Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

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 2019

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 require that the constitutional document of the non-UCITS fund in which it is intended to invest includes a prohibition on investing more than 10% of its assets in other investment funds.

A non-UCITS investment fund must also be subject to requirements in its jurisdiction of domicile which are equivalent to UCITS investor protections in order to comply with Regulation 68(1)(e). Alternatively, the non-UCITS fund must have requirements of the same effect in its constitutional document or offering document. A statement of the intended investment approach does not constitute a rule for this purpose.

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

[*Deleted - 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

[*Deleted - 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 or a UCITS ETF share class of a UCITS, 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 85(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 85(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 or has a share class which is a UCITS ETF share class 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". However, where a UCITS wishes to establish a UCITS ETF share class, in

accordance with Central Bank QA ID 1088 the identifier "UCITS ETF" should be used in the name of the share class.

ID 1017

Q. *Regulation 87(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.

ID 1088

Q. *Is it possible to establish a UCITS which has a listed share class (UCITS ETF share class) and an unlisted share class? What are my disclosure obligations?*

A. Where a UCITS has both listed and unlisted share classes, the Central Bank will permit the use of the "UCITS ETF" identifier at the level of the sub-fund or listed share class.

Where a UCITS has both UCITS ETF share classes and unlisted share classes, both must be clearly identified so that investors can easily distinguish between the listed and unlisted share classes. The Responsible Person for a UCITS ETF must ensure the prospectus discloses the implications for investors depending on whether they are invested in the ETF share class or the unlisted share class.

The Responsible Person should

i. ensure the prospectus clearly sets out, in tabular format, the differences between investing in a listed share class and in an unlisted share class. At a minimum the following should be addressed:

   A. Ability to deal in shares of each class on a dealing day. For example,

      i. investors in an unlisted share class can purchase shares directly from the UCITS. Investors in a UCITS ETF share class can purchase shares on a stock exchange from a market participant, there is no interaction with the UCITS;

      ii. frequency of dealing: investors in an unlisted share class can purchase and sell shares once a day. Investors in a UCITS ETF share class can purchase and sell shares multiple times during the day.

      iii. settlement timeframe for dealing (outline any differences for receipt of ownership or confirmation of interest in shares in the UCITS);

   B. Dealing mechanism. Investors in a UCITS ETF share class must deal through their broker in order to purchase and sell shares;

C. Cost of dealing. For example, fees and costs associated with purchasing the UCITS ETF share class and unlisted share classes should be clearly disclosed;

D. Minimum dealing amounts. For example for investors in an unlisted share class there may be minimum dealing amounts. For investors in a UCITS ETF share class there may be no minimum dealing amounts.

E. Shareholder rights. For example, investors in an unlisted share class are direct shareholders in the UCITS. Investors in a UCITS ETF share class will not be direct shareholders in the UCITS.

ii. ensure the prospectus addresses (at least) risk factors relating to the liquidity profile of unlisted share classes and the difference in price of UCITS ETF share classes and unlisted share classes.

Consideration should be given to the appropriateness of including the foregoing disclosure in the same location as the disclosure required by Regulation 87(1) of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2019.

The establishment of share classes that are subject to this QA do not fall within the revised review processes in relation to share classes that were notified to Industry on 8 October 2018. Such applications must be submitted for review in the normal manner.

This QA may be updated as disclosure requirements evolve.

KIID filings and implementation of ESMA's Performance Fee Guidelines

ID 1104

Q. *I am a UCITS with a financial year end of 31 December 2021 and will comply with the Central Bank's Guidance on implementation of ESMA's Performance Fee Guidelines with effect from that date. As a UCITS I am obliged to ensure a Key Investor Information Document (KIID) is provided to investors free of charge, in good time before the subscription in order to help them to reach informed investment decisions. I must also ensure the KIID is kept up-to-date and must file a KIID with the Central Bank as part of the annual KIID update by 22 February 2022 in compliance with Article 23 of Commission Regulation 583/2010. In respect of updates arising from the implementation of ESMA's Performance Fee Guidelines should I file with the Central Bank (i) an updated KIID to reflect changes made to accord with those e Guidelines and (ii) a KIID in compliance with Article 23 of Commission Regulation 583/2010 (Article 23) by 22 February 2022?*

