



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Feedback Statement on CP 119 -

Consultation on amendments
(and consolidation) to the
Central Bank UCITS
Regulations

Feedback Statement – CP 119

Introduction

1. On 28 March 2018 the Central Bank of Ireland ('the Central Bank') published Consultation Paper 119 *Consultation on amendments to (and consolidation of) the Central Bank UCITS Regulations* ('CP119').
2. The amendments included within CP119 can be categorised under four headings, namely (i) general amendments arising from a review of the Central Bank UCITS Regulations¹, (ii) amendments to UCITS Share Class Provisions to reflect the ESMA Opinion, (iii) amendments related to UCITS performance fees; and (iv) amendments arising from the implementation of the EU Money Market Fund Regulation² (MMFR). In addition, this set of regulations consolidates amendments made by way two previous amending regulations (S.I. 307 of 2016 and S.I. 344 of 2017);
3. CP119 requested feedback from respondents on five questions under each of these four headings. This feedback statement briefly summarises the responses received from stakeholders along with the Central Bank's commentary and policy determination.
4. The Central Bank will keep its requirements under review at all times and welcomes ongoing discussion on how best to protect investors.
5. This feedback statement is published to promote understanding of the policy formation process within the Central Bank and is not relevant to assessing compliance with regulatory requirements.
6. Schedule A contains a 'Table of Destinations' which maps the provisions.

Markets Policy Division

Central Bank of Ireland

6 June 2019

¹ S.I. 420 of 2015 - Central Bank (Supervision And Enforcement) Act 2013 (Section 48(1)) (Undertakings For Collective Investment In Transferable Securities) Regulations 2015, as amended by S.I. 307 of 2016 and S.I. 344 of 2017

² Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on Money Market Funds

Amendments arising from a review of the Central Bank UCITS Regulations

Questions:

Question 1: Stakeholders were requested to indicate whether they agreed with the changes proposed and to provide any comments and / or observations.

8. Proposal to amend Regulation 81 relating to publication of UCITS annual and half yearly reports

In CP119, the Central Bank included a provision to make clear that the 18-month requirement applies to the umbrella UCITS and the preparation of these accounts must include all sub-funds launched as at that date.³ One respondent requested that, in the case of ICAVs and other legal structures which allow separate annual reports for each sub-fund, where a sub-fund has a potential initial period of less than 2 months, those sub-funds should be permitted to opt for an extended initial period in the annual report up to the date of the balance sheet in the following year.

Central Bank:

The Central Bank will retain the requirement as consulted on. The Central Bank will consider waiver requests, on a case-by-case basis, from the requirements of 81(2)(b)(ii) should it be deemed necessary taking into account the individual circumstances.

9. Proposal to amend 98(3) and 117(3) to extend second set of accounts for UCITS Management Companies and Depositaries to cover the full 12 months of the financial year and to require submission of this set of accounts within one month of year end.

Most respondents agreed with the proposal to extend second set of accounts to cover the full 12 months of the financial year. A handful of respondents recommended that a two-month filing deadline should be retained for the second set of accounts citing additional administration burden and the higher potential for inaccuracies that could result from a one-month filing deadline.

Central Bank:

It was proposed to introduce these requirements in order to have a consistent approach with fund administrators, as set out in the Investment Firms Regulations 2017. This requirement also applies to MiFID investment firms.

While it is acknowledged that the reduction in filing time may be an additional burden on UCITS Management Companies and Depositaries, the rationale for this change is to enable supervisors to

³ 81(2) The responsible person shall ensure that –

(a) the first annual or half-yearly report be prepared within 9 months of the launch of the UCITS and shall be published and submitted to the Bank within 2 months for half-yearly reports or 4 months for annual reports, and

(b) the first annual report with audited accounting information-

(i) is prepared within 18 months of the incorporation or establishment of the UCITS,

(ii) includes all sub-funds of the UCITS launched within the period to which that report relates, and

(iii) is published and submitted to the Bank within 4 months of the preparation of the report and in any event not later than 4 months after the expiration of the 18 month period referred to in paragraph 2(b)(i).

have information in a timely manner so as to inform any required supervisory action as may be appropriate. On that basis, the Central Bank will retain the requirement as consulted on.

10. Proposal to amend Regulation 33(4) in relation to temporary suspension of redemptions and the need to notify the Central Bank.

One respondent noted that as currently drafted the legislation appears to require two notifications regarding the temporary suspension of redemptions.

Central Bank:

The Central Bank welcomes the feedback and agrees that the legislation as currently drafted implies that a notification is required after 21 working days irrespective of whether the UCITS has already notified the Central Bank of the suspension lifting.

The provision has been amended to explicitly clarify that the notification is only required where the suspension remains in effect. This notification should be provided after 21 working days and for each subsequent period of 21 working days while the suspension remains in effect.

11. Proposal to require a Designated Email Address – Regulation 47

One respondent queried whether the requirement applies at the umbrella or sub-fund level.

