



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

Consultation Paper 161

Consultation on proposed amendments to the Central Bank UCITS Regulations and the Central Bank Guidance on performance fees for UCITS and certain types of Retail Investor AIFs

September 2025

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Introduction

Background and objectives

The Directive (EU) 2009/65/EC (the “UCITS Directive”) was transposed into Irish law by S.I. No. 352/2011 (the “UCITS Regulations”) and provides the legislative basis for the authorisation and regulation of Undertakings for Collective Investment in Transferable Securities (UCITS) in Ireland. The Central Bank of Ireland (the “Central Bank”) is responsible for the regulation and supervision of UCITS in Ireland. The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2019 (the “Central Bank UCITS Regulations”) supplement the statutory instrument and set out additional regulatory requirements and conditions imposed by the Central Bank on Irish domiciled UCITS, UCITS management companies and depositaries of UCITS.

On 15 April 2024, the Directive (EU) 2024/927 (the “Amending Directive”) entered into force. The Amending Directive amends the UCITS Directive. It is now proposed to repeal and replace the current Central Bank UCITS Regulations to ensure alignment of the domestic regulatory framework with the revised European rules which will be transposed into the UCITS Regulations by the Department of Finance, and make a number of additional amendments to update the framework as set out in this Consultation Paper.

Summary

The proposed repeal and replacement of the Central Bank UCITS Regulations will:

- i. ensure the domestic UCITS regulatory framework is aligned with the revised European UCITS framework;
- ii. update the domestic framework by incorporating outstanding updates from previous consultations, clarifying certain provisions, incorporating certain Q&As and guidance and removing out of date provisions; and
- iii. change existing domestic rules in relation to performance fees for UCITS and certain kinds of Retail Investor AIFs and rules in relation to the operation of redemption gates for UCITS.

Updating performance fee rules and permitting entities other than the depository to verify the calculation of the performance fee

UCITS are subject to specific rules regarding the charging and calculation of performance fees to ensure investor protection, transparency and fair treatment. Performance fees for Irish domiciled UCITS are governed by both the UCITS Regulations and the Central Bank's Guidance on performance fees for UCITS and certain types of Retail Investor AIFs (the "Central Bank Guidance on performance fees").

The Central Bank Guidance on performance fees was published in 2021 and clarified the Central Bank's expectations in relation to performance fees charged by Irish-domiciled funds following publication of the ESMA Guidelines on performance fees in UCITS and certain types of AIFs¹ (the "ESMA Guidelines on performance fees"). Due to legislative constraints contained in the Central Bank UCITS Regulations, certain aspects of the ESMA Guidelines on performance fees were not fully implemented, including:

- the possibility of a performance reference period that is less than the whole life of the fund for certain fee models;
- fulcrum fee models or other models which provide for a symmetrical fee structure; and
- crystallisation of performance fees more frequently than annually for HWM or HoH models that have a performance reference period of the life of the fund that cannot be reset, and fulcrum fee models or other models which provide for a symmetrical fee structure.

In the Feedback Statement to Consultation Paper 134, the Central Bank indicated it would consider removing the legislative constraints in its next review of the Central Bank UCITS Regulations.

It is now proposed to remove the relevant legislative constraints contained in the Central Bank UCITS Regulations and bring Central Bank's approach to performance fees in line with the ESMA Guidelines on performance fees. This will permit:

¹ [ESMA Guidelines on performance fees in UCITS and certain types of AIFs.](#)

- a performance reference period of less than the whole life of the UCITS for HWM or HoH fee models or where the fund employs a performance fee based on a benchmark index, subject to a minimum of 5 years;
- the adoption of fulcrum fee models and other models which provide for a symmetrical fee structure which can be adjusted up or down depending on relative performance of the UCITS to a benchmark;
- crystallisation more than once a year where a UCITS employs HWM or HoH fee model provided the performance reference period is equal to the life of the fund and cannot be reset, or fulcrum fees and other models which provide for a symmetrical fee structure.

It is also proposed to update the Central Bank Guidance on performance fees (see Appendix) to align the Central Bank's approach to performance fees with the ESMA Guidelines.

In the Feedback Statement to Consultation Paper 134, the Central Bank also committed to consulting on whether entities other than the depositary might perform function of verifying the calculation of the performance fee. The Central Bank is now consulting on whether it is appropriate to permit an entity other than the depositary to perform the function of verifying the calculation of the performance fee.

Redemption gates

The Central Bank is proposing to remove the requirement that a responsible person cannot impose a redemption gate on any dealing day unless the total requests for redemption exceed at least 10% of the total number of units of UCITS or at least 10% of the net asset value of the UCITS. Primary responsibility for liquidity risk management remains with the responsible person of the UCITS and the Central Bank is proposing to remove this restriction in order to enable the responsible person sufficient discretion to impose a redemption gate at a level they have determined is appropriate subject to compliance with the general UCITS framework. This amendment ensures the Central Bank's domestic approach to Liquidity Management Tools (LMTs) and their usage is consistent with the new provisions on LMTs set out in the European framework.

Other amendments

- [New section on residency requirements for Directors and Designated Persons](#)

The current residency requirements for Directors and Designated Persons for rated firms rated “low” will be retained as a minimum requirement for all management companies, with the discretion for the Central Bank to provide for additional residency requirements at the point of authorisation.

- [Introduction of new regulations on LMTs and differentiation of certain charges and activities from harmonised LMT fees and activities](#)

The UCITS Regulations will introduce new rules on LMTs equivalent to those set out in the Amending Directive, which will be aimed at ensuring a more effective response by fund managers to liquidity stress. Investment funds utilise LMTs to ensure they can meet redemption requests and manage the impacts of market instability. The new rules will be aimed at ensuring a more effective response by fund managers to liquidity stress by increasing the availability of LMTs across the EU, to ensure consistent application and investor protection.

Harmonised descriptions of certain LMTs will be set out in the UCITS Regulations transposing Annex IIA of the Amending Directive and at least two LMTs from this list must be selected and incorporated into the fund rules of the UCITS. The Central Bank is introducing a dedicated LMT section in the new Central Bank UCITS Regulations containing provisions on general operational requirements for LMTs along with rules for UCITS selecting, activating and deactivating side pockets, suspensions, swing pricing and redemption gates.

In light of the harmonised definitions of LMTs in Annex IIA of the UCITS Directive which will be transposed into the UCITS Regulations, it is necessary to differentiate rules around certain charges and activities set out in the Central Bank UCITS Regulations from the LMTs listed in the aforementioned Annex IIA. The Central Bank proposes clarifying that

administrative charges applied to investor redemptions are distinct from LMTs (which take account the cost of liquidity) under Annex IIA. These changes are necessary to ensure, where a fund imposes standard charges as part of its normal redemption process, that it does not inadvertently trigger the requirements under the relevant LMT provisions.

It is also necessary to differentiate between in-specie/in-kind redemption as an LMT and the exchange of assets in the settlement of redemptions which does not constitute an LMT under Annex IIA. Specific requirements with respect to redemption in kind as an LMT are detailed in the Amending Directive which will be transposed into the UCITS Regulations. Where the UCITS provides for the settlement of redemptions through an exchange of assets as part of its redemption policy, and this is not implemented as a LMT, the Central Bank UCITS Regulations will require that the UCITS disclose the terms and conditions in its prospectus under which such an arrangement will operate.

- [Removal of obsolete provisions now covered by the Money Market Fund Regulation](#)

Money Market Funds (MMF) are a specific type of collective investment scheme that invest in short-term debt securities and aim to provide liquidity and preserve capital. Historically many MMFs were structured as UCITS funds, benefiting from the UCITS passport and regulatory regime. In July 2017, the European Union (EU) introduced a dedicated regulatory framework for MMFs – the MMF Regulation (MMFR).

As a result, MMFs are now regulated as a distinct category of funds under the MMFR. It is proposed to remove the obsolete rules from the Central Bank UCITS Regulations that apply to MMFs and amend certain rules applying to UCITS investing in money-market instruments (MMIs) that are not MMFs. Certain rules will be retained to include i) requirements that a UCITS which is a short term or standard MMF must comply with stress testing requirements under the MMFR and ongoing reporting requirements and ii) requirements for non-MMF UCITS which contain MMIs to comply with certain provisions in the MMFR relating to the use of amortized costs.