A. With effect from the date of this QA (29 October 2021), a UCITS with a financial year end of 31 December 2021 which is implementing changes to its performance fee methodology to accord with ESMA's Performance Fee Guidelines may elect to make either:

I. two KIID filings, one to reflect changes to the UCITS arising from implementation of ESMA's Performance Fee Guidelines and one to meet KIID filing obligations arising under Article 23; or

II. a single filing to meet KIID filing obligations arising under Article 23 by 22 February 2022.

A UCITS electing for (ii), must nevertheless ensure that prospective investors are provided with sufficient information in relation to changes to the UCITS arising from implementation of ESMA's Performance Fee Guidelines in order to help them to reach an informed investment decision.

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 and Shenzhen–Hong Kong Stock Connect ('Stock Connect infrastructure')?*

A: Before an Irish authorised UCITS acquires Chinese shares through the 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 Stock Connect infrastructure is a joint collaboration between Hong Kong Stock Exchanges and Clearing Limited and the Shanghai and Shenzhen Stock Exchanges. The Stock Connect infrastructure involves two central securities depositaries - 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 depositary 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 depositary cannot be met without at least being a participant in HKSCC. It is also clear that in cases where the transaction is not being settled on a real-time delivery versus payment basis and the broker is not an entity within the depositary's custodial network, this 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.

ID 1089

Q. *What are the regulatory considerations around Irish authorised UCITS seeking to acquire Chinese bonds through Bond Connect?*

A. Before an Irish authorised UCITS acquires Chinese bonds through the Bond Connect infrastructure, its depositary must ensure that the manner in which the bonds are held allows the depositary to meet its legal obligation under the UCITS Regulations and any conditions imposed by the Central Bank.

If an Irish authorised UCITS proposes to acquire Chinese bonds through Bond Connect, the depository of the UCITS, or an entity within its custodial network (i.e. a sub-custodian), must ensure it retains control over the bonds at all times.

It is incumbent on the depositary to review and keep under review the Bond Connect infrastructure arrangements to ensure that its legal obligations can continue to be met.

Guaranteed UCITS

ID 1018

Q. *Regulation 93 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), 48(2)(a) and 53(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.

ID 1090

Q. *Where a UCITS will have performance fees as permitted by Regulation 40 of the Central Bank UCITS Regulations, is it required to charge such fees on an individual investor basis?*

A. No. It is acceptable to charge performance fees at (i) an individual investor level or (ii) at a share class / fund level, as adjusted for subscriptions and redemptions.

ID 1091

Q. *Can a UCITS crystallise and pay a performance fee upon the redemption of its shares/units by an investor?*

A. Yes. 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 Regulation 40(4) of the Central Bank UCITS Regulations.

ID 1105

Q. *Where an existing UCITS has multiple managers or advisers ("multi-manager UCITS"), can a responsible person continue to pay a performance fee only on the performance of that part of the portfolio for which the investment manager or adviser is responsible and in respect of which there has been outperformance?*

A. The Central Bank intends to implement Section XI, Question 5 of the ESMA Q&A on the UCITS Directive and will update the Central Bank UCITS Regulation (S.I. No. 230 of 2019) in due course. The Application Forms will be updated shortly in this regard. As such, the Central Bank requires existing multi-manager UCITS to have transitioned their current performance fee models into compliance with the ESMA Q&A by 1 January 2023 and will have updated their prospectuses accordingly by that time.

ID 1106

Q. *I am responsible person and wish to establish a new multi-manager UCITS and wish to implement a performance fee model. Must I comply with the performance fee requirements of Section XI, Question 5 of the ESMA Q&A on the UCITS Directive from the date of establishment?*

A. Yes. From the date of this Q&A, the Central Bank will not authorise new multi-manager UCITS that have a performance fee structure which does not comply with the aforementioned ESMA Q&A.