Central Bank:

This requirement applies at the umbrella level. The Central Bank will clarify this by way of QA.

12. Proposed requirement in Regulation 41 permitting the UCITS to charge annual management fees based on the Initial Offer Price (IOP)

One respondent suggested revising the wording to provide for the flexibility of service provider fees other than those of the investment manager to be calculated based on the initial offer price rather than being based on the net asset value.

Central Bank:

As this provision was included in order to incorporate previous industry guidance published by the Central Bank, it is not proposed to provide for other service providers to charge fees based on the initial offer price at this time. The Central Bank does not consider sufficient rationale has been provided to amend the requirement.

13. **Proposal to amend Regulation 12 of the consultation paper (previously Regulation 11) to make clear that the requirement for the holding of ancillary liquidity applies in the case of any single credit institution to remove any potential ambiguity in this provision.**

Central Bank:

The Central Bank will apply the same requirements to accounts held for ancillary liquidity as deposit accounts held for investment purposes. This approach is reflected in Regulation 7 of the Central Bank UCITS Regulations 2019. A QA will be published to clarify that the limits provided for in Regulation 70 of the UCITS Regulations for deposit accounts also apply to accounts holding ancillary liquidity.

In addition to the amendments consulted on, the Central Bank has also taken the opportunity to correct some typographical errors.⁴

⁴ For example, Regulation 104(10) has been amended to clarify the relevant paragraphs which should apply to investment companies which have designated a management company.

Amendments to UCITS Share Class Provisions

Question 2 -

Stakeholders were requested to indicate whether they agree with the changes to share class provisions as currently proposed.

14. Some respondents suggested the wording of some of the proposed amendments should be amended to precisely reflect the wording of the ESMA Opinion.

Central Bank:

For the majority of amendments, the Central Bank has opted to retain the existing provisions as this was given due consideration as part of the legal drafting process. Two specific matters warranted further consideration, relating to under-hedged positions and stress testing, and have been amended accordingly. The proposed approach in relation to these is set out below.

15. **UCITS ensuring under-hedged positions do not fall below 95% of the portion of the net asset value of the share class**

Several respondents noted the proposed change is not consistent with ESMA Opinion as reference should be to the portion of the NAV of the share class which is to be hedged against currency risk.

Central Bank:

The Central Bank agrees and has amended Regulation 26(3)(a) accordingly.

16. **UCITS Share Class Disclosures**

One respondent noted that paragraph (b) of Regulation 73(2) should be amended to include reference to 'share class level' as the provision appears to currently refer to hedging at portfolio level.

Central Bank:

The Central Bank agrees and has updated Regulation 73(2)(b) accordingly.

17. **Implementation of Stress Tests at Share Class Level**

Two respondents proposed that stress tests should only be required where the hedging activity presents a risk that losses relating to the relevant transactions attributable to a specific share class could exceed the net asset value of the share class. It was further indicated by these respondents that stress tests required in the context of currency hedging should be set out in guidance and not aligned with Regulation 21 as proposed.

Central Bank:

The Central Bank will retain the proposed amendment in Regulation 26(3)(g) as drafted. This is consistent with the ESMA Opinion, which does not preclude certain UCITS from needing to conduct stress tests. The Central has deleted Regulation 27(4) of the consultation in light of the feedback received.

18. Proposed requirement to include a list all share classes of the UCITS in annual and half-yearly reports in Schedules 7 and 8.

A selection of respondents proposed that this requirement should only apply to those share classes that have been in issue at any time during the relevant period rather than being required to list both launched and unlaunched share classes.

Central Bank:

Schedules 7 and 8 have been amended to require that the UCITS annual and half-yearly reports only list those share classes in issue during the relevant period.

UCITS Performance Fees Provisions

Questions:

Question 3 – Stakeholders were invited to provide comments and observations on the performance fee provisions being included in the Central Bank UCITS Regulations.

Question 4 – Stakeholders were requested to indicate whether further requirements are necessitated to better regulate the charging of performance fees by UCITS.

19. A selection of respondents believed prescribing rules around performance fee methodologies in regulations rather than within guidance may reduce flexibility that UCITS have in this area. One respondent requested that sufficient transitional arrangements are provided in order to allow for updating of fund documentation and investor approvals.

Central Bank:

The Central Bank wants to ensure that UCITS comply with regulatory requirements around performance fees and hence why this exercise to codify UCITS performance fee provisions in the Central Bank UCITS Regulations was undertaken. This has been re-affirmed by the recent thematic review conducted by the Central Bank. On that basis, the performance fee provisions will be included as requirements in the Central Bank UCITS Regulations.

The Central Bank has given due consideration to an appropriate transitional arrangement for UCITS to comply with the minimum crystallisation requirement. Further detail is set out below.

20. Basis for Payment of UCITS Performance Fees

One respondent suggested that the Central Bank should provide for performance fees “*as adjusted for subscriptions and redemptions*”. This respondent also proposed that the Central Bank provide for circumstances other than those set out in sub-paragraph (a) or (b) where the relevant performance fee methodology has been deemed acceptable by the Central Bank.