- [Incorporation of UCITS Q&A ID 1016 which permits the exchange-traded fund \(ETF\) naming requirement at share class level](#)

On November 2024, the Central Bank published the 41st Edition of the UCITS Q&A to reflect changes which enable the ETF naming requirement at the share class level. It is proposed to reflect these changes in the Central Bank UCITS Regulations and delete the relevant Q&A.

- [Inclusion of a derogation for UCITS ETFs to the requirement that all share classes within a UCITS or sub-funds thereof have the same dealing procedures and frequencies](#)

Under current Regulation 26(2) of the Central Bank UCITS Regulations, all share classes within the UCITS or sub-funds thereof must have the same dealing procedures and frequencies. Under the UCITS Q&A ID 1030, an application can be made by a UCITS ETF seeking a waiver from this provision so that it may have different dealing deadlines for cash and in-kind dealing, and/or different deadlines where the UCITS ETF with hedged and unhedged share classes implements currency hedging at share class level. This is because cash subscriptions (where investors provide cash to be invested by the UCITS ETF) may require additional time for the ETF to invest the funds in the market compared to in-kind subscriptions, where investors exchange existing securities for ETF shares. Therefore, the dealing deadline for cash subscriptions might be earlier than for in-kind subscriptions. Additionally, a UCITS ETF with a hedged share class, which uses a currency-hedged index, might also have a different dealing deadline for the hedged share class. This is because the hedge trades might need to be executed close to the time the foreign exchange rate is fixed within the index, requiring an earlier deadline for the hedged share class to ensure sufficient time for trade execution.

The Central Bank is proposing retaining the rule that all share classes must have the same dealing procedures, but with a derogation for UCITS ETFs, which will result in the subsequent deletion of the UCITS Q&A ID 1030.

- A requirement for the responsible person to disclose in the prospectus the maximum fee payable for any recurring fees which are calculated based on the Net Asset Value of the UCITS and deducted from its assets

The Central Bank is proposing requiring a new disclosure in the prospectus of the maximum fee payable for recurring fees based on the Net Asset Value. This will provide additional transparency and informed decision making by investors. There is currently no specific requirement for the disclosure of such fees in the framework and it will constitute an important enhancement to the prospectus disclosure rules not covered elsewhere in the framework.

- Further technical changes

Other provisions will be reviewed as part of a general update to the Central Bank UCITS Regulations. These include:

- changing reporting requirements so that the new Central Bank UCITS Regulations will direct stakeholders to the Central Bank’s website for the relevant reporting requirements. This allows for greater flexibility for the Central Bank to update reporting requirements without having to make legislative amendments. It also ensures that there is no conflict between the requirements in the Central Bank UCITS Regulation and the website when changes are made; and
- reflecting regulatory changes in the Central Bank UCITS Regulations pursuant to the updated UCITS Regulations which will transpose changes set out in the Amending Directive such as ensuring retail investors cannot receive redemption in kind in the ordinary course of redemptions and other changes including reflecting the fact that most UCITS no longer have to issue a UCITS key investor information document (“KIID”) where they now produce a key information document (“KID”) pursuant to Regulation (EU) 1286/2014 on key information documents for packaged retail and insurance-based investment products (the “PRIIPs Regulation”).

The purpose of this Consultation Paper is to set out details of the amendments and to receive feedback from stakeholders on the proposals.

Proposal/ Format of the Consultation Paper

This Consultation Paper comprises draft proposed amendments to the Central Bank UCITS Regulations and a series of questions on the proposals set out therein. The Consultation Paper is structured as follows:

- Part 1 – Preliminary and general;
- Part 2 – Restrictions on UCITS;
- Part 3 – Supervisory requirements;
- Part 4 – Prospectus requirements;
- Part 5 – Key investor information document;
- Part 6 – General operational requirements;
- Part 7 – Annual and half-yearly reports of a UCITS;
- Part 8 – Requirements in respect of specific types of UCITS;
- Part 11 – Management companies;
- Part 12 – UCITS depositaries;
- Part 13 – Miscellaneous provisions;
- Part 14 – Revocations and saver;
- Schedule 2 – Netting and Hedging;
- Schedule 3 – Conditions for Collateral Received by a UCITS;
- Schedule 5 – Methods of Valuation;
- Appendix – Central Bank Guidance on performance fees for UCITS and certain types of Retail Investor AIFs.

Consultation responses

The Central Bank invites all stakeholders to provide responses to the questions on the proposed amendments within this Consultation Paper. Responses should be submitted no later than 5 November 2025.

Please make your submission electronically by email to fundspolicy@centralbank.ie. We will send an email acknowledgement to all responses. If you do not receive an acknowledgement, please contact us on fundspolicy@centralbank.ie.

The Consultation will remain open for 8 weeks from 9 September 2025 to 5 November 2025, following which the Central Bank will review all feedback received on this Consultation Paper and prepare an associated Feedback Statement to be published by the Central Bank. It is the policy of the Central Bank to publish all responses to its consultations on its website. Accordingly, commercially confidential information should not be included in consultation responses. Information deemed potentially libellous or defamatory will not be published.

The Central Bank will accept no liability in respect of any information provided, which is subsequently released, or in respect of any consequential damage suffered as a result.

Markets and Funds Policy Division

Central Bank of Ireland

9 September 2025

Part 1 – Preliminary and general

Regulation 1 – Citation

The Central Bank UCITS Regulations are currently cited as the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2019. The Central Bank is proposing to update the reference to which the Central Bank UCITS Regulations may be cited as a result of the publication of the amended Regulations after the consultation period has ended.

Proposed amendment to Regulation 1 of the Central Bank UCITS Regulations:

1. Citation

- (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) Regulations ~~2019~~ **[INSERT DATE]**.

Question 1.1: Do you agree with the proposed changes to Regulation 1 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 2 – Interpretation

The Central Bank proposes to amend Regulation 2 of the Central Bank UCITS Regulations to update, include or remove definitions as required, to ensure alignment with definitions set out in other relevant EU legislation or ESMA Guidelines.

In particular, the proposed changes seek to:

- update the definition of “anti-dilution levy” to align with the definition which will be set out in the UCITS Regulations equivalent to in Annex IIA(7) of the Amending Directive;
- introduce key concepts around the operation and management of a performance fee in line with the ESMA Guidelines on performance fees, including “fulcrum fee”, “fund managed in reference to a benchmark”, “High-Water Mark (HWM)”, “HWM model”, “High-on-High (HoH) model”, “hurdle rate”, and “performance reference period”;
- add a definition for “KID” in line with the PRIIPs Regulation;
- add a definition for “UCITS Directive” to streamline references to same throughout the Central Bank UCITS Regulations;
- if necessary, update the reference to the “UCITS Regulations”;
- insert definitions for “unitholder” and “units”; and
- remove the definitions of “weighted average life” (WAL) and “weighted average maturity” (WAM) dis-applied by Regulation 130 of the Central Bank UCITS Regulations, to take account of the MMFR and the Central Bank’s proposed approach to remove MMF-related requirements from the Central Bank UCITS Regulations, as relevant.

Proposed amendments to and insertion or removal of definitions in Regulation 2 of the Central Bank UCITS Regulations:

2. Interpretation

(1) In these Regulations, unless the context otherwise requires-

- ~~“anti-dilution levy” means a charge imposed on subscriptions or on redemptions as relevant, to offset the dealing costs of buying or selling assets of the UCITS and to preserve the net asset value per share of the UCITS, as a result of net subscriptions or of net redemptions on a dealing day;~~ **a fee that is paid to the UCITS by a unitholder at the time of a subscription, repurchase or redemption of units, that compensates the fund for the cost of liquidity incurred because of the size of that transaction, and that ensures that other unit-holders are not unfairly disadvantaged;**
- **“fulcrum fee” means a type of performance fee which provides for the level of the fee to increase or decrease proportionately with the investment performance of the fund over a**

specified period of time in relation to the investment record of an appropriate benchmark (including a negative fee deducted from the basic fee charged to the fund);

- “fund managed in reference to a benchmark” means a fund where the benchmark plays a role in the management of the UCITS;
- “High-Water Mark” or “HWM” means the highest net asset value per unit;
- “High-Water Mark model” means a performance fee model where a performance fee may only be charged on the basis of achieving a new HWM during the performance reference period;
- “High-on-High (HoH) model” means a performance fee model where a performance fee may only be charged if the net asset value exceeds the net asset value at which the performance fee was last crystallised;
- “hurdle rate” means a predefined minimum fixed rate of return;
- “KID” means a key information document issued pursuant to Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs);
- “performance reference period” means the time horizon over which the performance of a UCITS is measured and compared with that of the benchmark, at the end of which the mechanism for the compensation for past underperformance (or negative performance) can be reset;
- “UCITS Directive” means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities;
- “UCITS Regulations” means European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011) (as amended);
- “unitholder” means a shareholder in the case of an investment company and unitholder in the case of a unit trust or common contractual fund;
- “units” mean shares of an investment company and units of a unit trust or common contractual fund;
- “weighted average life” (“WAL”) means the average length of time to the legal maturity of all the underlying assets in the UCITS reflecting the relative holdings in each asset;
- “weighted average maturity” (“WAM”) means the average length of time to maturity or, if shorter, to the next interest rate reset to a money market rate, of all the underlying assets in the UCITS reflecting the relative holding in each case.

