



Banc Ceannais na hÉireann  
Central Bank of Ireland

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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.

In this document:

“the UCITS Regulations” refers to the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011)

“the Central Bank UCITS Regulations” refers to the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015

### *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 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 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 of the UCITS Regulations. 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. 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. Central Bank UCITS guidance on acceptable investments by UCITS in other investment funds 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. The above guidance 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 this guidance.

### ***Implementation of ESMA guidelines on ETFs and other UCITS issues***

#### **ID 1007**

*[no longer relevant]*

#### **ID 1008**

Q. Paragraph 6(d) Schedule 7 of the Central Bank UCITS Regulations reflects ESMA Guideline 35(d). In this Regulation/Guideline is the reference to “revenue” applicable only to revenue from securities lending arrangements and repurchase/reverse repurchase agreements?

A. In accordance with paragraph 6(d) Schedule 7 of the Central Bank UCITS Regulations the following disclosure is to be included in the annual reports issued by UCITS:

*The revenues arising from efficient portfolio management techniques and instruments for the entire reporting period together with the direct and indirect operational costs and fees incurred. ( ).*

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**

*[No longer relevant]*

#### **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?

A. 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 UCITS Regulations 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 UCITS Regulations 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 Regulation 2 of the Central Bank UCITS Regulations 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. Regulation 82(3) of the Central Bank UCITS Regulations requires the prospectus, key investor information document and marketing communications of a UCITS ETF to disclose the policy regarding portfolio transparency including where information on the portfolio may be obtained.

### **ID 1016**

Q. Regulation 82(2)(a) of the Central Bank UCITS Regulations sets out a requirement that the identifier “UCITS ETF” must be used in the constitutional document. How is this to be applied when an umbrella UCITS has some sub-funds which are UCITS ETFs and some which are not?

A. Question 2 of ESMA’s Questions and Answers on ESMA’s guidelines on ETFs and other UCITS issues provides that where an umbrella UCITS has some sub-funds which are UCITS ETFs and some which are not, the “UCITS ETF” identifier should be used at sub-fund level. Accordingly, any references in the constitutional document to a sub-fund which is a UCITS ETF should include the identifier “UCITS ETF”.

### **ID 1017**

*Q. Regulation 84(2) of the Central Bank UCITS Regulations provides:*

*“Where the stock exchange value of the units of a UCITS ETF varies significantly from its net asset value, the responsible person shall ensure that an investor who has acquired:*

*(a) a unit, or*

*(b) where applicable, any right to acquire a unit that was granted by way of distributing a respective unit, on the secondary market, may sell the unit back to the UCITS ETF directly.”*

*In what circumstances might this right to deal directly with the UCITS ETF arise?*

A. This may arise in cases of market disruption such as the absence of a market maker.

### ***Past performance data***

### **ID 1013**

*Q: Can a UCITS be permitted to disclose past performance in its KIID relating to the period when it was domiciled outside Ireland or was established in Ireland as an AIF, as set out in the following three situations:*

- *an investment fund which re-domiciles to Ireland as a UCITS; or*
- *a non-Irish investment fund which merges with a newly established Irish UCITS; or*
- *an Irish AIF which merges with a newly established Irish UCITS?*

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

- (i) the 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 UCITS was domiciled outside Ireland and was not authorised as a UCITS or where the performance relates to the Irish AIF prior to the merger.

**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 ?

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 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 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.

## ***Guaranteed UCITS***

### **ID 1018**

Q. Regulation 90 of the Central Bank UCITS Regulations refers to a 'third party of substance'. What is this?

A. As a general guideline this should be a credit institution with paid-up share capital in excess of €100million and which is within at least one of the categories set out in Regulation 7 of the Central Bank UCITS Regulations.

## ***US bank holding companies***

### **ID 1019**

Q. For the purposes of Regulation 8(3)(a) of the Central Bank UCITS Regulations, is an entity issued with a bank holding company licence from the Federal Reserve covered by Regulation 7(b) of the Central Bank UCITS Regulations?

