

Self-certification for UCITS and Retail AIFs

Central Bank moves to self-certification for many aspects of the authorisation and post-authorisation process for UCITS and Retail AIFs.

The Central Bank of Ireland (the Central Bank) has introduced changes to certain aspects of the authorisation and post-authorisation process for UCITS and Retail AIFs.

Subject to receipt of relevant Central Bank application forms and written confirmations, the Central Bank will no longer carry out a prior review in relation to:

- the establishment of new share classes
- depositary agreements
- trust deeds (for unit trusts)
- deeds of constitution (for CCFs)
- UCITS financial indices.

The Central Bank has also issued an application form for UCITS merger applications which reflects the requirements under the UCITS Regulations 2011 and does not introduce any new requirements. The application form is intended to streamline the pre-approval process. The application form must be submitted to the Central Bank in soft copy (to ucitsmergers@centralbank.ie) with any UCITS merger application.

The changes are effective from 9 October 2018 and any applications submitted from that date will fall under the new regime. The aim of these changes is to make the process as efficient as possible and it is anticipated that the changes should result in significantly reduced timeframes. The Central Bank will carry out quality assurance checks on a random basis following authorisation of a UCITS or Retail AIF.

Similar checks will also be conducted in relation to financial indices and this will require a Responsible Person of a UCITS to make available to the Central Bank, immediately upon request, material demonstrating that the Index is an eligible financial index for a UCITS. This is an important element to take into account as part of internal procedures. We have prepared a separate In Focus paper on this topic.

The establishment of new Share Classes in an authorised UCITS or Retail AIF

Change to Process

The establishment of share classes in an authorised UCITS or Retail AIF, will no longer be subject to prior review by the Central Bank.

The prospectus/supplement which provides for the establishment of the share class, may be submitted for noting by 12pm on the day prior to noting, in soft copy to fundspostauthorisation@centralbank.ie together with a completed section 2.21 of the relevant Application Form. This should also be accompanied by a confirmation by the responsible person as set out across.

Confirmation

Responsible Person confirmation:

The establishment of the share class accurately reflects the requirements of section 2.21 of the UCITS/RIAIF Application Form and the requirements of any relevant Central Bank guidance and legislation.

Where it is intended to restrict a share class, the Responsible Person must also confirm that the proposal to restrict the named classes to the entities outlined is sufficient to allow that the class provides for public participation.

UCITS/Retail AIF Depositary Agreements

Change to Process

Depositary Agreements will no longer will subject to prior review by the Central Bank.

Authorisation

The confirmation set out across, together with a completed section 5 of the UCITS Application Form/Section 4 of the Retail Investor AIF Application Form and duly executed depositary agreement should be submitted on the authorisation day as part of the authorisation process.

Post Authorisation Amendments

Where post authorisation updates are made to the Depositary Agreement, the updated and executed agreement should be submitted in soft copy no later than midday on the day prior to noting to fundspostauthorisation@centralbank.ie, which must be accompanied by a written confirmation by the depositary as set out across.

Confirmation

Depositary Confirmation (on authorisation):

The provisions of the Depositary Agreement are in compliance with the *European Communities UCITS Regulations 2011, Commission Delegated Regulation (EU) 2016/438, the Central Bank UCITS Regulations 2015 OR European Union (Alternative Investment Fund Managers) Regulation 2013, Commission Delegated Regulation (EU) No 231/2013, the Central Bank of Ireland AIF Rulebook* and any relevant Central Bank guidance, and in particular, that the provisions of the Depositary Agreement are in compliance with all liability requirements in this regard.

Depositary Confirmation (post authorisation):

The amendments to the Depositary Agreement are in compliance with the *European Communities UCITS Regulations 2011, Commission Delegated Regulation (EU) 2016/438, the Central Bank UCITS Regulations 2015 OR European Union (Alternative Investment Fund Managers) Regulation 2013, Commission Delegated Regulation (EU) No 231/2013, the Central Bank of Ireland AIF Rulebook* and any relevant Central Bank guidance, and in particular, that the amendments are in compliance with all liability requirements in this regard.

UCITS/Retail AIFs Trust Deeds/Deeds of Constitution

Change to Process

The Central Bank will no longer review Trust Deeds or Deeds of Constitution, subject to written confirmations from the depositary.

Authorisation

The confirmation set out across, together with a completed section 3/4 of the Application Form (as appropriate) and executed document should be submitted on the authorisation day as part of the authorisation application.

Post Authorisation Amendments

Where post authorisation updates are made to the trust deed/deed of constitution, the updated and executed agreement should be submitted in soft copy no later than midday on the day prior to noting to fundspostauthorisation@centralbank.ie, which must be accompanied by the section 3/4 Application Form (as appropriate) together with written confirmation by the depositary as set out across.

Confirmation

Depositary Confirmation (on authorisation):

The duties and obligations of the Depositary outlined in the Trust Deed/Deed of Constitution are in compliance with the *European Communities UCITS Regulations 2011, Commission Delegated Regulation (EU) 2016/438, the Central Bank UCITS Regulations 2015 OR European Union (Alternative Investment Fund Managers) Regulation 2013, Commission Delegated Regulation (EU) No 231/2013, the Central Bank of Ireland AIF Rulebook* and any relevant Central Bank guidance, and in particular, that the Depositary related provisions are in compliance with all liability requirements in this regard.

Depositary Confirmation (post authorisation):

The amendments to the Trust Deed/Deed of Constitution are in compliance with the *European Communities UCITS Regulations 2011, Commission Delegated Regulation (EU) 2016/438, the Central Bank UCITS Regulations 2015 OR European Union (Alternative Investment Fund Managers) Regulation 2013, Commission Delegated Regulation (EU) No 231/2013, the Central Bank of Ireland AIF Rulebook* and any relevant Central Bank guidance, and in particular, that the Depositary related provisions are in compliance with all liability requirements in this regard.

UCITS Financial Indices

Change to Process

The use of an Index by a UCITS will no longer be subject to prior review by the Central Bank but instead will be subject to the Responsible Person of the UCITS proving the certification set out across.

Where a new UCITS or UCITS sub-fund intends to use an index, the signed certification (set out across) should be included with the initial application seeking authorisation or approval.

Where an existing UCITS proposes to use an index, the signed certification should be submitted to fundspostauthorisation@centralbank.ie.

Where a UCITS intends to use an index referred to in Regulation 71(2) of the UCITS Regulations, a Responsible Person should, at the time the UCITS seeks authorisation, provide a submission to the Central Bank, setting out that the limit in Regulation 71(1)(a) is to be raised to a maximum of 35% for a single issuer and why this is justified by exceptional market conditions.

Further details relating to this update are set out in the revised Central Bank Guidance on UCITS Financial Indices: www.centralbank.ie/regulation/industry-market-sectors/funds/ucits/guidance/ucits-financial-indices.

Confirmation

Responsible Person Confirmation:

I (being a director of the Responsible Person), on behalf of the [Responsible Person] of [name of UCITS] certify that [name of Index] is a financial index which complies with: the requirements of the UCITS Regulations 2011, the Central Bank UCITS Regulations 2015 and the Central Bank's Guidance on UCITS Financial Indices. [name of Index] is a UCITS eligible financial index.

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