Question 1.2: Do you agree with the proposed changes to Regulation 2 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Part 2 – Restrictions on UCITS

Regulation 6 – Money-market instruments

Regulation 6(3) is being amended and applies to UCITS investing in MMIs that are not MMFs. This regulation cross-refers to the MMFR and the controls for when amortized costs valuations deviate significantly from the mark-to-market valuation.

Proposed amendments to Regulation 6 of the Central Bank UCITS Regulations:

6. Money-market instruments

- (3) **Where a UCITS invests in money market instruments, the responsible person shall value those money market instruments in accordance with the valuation requirements in Article 29(2) to (4) of the Money Market Fund Regulation.**

~~Where a responsible person considers that an amortization method can be used to assess the value of a money-market instrument it shall ensure that this method will not result in a material discrepancy between the value of the money-market instrument and the value calculated according to –~~

- ~~(a) the amortization method as set out in Regulation 91, where the UCITS is a Short-Term Money-Market Fund authorised by the Bank and not subject to the Money Market Funds Regulation, or~~
- ~~(b) the amortised cost method as defined in Article 2(10) of the Money Market Funds Regulation where the UCITS is authorised by the Bank pursuant to the Money Market Funds Regulation on or after 20 July 2018.~~

() By way of derogation from paragraph (3), the responsible person may value money market instruments using the amortised cost method as defined in Article 2 (10) of the Money Market Fund Regulation. The amortised cost method shall only be used for valuing a money market instrument in circumstances where the price of that money market instrument calculated in accordance with paragraph (3) does not deviate from the price of that money market instrument calculated in accordance with the amortised cost method by more than 10 basis points. In the event of such a deviation, the responsible person shall calculate the value of the money market instrument in accordance with paragraph (3).

Question 2.1: Do you agree with the proposed changes to Regulation 6 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 24 – Collateral

Regulation 24(5), sub-paragraph (e), of the Central Bank UCITS Regulations is being deleted as it refers to an expired transitional arrangement.

Proposed removal of Regulation 24(5)(e) of the Central Bank UCITS Regulations:

24. Collateral

- (5) Where a responsible person invests the cash collateral received by the UCITS, such investments shall only be made in one or more of the following:
- (a) a deposit with a credit institution referred to in Regulation 7;
 - (b) a high-quality government bond;
 - (c) a reverse repurchase agreement, provided the transaction is with a credit institution referred to in Regulation 7 and the UCITS is able to recall at any time the full amount of cash on an accrued basis;
 - (d) a short-term MMF as defined in Article 2(14) of the Money Market Funds Regulation;

(e) ~~a Short-Term Money Market Fund as defined in Regulation 89 where such investment is made prior to 21 January 2019.~~

Question 2.2: Do you agree with the proposed changes to Regulation 24 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 26 – Creation of share classes in a UCITS

Under current Regulation 26(2) of the Central Bank UCITS Regulations, all share classes within the UCITS or sub-funds thereof must have the same dealing procedures and frequencies. Under the UCITS Q&A ID 1030, an application can be made by a UCITS ETF seeking a derogation from this provision so that it may have different dealing deadlines for cash and in-kind dealing, and/or different deadlines where the UCITS ETF with hedged and unhedged share classes implements currency hedging at share class level.

The Central Bank is proposing retaining the rule that all share classes must have the same dealing procedures, but with a derogation for UCITS ETFs which will also result in the deletion of the UCITS Q&A ID 1030.

Proposed amendments to Regulation 26 of the Central Bank UCITS Regulations:

26. Creation of share classes in a UCITS

- (2) ~~A responsible person shall ensure that all share classes within the UCITS or sub-funds thereof have the same dealing procedures and frequencies.~~ **A responsible person shall ensure that all share classes within the UCITS or sub-funds thereof have the same dealing procedures and frequencies. By way of derogation from this paragraph (2), a UCITS ETF may have:**
- (a) different dealing cut-off times for cash and in-kind dealings; and/or**

(b) different cut-off times where a UCITS ETF with hedged and unhedged share classes implements currency hedging at share class level.

Question 2.3: Do you agree with the proposed changes to Regulation 26 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 31 – Dealing in specie

Specific requirements with respect to redemption in specie as a LMT will be transposed into the UCITS Regulations. Where the UCITS provides for the settlement of redemptions through an exchange of assets as part of its redemption policy and this is not a LMT, the Central Bank UCITS Regulations require that this is provided for in the constitutional document along with the requirement that asset allocation is subject to approval by the depositary.

Proposed amendments to Regulation 31 of the Central Bank UCITS Regulations:

31. *Dealing in specie*

(2) (a) This paragraph does not apply to:

- (i) a UCITS ETF the original subscription to which was made in specie.; or
- (ii) a redemption in kind for the purposes of Article 18a and paragraph 8 of Annex IIA of the UCITS Directive.

(b) Subject to subparagraph (a), a responsible person shall ensure that, where the constitutional document of a UCITS provides for **exchange of securities in order to meet a redemption request** ~~redemption in specie~~, it also contains provisions that require, in respect of such **an exchange of securities in order to meet a redemption request** ~~a redemption in specie~~, **that asset allocation is subject to the approval of the depositary.** =

- (i) — redemption in specie is at the discretion of the UCITS and with the consent of the redeeming unit holder, and
 - (ii) — asset allocation is subject to the approval of the depositary.
- (c) **The responsible person may determine to provide exchange of securities in order to meet a redemption request subject to such redemption being provided for in the constitutional document.** Notwithstanding subparagraph (b), where the redeeming unit holder requests redemption of a number of units that represent 5 per cent or more of the net asset value of the UCITS, the responsible person may, without the consent of the redeeming unit holder, where utilising the discretion of the UCITS, determine to provide redemption in specie subject to such redemption being provided for in the constitutional documents and -
- (i) — in that event the UCITS shall, if requested to do so, sell the assets on behalf of the unit holder after the redemption has been effected, and
 - (ii) — the cost of any sale in accordance with clause (i) can be charged to the unit holder.

Question 2.4: Do you agree with the proposed changes to Regulation 31 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 33 and Chapter 7 – Subscriptions and redemptions, Dealing

The proposed amendments to Regulation 33 and Chapter 7 of the Central Bank UCITS Regulations introduce distinct regulations setting out requirements in respect of LMTs, including general operational requirements for LMTs and rules on suspensions, side pockets, swing pricing and redemption gates.

To align with the Financial Stability Board (FSB) revised policy recommendations to address structural vulnerabilities from liquidity mismatch in Open Ended Funds² (the “revised FSB recommendations”) and the International Organization of Securities Commissions (IOSCO) Final Report on Guidance on anti-dilution LMTs³ for the effective implementation of the recommendations for liquidity risk management for collective investment schemes (the “IOSCO LMT Guidance”), the Amending Directive introduced new requirements for LMTs. These new requirements aim to harmonise approach to the selection, operation and reporting of LMTs across the EU while implementing the recommendation of the ESRB to improve investor protection and allow for a more efficient reaction to liquidity constraints during periods of market stress.

The Central Bank is proposing to include to require, where appropriate, that the responsible person of the UCITS consider selecting at least one quantitative-based LMT (redemption gate, extension of notice period) and at least one anti-dilution tool (redemption fee, swing pricing, dual pricing, anti-dilution levy, redemption in kind).

For supervisory purposes, the responsible person of the UCITS is required to notify the Central Bank where it activates or deactivates any of the LMTs that are disclosed in its prospectus where such activation or deactivation occurs other than in the ordinary course of the UCITS’ business.

In respect of “redemption gates”, it is proposed to remove the requirement that a responsible person cannot impose a redemption gate on any dealing day unless the total requests for redemption exceed at least 10% of the total number of units of UCITS or at least 10% of the net asset value of the UCITS.