A. Yes.



***Reasonable notice*****ID 1020**

Q. Regulations 27(4)(a), 45(2)(a) and 50(4)(a) of the Central Bank UCITS Regulations all reference providing unit-holders with reasonable notice before implementing a change. What is reasonable notice?

A. The Central Bank considers reasonable notice to be a minimum period of two weeks in the case of daily/weekly dealing UCITS or two dealing days in the case of fortnightly dealing UCITS. The responsible person may wish to provide additional dealing days to facilitate redemptions.

***Non-material changes*****ID 1021**

Q. Do unit-holders have to be given reasonable notice in advance of implementing non-material changes to a UCITS (for example, non-material amendments to the investment policies)?

A. No. However, the Central Bank expects the responsible person will include information on non-material changes in the next set of periodic reports for the UCITS.

**ID 1022**

Q. Regulation 12 of the UCITS Regulations provides for Central Bank approval for any amendment to the trust deed/deed of constitution. Is unit holder approval also required for such amendments?

A: The Central Bank will not grant approval unless the changes have also been approved by unit-holders. However, unit holder approval will not be required where the depositary certifies that it is satisfied that changes are not material and will not prejudice unit holders

***Closed ended funds*****ID 1023**

Q. Paragraph 2(b)(ii) of Part 2 of Schedule 2 to the EC (UCITS) Regulations 2011 refers to closed ended funds constituted under the laws of contract which are “subject to corporate governance mechanisms equivalent to those applied to companies”. How can these corporate governance mechanisms be assessed?

A. In assessing whether the corporate governance mechanisms for closed ended funds in contractual form are equivalent to investment companies, the following factors are indicators which can be used as guidance:

- Unit holders' rights. The contract on which the closed ended fund is based should provide for:

- (i) right to vote of the unit holders in the essential decision making processes of the fund (including appointment and removal of asset management company, amendment to the contract which set up the fund, modification of investment policy, merger, liquidation);
  - (ii) right to control the investment policy of the fund through appropriate mechanisms.
- The assets of the closed ended fund should be separate and distinct from that of the investment manager and the closed ended fund should be subject to liquidation rules adequately protecting the unit holders.

### ***Fees and charges***

#### **ID 1024**

*Q. Is there a limit on the maximum subscription charge or performance fee that can be applied to a UCITS?*

A. It is not the Central Bank's practice to approve subscription arrangements that include subscription charges above 5% of the subscription amount or performance fees above 20%.

#### **ID 1025**

*Q. Is there a limit on the maximum charge that can be applied to the redemption of units in a UCITS?*

A. The Central Bank does not approve redemption arrangements that include redemption charges above 3% of the redemption amount.

#### **ID 1026**

*Q. Is unit-holder approval always required for an increase in a redemption fee?*

A. If a redemption fee as disclosed in the prospectus of a UCITS is less than the maximum fee permitted in the constitutional document, unit-holder approval will be required for an increase in the fee disclosed in the prospectus unless the prospectus also provides that a higher fee may be charged and discloses the maximum fee which can be charged

### ***Notification of legal proceedings***

#### **ID 1027**

*Q. Regulation 103(2)(c) of the Central Bank UCITS Regulations requires a management company to notify the Central Bank in writing immediately that the management company becomes aware of "the bringing of any legal proceedings by or against the relevant UCITS or the management company". What information does the Central Bank expect to receive in such a notification?*

A. The notification should disclose the existence of the legal proceedings and indicate the nature of the proceedings. Dates for hearings should be advised to the Central Bank as they become known.

### ***Depository obligations***

#### **ID 1028**

Q. Where a UCITS proposes to invest in another investment fund does a depository have to confirm to the Central Bank that Regulation 114(6) of the Central Bank UCITS Regulations is being complied with?

A. Yes. However the Central Bank will permit that when a new UCITS is being established, the depository may provide written confirmation to the Central Bank that the procedures required by Regulation 114(6) of the Central Bank UCITS Regulations are in place. The Central Bank will not then require confirmations on an on-going basis prior to each investment in another investment fund.

