

Updated and consolidated Central Bank UCITS Regulations 2019

The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2019 (S.I. No. 230 of 2019) (the Central Bank UCITS Regulations) have issued

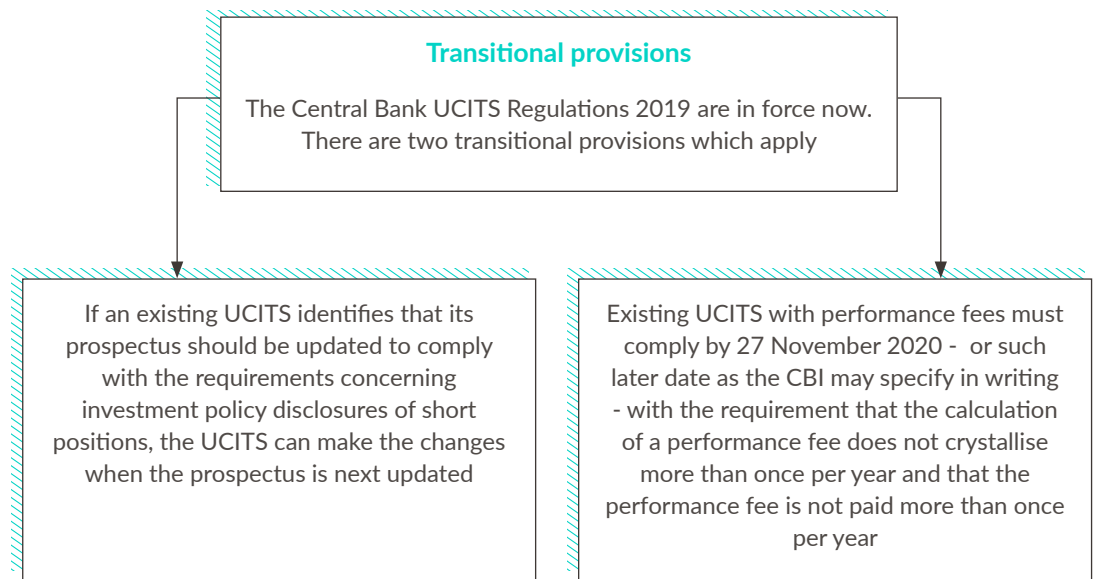
They were published by the Central Bank of Ireland (CBI) on 6 June 2019. This follows CBI consultation CP119 which proposed amendments to the Central Bank UCITS Regulations.

Amendments include:

- Changes to UCITS share class provisions to reflect the ESMA opinion on share classes of UCITS
- UCITS performance fee changes including a new performance fee crystallisation frequency requirement. Existing UCITS will have until 27 November 2020 to comply with this requirement.
- Amendments arising from the implementation of the EU Money Market Fund Regulation
- General amendments arising from a review of the Central Bank UCITS Regulations

The CBI UCITS Q&A were also updated on 6 June 2019. CBI UCITS Guidance has also been updated to refer to the updated Regulations.





1. Amendments to UCITS Share Class provisions

These reflect the ESMA Opinion on Share Classes of UCITS

- That under-hedged positions do not fall below 95 per cent of the portion of the net asset value of the share class. This clarifies that there can be partial under-hedging at share class level
- To require the results of stress testing at share class level to be provided to the CBI upon request
- That administrative costs for the establishment of a share class are to be borne solely by the relevant share class
- That any risk or administrative costs arising from the use of derivative overlay to hedge the currency risk in a share class is borne solely by the relevant share class
- To ensure the coverage available to the share class is sufficient to meet all future obligations of that share class
- That the notional of the derivative transaction should not lead to a payment or delivery value exceeding that of the hedged share class
- To ensure counterparty exposure is to be assessed at the level of the hedged share class
- To require inclusion of a list of all in-issue share classes of the UCITS, and whether the relevant share class is hedged, in the annual and half-yearly reports.