Notification of legal proceedings

ID 1027

Q. *Regulation 107(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.

Depositary obligations

ID 1028

Q. *Where a UCITS proposes to invest in another investment fund does a depositary have to confirm to the Central Bank that Regulation 118(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 depositary may provide written confirmation to the Central Bank that the procedures required by Regulation 118(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 will permit

i. a UCITS ETFs to have different dealing cut-off times for cash and in specie dealings;

ii. a UCITS ETF with hedged and unhedged share classes to have different dealing cut-off times where the UCITS ETF implements currency hedging at class level.

In each case, the Responsible Person must make an application to the Central Bank seeking a waiver from Regulation 26(2) of the Central Bank UCITS Regulations in relation to share classes for which different dealing cut-off times are requested. The application must detail the rationale for seeking the waiver.

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 43 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 42 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 43?

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 43(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 82(3)(a) and 83(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.

ID 1094

Q. *Can a UCITS invest in Contracts for Difference (CFDs), Collateralized Loan Obligations (CLOs), Contingent Convertible Securities (CoCos) or Binary options?*

A. The UCITS regime is a product framework intended to be suitable for retail investors. The framework contains various requirements designed to support investor protection, including rules around eligible assets, diversification, liquidity, valuation, risk management, compliance and oversight, and safekeeping of assets. It is a matter for the UCITS to ensure compliance with these requirements.

In particular, when formulating the investment objective and strategy of a UCITS, it should be noted that:

- Regulation 69 of the UCITS Regulations requires that "*A management company or an investment company shall employ a risk-management process which enables it to monitor and measure at any time the risk of the UCITS' positions and their contribution to the overall risk profile of the portfolio of assets of the UCITS.*" Such a risk-management process must take account of Schedule 9 of the UCITS Regulations, including that:
  - *Management companies shall employ an appropriate liquidity risk management process in order to ensure that each UCITS they manage is able to comply at any time with Regulation 104(1).* Regulation 104(1) requires that *"… a UCITS shall redeem or repurchase units at the request of the unit-holder.";*

- *The risk management policy shall comprise such procedures as are necessary to enable the management company to assess for each UCITS it manages the exposure of the UCITS to market, liquidity and counterparty risks, and the exposure of the UCITS to all other risks, including operational risks, which may be material for each UCITS it managers*;
- *Management companies shall conduct stress tests which enable assessment of the liquidity risk of the UCITS under exceptional circumstances*; and
- *Management companies shall conduct, where appropriate, periodic stress tests and scenario analyses to address risks arising from potential changes in market conditions that might adversely impact the UCITS.*

In addition, as set out in Schedule 5 of the UCITS Regulations "*Management companies when implementing their risk management policy, and where it is appropriate after taking into account the nature of a foreseen investment, shall formulate forecasts and perform analyses concerning the investment's contribution to the UCITS portfolio composition, liquidity and risk and reward profile before carrying out the investment. The analyses shall only be carried out on the basis of reliable and up-to-date information, both in quantitative and qualitative terms.*"

During the authorisation process for UCITS, in addition to the required application forms, relevant fund documentation and relevant draft letters, the Central Bank may request such additional information as may be required in the course of reviewing a specific application. For example, where a UCITS proposes to invest in CFDs, CLOs, CoCos or Binary Options, that UCITS may be subject to enhanced scrutiny at the authorisation phase with a view to ensuring that the proposal is appropriate taking into account the overall portfolio of assets proposed. Such enhanced scrutiny may include review of (i) model portfolio information, (ii) the due diligence carried out in respect of the proposed underlying portfolio and (iii) evidence to support the view that the proposed investment portfolio is suitable taking into account the above-mentioned requirements. Such information should be sufficiently detailed to enable the Central Bank to make an informed judgement with respect to the particular application involved.

ID 1100

Q. *Can a UCITS invest either directly or indirectly in Digital Assets?*

A. Digital Assets are generally considered to be private assets that depend primarily on cryptography and distributed ledger or similar technology. However, the nature and characteristics of digital assets vary considerably. For example, digital assets that are tokenised traditional assets (whose value is linked to an underlying traditional asset or a pool of traditional assets (such as financial instruments or commodities) may have a different risk profile when compared to other digital assets that are based on an intangible or non-traditional underlying. For the purposes of this Q&A "digital asset" is used to refer to the latter type of asset.