### ***Dealing***

#### **ID 1029**

Q. Where a responsible person receives a subscription or redemption application after the dealing deadline for a dealing day, will it be in breach of Regulation 33(1)(a) of the Central Bank UCITS Regulations?

A. No provided that an application received after the dealing deadline on a dealing day is held over and dealt with on the next dealing day (unless the provisions of Regulation 33(1)(b) of the Central Bank UCITS Regulations apply).

#### **ID 1030**

Q. Regulation 26(2) of the Central Bank UCITS Regulations provides that “a responsible person shall ensure that all share classes within the UCITS or sub-funds thereof have the same dealing procedures and frequencies. Does a UCITS ETF have to comply with this provision?”

A. Generally, a UCITS ETF will have to comply with this provision. The Central Bank has allowed some UCITS ETFs to have different cut-off times for cash and in specie dealings. In each case where this was permitted, the Central Bank received and considered a detailed submission which addressed why different cut-off times were required and how the equal treatment of unit-holders was assured.

Those UCITS ETFs which have been permitted by the Central Bank to have different cut-off times for cash and in specie dealings should apply for a waiver from Regulation 26(2) of the Central Bank UCITS Regulations. The waiver application does not need to include a detailed submission but instead should reference the previous engagement with the Central Bank on the issue. In these circumstances the Central Bank envisages

issuing waivers to Regulation 26(2) of the Central Bank UCITS Regulations as a matter of course.

### **ID 1031**

*Q. Regulation 33(2) of the Central Bank UCITS Regulations requires a responsible person to “pay the redemption proceeds to a redeeming unit-holder within ten business days of the relevant dealing deadline”. In what circumstances might it be acceptable not to pay redemption proceeds within this timeframe?*

A. Redemption proceeds might not be paid within this timeframe where, for example, a redeeming unit-holder’s anti-money laundering documentation is not complete.

## ***Dealings with connected persons***

### **ID 1032**

*Q. Regulation 41 of the Central Bank UCITS Regulations sets out obligations in relation to dealings between a UCITS and a connected person. “Connected person” is defined in Regulation 40 as:*

*“the management company or depositary to a UCITS; and the delegates or sub-delegates of such a management company or depositary (excluding any non-group company sub-custodians appointed by a depositary); and any associated or group company of such a management company, depositary, delegate or sub-delegate.”*

*Are appointments of service providers (for example as UCITS management company, as depositary, as administrator or as a broker) and subscriptions/redemptions by connected persons within the scope of Regulation 41?*

A. No. The appointments of service providers to carry out services are not transactions with the UCITS. A responsible person is required to act in the best interests of investors in appointing service providers. Dealings in a UCITS (i.e. subscriptions/redemptions of shares of the UCITS) by any person, including connected persons, are governed by the dealing provisions in the UCITS constitutional document or prospectus.

### **ID 1033**

*Q. Can a depositary hold funds for a UCITS?*

A. The depositary may hold funds for a UCITS subject to the provisions of Section 30 of the Central Bank Act, 1989. Funds held by a depositary for a UCITS should be held on terms which comply with Regulation 41(1) of the Central Bank UCITS Regulations.

***Disclosures in annual and half-yearly reports*****ID 1034**

Q. On what basis should the disclosures concerning cross investments required by Regulations 79(3)(a) and 80(3) of the Central Bank UCITS Regulations be made?

A. These disclosures should be made in accordance with industry adopted standards.

**ID 1035**

Q. What is the information to be included in the annual report of a UCITS under paragraph 9 of schedule 7 of the Central Bank UCITS Regulations on the model and inputs used for calculating the VaR limit?

A. The annual report should include information on the calculation model, confidence level, holding period and length of data history.

***Assessing liquidity*****ID 1036**

Q. What is a 'short period' as referred to in Regulation 6(2)(a)(vi) of the Central Bank UCITS Regulations with regard to the liquidity of money market instruments?

A. An example of a short period for the purposes of this Regulation is seven business days.

***Investment restrictions*****ID 1037**

Q. Can a depositary grant a charge over the assets of a UCITS for the purpose of securing the borrowings referenced in Regulation 103(3) of the UCITS Regulations?

