



Banc Ceannais na hÉireann
Central Bank of Ireland
Eurosystem

2016

Consultation on amendments to the Central Bank UCITS Regulations

Consultation Paper CP105

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Introduction

1. The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015 (the “CBI UCITS Regulations”) were published in October 2015 and came into effect 1 November 2015. The Central Bank undertook to keep the CBI UCITS Regulations under review and, if necessary, to update them periodically.
2. A number of amendments to the CBI UCITS Regulations have been identified and are set out in this Consultation Paper. These can be categorised as:
 - a. amendments consequential on the implementation of UCITS V;
 - b. technical changes, including corrections of typographical errors, identified following the introduction of the CBI UCITS Regulations.
3. The purpose of the Consultation Paper is to set out details of these amendments and to elicit feedback from stakeholders on the proposals.

Format of this Consultation Paper

4. Section I contains details of the amendments consequential on the implementation of UCITS V and Section II contains details of the technical changes. Schedule A contains draft Amending CBI UCITS Regulations.

Consultation Paper responses

5. The Central Bank invites all stakeholders to provide comments on the proposed changes.
6. Please submit responses electronically by email to fundspolicy@centralbank.ie or in writing, to:

**Amending CBI UCITS Regulations Consultation
Markets Policy Division
Central Bank of Ireland
Block D, Iveagh Court
Harcourt Road
Dublin 2**

Responses should be submitted no later than 25 August 2016.

7. It is the policy of the Central Bank to publish all responses to its consultations. As all responses will be made available on the Central Bank’s website, commercially confidential information should not be included in responses. The Central Bank will acknowledge, by email, all responses sent by email. If you do not receive acknowledgement of an emailed response please contact the Central Bank on 2246000 to correct the situation.

**Markets Policy Division
Central Bank of Ireland
2 June 2016**

Definitions

Amending CBI UCITS Regulations	draft Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2016 (S.I. XX of 2016).
CRD IV	Directive 2013/36 EU and also Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms.
UCITS V	Directive 2014/91/EU of the European Parliament and of the Council amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions.
UCITS V Level 2 Regulation	Commission Delegated Regulation (EU) 2016/438 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to obligations of depositaries.

Section I

Amendments consequential on the implementation of UCITS V

1. The UCITS V Level 2 Regulation introduces requirements in relation to the holding of cash accounts by UCITS for operational purposes. These requirements are now reflected in amendments to Regulation 11.
2. Unlike the position under AIFMD, the UCITS V Level 2 Regulation does not apply safe-keeping obligations in relation to assets held through subsidiary vehicles. This gap is addressed through a new Regulation []. In addition, the requirements which are currently applied by the Central Bank as part of the UCITS authorisation process in respect of the establishing of subsidiaries by UCITS are set out in a new Regulation [].
3. Regulation 114(1), Regulation 114(7)(a), Regulation 114(8), Regulation 115, Regulation 116(2), Regulation 116(3), Regulation 118(2), Regulation 118(3) are deleted. The requirements which had been applied by these Regulations will be superseded by requirements set out in the UCITS V Level 2 Regulation.

Questions

1. **Stakeholders are requested to indicate whether they agree with the changes as currently proposed and to provide observations. In addition, stakeholders are requested to indicate whether further amendments may be required as a result of the implementation of UCITS V.**

Section II

Technical amendments including correction of typographical errors

1. An amendment to Regulation 2(1) and Schedule 9 aligns the definition of “own funds” with the requirements in CRD IV.
2. Proposed amendments to Regulation 23 and 61 correct inconsistencies in the current text with the ESMA Guidelines on ETFs and other UCITS Issues (ref ESMA 2014/937).
3. The proposed amendment to Regulation 36 reflects the fact that valuation of a particular asset type of a UCITS may be mandated by legislative requirements other than those in the CBI UCITS Regulations (e.g. valuation of derivatives in accordance with Regulation (EU) No 648/2012 (EMIR).
4. The proposed amendment to Regulation 53(2)(b) permits a responsible person which proposes, on behalf of a UCITS, to take short positions, to provide for disclosure of long and short positions on the basis of a ratio.
5. The proposed amendment to Regulation 78(1) clarifies timing for submission of UCITS periodic reports.