The Central Bank must be satisfied that assets in which a UCITS invests are capable of meeting the eligible asset criteria for UCITS and that indirect exposure to the assets is capable of being appropriately risk managed. As of the date of publication of this Q&A, the Central Bank has not seen information which would satisfy it that digital assets are capable of meeting the eligible asset criteria for UCITS or that indirect exposure to digital assets is capable of being appropriately risk managed. Though digital assets do not all have uniform characteristics, the Central Bank has noted that they can present significant risks, including liquidity risk; credit risk; market risk; operational risk (including fraud and cyber risks); money laundering / terrorist financing risk; and legal and reputation risks.

Taking into account the specific risks attached to digital assets and the potential that retail investors will not be able to appropriately assess the risks of making an investment in a fund which gives such exposures, the Central Bank is highly unlikely to approve a UCITS proposing any exposure (either direct or indirect) to digital assets.

The Central Bank's approach in relation to digital assets will be kept under review, continue to be informed by European regulatory discussions on the topic and may change should new information or developments emerge in the future.

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

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) of the Central Bank UCITS Regulations 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 56(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.

ID 1086

Q. *I am a UCITS which makes use of a benchmark as referred to in Article 3(1)(7)(e) of the Benchmark Regulation. Article 29(2) of the Benchmark Regulation indicates that the prospectus shall include clear and prominent information stating whether the benchmark is provided by an administrator included in the register referred to Article 36 of the Regulation. Do I need to include the name of the administrator in this disclosure?*

A. No. The disclosure in the UCITS prospectus does not require the name of the benchmark administrator to be identified.

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.

ID 1074

Q. *I am a UCITS management company and I want to amend my business plan. Do I need to submit a draft business plan to the Central Bank so that it can review and approve those changes in advance?*

A. The business plan must be kept up to date but there is no need to submit changes to the business plan to the Central Bank for review or approval. The business plan must be provided on request to the Central Bank.

Where you propose to engage in any significant new activities, you must consult with the Central Bank in advance in accordance with Regulation 107 of the Central Bank UCITS Regulations.

ID 1101

Q. *I am a UCITS management company operating or planning to operate in the manner of a third party management company[1]. What should I consider and what actions should I take when taking on new business?*

A. Fund management companies need to have sufficient resources to enable them to carry out their functions to the required standard, taking into account the nature, scale and complexity of their business. This is of particular relevance to third party management companies where the on-

[1] As set out in the ESMA Brexit opinion (ESMA34-45-344), reference to third party fund management companies / white-label fund management companies, generally refers to "*fund managers that provide a platform to business partners by setting up funds at the initiative of the latter and typically delegating investment management functions to those initiators/business partners or appointing them as investment advisers.*"

boarding of new business may change the nature of, or increase the number of delegate relationships, and therefore amplify the complexity of operations.

Where new business results in a material increase in the nature, scale or complexity of a firm's business, whether through a standalone transaction or on a cumulative basis, the Central Bank deems this to be a material change to the firm's operating model which requires consultation with the Central Bank in accordance with Regulation 107 of the Central Bank UCITS Regulations. This includes, but is not limited to, material increases in the number of funds under management and/or the number of delegates, and on-boarding of self-managed investment companies who are changing their status to be externally managed. In these circumstances, management companies are required to engage proactively with Central Bank supervisors and to ensure that they are appropriately resourced to service the additional business. The management company is required to submit revised financial and business growth (AUM, number of funds/sub funds, number of delegates) projections covering a period of two years as well as detailed assumptions on which the projections are based, an up to date capital plan and current business plan with increased resourcing projections for review.