A. A depositary may give a charge over the assets of the UCITS in order to secure borrowings.

***Repurchase and reverse repurchase agreements*****ID 1038**

Q. Regulations 25(1) and (3) of the Central Bank UCITS Regulations refer to cash or securities being recallable at all times. What does this mean in the context of fixed-term repurchase and reverse repurchase agreements?

A. Fixed-term repurchase and reverse repurchase agreements that do not exceed seven days should be considered as arrangements on terms that allow the assets to be recalled at any time by the UCITS.

## ***Outward marketing***

### **ID 1039**

Q. Where should an outward marketing notification letter as referred to in Regulation 117 of the UCITS Regulations be sent?

A. The notification letter and attachments should be submitted by email to the Central Bank to: [UCITSoutwardmarketing@centralbank.ie](mailto:UCITSoutwardmarketing@centralbank.ie).

## ***Prospectus disclosures***

### **ID 1040**

Q. Regulation 15(4)(b)(iii) of the Central Bank UCITS Regulations requires details of the exposure to the underlying asset of an FDI be provided in the prospectus of a UCITS. Should this disclosure be general or specific in nature?

A. As such exposures can change overtime, it may not be appropriate to include a specific disclosure in the prospectus. As an alternative, the prospectus could refer to the type of exposure that might arise but should be as specific as the proposed investment approach permits.

### **ID 1041**

Q. If the management/investment management fee disclosed in the prospectus is less than the maximum permitted in the constitutional document Regulation 27(3)(b) provides that prior unit holder approval is required for any proposed increase, unless the prospectus also provides that a greater fee than the fee disclosed may be charged. Must the maximum higher fee permitted be disclosed?

A. Yes.

### **ID 1042**

Q. Regulation 38 of the Central Bank UCITS Regulations permits the application of an anti-dilution levy. Where the constitutional document includes the provisions set out in that Regulation does the exact wording have to be included?

A. Wording in the constitutional document which achieves the same effect as Regulation 38 of the Central Bank UCITS Regulations is acceptable.

### **ID 1043**

Q. Regulation 53(2)(b) of the Central Bank UCITS Regulations requires prospectus disclosure of long and short positions. Should this disclosure be general or specific in nature?

A. The prospectus can disclose the anticipated range for long and short positions. The responsible person can determine whether such disclosure should be made on a net or

gross basis. However, the prospectus must clearly disclose the basis upon which the long/short disclosure is being expressed.

**ID 1044**

*Q. Can rebate arrangements be disclosed in the prospectus?*

A. The Central Bank will not object to disclosure of rebate arrangements as disclosure ensures that all unit holders are informed of this possibility.

***Directed brokerage***

**ID 1045**

*Q. Directed brokerage services are defined in Regulation 2 of the Central Bank UCITS Regulations as:*

*“brokerage services in relation to a UCITS pursuant to which a commission or similar payment is paid to or secured by the entity which issues instructions”.*

*What do these services involve?*

A. These services may involve the negotiation of recaptured commissions and monitoring of brokers to ensure that the selected brokers provide the highest standards for execution, value added services and investment research on behalf of their clients.

***UCITS Management Companies***

**ID 1046**

*Q: The feedback statement to CP86 Consultation on Fund Management Company Effectiveness – Delegate Oversight provides that the Central Bank will amend its authorisation processes for fund management companies to require inter alia that the rationale for the board composition be included in the business plan/programme of operations. Are existing UCITS management companies required to insert a board composition rationale into their business plans?*

A: Only new UCITS management companies are subject to the authorisation process which requires the rationale for the board composition to be documented in the business plan. However, the Central Bank is of the view that it is good practice for the director performing the Organisational Effectiveness role for each UCITS management company (new or existing) to document the rationale for the board composition as part of developing this role and to include this in the business plan when it is next updated.