One respondent proposed that the Regulation is amended to reflect the fact that some UCITS provide for payment of a performance fee only when the ‘water mark’ is exceeded by a certain percentage as opposed to simply when a new high NAV per share is achieved.

Central Bank:

The Central Bank has made a slight amendment to the requirement consulted on to state that performance fees may be paid where a new high NAV is achieved over the life of the UCITS.

The Central Bank will clarify by way of guidance that this may be on either (i) achieving a new high NAV per share or (ii) achieving a new high NAV as adjusted for subscriptions and redemptions.

The requirement as drafted does not preclude UCITS from providing for payment of a performance fee only where the high water mark is exceeded by a given percentage.

21. Payment of Performance Fee – Out-Performance of an Index

One respondent proposed to retain reference to ‘relevant’ as opposed to the proposed change to require the index to be ‘consistent’ with the UCITS investment policy.

Central Bank:

The Central Bank will retain use of the term ‘consistent’ as it more adequately reflects the expectations of the Central Bank when a UCITS uses an index for the purpose of calculating its performance fee.

22. Minimum Frequency for Crystallisation and Payment of a Performance Fee –

Two respondents proposed to amend the provision to explicitly provide for crystallisation and transfer of a performance fee upon a redemption. One respondent proposed that annual crystallisation should not apply to UCITS funds who have adopted an alternative performance fee methodology such as a high-watermark methodology. One respondent indicated that the drafting should permit accrual of performance fees at each valuation point and for a redemption of shares to be considered a crystallisation event.

Central Bank:

The Central Bank acknowledges the feedback and agrees that performance fees may crystallise upon an investor redemption. This will be clarified by way of guidance.

As regards the crystallisation frequency requirement in Regulation 40(4). The Central Bank does not agree that separate crystallisation practices should apply where the UCITS uses the high-watermark methodology and therefore no amendment has been made in this regard.

23. Transitional Provisions for Performance Fee Crystallisation Requirement

Two respondents queried whether the Central Bank anticipates UCITS should obtain investor approval if making changes to their performance fee model assuming the changes are restricted to compliance with the Regulations. In addition, one respondent suggested that appropriate consideration be given to the length of the transitional period, making reference to the complexity of organising EGMs in multiple markets.

Central Bank:

The Central Bank has given a great deal of consideration to the transitional arrangement, which has been further informed by the findings of the recent thematic review.⁵

The Central Bank will provide for a transitional period of 18 months from the commencement of this set of Central Bank UCITS Regulations. This provides sufficient time for the UCITS to make the necessary arrangements to ensure compliance with the requirements.

⁵ See Industry Letter – Thematic Review of UCITS Performance Fees, 4 September 2018:
<https://www.centralbank.ie/docs/default-source/Regulation/industry-market-sectors/Funds/industry-communications/industry-letter---thematic-review-of-ucits-performance-fees---4-september-2018.pdf>

Amendments to the Regulations in light of the Money Market Fund Regulation (MMFR)

Questions:

Question 5 – Stakeholders are requested to indicate whether they agree with the amendments proposed and to provide any observations / comments.

There was limited feedback received under this heading.

Disapplication of certain provisions in light of MMFR

One stakeholder noted that additional provisions should also be dis-applied for UCITS Money Market Funds (MMFs) as there are related provisions in the MMFR. These specifically relate to:

- Regulation 7 relating to investment in deposits (covered by MMFR Regulations 12 and 17-23);
- Regulation 8 relating to the purposes of FDI investment and the types of counterparty (covered by MMFR Regulations 13 and 17-23); and
- Regulations 23 – 25 relating to EPM and collateral, which is covered in MMFR by various regulations relating to repos and FDIs (MMFR Regulations 13-15 and 17-23).

Central Bank:

The Central Bank agrees that these requirements should also be dis-applied in respect of UCITS MMFs as they are superseded by MMFR. Regulation 131 has been amended accordingly.

Other minor amendments have been made to correct typographical errors.⁶

⁶ For example, Regulation 6(3) has been amended to make explicitly clear that UCITS may continue to use the amortization method as set out in Regulation 91 to value money market instruments. UCITS MMFs should use the amortised cost method as set out in Article 2(10) of MMFR. Reference to Regulation 93 in the disapplication provision has been removed.

Schedule A

Table of Destinations

Part 1 - Preliminary and General		
Old Regulations	Title	Equivalent Provision in New Regulations
Regulation 1	Citation and commencement	Regulation 1
Regulation 2	Interpretation	Regulation 2
Part 2 - Restrictions on UCITS		
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Regulation 3	General restrictions	Regulation 3
Regulation 4	Eligible assets: transferable securities	Regulation 4
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Regulation 6	Money-market instruments	Regulation 6
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N/A	Calculation of annual management fee of a structured UCITS (NEW)	Regulation 41
Chapter 10 - Transactions involving Connected Persons		
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