2. Amendments to UCITS Performance Fee provisions

- New provisions for UCITS performance fees which was previously CBI guidance published on its website
- Disclosure obligations in relation to performance fees
- Requirements that the calculation of a performance fee does not crystallise more than once per year and that the performance fee is not paid more than once per year. This will align the CBI's approach with IOSCO Good Practice on Fees and Expenses. Note the transitional provision above which applies to this requirement
- The Central Bank has made a slight amendment to the requirement consulted on to state that performance fees may be paid where a new high NAV is achieved over the life of the UCITS. The Central Bank will clarify by way of guidance that this may be on either (i) achieving a new high NAV per share or (ii) achieving a new high NAV as adjusted for subscriptions and redemptions. The requirement as drafted does not preclude UCITS from providing for payment of a performance fee only where the high water mark is exceeded by a given percentage.
- The Central Bank agrees that performance fees may crystallise upon an investor redemption. This has been clarified in the newly updated CBI UCITS Q&A.

- UCITS will need to consider whether they should obtain investor approval if making changes to their performance fee model where those changes are restricted to compliance with the updated Regulations. The transitional provisions will give UCITS time to organise EGMs in multiple markets where necessary.

3. General clarifications of the Central Bank UCITS Regulations

- Aligning equivalence provisions for third country credit institutions with CRR
- 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. Where a sub-fund of an ICAV, and other legal structures which allow separate annual reports for each sub-fund, has a potential initial period of less than 2 months the CBI will consider waiver requests, on a case-by-case basis, from these requirements should it be deemed necessary taking into account the individual circumstances. This is in the feedback statement to CP119.
- Requirements regarding maintenance of company secretarial materials are deleted as they are set out in the Companies Act 2014 and do not need to be repeated
- In addition to the existing requirement to notify the CBI of temporary redemption suspensions, requirement that the CBI be notified immediately when the temporary suspension 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. This was clarified in the updated CBI UCITS Q&A
- Requiring the second set of accounts in the year for a UCITS management company and a Depositary cover the full 12 months of the year
- Requiring the second set of accounts in the year for a UCITS management company and a Depositary to be filed within 1 month of year end, rather than 2 months as currently required. This will ensure a consistent approach with fund administrators and MiFID investment firms.
- Updating the text to clarify 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. This was already in place.
- The Central Bank has also taken the opportunity to correct some typographical errors. For example, Regulation 104(10) has been amended to clarify the relevant paragraphs which should apply to investment companies which have designated a management company.

4. Money market funds

Amendments have been made to the Central Bank UCITS Regulations as a consequence of the implementation of EU Money Market Fund Regulation. These amendments include disapplication of certain provisions to CBI authorised money market funds to align with the provisions of the EU Money Market Fund Regulation.

Industry submissions to CP119

The Central Bank UCITS Regulations are accompanied by a feedback statement on CP 119. There were many industry submissions. The few that were incorporated are:

- The share class hedging requirements have been refined to require that over-hedged positions do not exceed 105 per cent of the net asset value of the share class and under-hedged positions do not fall below 95 per cent of the portion of the net asset value of the share class where it is to be hedged against currency risk. This reflects the ESMA opinion on share class hedging
- The requirement for a UCITS to update the CBI of a temporary redemption suspension every 21 days only applies where the suspension has not been lifted

- Prospectus disclosure requirements where a UCITS intends to invest in any asset denominated in a currency other than the base currency have been adjusted to relate to hedging at share class level
- Publication and filing requirements for annual and half yearly reports have been adjusted to cater for ICAV flexibility
- The requirement to disclose all share classes in annual and half-yearly reports has been modified to require disclosure of an up-to-date list of all share classes of the UCITS in issue at any time during the reporting period. The disclosure should also identify whether the relevant share class is hedged.

CBI UCITS Q&As

Some CP119 submissions were dealt with by way of update CBI UCITS Q&As. The new Q&As are summarised below.

- A UCITS with performance fees as permitted by the Central Bank UCITS Regulations, may

charge performance fees at (i) an individual investor level or (ii) at a share class / fund level, as adjusted for subscriptions and redemptions.

- A UCITS may crystallise and pay a performance fee upon the redemption of its shares/units by an investor. The crystallisation and payment of a performance fee by a UCITS upon the redemption of shares/units by an investor is not considered to be an annual calculation for the purposes of the Central Bank UCITS Regulations.
- Exposure to credit institutions arising from cash held as ancillary liquidity are included in the individual and group limits for deposits provided for by the Central Bank UCITS Regulations. The limits apply irrespective of whether the accounts are held for investment or ancillary liquidity purposes.
- The requirement that each UCITS authorised by the CBI establishes and maintains an email address for correspondence with the CBI applies at umbrella level.

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