**ID 1063**

*Q. I am carrying out the Organisational Effectiveness role for a UCITS management company. The Central Bank’s guidance on Organisational Effectiveness states that I should keep the effectiveness of the organisational arrangements of the company under ongoing review and organise periodic board effectiveness evaluations. How often should I conduct an organisational effectiveness review?*

A. Except in rare cases where unique and unusual circumstances apply, an organisational effectiveness review should, at a minimum, be conducted on an annual basis.

## ***Central Bank (UCITS) Regulations***

### **ID 1049**

*Q. Should Regulation 9(12) of the Central Bank UCITS Regulations provide that sub-categories of the same commodity are highly correlated if 25 per cent of correlation observations are above 0.8?*

A. Yes. Regulation 9(12) of the Central Bank UCITS Regulations, contains a typographical error. The reference to 75 per cent is incorrect and instead Regulation 9(12) should state “sub-categories of the same commodity are highly correlated if 25 per cent of the correlation observations are above 0.8”. The Central Bank UCITS Regulations will be corrected at the first available opportunity.

### **ID 1050**

*Q. Regulation 9(4) of the Central Bank UCITS Regulations provides that a ‘responsible person shall not invest assets of the UCITS in a financial index where a single component’s impact on the overall return of that index exceeds the diversification requirements set out in Regulation 71 of the UCITS Regulations’. The Central Bank had, in Guidance Note 2/07, stated that a UCITS proposing to use a financial index comprised of eligible assets with concentrated levels in excess of that permitted by the Regulations, may, applying a look through approach, consolidate the constituents of the index with the assets held directly by the UCITS to ensure it meets the risk-spreading requirements of the Regulations. Is the Central Bank continuing to adopt this position in light of Regulation 9(4)?*

A. Regulation 9(4) follows the ESMA guidelines on ETF and other UCITS issues where each financial index must meet the relevant criteria and no look through can be applied. Accordingly, it is not possible to treat such investments as a look through of a financial index. However, this is without prejudice to Article 9(2) of the Eligible Assets Directive (Commission Directive 2007/16/EC) which allows investments in financial derivatives whose underlyings are eligible assets with concentration levels in excess of that permitted by the UCITS Regulations to be regarded as financial derivatives on a combination of assets.

### **ID 1058**

*Q: Regulation 78(2) of the Central Bank UCITS Regulations provides:*

*“(2) The responsible person shall ensure that:*  
*(a) the first annual or half-yearly report be prepared within 9 months of the launch UCITS and shall be published and submitted to the Bank within 2 months if half-yearly or 4 months for annual; and*



*(b) the first annual report shall be submitted to the Bank within 18 months of the incorporation or establishment of that UCITS and shall be published within 4 months.*

*Are the dates in Regulation 78(2)(b) correct?*

A: There is an error in Regulation 78(2)(b) which should provide as follows:

*“(b) the first annual audited report be prepared within 18 months of the incorporation or establishment of the UCITS and shall be published and submitted to the Bank within 4 months”*

### **ID1059**

*Q. Regulation 105 of the Central Bank UCITS Regulations sets out provisions in regard to internally managed investment companies. Regulation 105(d) states that they must comply with Regulation 100 (1)-(6) is this a correct reference?*

A. Regulation 105 (d) contains an omission. Internally managed investment companies must also comply with Regulation 100 (7). The Central Bank UCITS Regulations will be corrected at the first available opportunity.

## ***Central Bank (UCITS) Regulations – Transitional arrangements***

### **ID 1047**

*Q. Where a responsible person has received a waiver from the UCITS Notices, can it submit an application to receive a similar waiver from the Central Bank UCITS Regulations?*

A. Yes, an application can be made. These should be received by the Central Bank before 1 November 2015. It is essential to submit applications promptly as, from 1 November, any existing waivers will automatically cease to apply and cannot be relied on thereafter. However, where an application to continue an existing waiver is received before 1 November, the Central Bank will communicate with you concerning your proposed waiver and will make bilateral arrangements with you with regard to the continuation of the waiver during the period that the application is being assessed.