Central Bank (UCITS) Regulations

ID 1049

[Deleted – no longer relevant]

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

[Deleted – no longer relevant]

ID1059

[Deleted – no longer relevant]

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 Central Bank UCITS Regulations or where the Central Bank 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 129(1) of the Central Bank 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 Central Bank 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

[Deleted – no longer relevant]

ID 1052

[Deleted – no longer relevant]

ID 1053

Q: *I am a UCITS management company or UCITS self-managed investment company. What transitional arrangements (if any) apply in relation to (i) the managerial functions listed in Schedule 10 of the Central Bank UCITS Regulations; (ii) new requirements in relation to an effective supervision requirement and the retrievability of records; and (iii) adherence to the fund management company guidance chapters 1-6?*

A: Please refer to the following table:

Provision	**Transition date**		
	Authorised before 1 November 2015	**Authorised between 1 November 2015 and 30 June 2017 (inclusive)**	**Authorised after 30 June 2017**
Managerial Functions listed in Schedule 10 of the Central Bank UCITS Regulations	1 July 2018	Applicable from date of authorisation	Applicable from date of authorisation
Performance of Organisational Effectiveness role: **Regulation 104(9) of the Central Bank UCITS Regulations** –	1 July 2018	Applicable from date of authorisation	Applicable from date of authorisation
Effective supervision requirement - Regulation 104 (4) - (6) of the Central Bank UCITS Regulations	1 July 2018	1 July 2018	The Central Bank will only authorise fund management companies that are organised in a way that complies with these provisions.
Retrievability of records - Regulation 128(3) of the Central	1 July 2018	1 July 2018	

Bank UCITS Regulations			
Guidance: Part I **Delegate Oversight**	4 November 2015[2]	Applicable from date of authorisation	Applicable from date of authorisation
Guidance: Part II **Organisational Effectiveness**	Applicable from the date that a fund management company has appointed a person to the Organisational Effectiveness role.		
Guidance: Part III **Director' Time Commitments**	4 November 2015	Applicable from date of authorisation.	Applicable from date of authorisation.
Guidance: Part IV **Managerial Functions**	1 July 2018	1 July 2018	Applicable from date of authorisation.
Guidance: Part V **Operational Issues**	**Retrievability of records**: 1 July 2018 **Dedicated email address**: 30 June 2017.	**Retrievability of records**: 1 July 2018 **Dedicated email address:** 30 June 2017.	**Retrievability of records**: Applicable from date of authorisation. **Dedicated email address:** Applicable from date of authorisation.
Guidance: Part VI **Procedural matters**	This guidance is a reflection of the existing fund management company guidance and is already applicable consequently, no transitional arrangements apply.		

ID 1075

[Deleted – no longer relevant]

ID 1076

Q. *I am a UCITS management company / UCITS self-managed investment company. How should I submit details of my designated email address to the Central Bank?*

A. If you are:

i. a UCITS self-managed investment company: You should submit the details to fundsupervision@centralbank.ie

ii. a UCITS management company that is classified as "low impact" under PRISM: You should submit the details to FSPsupervision@centralbank.ie

iii. a UCITS management company that is classified as "medium-low impact" or "medium-high impact" under PRISM: You should provide the details to your supervisor.

[2] This is the date that the final guidance on Delegate Oversight, Organisational Effectiveness and Directors' Time Commitments was published.

Designated email addresses are expected to be operational by 30 June 2017. The Central Bank may from time to time conduct tests to check how these are being monitored.

ID 1085

Q: *I am an Irish UCITS managed by a non-Irish fund management company. Must I maintain a dedicated email address?*

A: Yes, in order to facilitate effective and efficient communication between the Central Bank and Irish authorised funds, a designated email address should be provided for each Irish UCITS. This email address should be monitored for regulatory correspondence.

Individual email address can be set up for each Irish UCITS or a single email address for all Irish UCITS managed by the non-Irish fund management company. These designated email addresses should be communicated to the Central Bank through the UCITS application form. Should this designated email address change, the UCITS should communicate the new address immediately by filing a Regulatory Report Return on the Online Reporting System with the updated details.