Proposed amendments to Regulation 33 and insertion of new regulations to Chapter 7 of the Central Bank UCITS Regulations:

33. Subscriptions and redemptions

~~(3) Where—~~

² [Financial Stability Board \(FSB\) Revised Policy Recommendations to Address Structural Vulnerabilities from Liquidity Mismatch in Open-Ended Funds.](#)

³ [International Organization of Securities Commissions \(IOSCO\) Final Report on anti-dilution Liquidity Management Tools – Guidance for Effective Implementation of the Recommendations for Liquidity Risk Management for Collective Investment Schemes.](#)

(a) the total requests for redemption on any dealing day for a UCITS or a sub-fund thereof exceed at least 10 per cent of the total number of units in the UCITS or sub-fund or at least 10 per cent of the net asset value of the UCITS or sub-fund, and

(b) the responsible person decides to refuse to redeem any units in excess of 10 per cent of the total number of units in the UCITS or sub-fund or 10 per cent of the net asset value of the UCITS or sub-fund or such higher percentage that the responsible person may determine,

the UCITS shall reduce pro rata any request for redemption on that dealing day and shall treat the redemption requests as if they were received on each subsequent dealing day until all the units to which the original request related have been redeemed.

(4) Where a UCITS temporarily suspends the repurchase or redemption of units in a UCITS in accordance with Regulation 104(2)(a)(i) of the UCITS Regulations, a responsible person shall –

(a) notify the Bank immediately upon the lifting of that temporary suspension by the UCITS, and

(b) without prejudice to subparagraph (a), and in circumstances where the temporary suspension has not been lifted within 21 working days of application, provide the Bank with an update on the temporary suspension at the expiration of the 21 working day period and each subsequent period of 21 working days where the temporary suspension continues to apply.

[]. *Liquidity Management Tools – General operational requirements*

() A responsible person shall ensure that the UCITS discloses in its prospectus the selected liquidity management tools and the terms and conditions under which a liquidity management tool can be activated and deactivated.

() When selecting liquidity management tools in accordance with Article 18a(2) of the UCITS Directive, the responsible person should consider selecting -

() at least one quantitative-based liquidity management tool from Annex IIA of the UCITS Directive, namely, redemption gates or extension of notice period, and

() at least one anti-dilution based liquidity management tool from Annex IIA of the UCITS Directive, namely, redemption fees, swing pricing, dual pricing, anti-dilution levy or, redemption in kind.

() A responsible person shall notify the Bank without delay where it activates or deactivates any of the liquidity management tools that are disclosed in its constitutional document or prospectus where such activation or deactivation occurs other than in the ordinary course of the UCITS' business.

[]. *Suspensions*

() Where a responsible person activates or deactivates the suspension of the calculation of the net asset value of the UCITS and/or the suspension of subscriptions, repurchase and redemption of the units of the UCITS, the responsible person must inform the Bank immediately upon such activation or deactivation taking effect.

() Without prejudice to paragraph 1, and in circumstances where a suspension has not been lifted within 21 working days of taking effect, the responsible person shall provide the Bank with an update on the suspension at the expiration of the 21 working day period and each subsequent period of 21 working days where the temporary suspension continues to apply.

() Where any competent authority under [INSERT SI REFERENCE EQUIVALENT TO ARTICLE 46(J) OF DIRECTIVE (EU) 2024/927] requires the responsible person of the UCITS to suspend the calculation of the net asset value or activate or deactivate the suspension of subscriptions, repurchases and redemptions, the responsible person must immediately inform the Bank when it becomes aware of this instruction.

() The Responsible Person shall take all necessary steps to keep the Bank informed of relevant information with respect to the management of the UCITS that is the subject of the exercised powers as detailed in paragraph (3) of this section.

[]. *Side pockets*

() A responsible person may establish a side pocket for assets which become impaired, illiquid or difficult to value either by physical segregation or accounting segregation where provided for in the constitutional document of the UCITS.

[]. *Swing pricing*

() A responsible person may apply swing pricing to a UCITS only if -

- () the constitutional document of the relevant UCITS provides for swing pricing, and
- () the UCITS has a swing pricing policy which is consistently applied.

[]. *Redemption gates*

() Where the responsible person decides on any dealing day to activate a redemption gate, any request for redemption on such dealing day shall be reduced rateably and the redemption requests shall be treated as if they were received on each subsequent dealing day until all the units to which the original request related have been redeemed.

Question 2.5: Do you agree with the proposed changes to Regulation 33 and Chapter 7 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 40 – Performance fees

UCITS are subject to specific rules regarding the charging and calculation of performance fees. These rules are designed to ensure investor protection, transparency and fair treatment.

Performance fees for Irish domiciled UCITS are governed by the UCITS Regulations and the Central Bank Guidance on performance fees. The Central Bank Guidance on performance fees was published in 2021 and clarified the Central Bank’s expectations in relation to performance fees being charged for Irish-domiciled UCITS funds and certain Retail Investor AIFs following publication of the ESMA Guidelines on performance fees. Certain aspects of the ESMA Guidelines were not carried across to the Central Bank Guidance on performance fees because at the time, Regulation 40 of the current Central Bank UCITS Regulations meant that it was not possible to provide for certain aspects of the ESMA Guidelines in the Central Bank Guidance, including:

- (i) the possibility of a performance reference period of less than the whole life of the fund for certain fee models;
- (ii) fulcrum fees or other models which provide for a symmetrical fee structure; and
- (iii) crystallisation of performance fees more frequently than annually, for HWM or HoH models with a performance reference period of the life of the fund which cannot be reset, and fulcrum fee models or other models which provide for a symmetrical fee structure.

In the [Feedback Statement to Consultation Paper 134](#), the Central Bank undertook to consider removing the legislative constraints to aligning with the ESMA Guidelines on performance fees in its next review of the Central Bank UCITS Regulations. On this basis, the Central Bank is now consulting on removing the relevant legislative constraints and bringing the Central Bank's approach to performance fees in line with the ESMA Guidelines (see Appendix). This will permit:

- (i) a performance reference period of less than the whole life of the UCITS for certain fee models;
- (ii) the adoption of fulcrum fee models or other models which provide for a symmetrical fee structure which can be adjusted up or down depending on relative performance of the UCITS to a benchmark; and
- (iii) crystallisation of performance fees more frequently than annually for HWM or HoH models with a performance reference period of the life of the fund which cannot be reset and fulcrum fee models or other models which provide for a symmetrical fee structure.

These changes will align the Central Bank approach to performance fees with the ESMA Guidelines.

In respect of the Central Bank Guidance on performance fees, the Feedback Statement to Consultation Paper 134 noted that the Central Bank was committed to consulting on whether entities other than the depositary might perform function of verifying the calculation of the performance fee. The Central Bank acknowledges that an independent third party entity may be appointed to carry out this task and is now consulting on whether it is appropriate to permit this in its Guidance.

The Central Bank Guidance on performance fees applies to UCITS and certain types of Retail Investor AIFs. However, the Central Bank draws stakeholders' attention to the fact that the updated Central Bank Guidance on performance fees has only been included in the Consultation Paper 161 on the Central Bank UCITS Regulations in order to reduce the length of the Consultation Paper 162 on the proposed changes to the Central Bank AIF Rulebook.

Proposed amendments to Regulation 40 of the Central Bank UCITS Regulations:

40. Performance fees

- (1) A responsible person shall ensure that performance fees are only payable by the UCITS on –
 - (a) achieving a new high net asset value ~~over the life of the UCITS~~ **during the performance reference period**, or,
 - (b) the out-performance of an index.
- (2) Where performance fees are payable on achieving a new high net asset value, the responsible person shall ensure that –
 - (a) no performance fee is accrued or paid until the net asset value per share exceeds –
 - (i) the previous highest net asset value per share on which the performance fee was paid or accrued, or
 - (ii) the initial offer price, if higher. The initial offer price shall be taken as the starting price for this calculation.
 - (b) the performance fee is only payable or paid on the increase of the net asset value per share over the amount in subparagraph (a)(i) or (a)(ii), whichever is higher.
- (3) Where performance fees are payable on the basis of out-performance of an index, the responsible person shall ensure that –
 - (a) the index is consistent with the UCITS investment policy,
 - (b) the performance fee is payable only on the amount by which the UCITS outperforms the index, and
 - (c) any underperformance of the index in preceding periods is cleared before a performance fee becomes due in subsequent periods.
- (4) In calculating the performance fees payable, the responsible person shall ensure –
 - (a) that the calculation of the performance fee does not crystallise more than once per year, and
 - (b) the performance fee is not paid more than once per year.
- (5) The responsible person shall ensure that ~~the calculation of the performance fee is verified by the depositary.~~ **the depositary or a competent person appointed by the responsible person and who is approved by the depositary, verifies that any performance fees payable are calculated in accordance with the constitutional document and the prospectus of the UCITS.**
- (6) ~~Where a UCITS has multiple managers or advisers the responsible person shall ensure that a performance fee is payable only on the performance of that part of the portfolio for which the investment manager or adviser is responsible.~~ **Sub-paragraph (a) of paragraph (4) shall not apply where the UCITS employs a HWM or a HoH model where the performance reference period is equal to the whole life of the UCITS and it cannot be reset.**

() Sub-paragraphs (a) and (b) of paragraph (4) shall not apply where the UCITS employs a fulcrum fee model or other performance fee model that provides for a symmetrical fee structure (whereby performance fees would decrease or increase based on the performance of the UCITS).