Questions

2. **Stakeholders are requested to indicate whether they agree with the changes as currently proposed and to provide observations. In addition, stakeholders are requested to indicate whether further amendments may be required as a result of the foregoing proposals.**
3. **The Central Bank is considering whether the requirements in relation to disclosure of open derivative positions in annual and half-yearly reports might be amended, particularly in circumstances where the disclosure can be lengthy and technical in nature. The Central Bank would welcome proposals from stakeholders for an alternative approach for disclosure which is both proportionate and which achieves sufficient, meaningful disclosure.**

SCHEDULE

[DRAFT]

STATUTORY INSTRUMENTS.

S.I. No. of 20[]

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013 (SECTION
48(1)) (UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE
SECURITIES) (AMENDMENT) (NO.2) REGULATIONS 2016

S.I. No. of 20[]

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013 (SECTION 48(1)) (UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES) (AMENDMENT) (NO.2) REGULATIONS 2016

In exercise of the powers conferred on the Central Bank of Ireland (the “Bank”) by section 48 of the Central Bank (Supervision and Enforcement) Act 2013 (No. 26 of 2013) (the “Act”), the Bank, having consulted with the Minister for Finance and the Minister for Enterprise, Jobs and Innovation in accordance with section 49(1) of the Act, hereby makes the following regulations:

Citation and commencement

1. These Regulations may be cited as the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) (Amendment) (No. 2) Regulations 2016.

Interpretation

2. (1) In these Regulations, “Principal Regulations” means the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015 (S.I. No. 420 of 2015).

(2) A word or expression that is used in these Regulations and that is also used in the Principal Regulations has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Principal Regulations.

Amendment of the Principal Regulations

3. (1) Regulation 2 of the Principal Regulations is amended by -

(a) deleting “‘ financial resources’ has the meaning given to the term in Schedule 9;”, and

(b) inserting the following definition:

“‘own funds’ has the meaning given to the term in point (118) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;”

4. Regulation 8(6)(b)(iii) of the Principal Regulations is amended by inserting “(1)(c),” after “paragraphs”.

5. The Principal Regulations are amended by inserting the following new Regulation:

“Investment through subsidiaries

9A. (1) A responsible person shall not establish a subsidiary of a UCITS without the prior approval of the Bank.

(2) A responsible person shall ensure that a subsidiary of a UCITS established in accordance with paragraph (1) complies with the following conditions–

- (a) the subsidiary is wholly owned and controlled by the UCITS,
- (b) the board of directors of the subsidiary is comprised of a majority of directors of the board of directors of the UCITS or management company,
- (c) the subsidiary is not an investment fund or issuing body,
- (d) the prospectus of the UCITS discloses –
 - (i) the name of the subsidiary, and
 - (ii) that the subsidiary is wholly owned by the UCITS,
- (e) the constitutional document of the UCITS provides –
 - (i) for the ability of the UCITS to establish wholly owned subsidiaries with the prior approval of the Bank, and
 - (ii) that the assets and shares of the subsidiary will be held by the depositary,
- (f) the constitution of the subsidiary provides that –
 - (i) it may not act outside of the control of the UCITS,
 - (ii) the UCITS shall be the sole shareholder of the subsidiary,
 - (iii) the sole object of the subsidiary shall reflect exactly the investment objective and investment policy of the UCITS as disclosed in its prospectus,
 - (iv) the assets of the subsidiary shall be held by the depositary,
 - (v) the assets of the subsidiary shall be valued in accordance with the valuation policy of the UCITS, and
 - (vi) the subsidiary may not appoint any third parties or enter into any contractual arrangements with third parties unless the UCITS is a party to such appointments or contractual arrangements.”.

6. Regulation 11 of the Principal Regulations is amended:

- (a) in paragraph (1) by the substituting “Cash booked in accounts” for “Deposits”, and

(b) in paragraph (2)(b) by substituting “cash booked in an account” for “deposit”.

