UCITS to notify the Central Bank immediately when a temporary suspension of redemptions is lifted and within 21 days if the suspension remains in place.
- Formalising the requirement to identify a designated e-mail address for each UCITS (or a single e-mail address for a fund management company to cover all Irish UCITS under management).
- Requiring that the second set of accounts in the year for a UCITS management company and a depositary cover the full 12 months of the year (instead of a second set of half-yearly accounts).
- Requiring that the second set of accounts in the year for a UCITS management company and a depositary be filed within one month of year end (rather than two months as currently required).
- Providing that the capital requirements set out in Schedule 9 apply to management companies as well as depositaries.
- Including provisions permitting UCITS which are structured products to charge an annual management fee based on the initial offer price, provided certain criteria are met.[3]

[2]Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms.

[3]This will reflect a previous communication to stakeholders by the Central Bank, 'Annual management fees within authorised collective investment schemes, 16 August 2006'.

[4]ESMA34-43-296 – Opinion to National Competent Authorities on UCITS Share Class Hedging.

Section II – amendments to UCITS share class provisions

The proposed amendments in this section are intended to reflect the ESMA Opinion on Share Classes of UCITS[4], as detailed below.

- Requiring that under-hedged positions should not fall below 95% of the NAV of the share class.
- Imposing mandatory stress testing at share class level in accordance with draft Regulation 22 and requiring the provision of stress testing results to the Central Bank.
- Requiring that administrative costs for the establishment of a share class be borne solely by the relevant share class.
- Requiring that any risk or administrative costs arising from the use of derivative overlay to hedge the currency risk in a share class be borne solely by the relevant share class.
- Ensuring that the coverage available to the share class is sufficient to meet all future obligations of that share class.
- Requiring that the notional of the derivative transaction should not lead to a payment or delivery value exceeding that of the hedged share class.
- Ensuring counterparty exposure be assessed at the level of the hedged share class.
- Requiring the inclusion in the annual and half-yearly reports of a list of all share classes of the UCITS, together with information as to whether the relevant share class is hedged.

Section III – amendments to UCITS performance fee provisions

It is proposed to revise the CBI UCITS Regulations to include some of the provisions in the Central Bank's current website guidance as detailed below.

- Draft Regulation 41 sets out provisions for UCITS performance fees.
- Draft Regulation 75 sets out disclosure obligations in relation to performance fees.
- Draft Regulation 75 sets out a requirement relating to the minimum frequency for crystallisation of performance fees. This will align the Central Bank's approach with IOSCO

Good Practice on Fees and Expenses[5]. Draft Regulation 75 will specify that the minimum period for performance fee crystallisation is once per annum. A transitional period (as yet unspecified) is also being provided for existing UCITS in respect of this requirement.

Section IV – amendments in light of the EU Money Market Fund Regulation (MMFR)

The Central Bank has identified a number of provisions that will be disapplied from 20 July 2018 (for new MMFs) and 21 January 2019 (for existing MMFs), as appropriate, in order to remove any overlap with the MMFR[6]. Specific provisions that will no longer apply include the definition of WAM and WAL in Regulation 2.

Consequential amendments are also being made to Regulation 6(3) and Regulation 24(5)(d) and (e) to reflect updated terminology derived from the MMFR.

[5]Good Practice 3 of IOSCO Final Report – Good Practices on Fees & Expenses.

[6]Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on Money Market Funds.

What to do now

Boards of fund companies should consider the proposed amendments in CP119 to determine what, if any, changes will be required to their current practices.

The deadline for responses to the Central Bank is 29 June 2018. Stakeholders have been invited to provide comments on the proposals. A&L Goodbody is in the process of preparing a response and we welcome any feedback you might have.

How A&L Goodbody can help

We will be working closely with our clients in relation to the impact of CP119. In the meantime, if you have any queries, please contact one of the partners listed below or your usual contact at A&L Goodbody.

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