Other than in the circumstances described in ID 1030, new waivers cannot be granted automatically and the merits of each proposed waiver will be reassessed by the Central Bank on a case-by-case basis. Accordingly, the application must refer to and summarise in detail the previous correspondence where the original waiver was granted and present a justification for why a waiver should be given. The provision of the CBI UCITS Regulations from which a waiver is sought should also be referenced.

### **ID 1048**

*Q. When should revisions to a UCITS prospectus be made?*

A. Technical amendments, for example to replace references to the UCITS Notices with references to the Central Bank UCITS Regulations, should also take place when the prospectus is next updated. Where text needs to be updated to reflect the text of the

CBI UCITS Regulations or where the CBI UCITS Regulations have refined rules contained in the UCITS Notices (e.g. connected party transactions), that can be treated as a technical update which can be incorporated when the prospectus is next updated.

Regulation 124(1) of the CBI UCITS Regulations grants a transitional period for prospectus amendments to include disclosures where a responsible person proposes, on behalf of a UCITS, to take short positions. These amendments must be made when the prospectus is next updated.

Where a UCITS is planning to take advantage of a new flexibility introduced by the CBI UCITS Regulations and where the previous position is set out in the UCITS prospectus (e.g. collateral diversification), the prospectus must be updated before the responsible person, on behalf of a UCITS, starts to take advantage of the new flexibility.

### **ID 1051**

*Q. When will a UCITS management company or a UCITS depositary which falls within Regulation 35(2)(c) of the UCITS Regulations have to produce the second set of half-yearly accounts required under Regulation 95(3)(a)(ii) and Regulation 113(3)(a)(ii) of the Central Bank UCITS Regulations, respectively?*

A. In accordance with Regulation 124(2) of the Central Bank UCITS Regulations, the requirement to produce this second set of half-yearly accounts commences when the next financial year for a UCITS management company or a UCITS depositary begins. For example, where a UCITS management company has a financial year end of 31 December, the requirement to produce a second set of half-yearly accounts will apply for the financial year commencing 1 January 2016.

### **ID 1052**

*Q. Regulation 124(3) of the Central Bank UCITS Regulations provides that a management company shall comply with Regulation 97(1)(c) by 30 June 2016. Is this a correct reference?*

A. Regulation 124(3) contains a typographical error. The correct reference is Regulation 97(1)(a). The Central Bank UCITS Regulations will be corrected at the first available opportunity.

### **ID 1053**

*Q. What transitional arrangements apply in relation to the managerial functions listed in Schedule 10 of the Central Bank UCITS Regulations?*

A. In accordance with Regulation 124(3) of the Central Bank UCITS Regulations, UCITS management companies authorised before 1 November 2015 must provide for the managerial functions listed in Schedule 10 by 30 June 2016. New UCITS management companies authorised after 1 November 2015 must have these managerial functions in place upon authorisation.

**ID 1054**

Q. Does the Central Bank require promoters of existing UCITS to maintain a minimum capital of €635,000?

A. The promoter approval regime has been discontinued with effect from 1 October 2015. The Central Bank no longer requires promoters of UCITS authorised before that date to maintain minimum capital of €635,000. The Central Bank does not require notification where the capital of a promoter of an existing UCITS reduces below this level.

**ID 1055**

Q. Regulation 36(1) of the Central Bank UCITS Regulations requires a responsible person to value assets in accordance with Schedule 5 of the Central Bank UCITS Regulations unless an alternative method of valuation has been agreed in advance with the Central Bank. Where an alternative method of valuation is provided for in the prospectus of a UCITS authorised before 1 November 2015 and where that prospectus has been noted by the Central Bank, can it be understood that such alternative method of valuation has been agreed in advance with the Central Bank?

A. Yes.

**ID 1056**

Q. The UCITS Notices set out conditions that the Central Bank imposed on fund administrators but the Central Bank UCITS Regulations do not set out similar rules. What rules is the Central Bank imposing on fund administrators acting for UCITS?