7. Regulation 23(1) and Regulation 23(2) of the Principal Regulations are amended by deleting the term “and instruments”.

8. Regulation 53(2)(b) of the Principal Regulations is amended by inserting the following after “respectively”:

“, or the ratio of those positions long to short.”

9. Regulation 61(1)(b) of the Principal Regulations is amended by deleting the term “and instruments”.

10. Regulation 78(1) of the Principal Regulations is amended by -

(a) deleting “prepare and”,

(b) inserting “within two working days the” after “Bank”, and

(b) inserting “published” after “a UCITS”.

11. Regulation 111(3)(b) of the Principal Regulations is amended by substituting “own funds” for “financial resources”.

12. Regulation 114 of the Principal Regulations is amended –

(a) in paragraph (1) by substituting “sub-paragraphs (a) and (b)” for “sub-paragraphs (a)-(c)”, and

(b) by deleting paragraph (7) and paragraph (8).

13. The Principal Regulations are amended by inserting the following new regulation:

“114A (1) Subject to paragraph (2), where a depositary holds the assets of a subsidiary of a UCITS it shall apply its safe-keeping duties as set out in:

(a) Regulation 34(4)(a) and (b) of the UCITS Regulations, and

(b) Articles 13 and 15 of Commission Delegated Regulation No 438/2016 of 17 December 2015 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to obligations of depositaries [Note: OJ L 78, 24.3.2016, p.11] to those assets.”

(2) Paragraph (1) does not apply to the depositary of a UCITS that is a fund of fund structure or master-feeder structure where the assets of the underlying funds are held by a depositary.”

13. Regulation 115 of the Principal Regulations is amended by deleting paragraph (2).

14. Regulation 116 of the Principal Regulations is amended by deleting paragraph (2) and paragraph (3).
15. Regulation 118 of the Principal Regulations is amended by deleting paragraph (2) and paragraph (3).
16. Regulation 120 of the Principal Regulations is amended by deleting paragraph (3).
17. Schedule 3, paragraph 5 of the Principal Regulations is amended by substituting “(ii) collateral” for “(2ii collateral”.
18. Schedule 4, paragraph 5(e) of the Principal Regulations is amended by substituting “at” for “t”.
19. Schedule 5 of the Principal Regulations is amended by inserting the following as a new paragraph 7 -

“7 OTC Derivatives
OTC derivatives shall be valued in accordance with Article 11 of EMIR”

20. Schedule 9 of the Principal Regulations is amended by the following –
 - (a) substituting the following for paragraph 3:

“3 Own Funds

A depositary shall have own funds at least equal to its minimum capital requirement.

Own funds are calculated as the aggregate of:

- (a) Fully paid in equity capital;
- (b) Perpetual non-cumulative preference shares;
- (c) Eligible capital contributions pursuant to paragraph 4 of this Schedule;
- (d) Qualifying subordinated loan capital pursuant to paragraph 4 of this Schedule;
- (e) Share premium accounts;
- (f) Disclosed revenue and capital reserves (excluding revaluation reserves);
- (g) Interim net profits (may only be included if they have been audited); and
- (h) Other reserves.

Less

- (a) Current year losses not included in disclosed revenue and capital reserves specified in paragraph 3(a) — (h) of this Schedule;

- (b) Goodwill;
- (c) Other intangible assets;
- (d) Deferred tax assets that rely on future profitability;
- (e) Defined benefit pension fund assets on the balance sheet of the institution;
and
- (f) Other deductions as per Article 36 of Regulation (EU) No 575/2013.”

(b) in paragraph (4)(a) by substituting “own funds” for “financial resources”, and
(c) in paragraph (5)(a) by substituting “own funds” for “financial resources”.

Signed for and on behalf of the CENTRAL BANK OF IRELAND
on [day in numerals] [month in words] [year in numerals]

[],
Office/Position

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The purpose of these Regulations is to amend the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferrable Securities) Regulations 2015.

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