



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, ESMA revised the rules for the diversification of collateral received by UCITS in the context of efficient portfolio management techniques and OTC transactions. The Central Bank issued a consultation paper on the adoption of these revised guidelines in July 2014 and the responses to that consultation are still under review.

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 the Central Bank 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.

Master-Feeder UCITS

ID 1011

Q. Regulation 86(2) of the EC (UCITS) Regulations 2011 provides that "The master UCITS shall not charge subscription or redemption fees for the investment of the feeder UCITS into its units or the divestment thereof". Does this Regulation preclude the application of an anti-dilution levy by the master UCITS to subscriptions and redemptions by the feeder UCITS? In this regard it is noted that the Central Bank application forms allow UCITS to provide for anti-dilution levies through appropriate provisions in the constitutional document and prospectus. The forms say that... "In calculating the subscription/redemption price for the UCITS the Directors may on any dealing day when there are net subscriptions/redemptions adjust the subscription/redemption price by adding/deducting an anti-dilution levy to cover dealing costs and to preserve the value of the underlying assets of the UCITS."

A. The application of an anti-dilution levy by a master UCITS would not be considered as falling within the prohibition set out in Regulation 86(2) of the EC (UCITS) Regulations 2011 where:

- (i) the prospectus includes complete and unambiguous disclosure on the purpose and nature of the charge which may arise; and
- (ii) any such anti-dilution levy is applied at the master UCITS level only.

UCITS ETF**ID 1012**

Q. I am a UCITS and am authorised by the Central Bank as an active ETF. Am I required to provide details of the holdings within my portfolio on a daily basis?

A. Yes. A UCITS ETF is defined in the UCITS Notices as a UCITS at least one unit or share class of which is traded throughout the day on at least one regulated market or multilateral trading facility with at least one market maker which takes action to ensure that the stock exchange value of its units does not significantly vary from its net asset value and where applicable its indicative net asset value. The Central Bank will not authorise an ETF, including an active ETF, unless arrangements are put in place to ensure that information is provided on a daily basis regarding the identities and quantities of portfolio holdings. The arrangements must be disclosed in the prospectus. Paragraph 3 of Notice UCITS 20 provides that: “A UCITS ETF should disclose clearly in its prospectus, key investor information document and marketing communications the policy regarding portfolio transparency and where information on the portfolio may be obtained, including where the indicative net asset value, if applicable, is published.”

Redomiciliation**ID 1013**

Q. Can an investment fund which re-domiciles to Ireland as a UCITS be permitted to disclose its past performance in its KIID relating to the period when it was domiciled outside Ireland?

A. The Central Bank will permit this past performance to be disclosed where the UCITS management company confirms that:

- (i) the UCITS investment policy, strategy and portfolio composition have not been substantially altered as a consequence of the transfer to the UCITS regime;
- (ii) there is no change to the entities involved in the investment management of the UCITS;
- (iii) it is satisfied that the past performance data is accurate; and
- (iv) appropriate disclosure will be included with the past performance in the KIID stating that the data relates to a period when the investment fund was domiciled outside Ireland and was not authorised as a UCITS.

UCITS ICAV**ID 1014**

Q. Should the object clause in a UCITS ICAV's instrument of incorporation include the text set out in section 6(3)(a) of the ICAV Act 2015 or the text set out in Regulation 4(3)(a) of the UCITS Regulations 2011 (SI No 352 of 2011)?

A. Section 6(3)(a) of the ICAV Act 2015 requires that the sole object of an ICAV must be included in the instrument of incorporation as follows:

“the sole object of the ICAV is the collective investment of its funds in property and giving members the benefit of the results of the management of its funds”.

While Regulation 4(3)(a) of the UCITS Regulations 2011 specifies what the sole object of a UCITS is, it does not specifically require that this be set out in the UCITS constitutional document.

The sole object provisions in the ICAV Act 2015 and UCITS Regulations 2011 are not inconsistent with each other. In the Central Bank’s view, text included in a UCITS ICAV’s instrument of incorporation consistent with section 6(3)(a) of the ICAV Act 2015 will also satisfy the requirements of Regulation 4(3)(a) of the UCITS Regulations. Accordingly, the object clause in a UCITS ICAV’s instrument of incorporation should include the text set out in section 6(3)(a) of the ICAV Act 2015.

UCITS Depositaries

ID 1015

Q: What are the regulatory considerations around Irish authorised UCITS seeking to acquire Chinese shares through the Shanghai-Hong Kong Stock Connect infrastructure?

A: Before an Irish authorised UCITS acquires Chinese shares through the Shanghai-Hong Kong Stock-Connect infrastructure for the first time, its depository would need to satisfy itself that the manner in which the shares were to be held allowed that depository to meet its legal obligation under the UCITS Regulations and any conditions imposed by the Central Bank.

The Shanghai-Hong Kong Stock Connect infrastructure (‘Stock Connect’) is a joint collaboration between Hong Kong Stock Exchanges and Clearing Limited and the Shanghai Stock Exchange. The Stock Connect infrastructure involves two central securities depositories - Hong Kong Securities Clearing Company Limited (‘HKSCC’) and China Securities Depository & Clearing Corporation Limited (‘ChinaClear’).

If an Irish authorised UCITS proposes to acquire Chinese shares through Stock Connect, in order to meet the legal obligations on a depository, the depository of the investment fund, or an entity within its custodial network (i.e. a sub-custodian), must ensure that it retains control over the shares at all times. The relevant legislation does not provide for the Central Bank to recognise eligible clearing structures. This obligation rests on the depositories in the first instance.

However, from the information provided by the relevant authorities, it is evident to the Central Bank that the legal obligations of a depository cannot be met without at least being a participant in HKSCC. It is also clear that in all cases, at the present time, arrangements where the broker of the investment fund is a participant of HKSCC but not an entity within the depository’s custodial network, will not satisfy the provisions of the relevant legislation.

Depositories will need to consider both the terms on which they or a sub-custodian could become participants in HKSCC and the arrangements in place from time to time between HKSCC and ChinaClear and the applicable law.

There are a number of options in terms of level of participation within HKSCC, namely General Clearing Participant, Direct Clearing Participant or Custodian Participant. As the terms of participation may vary over time and as the appropriate level of participation will, to some extent, depend on the scale of envisaged activity and as the legal obligation applies directly upon the depository, the Central Bank is not in a position to designate the appropriate level of participation. The depository or a member of its custodial network must identify one or more levels of participation, if any, which would be in line with its legal obligations as a depository.

It is incumbent on the depository to review and keep under review the Stock Connect infrastructure arrangements to ensure that its legal obligations can be met. This is the case with reliance on all such systems around the world.

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