Central Bank UCITS Regulations Consultation (CP119)
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Dear Sir/Madam

Thank you for the opportunity to discuss proposals on the Central Bank UCITs Regulations. Having consulted with our affected members, we have prepared the below response to the paper ('the CP').

Context of response

The development of a globally competitive operating environment for all sectors of the financial services industry is a central part of FSI's mission. The absence of a promotional mandate within the Central Bank's operating principles is widely publicised. Equally, the Central Bank's principle of 'primacy of the public interest' is intrinsically linked to the preservation of 40,000 jobs in the cross-border financial services industry, and Ireland's role in supporting the development of a level playing field for the sector within the EU single market. Our response to the CP is written in acknowledgement that Ireland can and should support best practice in the provision of financial services, and that a responsive, robust and proportionate regulator underpins our international reputation as location of choice for financial services.

Performance Fees

This response relates exclusively to Section III, 'Amendments Related to UCITs Performance Fees Provisions', and therefore, specifically to Questions 3 and 4 of the CP. The proposals contained in

this section are of wider relevance to the financial services industry, owing to their proposed new status as regulatory requirements rather than guidance, and the lack of similar rules in other EU member states. The proposal to alter the nature of these provisions from guidance to regulatory requirements is due to "the importance of this matter and ongoing supervisory work … [and] … to align the Central Bank's approach to the IOSCO good practices." (p. 11 CP119).

We understand that UCITS performance fees are an area of increased attention for the Central Bank and at European level within ESMA. We welcome guidance and the promotion of best practice in this area, however we do not agree with the proposal to codify a minimum annual calculation period into Irish UCITS legislation, as to do so is to distort the harmonisation of the UCITS regime across the Single Market. The principal aim of revisions to the UCITS regime has been to create uniform market conditions across the EU28. We do not believe it is appropriate to introduce national requirements that will impact the European pursuit of a level playing field. We believe that any new regulatory requirements on the crystallization of performance fees must be entrusted to ESMA. This is in simple acknowledgement of the principle of subsidiarity, as an issue that affects investors on a cross-border basis, and therefore is within ESMA's area of competence, rather than any National Competent Authority. At a practical level, in light of the number of funds domiciled in different jurisdictions, with different methodologies related to calculation of performance fees, the proposed enshrining within national legislation of such rules, in a rules-based manner, is inappropriate. This is particularly a concern given that the majority of UCITS domiciled in Ireland with performance fee methodologies are distributed across the EU Single Market to jurisdictions where the rules pertaining to performance fees are assessed differently by Host National Competent Authorities.

We are also concerned by the underlying assumption made within the CP that a minimum annual calculation period for performance fees ensures more equitable treatment for investors in all cases. A *blanket* introduction of this minimum period is also inconsistent with the IOSCO principles, which allow for deviation in specific circumstances, e.g. where the fund uses a "fulcrum fee arrangement". (P. 9, IOSCO FR09/16). We are of the view that it is the interaction of all of the features of a performance fee methodology that needs to be considered in a holistic, principles-based manner, as opposed to setting out specific requirements for individual elements of a methodology in isolation in

a rules-based manner. We believe that it is equally possible to achieve good consumer outcomes with this type of approach.

In summary, we are concerned by the principle of moving ahead of the European Supervisory Authorities in respect of any rule-making on matters that affect investors/consumers of cross-border financial services.

If you have any questions about this consultation response, please feel free to contact us.

Yours faithfully,

Audrey Crummy
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Regulation & EU Affairs
Financial Services Ireland
Ibec