



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

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UCITS

Questions and Answers

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Undertakings for Collective Investment in Transferable Securities (UCITS) Questions and Answers

This document sets out answers to queries likely to arise in relation to UCITS. It is published in order to assist in limiting uncertainty. It is not relevant to assessing compliance with regulatory requirements. In addition to being published in ‘*Markets Update*’ it will be posted on the Central Bank website and will be updated there from time to time. You should check the website from time to time in relation to any matter of importance to you to see if the position has altered. The Central Bank reserves the right to alter its approach to any matter covered in this Q&A at any time.

Investments in open-ended non-UCITS investment funds

ID 1001

Q. Who determines if a non-UCITS investment fund is an eligible investment?

A. In the first instance, a UCITS must determine if a non-UCITS investment fund is an eligible investment based on a diligent consideration of the relevant facts about the non-UCITS investment fund involved.

ID 1002

Q. Must the non-UCITS investment fund include conforming provisions in its constitutional document in order to be eligible for investment by a UCITS or is it sufficient for the non-UCITS investment fund to operate in practice in a manner which complies with the requirements of Regulation 68(1)(e)?

A. The UCITS Regulations 2011 (S.I. No. 352 of 2011) do not require that a non-UCITS investment fund in which a UCITS intends to invest includes conforming provisions in its constitutional document except that, in accordance with Regulation 68(1)(e)(iv), the constitutional document must include a prohibition on investing more than 10% of its assets in other investment funds.

However, the Central Bank draws attention to compliance obligations which should be considered if conforming provisions which eliminate discretion on this issue are not included in the constitutional document and/or the prospectus. It may be more difficult for a UCITS to determine that a non-UCITS investment fund complies with the requirements of Regulation 68(1)(e) both prior to investment and, importantly, on an on-going basis if the non-UCITS investment fund does not include conforming provisions in its constitutional document.

ID 1003

Q. Guidance Note 2/03 on ‘UCITS – Acceptable investments in other collective investment undertakings’ lists categories of non-UCITS investment funds which are eligible for investment by UCITS. This list includes non-UCITS investment funds authorised in the US and which comply, in all material respects, with the provisions of the UCITS Notices. What category of US investment funds is being referred to?

A. Guidance Note 2/03 is referring to US investment funds which are subject to The Investment Company Act of 1940. It will be up to the UCITS to determine whether a specific US investment fund satisfies the requirements of Regulation 68(1)(e).

ID 1004

Q. Does the ESMA opinion on Article 50(2)(a) of Directive 2009/65/EC (Ref. 2012/721 of 20 November 2012) relate only to investments by UCITS in open-ended non-UCITS investment funds?

A. Yes. The ESMA opinion and the provisions set out in Regulation 68(1)(e) of the UCITS Regulations 2011 are applicable only to investments by UCITS in open-ended non-UCITS investment funds.

ID 1005

Q. Can units in an open-ended investment fund which meet the transferable securities criteria be treated as transferable securities?

A. No. Units in open-ended investment funds must be subject to the criteria set down in Regulation 4(3), the rules set down in Regulation 68(1)(e) and the limits set down in Regulation 73. It is irrelevant whether the units of the open-ended investment fund also meet the transferable securities criteria.

ID 1006

Q. What does a UCITS need to do if it wishes to invest in a non-UCITS investment fund?

A. The UCITS must determine if the non-UCITS investment fund meets the eligibility criteria set out in Regulation 68(1)(e) of the UCITS Regulations 2011. This states that an eligible non-UCITS investment fund must:

1. be a collective investment undertaking within the meaning of Regulation 4(3);
2. be subject to equivalent supervision;
3. be subject to equivalent investor protection;
4. produce half-yearly and annual reports; and
5. not be able to invest more than 10% in other investment funds.

Criteria 1, 4 and 5 are objective matters which must be assessed by the UCITS.

Criteria 2 must be determined by the Central Bank. Guidance Note 2/03 sets out a number of categories of non-UCITS investment funds which meet this requirement, although other jurisdictions and types may be added over time.

Criteria 3 must be determined by the UCITS. Guidance Note 2/03 provides guidance on how to determine if a non-UCITS investment fund complies in all material respects with the UCITS Notices.

The UCITS must then complete the specific application procedure set out in Guidance Note 2/03.

Implementation of ESMA guidelines on ETFs and other UCITS issues

ID 1007

Q. When does a UCITS money market fund have to comply with paragraph 43(e) of the European Securities and Markets Authority (ESMA) guidelines on ETFs and other UCITS issues (ref: ESMA/2012/832) (“the guidelines”)?

A. The Central Bank of Ireland issued a memorandum to the Irish funds industry regarding implementation of the guidelines in February 2013 which *inter alia* noted that:

UCITS created before 18 February 2013 can avail of the transitional provisions set out in guidelines 63-70 of the ESMA guidelines.

Since then, on 20 December 2013, ESMA issued a consultation paper which proposes an amendment to the guidelines which would revise the rules for the diversification of collateral received by UCITS that take the form of money market funds in the context of efficient portfolio management techniques and OTC transactions.

In the light of that consultation it is reasonable for a UCITS money market fund, authorised before 18 February 2013, to delay its compliance with paragraph 43(e) of the ESMA guidelines until such time as ESMA has issued its feedback and concluded the consultation process.

ID 1008

Q. Is the reference to “revenue” in Guideline 35(d) applicable only to revenue from securities lending arrangements and repurchase/reverse repurchase agreements?

A. In accordance with Guideline 35(d), the UCITS Notices require the following disclosure to be included in the annual reports issued by UCITS:

The revenues arising from efficient portfolio management techniques for the entire reporting period together with the direct and indirect operational costs and fees incurred. (ref: paragraph 9, Appendix A to Notice UCITS 8).

A reasonable interpretation of the reference to “revenue” in Guideline 35(d), subject to any clarification which may be provided by ESMA, would be that it is applicable only to revenue from securities lending arrangements and repurchase/reverse repurchase agreements.

Permitted markets for UCITS

ID 1009

Q. Pending the outcome of the Central Bank’s consultation on the publication of the UCITS Rulebook (CP 77), will the Central Bank consider the inclusion of additional

Regulated Markets in Appendix 1 to Guidance Note 1/96 (Permitted Markets for Retail Collective Investment Schemes)?

A. As set out in Consultation Paper CP 77 the Central Bank intends to withdraw Guidance Note 1/96. Pending the issue of a final UCITS Rulebook we are not undertaking to review any submissions in relation to proposed markets. In the interim, UCITS which wish to refer to a regulated market in a prospectus should carry out the appropriate assessments to ensure compliance with the statutory requirements. Regard should continue to be had to the standards referred to in the Guidance Note. The Central Bank may seek sight of such assessments at any time and UCITS should be in a position to explain their decisions in relation to these matters.

ID 1010

Q. The UCITS Regulations and the AIF Rulebook provide for investment by UCITS and Retail Investor AIF respectively of up to 100% of their net assets in the securities of certain issuers, details on which are set out in the investment fund application forms. Will this list include securities and instruments issued by the government of the People's Republic of China?

Answer: The Central Bank will not object if UCITS and AIFs provide for investment of up to 100% of their net assets in securities and instruments issued or guaranteed by the government of the People's Republic of China. This position has been reflected in the investment fund application forms.

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