ID 1093

Q. *Regulation 47 of the Central Bank UCITS Regulations requires that each UCITS authorised by the Central Bank establishes and maintains an email address for correspondence with the Central Bank. In the case of umbrella UCITS, does this requirement apply at umbrella or sub-fund level?*

A. Regulation 47 of the Central Bank UCITS Regulations applies at umbrella level.

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. Fund administrators are subject to the requirements in Part 2 to 5 of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Investment Firms) Regulations 2017.

ID 1079

Q. *What valuation provision apply to valuation of OTC derivatives?*

A. Rules in relation to valuation of OTC derivatives (are prescribed in) Regulation 68(1)(g)(iii) if the UCITS Regulation and in Article 11 of EMIR. ESMA has also issued a Q&A which is of relevance to this matter.

ID 1080

Q. *What is the initial capital requirement for a depositary meeting the criteria set out in Regulation 35(2)(c) of the UCITS Regulations?*

A. At least €730,000 (in accordance with Article 28(2) Directive 2013/36/EU) unless the calculation set out in Regulation 35 (4)(b) of the UCITS Regulations results in a higher figure.

ID 1081

Q: *Regulation 104 of the Central Bank UCITS Regulations, refers, in the context of UCITS management company to 'half of its directors'. How should this be determined where the number of directors is uneven?*

A. Where the number of board members is an uneven number the number will be half of one less than the number of board members For example if the number of board members is 5 half of its directors would be 2.

ID 1082

Q: *What is meant by the term 'reverse leverage' in Regulations 60(2) and 76 of the Central Bank UCITS Regulations?*

A: The reference to reverse leverage in both Regulations refers to short exposure.

ID 1083

[Deleted – no longer relevant]

ID 1092

Q. *What limits apply to deposits or cash booked in accounts and held as ancillary liquidity, in accordance with Regulation 7(2) of the Central Bank UCITS Regulations?*

A. Exposure to credit institutions arising from cash held as ancillary liquidity are included in the individual and group limits for deposits provided for by Regulation 70 of the UCITS Regulations. The limits apply irrespective of whether the accounts are held for investment or ancillary liquidity purposes.

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 Classes

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.

ID 1077

Q: *I am a UCITS with one or more share classes, approved by the Central Bank on or prior to 30 January 2017. Such share class(es) do not comply entirely with the principles set out in paragraph 9, Section 3.1 of ESMA's Opinion 'Share classes of UCITS', dated 30 January 2017 and implemented in full by the Central Bank. Am I required to make any amendments to such share classes?*

A: No. You are not required to make any amendments to share classes approved by the Central Bank on or prior to 30 January 2017. However, any such share classes should be closed for investment by new investors on or before 30 July 2017, and for additional investment by existing investors on or before 30 July 2018.

ID 1078

Q. *I am a UCITS with one or more share classes, approved by the Central Bank on or prior to 30 January 2017. The UCITS employs derivatives in order to engage in currency hedging at the level of the share class. Am I required to make any amendments to these share classes?*

A. You must determine if you meet with the provisions of the ESMA Opinion on Share Classes as reflected in the Central Bank's guidance "UCITS and AIF Share Class Hedging". If not and if you intend to continue to offer these share classes to investors you should make any necessary amendments at the earliest opportunity. Any amendments to your documentation arising out of such process should be made at the time of the next update of your prospectus and/or supplement(s), if applicable in the case of sub-fund(s).

ID 1099

Q. *Is it possible to establish a UCITS which has a share class that makes distributions to charity? What are the obligations related to the establishment of such a share class?*

A. Yes, provided a number of requirements are met. The UCITS must ensure that:

- An investor actively elects to subscribe to such a share class (for example, opting into the share class via subscription forms) and should not be automatically invested in such a share class;
- That the distributions should only be paid to a charity which is approved / authorised / registered in the relevant jurisdictions. Details of the charity and evidence of their approval / authorisation / registration status should be provided to the Central Bank when establishing the share class;
- The prospectus / supplement must clearly set out:
    - The implications of such a share class (i.e. that the relevant charity and not the investor which will benefit financially from distributions from the fund);
    - Details of the charity to which the distributions are being made and the circumstances under which such distributions will take place; and
    - That such distributions will not be paid out of the capital of the fund.