() For the purposes of this Regulation, where the performance reference period is less than the life of the UCITS, the performance reference period shall be at least five years.

Question 2.6: Do you agree with the proposed changes to Regulation 40 of the Central Bank UCITS Regulations to enable alignment of the Central Bank Guidance on performance fees with the ESMA Guidance on performance fees?

Yes

No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Question 2.7: Do you think that a competent person who is appointed by the responsible person and approved by the depositary should be permitted to verify the calculation of the performance fee?

Yes

No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank Guidance on performance fees, and provide reasons for your answer.

Regulations 42 and 43 – Transactions involving Connected Persons

Chapter 10 of the Central Bank UCITS Regulations sets out a definition of “connected persons” and restrictions on transactions with such connected persons. The Central Bank is now proposing to amend the term to “connected parties” for clarification purposes.

Such amendment will align language in the Central Bank UCITS Regulations with the AIF Rulebook.

Proposed amendments to Chapter 10 of the Central Bank UCITS Regulations:

Chapter 10

Transactions involving Connected ~~Persons~~ Parties

42. *Interpretation: Chapter 10 of Part 2*

In this Chapter, "connected ~~person~~ party" means 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, ~~unitholder~~, depositary, delegate or sub-delegate.

43. *Restrictions on transactions with connected ~~persons~~ parties*

- (1) A responsible person shall ensure that any transaction between a UCITS and a connected ~~person~~ party is –
- (2) A responsible person may enter into a transaction, on behalf of a UCITS, with a connected ~~person~~ party only if at least one of the conditions in paragraphs (a), (b) or (c) is complied with:

Question 2.8: Do you agree with the proposed changes to Regulations 42 and 43 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Part 3 – Supervisory requirements

Regulation 47 – Relationship with the Bank

The proposed amendment to Regulation 47 seeks to clarify that the requirement to designate an email address for the purpose of corresponding with the Central Bank applies at the level of the fund.

Proposed amendments to Regulation 47(a) of the Central Bank UCITS Regulations:

47. Relationship with the Bank

A responsible person shall ensure that -

- (a) each UCITS, and each sub-fund of a UCITS, which has been authorised or approved by the Bank, as the case may be, establishes and maintains an email address for correspondence with the Bank,
- (b) the email address in subparagraph (a) is monitored on a daily basis, and
- (c) the Bank is informed in writing promptly of any change to the email address in subparagraph (a).

Question 3.1: Do you agree with the proposed changes to Regulation 47 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 48 – Charges for redemption or repurchase of units

The Central Bank is proposing to rename Regulation 48 ‘Charges relating to the redemption or repurchase of units’ rather than ‘Charges for redemption or repurchase of units’ for clarification purposes.

In light of the harmonised definitions of LMTs in Annex IIA of the UCITS Directive which will be transposed into Irish law by amending the UCITS Regulations, it is necessary to differentiate rules around certain charges set out in the Central Bank UCITS Regulations from the LMTs listed in Annex IIA. Certain charges relating to the redemption or repurchase of units are distinct from LMTs (which take account the cost of liquidity) under Annex IIA. These changes are necessary to ensure that where a fund imposes standard charges as part of its normal redemption/subscription process it does not trigger the requirements under the relevant LMT provisions.

Proposed amendments to Regulation 48 of the Central Bank UCITS Regulations:

48. ~~Charges for redemption or repurchase of units~~ **Charges relating to the redemption or repurchase of units**

- (1) Subject to paragraph (2), a responsible person shall not increase the maximum ~~relevant charge~~ **charge relating to the redemption or repurchase of units** without the prior approval of unit-holders given on the basis of a simple majority of votes cast in general meeting or with the prior written approval of all unit-holders of the relevant UCITS (in accordance with the constitutional document) or such other majority as is specified in the constitutional document of the relevant UCITS.
- (2) A responsible person shall -
 - (a) provide unit-holders with reasonable notice of any proposed increase in the ~~relevant charge~~ **charge relating to the redemption or repurchase of units**, and
 - (b) permit a unit-holder to redeem any or all of the unit-holder's units prior to the implementation of the proposed increase.
- (3) In this Regulation, "~~relevant charge~~ **charge relating to the redemption or repurchase of units**" means, in the context of a particular UCITS, a ~~charge-fee~~ **charge** relating to **expenses incurred by a UCITS to arrange for** the redemption or repurchase of units in that UCITS.

Question 3.2: Do you agree with the proposed changes to Regulation 48 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulations 51 and 52 – Monthly and quarterly returns

The Central Bank is proposing to remove and replace Regulations 51 and Regulation 52 of the Central Bank UCITS Regulations in respect of monthly and quarterly returns with a new Regulation allowing for future amendments to reporting requirements as set out in the relevant Central Bank’s guidance.

Proposed amendments to Regulation 51 and 52 of the Central Bank UCITS Regulations:

(). Reporting requirements

- (1) The responsible person shall submit such periodic returns and supervisory records to the Bank as specified by the Bank from time to time. Those returns and supervisory records shall be in the form, and contain the information, specified by the Bank and published on the Bank’s website.

51. Monthly returns

- (1) A responsible person shall submit to the Bank periodic returns each of which complies with the requirements of paragraph (2).
- (2) The requirements for the purposes of paragraph (1) are the following:
- (a) returns shall be made on a monthly basis;
 - (b) each return shall relate to a complete calendar month;
 - (c) a return shall be made to the Bank not later than the tenth business day of the month that is subsequent to the month to which the return relates;
 - (d) each return subsequent to the first return shall be in respect of the calendar month that is subsequent to the month to which the most recently submitted return relates;
 - (e) a return must be denominated in the base currency of the relevant UCITS;
 - (f) a return shall include the following:
 - i. the Bank code issued to the sub-fund of the UCITS;
 - ii. (the base currency of the UCITS;
 - iii. the type of UCITS, designated by investment strategy;
 - iv. the total gross asset value of the UCITS at month-end;
 - v. the total net asset value of the UCITS at month-end;
 - vi. the number of units in circulation at month-end;

- vii. — the net asset value per unit at month-end;
- viii. — payments received from the issues of units during the relevant month;
- ix. — payments made for the repurchase of units during the relevant month;
- x. — the net amount from issues and repurchases during the relevant month;
- xi. — the profit or loss arising from the operations of the UCITS in the relevant month;
- xii. — investment management fees (excluding performance fees) —
 - (i) — accrued, and
 - (ii) — paid,

in the relevant month;

- xiii. — all other charges, fees and expenses (excluding investment management fees) —
 - (i) — accrued, and
 - (ii) — paid,

in the relevant month.

52. Quarterly returns

- (1) A responsible person shall submit to the Bank periodic returns in the format prescribed by the Bank from time to time and each of which complies with the requirements of paragraph (2).
- (2) The requirements for the purposes of paragraph (1) are the following:
 - (a) each return shall be known as a Money-Market and Investment Fund return;
 - (b) returns shall be made on a quarterly basis;
 - (c) each return shall relate to a period of three complete and consecutive calendar months;
 - (d) a return shall be made to the Bank not later than the tenth business day of the month that is subsequent to the last of the months to which the return relates;
 - (e) each return subsequent to the first return shall be in respect of the three-month period that is subsequent to the last of the months to which the most recently submitted return relates.

Question 3.3: Do you agree with the proposed removal and replacement of Regulations 51 and 52 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Part 4 – Prospectus requirements

Regulation 53 – General requirements

In respect of the requirement to ensure that the UCITS complies with the terms of the UCITS prospectus as set out in the current Regulation 53 of the Central Bank UCITS Regulations, the Central Bank proposes to clarify that responsibility rests with the management company of the UCITS.