A. The Central Bank imposes conditions on fund administrators under section 14 of the Investment Intermediaries Act 1995. These conditions are set out in chapter 5 of the AIF Rulebook and apply regardless of whether the fund administrator is acting in relation to UCITS or AIFs. These conditions are being incorporated into the draft Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Investment Firms Prudential and Supervisory Requirements Regulations 2015 which are currently subject to public consultation. When those regulations have been finalised, the fund administrator's chapter will be removed from the AIF Rulebook. In the interim, fund administrators should continue to comply with the conditions imposed under section 14 of the Investment Intermediaries Act 1995.

***Umbrella UCITS*****ID 1057**

Q. Can subscription and redemption monies of individual sub-funds, as fund assets, be held within a single account in the name of the umbrella UCITS?

A. There is no regulatory obstacle to holding subscription and redemption monies for a single umbrella UCITS in this way. As this has not been prior practice in the context of Irish authorised investment funds, the Central Bank has published guidance entitled 'Umbrella funds – cash accounts holding subscription, redemption and dividend monies'.

**ID 1060**

Q. The Central Bank's Guidance on 'Umbrella funds – cash accounts holding subscription, redemption and dividend monies' sets out 'that at all times the amounts within the umbrella cash account can be attributed to the individual sub-funds in order to comply with constitutional documents'.

Are there circumstances where this may not be possible?

A. Yes. In accordance with paragraph 1(iii) under the heading “Treatment of subscription, redemption and dividend monies in umbrella cash accounts” in the Central Bank’s guidance on ‘Umbrella funds – cash accounts holding subscription, redemption and dividend monies’ it may not be possible to attribute monies in the umbrella cash account for a period of time where subscription money is received with insufficient documentation to identify the owner. This could occur where –

- i. A subscription application has been received and subscription monies have been received into the umbrella cash account but the subscription monies cannot be matched to the subscription application, for example due to insufficient information provided; or
- ii. Subscription monies have been received but the subscription application has not been received.

While noting that these circumstances could occur, the reconciliation and attribution of the monies to a sub-fund should be effected without delay. Regulation 12 of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) Investor Money Regulations 2015 for Fund Service Providers requires that unidentified monies are either attributed or returned within 5 working days of initial receipt of such monies. A similar approach could reasonably be applied to unattributed monies in umbrella cash accounts and this is provided for in paragraph 3 under the heading “Treatment of subscription, redemption and dividend monies in umbrella cash accounts” in the Central Bank’s guidance on ‘Umbrella funds – cash accounts holding subscription, redemption and dividend monies’.

A responsible person should consider the appropriateness of using an umbrella cash account where such instances are occurring on more than an exceptional basis.

**ID 1061**

Q. Can the umbrella cash account be used to pay monies to parties other than investors and sub-funds; e.g. service providers or the Revenue Commissioners?

A. No. Payments from an umbrella cash account should only be made to investors or to sub-funds. If an umbrella fund wishes to operate an account at umbrella level through which payments to other parties will flow, that account should be kept separate from the umbrella cash account holding subscription, redemption and dividend monies and every amount should be attributable to a specific sub-fund.

**ID 1067**

Q. Does the Central Bank's guidance on 'Umbrella funds – cash accounts holding subscription, redemption and dividend monies' apply to a segregated account established by an umbrella fund in respect of a sub-fund?

A. No. As stated in the Central Bank's guidance on 'Umbrella funds – cash accounts holding subscription, redemption and dividend monies', an umbrella cash account is an account at the level of the umbrella fund. If a cash account is established as a segregated account in respect of a particular sub-fund of the umbrella fund, the Central Bank's guidance 'Umbrella funds – cash accounts holding subscription, redemption and dividend monies', does not apply.

**ID 1068**

Q. Is it possible for an umbrella fund to establish more than one umbrella cash account?

A. The Central Bank has no objection to the establishment of multiple cash accounts by or on behalf of an umbrella fund provided each such umbrella cash account complies with the Central Bank's guidance 'Umbrella funds – cash accounts holding subscription, redemption and dividend monies'.

**ID 1069**

Q. May an umbrella cash account be operated for one or more umbrella funds (i.e. so that a number of sub-funds from different umbrella funds utilise the same umbrella cash account)?