- Periodic reporting to investors (for example, in the annual reports) should take place and include:
    - The amounts that have been distributed to charity.

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

[*Deleted - no longer relevant*]

ID 1071

Q. *Is a minimum capital requirement report required for the set of accounts provided for in Regulation 98 (3)(a)(ii) and Regulation 117(3)(a)(ii) of the Central Bank UCITS Regulations?*

A. No. Regulation 98 (in the case of a UCITS management company) and Regulation 117 (in the case of a depositary) of the Central Bank UCITS Regulations provide that a minimum capital requirement report must accompany the annual audited accounts and first set of half yearly accounts only.

ID 1072

[Deleted - no longer relevant]

Auditors

ID 1073

Q: *I am an umbrella ICAV. Are my sub-funds permitted to have separate auditors?*

A: No. The Central Bank does not permit sub-funds within umbrella funds, including ICAVs to have separate auditors.

Governing Law

ID 1084

Q. *I am a UCITS management company passporting into Ireland. I intend to act as management company to Irish authorised UCITS. Will the agreement(s) with the UCITS be required to be subject to Irish governing law?*

A. The law governing the agreement between a UCITS management company and an Irish authorised UCITS is a matter for the parties to that agreement to determine by exercising the duty to act in the best interests of the investors in the UCITS.

PRIIPs Regulation

ID 1087

[Deleted- no longer relevant]

ID 1107

Q. *I am the Responsible Person of a UCITS that is seeking authorisation or approval of a new umbrella or sub-fund from 1 January 2023 that is required to produce a PRIIPs KID. Am I required to file the PRIIPs KID with the Central Bank on authorisation / approval of the UCITS?*

A. Yes. Where a UCITS is required to produce a PRIIPs KID and is applying for authorisation of a new UCITS umbrella or sub-fund from 1 January 2023, the Responsible Person should submit the PRIIPs KID to the Central Bank. The PRIIPs KID must be accompanied by a written declaration from the Responsible Person or legal adviser to the UCITS setting out that (i) the KID complies with the PRIIPs Regulation and (ii) the information in the KID does not conflict with the content of the prospectus.

ID 1108

[Deleted – no longer relevant]

ID 1109

Q. *I am the Responsible Person of a UCITS authorised prior to 1 January 2023 that must now produce a PRIIPs KID. How do I submit the PRIIPs KID to the Central Bank?*

A. From 1 January 2024, UCITS authorised prior to 1 January 2023 that are required to provide a PRIIPs KID should submit the PRIIPs KID to the Central Bank through the Portal in accordance with the guidance on the Central Bank's website.

ID 1110

Q. *I am the Responsible Person of an authorised UCITS that markets separate share classes to only professional investors within a fund or sub-fund. Am I required to file a PRIIPs KID with the Central Bank?*

A. If a UCITS markets share classes within a fund or sub-fund to only professional investors, the UCITS may submit a UCITS KIID to the Central Bank for those share classes.

ID 1111

Q. *I am the Responsible Person of a foreign domiciled UCITS registered to market in Ireland that intends to market to retail investors in Ireland. Am I required to file a PRIIPs KID with the Central Bank?*

A. Yes. The PRIIPs KID should be submitted as part of the passporting notification to the UCITS' home regulator for onward submission to the Central Bank.

Liquidity Stress Testing

ID 1095

Q. *In relation to the ESMA Guidelines on liquidity stress testing in UCITS and AIFs, section 1.4 (the LST Policy), where should the liquidity stress testing policy be documented?*

A. The ESMA Guidelines state that the liquidity stress testing policy should be documented within the UCITS Risk Management Process. However, it is the UCITS management company which is required to have a risk management policy which enables the management company to assess, for each UCITS it manages, the exposure of the UCITS to market, liquidity and counterparty risks, and the exposure of the UCITS to all other risks, including operational risks, which may be material for each UCITS. UCITS management companies are required to conduct, where appropriate, periodic stress tests and scenario analyses to address risks arising from potential changes in market conditions that might adversely impact each UCITS it manages. As such, it may be appropriate for the liquidity stress testing policy to be documented within the risk

management policy of the UCITS management company. Notwithstanding this, as outlined in the ESMA Guidelines, the liquidity stress testing should be adapted appropriately to each fund under management.