Proposed amendments to Regulation 53(1) of the Central Bank UCITS Regulations:

53. *General requirements*

- (1) A ~~responsible person~~ **management company** shall ensure that it and the UCITS complies with the terms of the UCITS prospectus.

Question 4.1: Do you agree with the proposed changes to Regulation 53 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 54 – Advertising

The proposed amendments to Regulation 54 of the Central Bank UCITS Regulation relate to paragraphs (3) and (4), where the reference to the KID as defined in the amended Regulation 2 of the Central Bank UCITS Regulations submitted for consultation was included to take account of the entry into force of the PRIIPs Regulation.

Since the entry into application of the PRIIPs Regulation to UCITS, the responsible person of a UCITS shall provide a PRIIPs KID instead of a UCITS KIID where the UCITS is made available to retail investors in the EU. However, the proposed language clarifies that specific situations outlined in the European Commission’s Q&A XI, point 1, of the PRIIPs Q&As may require a UCITS to provide a UCITS KIID, in particular, where a UCITS is not made available to retail investors in the EU in accordance with Article 5(1) of the PRIIPs Regulation and in compliance with the rules in the UCITS Directive, as transposed into Irish law in the UCITS Regulations, unless the UCITS management company has decided to draw up a KID as set out in the PRIIPs Regulation.

Proposed amendments to Regulation 54 of the Central Bank UCITS Regulations:

54. Advertising

- (1) A responsible person shall ensure that the name of a UCITS and its regulatory status is shown clearly in any advertisement relating to that UCITS.
- (2) A responsible person shall ensure that an advertisement relating to a UCITS shall not contain information ~~which~~ **that** is false or misleading or presented in a manner that is deceptive.
- (3) A responsible person shall ensure that an advertisement relating to a UCITS shall refer to the ~~key investor information document~~ **KIID or the KID (as the case may be)** and the prospectus issued by the relevant UCITS.
- (4) A responsible person shall ensure that no advertisement relating to a UCITS is inconsistent with any relevant ~~provision of the key investor information document or~~ **provisions of the KIID or the KID (as the case may be) and** the prospectus issued by the relevant UCITS.
- (5) Without prejudice to Regulation 97, a responsible person shall comply with the advertising standards set out in Schedule 6 where the relevant UCITS is –
 - (a) authorised in a Member State other than the State and is marketing its units in the State, or
 - (b) authorised in the State and is marketing its units in the State or in a state that does not have any statutory regulation of marketing.

Question 4.2: Do you agree with the proposed changes to Regulation 54 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 60 – Index-tracking funds

The Central Bank proposes to amend Regulation 60(2)(d) of the Central Bank UCITS Regulations to incorporate the UCITS Q&A ID 1082 on the meaning of the term ‘reverse leverage’, which refers to short exposure. This amendment will result in the deletion of the UCITS Q&A ID 1082.

Proposed amendments to Regulation 60(2)(d) of the Central Bank UCITS Regulations:

60. *Index-tracking funds*

- (2) A responsible person of an index-tracking leveraged UCITS shall include the following information in the prospectus of the UCITS:
- (a) a description of the leverage policy and how the leverage policy is implemented;
 - (b) the cost of the leverage (where relevant);
 - (c) the risks associated with the leverage policy;
 - (d) a description of the impact of any ~~reverse leverage~~ **short exposure**;
 - (e) a description of how the performance of the UCITS may differ significantly from the multiple of the index performance over the medium term to the long term.

Question 4.3: Do you agree with the proposed changes to Regulation 60 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 61 – Efficient portfolio management

The Central Bank proposes to clarify Regulation 61(1)(a) of the Central Bank UCITS Regulations related to disclosure requirements in the prospectus on efficient portfolio management techniques and instruments which may be used by the UCITS. Specifically, it is proposed to remove the reference to the ‘intentions’ of the UCITS as regards such techniques and instruments, a term which is unclear and open to interpretation. Under the proposed approach, the Central Bank seeks to clarify that the techniques and instruments which may be used by the UCITS shall be disclosed in the prospectus.

Proposed amendments to Regulation 61(1)(a) of the Central Bank UCITS Regulations:

61. Efficient portfolio management

- (1) A responsible person shall, in the prospectus of the relevant UCITS, include the following:
 - (a) a description of ~~its intentions regarding~~ the techniques and instruments which may be used for the purposes of efficient portfolio management. This should include reference to the techniques and instruments which the UCITS can utilise and a detailed description of the inherent risks, including counterparty risk and potential ~~conflict~~ conflicts of interest, that may arise;

Question 4.4: Do you agree with the proposed changes to Regulation 61 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 62 – Dealing

Regulation 62 of the Central Bank UCITS Regulations specifies the information that shall be disclosed in the prospectus of the UCITS in respect of dealing. The Central Bank is now proposing to clarify that both the “maximum charge relating to the redemption or repurchase of units” i.e. ‘one and done’ costs incurred for redemptions and other charges to cover dealing costs and preserve the value of the underlying assets of the UCITS must be prominently disclosed in the prospectus. These other charges may be an anti-dilution levy, a redemption fee, a swing-pricing factor or an adjustment factor that reflects the cost of liquidity and they must be disclosed in as per the statement set out in paragraph (2) of this Regulation.

Proposed amendments to Regulation 62 of the Central Bank UCITS Regulations:

62. Dealing

- (1) A responsible person shall, in the prospectus of the relevant UCITS, disclose the following information in respect of dealing:
 - (a) the initial offer period;
 - (b) the initial offer price;
 - (c) in bold typeface, prominently at the beginning of the prospectus (or the relevant supplement to the prospectus, where appropriate), the maximum ~~redemption charge~~ **charge relating to the redemption of repurchase of units (as defined in Regulation 48(2));**
 - (d) the time limits within which the equivalent of the net issue price is to be paid into the assets of the UCITS.
- (2) A responsible person that proposes to apply an ~~anti-dilution levy~~ **liquidity management tools including those referred to in [INSERT REFERENCE TO IRISH LEGISLATIVE PROVISION TRANSPOSING ANNEX IIV]** to subscriptions or redemptions shall, in the prospectus of the relevant UCITS, include a provision to the following effect –

"In calculating the subscription or redemption price for the UCITS the directors may, on any dealing day on which there are net subscriptions or redemptions, adjust (as relevant)

the subscription or redemption price by adding or deducting ~~an anti-dilution levy~~ a charge to cover dealing costs and to preserve the value of the underlying assets of the UCITS."

() For the purposes of Regulation 62(2), charge means any one of (i) an anti-dilution levy, (ii) a redemption fee, (iii) a swing pricing factor or (iv) an adjustment factor that reflects the cost of liquidity.

Question 4.5: Do you agree with the proposed changes to Regulation 62 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 63 – Redemption *in specie*

Redemption in kind, referred to as redemption in specie in the Central Bank UCITS Regulations, shall only be activated to meet redemptions requested by professional investors in accordance with Recital 54 and Annex IIA, point 8, of the Amending Directive which will be transposed into Irish law by amending the UCITS Regulations.

Regulation 63 of the Central Bank UCITS Regulations is being amended to reflect this and allow for circumstances where a UCITS, if provided for in the prospectus, may exchange securities in order to meet a redemption request, provided that the asset allocation is subject to the approval of the depositary.

Proposed amendments to Regulation 63 of the Central Bank UCITS Regulations:

63. ~~Redemption in specie~~ *Exchange of securities in order to meet a redemption request*

- (1) *Where the prospectus of a UCITS provides for the exchange of securities in order to meet a redemption request, the responsible person shall, in the prospectus of the relevant UCITS, provide that asset allocation is subject to the approval of the depositary. Subject to paragraph (3),*

where the prospectus of a UCITS provides for redemption in specie, the responsible person shall, in the prospectus of the relevant UCITS, also provide as follows:

(a) redemption in specie is –

- _____ (i) _____ at the discretion of the UCITS, and
- _____ (ii) _____ subject to the consent of the redeeming unit-holder;

(b) _____ asset allocation is subject to the approval of the depositary;

(c) _____ a determination to provide redemption in specie may be at the sole discretion of the responsible person where the redeeming unit-holder requests redemption of a number of units that represent at least 5 per cent of the net asset value of the UCITS.