A. No. It is only permissible to open an umbrella cash account for a single umbrella fund and only the sub-funds of a single umbrella fund may utilise that account. It is possible to open more than one umbrella cash account for a single umbrella fund.

***Securities Financing Transactions Regulation ('SFTR')*****ID 1062**

Q. Article 33(2)(c) of Regulation (EU) 2015/2365 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 ('SFTR') provides a transitional arrangement for collective investment undertakings subject to UCITS that are constituted before 12 January 2016. Should sub-funds established after 12 January 2016 avail of this transitional arrangement?

A. The Central Bank strongly recommends that any new sub-fund include in its prospectus documentation the SFTR required disclosure on the use of SFTs and total return swaps. SFTs and total return swaps are used at sub-fund level rather than umbrella level. Accordingly, the SFTR disclosures are required at sub-fund level. Further, the term 'collective investment undertaking' is used in the context of sub-funds throughout the SFTR. For example, recital 16 refers to a "collective investment undertaking's investment strategy" and recital 20 refers to "a collective investment undertaking's investment policy" and investment policies apply at sub-fund rather than umbrella level. Accordingly, new sub-funds should make the disclosures required by the SFTR.

Should the European Commission suggest a different approach, this position will be revisited by the Central Bank and, if necessary, revised to align it with that approach.

### ***Share Class Hedging***

#### **ID 1064**

Q. The Central Bank's guidance - UCITS and AIF Share Class Hedging - provides inter alia that over-hedged positions should be included in calculations of global exposure. Should over-hedged positions be included when leverage is calculated: as the sum of the notionals (where a UCITS uses a VaR approach to calculate global exposure); in calculations of counterparty risk; and, in calculations of concentration exposures?

A. Yes, over-hedged positions should be included in these calculations.

### ***Companies Act 2014***

#### **ID 1065**

Q. Does the Central Bank require UCITS management companies, alternative investment fund managers, AIF management companies, fund administrators, depositaries and investment firms which are companies to convert to Designated Activity Companies ('DACs') under the Companies Act 2014?

A. Section 18(2) of the Companies Act 2014 prohibits private companies limited by shares from carrying on the activity of a credit institution or insurance undertaking. Accordingly, existing credit institutions and insurance undertakings must re-register with the Companies Registration Office as a DAC unless they are public limited companies. The Companies Act 2014 does not require other regulated financial service providers which are companies to convert to DACs. Likewise, the Central Bank will not require the entities mentioned above to convert to DACs as it is of the view that corporate structuring is a matter for each entity. Notwithstanding the corporate structure chosen, regulated financial service providers must comply with all regulatory requirements applicable to them.

#### **ID 1066**

Q. Does the Central Bank require UCITS management companies, alternative investment fund managers, AIF management companies, fund administrators, depositaries and investment firms which are taking action to re-register as a company type recognised under the Companies Act 2014 to submit amendments to their constitution?

A. No. However where companies re-register as DACs a copy of the new certificate of incorporation should be submitted.

## *Accounts*

### **ID 1070**

*Q. I am a UCITS management company / depositary. In accordance with Regulation 95(3) / Regulation 113(3) of the Central Bank UCITS Regulations, I am required to prepare and submit a second set of half yearly accounts. Should those accounts include notes similar to the format of the first half yearly accounts?*

A. The format of second half yearly accounts should follow that of the first half yearly accounts.

### **ID 1071**

*Q. Is a minimum capital requirement report required for the second half yearly accounts?*

A. No. Regulation 95 (in the case of a UCITS management company) and Regulation 113 (in the case of a depositary) of the Central Bank UCITS Regulations provide that a minimum capital requirement report must accompany the annual and first set of half yearly accounts only.

### **ID 1072**

*Q. Is the second set of half yearly accounts required to be filed within 2 months of the period end or can this be filed with the annual accounts within the 4 month period?*

A. As provided for in Regulations 95 and 113 of the Central Bank UCITS Regulations, half yearly accounts must be submitted within two months of the period end.

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