ID 1096

Q. *How often should Liquidity Stress Testing be carried out?*

A. The Central Bank considers that liquidity stress testing should generally be performed at least quarterly. The determination of a higher or lower frequency should be based on the fund's characteristics and the reasons for such a determination should be recorded in the liquidity stress testing policy.

ID 1097

Q. *Should a UCITS Management Company conduct liquidity stress testing at the design phase of the fund's lifecycle?*

A. Yes. ESMA's Guidelines on liquidity stress testing in UCITS and AIFs set out that liquidity stress testing should, where appropriate, be employed at all stages in a fund's lifecycle. The use of liquidity stress testing at the design phase of a UCITS' lifecycle should be carried out to adequately understand the potential risks that may impact the UCITS, in various market conditions, throughout its lifecycle.

ID 1098

Q. *The ESMA Guidelines on liquidity stress testing in UCITS and AIFs, Section V.3 "Interaction with National Competent Authorities" states that managers should notify NCAs of material risks and actions taken to address them. How should this notification be made and what should be included in the notification?*

A. Notification to the Central Bank takes the form of a two-stage process.

Initial notification: The Central Bank requires that it be immediately informed via an ONR IF Regulatory Report if a stress test performed reveals a material risk.

Subsequent notification: In addition to this initial notification, where a stress test reveals a material risk, the manager should draw up an extensive report with the results of the stress testing and a proposed action plan. Where necessary, the manager should take action to strengthen the robustness of the UCITS including actions that reinforce the liquidity or the quality of the assets of the UCITS. The manager shall again immediately inform the Central Bank via an ONR IF Regulatory report of the measures taken, to include the extensive report and the action plan.

ESMA Guidelines on marketing communications under the Regulation on cross-border distribution of funds (the 'ESMA Marketing Guidelines')

ID 1102

Q. *Does the use of the shorter disclaimer as per paragraph 8 of the ESMA Marketing Guidelines fulfil the requirements of Regulation 54(3) of the Central Bank UCITS Regulations?*

A. Yes. Regulation 54(3) of the Central Bank UCITS Regulations provides that an advertisement relating to a UCITS shall refer to the key investor information document and the prospectus issued by the relevant UCITS. Similarly paragraph 7 of the ESMA Guidelines provides that marketing communications should include a disclaimer such as the following:

"This is a marketing communication. Please refer to the [prospectus of the [UCITS/ AIF/EuSEF/EuVECA]/Information document of the [AIF/EuSEF/EuVECA] and to the [KIID/KID](delete as applicable)] before making any final investment decisions."

However, paragraph 8 of the ESMA Guidelines provides that when the disclaimer as per paragraph 7 does not fit to the format and length of an on-line marketing communication, it may be replaced by a shorter identification of the marketing purpose of the communication such as the words "Marketing Communication" in the case of a banner or short videos lasting only a few seconds on a website or the word "#MarketingCommunication" for social media platforms.

The Central Bank considers that the use of the shorter disclaimer for marketing communications described in paragraph 8 of the ESMA Marketing Guidelines is permitted for the purposes of Regulation 54(3) of the Central Bank UCITS Regulations provided it is only used in the instances as described in paragraph 8.

ID 1103

Q. *Does the statement set out in paragraph 47 of the ESMA Marketing Guidelines satisfy the requirement of Schedule 6(11) of the Central Bank UCITS Regulations?*

A. Yes. Paragraph 47 of the ESMA Guidelines requires the following statement when information on past performance is presented:

'Past performance does not predict future returns'.

Schedule 6 of the Central Bank UCITS Regulations sets out a similar warning with respect to past performance, however the wording is not identical.

The Central Bank considers that the statement as per the paragraph 47 of the ESMA Marketing Guidelines satisfies the requirements of Schedule 6(11) of the Central Bank UCITS Regulations.

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