A&L Goodbody

# Central Bank of Ireland issues July 2019 guidance on UCITS financial indices
## *Certification requirements clarified*

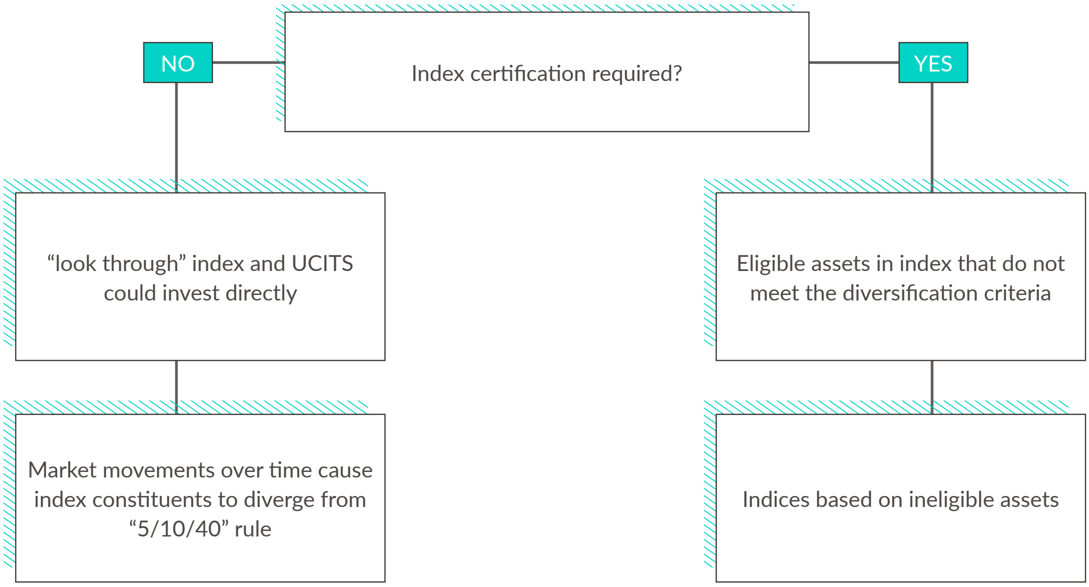
- A UCITS that proposes to use a financial index should assess the index and, at the point of authorisation of the UCITS or approval of a new sub-fund, confirm to the CBI that the index meets the regulatory requirements or provide index certification. A pre-approval submission for an index is required in limited circumstances.
- Updated CBI guidance on UCITS financial indices issued in July 2019 clarifies the circumstances where an index certification is not required
- If on a "look-through" basis the UCITS could invest directly in the index constituents, or if the index weightings change over time due to market movements, the index will be deemed to meet the CBI's index criteria and certification is not required.
- Certification is required where the index does not meet the UCITS risk spreading criteria, or for an index comprised of ineligible assets.

### Background

In October 2018, the Central Bank of Ireland (CBI) issued updated guidance permitting UCITS to self-certify most financial indices being used. This was a welcome development. In July 2019 that guidance has been further updated to clarify the circumstances where an index certification is not required. The 2018 guidance meant that UCITS tracking indices even where they were fully diversified and comprised of eligible assets required managers to carry out index reviews for certification and maintain the relevant back up information. The application of the certification requirement to this kind of index investment by UCITS appeared to be disproportionate to the nature of the investment and unintended.

### Index certification

A responsible person should assess each index that the UCITS intends to use, in order to determine whether the index meets the relevant regulatory requirements. Once determined that this is the case, the responsible person must either state that the index meets the regulatory requirements or provide an index certification when the UCITS seeks authorisation or approval of an additional sub-fund in the case of an umbrella UCITS.




## Index certification not required

### Look-through

A responsible person that proposes to use a financial index for tracking or replication, investment or EPM purposes for a relevant UCITS is not required to submit an index certification if, on a "look-through" basis, it would be possible for the UCITS to directly invest in the constituents of the index as allowed by the UCITS Regulations. This means satisfying the UCITS eligible assets and risk diversification rules, for example the "5/10/40" rule as applied to equity and debt securities.

> A Responsible Person of a UCITS is a director of the UCITS management company or of the UCITS self- managed investment company

### Market events and weighting

Over time, market movements or other events may cause the weightings of a financial index to change so that it no longer complies with the "5/10/40" rule. Where this happens and on the basis that the UCITS confirms as part of its authorization, approval or post-authorisation process that the index is comprised of eligible assets and complies with the "5/10/40" rule, the financial index will be deemed to meet index criteria set out in the section of the CBI guidance "Summary of Financial Index Assessment Criteria".

### CBI confirmation

A UCITS that proposes to use a financial index for which there is no requirement to submit an index certification should state, when making the application for authorisation or approval to the CBI, that such indices meet the regulatory requirements. The guidance states that the absence of such a statement will result in the CBI querying the use of the index, and requesting the relevant certification, which will delay the authorisation or approval process.

## Index certification required

### Eligible assets not satisfying the diversification rules

If it would not be possible for a UCITS to invest directly in assets comprising an index without transgressing the risk-spreading limits of the UCITS Regulations, an index certification should be submitted to the CBI. This does not apply to UCITS applying the "look-through" approach or where the "5/10/40" rule is exceeded over time due to market movements.

### Ineligible assets

An index certification should be submitted to the CBI if it is not possible for a UCITS to invest directly in the underlying assets comprised in the index.

## Financial Index assessment and other requirements

No change has been made since the October 2018 guidance to:

- the pre-approval submission to the CBI where the financial index to be used has one constituent with a weighting in excess of 20% up to a maximum of 35%
- the financial index assessment criteria
- disclosure requirements
- CBI quality assessment procedure.

The updated guidance continues to state that:

- no confirmation or certification is required where a UCITS uses an index solely as a performance benchmark
- non-financial indices are not eligible assets for UCITS.

## Conclusion

Irish UCITS which use financial indices will welcome the clarification and reduced burden of self-certification requirements in the CBI's July 2019 updated guidance. UCITS should revisit their compliance with the provisions of the October 2018 CBI guidance on UCITS use of financial indices and consider what implications the changes in the July 2019 updated guidance may have.

You can contact a member of the A&L Goodbody Asset Management & Investment Funds team for further information and advice.

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