(2) In the event of a redemption in specie in accordance with subparagraph (c) of paragraph (1) –

- (a) the responsible person shall, if so requested by the redeeming unit-holder, sell the assets on behalf of that unit-holder, and
- (b) the cost of the sale of the relevant units may be charged to the unitholder.

(3) Paragraph (1) does not apply to an exchange-traded fund where the original subscription was made in specie.

Question 4.6: Do you agree with the proposed changes to Regulation 63 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 67 – Risk disclosures

The Central Bank is proposing to amend Regulation 67(2)(c) of the Central Bank Regulations to emphasise the distinction between an administrative charge relating to the sale and redemption or repurchase of units, and an LMT type redemption fee which is designed to reflect the cost of liquidity.

Proposed amendments to Regulation 67(2)(c) of the Central Bank UCITS Regulations:

67. Risk disclosures

(2) A disclosure for the purposes of paragraph (1) shall make reference to at least the following:

- (a) the fact that prices of units may fall as well as rise;
- (b) that investors are recommended to consult a stockbroker or financial adviser about the contents of the prospectus;
- (c) where relevant, the fact that the difference at any one time between the sale **and redemption** ~~and-or~~ repurchase price of units in the UCITS arising from **any charge relating to the redemption or repurchase of units** ~~the repurchase charge~~ means that the investment should be viewed as medium term to long term investment.

Question 4.7: Do you agree with the proposed changes to Regulation 67 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 71 – Conflicts of interest

The Central Bank proposes to amend the term “connected person(s)” to “connected party(ies)” within Regulation 71 of the Central Bank UCITS Regulations for clarification purposes. Such amendment will further align language with the Central Bank AIF Rulebook.

Proposed amendments to Regulation 71 of the Central Bank UCITS Regulations:

71. Conflicts of interest

- (1) A responsible person shall include in the prospectus of the relevant UCITS a description of the potential conflicts of interest that could arise between the management company, investment manager and the UCITS and, where applicable, details of how such conflicts will be managed.

- (2) A responsible person shall include in the prospectus of the relevant UCITS a description of soft commission arrangements that may be entered into by a responsible person or a connected ~~person~~ party.
- (3) Where it is envisaged that a UCITS and connected ~~persons~~ parties may enter into transactions with each other, the responsible person shall ensure that the prospectus discloses the fact that such transactions may occur.
- (4) In this Regulation “connected ~~person~~ party” has the meaning given to the term in Regulation 42.

Question 4.8: Do you agree with the proposed changes to Regulation 71 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 74 – Performance fees

It is proposed to amend Regulation 74 to reflect Section XI, Question 5 of the ESMA Q&A on the UCITS Directive. In the Central Bank’s UCITS Q&A ID 1105, the Central Bank confirmed that it would implement the aforementioned ESMA Q&A and subsequently update the Central Bank UCITS Regulations in due course. It is now proposed to make this legislative update.

Proposed amendments to Regulation 74 of the Central Bank UCITS Regulations:

74. Performance fees

- (1) Where a UCITS provides for the payment of performance fees, a responsible person shall, in the prospectus of the relevant UCITS, disclose the following:
 - (a) that the UCITS provides for the payment of performance fees;
 - (b) the calculation period for determining the performance fees;
 - (c) the first calculation period;
 - (d) how the performance fees are calculated;
 - (e) the percentage performance fee payable;

- (f) the accrual basis of the performance fees and when the performance fees are actually paid;
and
- (g) a risk warning that performance fees are based on net realised and net unrealised gains and losses as at the end of each calculation period and as a result, performance fees may be paid on unrealised gains which may subsequently never be realised;
- ~~(h) where a UCITS has multiple managers or advisers, a risk warning that it is possible that performance fees may be payable to one or more of the investment managers or advisers where the overall net asset value of the fund may not have increased.~~

Question 4.9: Do you agree with the proposed changes in Regulation 74 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation [] – Net Asset Value based fees

The Central Bank is proposing to impose a new requirement to disclose in the prospectus the maximum fee payable for details of any recurring fees which are calculated based on the net asset value of the UCITS and deducted from its assets. This will promote transparency and informed decision making for investors.

Proposed insertion of new regulation within Part 4 on prospectus requirements of the Central Bank UCITS Regulations:

[]. *Net Asset Value-based fees*

() A responsible person shall ensure that the prospectus includes the maximum fee payable for details of any recurring fees which are calculated based on the net asset value of the UCITS and deducted from its assets.

Question 4.10: Do you agree with the proposed insertion of a new regulation above?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Part 5 – Key investor information document

Part 5 (Regulations 75 to 78) – Key investor information document

The Central Bank is proposing to amend Regulations 75 to 78 of the Central Bank UCITS Regulations as a result of the entry into force of the PRIIPs Regulation and related Level 2/3 texts.

Specifically, the proposed changes seek to:

- clarify that requirements set out in Regulations 75, 76(1), 77 and 78 of the Central Bank UCITS Regulations are applicable to specific situations outlined in the European Commission’s Q&A XI, point 1, of the PRIIPs Q&As, in particular, where a UCITS is not made available to retail investors in the EU in accordance with Article 5(1) of the PRIIPs Regulation and in compliance with the rules in the UCITS Directive, as transposed into Irish law in the UCITS Regulations, unless the UCITS management company has decided to draw up a KID as set out in the PRIIPs Regulation;
- ensure, where the UCITS is required to have a KIID, that the KIID complies with the ESMA Guidelines on the PRIIPs Regulation per the proposed changes to Regulation 75(f);

- incorporate into the Regulation 76(1)(b)(ii) the UCITS Q&A ID 1082 on the meaning of the term ‘reverse leverage’, which refers to short exposure;
- set out a requirement for an umbrella UCITS to submit a KID to the Central Bank prior to the approval of a new sub-fund per the proposed new Regulation 78(4);
- provide specific filing requirements that shall be met when submitting a KID per the proposed new Regulation 78(5), to ensure that the UCITS KID complies with the PRIIPs Regulation and the Commission’s Delegated Regulation laying down regulatory technical standards as regards the content of the PRIIPs KID, and that it does not conflict with the content of the prospectus;
- set out an obligation on the responsible person of the UCITS to submit to the Central Bank each new or amended KID per the proposed new Regulation 78(6); and
- make drafting changes to Regulations 75(e), 78(2) and 78(3).

Proposed amendments to Part 5, Regulations 75 to 78 of the Central Bank UCITS Regulations:

Part 5

Key investor information document/ **Key information document**

75. *General*

Where a UCITS is required to have a KIID, a responsible person shall ensure that **a** ~~the~~ KIID ~~for a UCITS~~ complies with the following:

- (a) the ESMA Guidelines on clear language and layout of the key investor information document (Ref: CESR/10-1320);
- (b) the ESMA Guidelines on the methodology for calculation of the ongoing charges figure in the Key Investor Information Document (Ref: CESR/10-674);
- (c) the ESMA Guidelines on the methodology for the calculation of the synthetic risk and reward indicator in the Key Investor Information Document (Ref.: CESR/10-673);
- (d) the ESMA template for the Key Investor Information Document (Ref.: CESR/10-1321);
- (e) the ESMA Guidelines selection and presentation of performance scenarios in the Key Investor Information ~~d~~Document for structured UCITS (Ref.: CESR/10-1318).;
- (f) **the ESMA Guidelines on the application of Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs).**

76. Investment objective and policy

- (1) **Where a UCITS is required to have a KIID, a** responsible person shall ensure that the following are included in the KIID:
- (a) where a UCITS is established as an index-tracking UCITS, the KIID shall include, in summary form, information on how the index will be tracked and the implications of the chosen method for unit holders in terms of their exposure to the underlying index and counterparty risk;
 - (b) where a UCITS is established as an index-tracking leveraged UCITS, the KIID shall include, in summary form, the following information:
 - (i) a description of the leverage policy, how this is achieved (i.e. whether the leverage is at the level of the index or arises from the way in which the UCITS obtains exposure to the index), the cost of the leverage (where relevant) and the risks associated with this policy;
 - (ii) a description of the impact of any ~~reverse leverage~~ **short exposure**;
 - (iii) a description of how the performance of the UCITS may differ significantly from the multiple of the index performance over the medium to the long term.
- (2) In relation to a structured UCITS, if the pre-determined pay-off is available only to those investors that buy units at a certain point and hold them until a certain date, the responsible person shall ensure that the relevant KIID -
- (a) includes a statement to this effect,
 - (b) details the consequences for an investor of buying and selling units in the UCITS other than in instances in which the pre-determined pay-off is available, and
 - (c) if a guarantee from an independent third party is offered, includes an explanation of such guarantee.

77. Risk and reward profile

- (1) **Where a UCITS is required to have a KIID, a** responsible person shall calculate a synthetic risk and reward indicator in accordance with the methodology prescribed in ESMA Guidelines for the calculation of the synthetic risk and reward indicator in the Key Investor Information Document (Ref: CESR/10-673).
- (2) (a) **Where a UCITS is required to have a KIID, a** responsible person of a UCITS established as a feeder fund shall ensure the following are included in the KIID:
- (i) a description of the risk and reward profile of the UCITS;

- (ii) where the ancillary assets held by the feeder UCITS impact on the risk and reward profile of the UCITS, a disclosure of this fact;
- (b) A description for the purposes of subparagraph (a)(i) shall not be materially different to the risk and reward profile of the corresponding master UCITS.

78. *Filing requirements*

- (1) **Where a UCITS is required to have a KIID, a** responsible person of an umbrella UCITS shall submit a KIID to the Bank prior to the approval of a new sub-fund.
- (2) When filed with the Bank in accordance with paragraph (1), a KIID must be accompanied by written confirmation from the responsible person or the legal adviser to the UCITS ~~to the Bank~~ that -
 - (a) the KIID complies with the requirements of the UCITS Regulations, Commission Regulation (EU) No 583/2010 and these Regulations, and
 - (b) the information in the KIID does not conflict with the content of the prospectus.
- (3) ~~Every~~ **Each** new KIID and amended KIID shall be submitted by the responsible person to the Bank.
- (4) **Where a UCITS is required to have a KID, a responsible person of an umbrella UCITS shall submit a KID to the Bank prior to the approval of a new sub-fund.**
- (5) **A KID filed in accordance with paragraph (4) must be accompanied by written confirmation from the responsible person or the legal adviser to the UCITS that-**
 - (a) **the KID complies with Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs);**
 - (b) **the KID complies with Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs) by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents; and**
 - (c) **the information in the KID does not conflict with the content of the prospectus.**
- (6) **Each new KID and amended KID shall be submitted by the responsible person to the Bank.**

Question 5: Do you agree with the proposed changes to Regulations 75 to 78 in Part 5 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Part 6 – General operational requirements

Regulation 80 – Directed brokerage services or similar arrangements

Changes are proposed to Regulation 80 of the Central Bank UCITS Regulations for drafting purposes.

Proposed amendments to Regulation 80 of the Central Bank UCITS Regulations:

80. Directed brokerage services or similar arrangements

A responsible person shall, **review** at least, ~~on an annual basis, review~~ **annually** any directed brokerage services or similar arrangements and associated costs to a UCITS, where such services or arrangements are being operated in relation to that UCITS.

Question 6: Do you agree with the proposed changes in Regulation 80 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Part 7 – Annual and half-yearly reports of a UCITS

Regulation 82 – Additional information to be included in the annual report

Changes are proposed to Regulation 82 for drafting purposes.

Proposed amendments to Regulation 82 of the Central Bank UCITS Regulations:

82. Additional information to be included in the annual report

- (2) For the purposes of paragraph (1)(b) –
 - (a) a material change is defined as aggregate purchases of a security exceeding 1 per cent of the total value of purchases for the period or aggregate disposals greater than 1 per cent of the total value of sales,
 - (b) if there were fewer than 20 purchases that met the material changes definition, the UCITS shall disclose those purchases and such number of the next largest purchases so that at least 20 purchases are disclosed, and
 - (c) if there were fewer than 20 sales that met the material changes definition, the UCITS shall disclose those sales and such number of the next largest sales so that at least 20 sales are disclosed.

Question 7: Do you agree with the proposed changes in Regulation 82 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Part 8 – Requirements in respect of specific types of funds

Regulation 84 – Interpretation: Part 8

The Central Bank is now proposing to remove Regulation 84 of the Central Bank UCITS Regulations for clarification purposes and to include, as a replacement, new paragraphs (1) and (2).

The proposed Regulation 84(1) and (2) seek to ensure that for a UCITS that is a short term or standard MMF (i) comply at all times with the requirements on stress testing in accordance with Article 28 of the MMFR, and (ii) adhere to the guidelines establishing common reference parameters of the stress test scenarios that are issued and updated periodically by the ESMA.

Proposed amendments to Regulation 84 of the Central Bank UCITS Regulations:

84. ~~Interpretation: Part 8~~ *Stress Testing – Money Market UCITS*

- (1) ~~For a UCITS that is a short term MMF or a standard MMF as defined in Article 2(14) and 2(15) respectively of the Money Market Funds Regulation, a responsible person shall ensure that the UCITS complies at all times with the requirements on stress testing in accordance with Article 28 of the Money Market Funds Regulation. In this Part, references to a "Short-Term Money-Market Fund" means a money-market fund referred to in Regulation 89, "Money-Market Fund" means a money-market fund referred to in Regulation 90 and "money market fund" means either a Short-Term Money-Market Fund or a Money-Market Fund.~~

 (2) ~~In conducting the stress testing detailed in paragraph (1) above, the UCITS shall adhere to the guidelines establishing common reference parameters of the stress test scenarios that are issued and updated periodically by the European Securities and Markets Authority (ESMA).~~

Question 8.1: Do you agree with the proposed changes in Regulation 84 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 85 – Exchange-traded funds

In November 2024, the Central Bank published UCITS Q&A ID 1016 to reflect changes which enable the ETF naming requirement at the share class level. It is now proposed to reflect these changes in the Central Bank UCITS Regulations under paragraph (1) of Regulation 85 and delete the relevant Q&A.

In addition, it is proposed to update Regulation 85(2) and (3) of the Central Bank Regulations to clarify that the relevant documents include the UCITS KIID or the PRIIPs KID, as applicable.

Proposed amendments to Regulation 85 of the Central Bank UCITS Regulations:

85. Exchange-traded funds

- (1) A responsible person of a UCITS ETF shall ensure that, in its name and in each of the types of document set out in paragraph (2), the relevant UCITS ETF uses the identifier "UCITS ETF" to identify it as an exchange-traded fund. Where a UCITS ETF has one or more sub-funds or share classes, the "UCITS ETF" identifier shall only be used in respect of those sub-funds or share classes that are exchange-traded. A responsible person of a UCITS ETF shall ensure that, in its name and in each of the types of document set out in paragraph (2), the relevant UCITS ETF uses the identifier "UCITS ETF" to identify it as an exchange-traded fund.
- (2) The types of document to which paragraph (1) refers are, in respect of the particular UCITS ETF -
 - (a) the constitutional document,
 - (b) the prospectus,
 - (c) the KIID or KID, and
 - (d) marketing communications.
- (3) A responsible person of a UCITS ETF shall, in -
 - (a) the prospectus,

- (b) the KIID **or KID**, and
- (c) the marketing communications of the UCITS ETF, disclose the policy of the UCITS ETF regarding portfolio transparency and where information on the portfolio may be obtained, including where the indicative net asset value, if applicable, is published.

Question 8.2: Do you agree with the proposed changes in Regulation 85 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 86 – Actively managed UCITS ETFs

The Central Bank is proposing to amend Regulation 86(b) of the Central Bank UCITS Regulations in respect of actively-managed UCITS ETFs to include, where the UCITS is required to provide a PRIIPs KID, a reference to the PRIIPs KID to the list of documents where the disclosure requirements set out in this provision shall be met by the responsible person of the UCITS.

Proposed amendments to Regulation 86(b) of the Central Bank UCITS Regulations:

86. Actively managed UCITS ETFs

A responsible person of a UCITS that is an actively managed UCITS ETF shall, in –

- (a) the prospectus,
- (b) the KIID **or KID**, and
- (c) the marketing communications of the actively managed UCITS ETF, disclose –
 - (i) that the UCITS ETF is an actively managed UCITS ETF, and
 - (ii) how the UCITS ETF will meet the stated investment policy including, where applicable, its intention to outperform an index.

Question 8.3: Do you agree with the proposed changes in Regulation 86 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulations 88 to 91 – Provisions in respect of money-market UCITS

The Central Bank is proposing to remove Regulations 88 to 91 of the Central Bank UCITS Regulations as they are obsolete.

Proposed removal of Regulations 88, 89, 90 and 91 of the Central Bank UCITS Regulations:

~~88. Money-market UCITS~~

~~(1) A responsible person of a UCITS that is a money-market fund shall, in –~~

~~(a) the prospectus, and~~

~~(b) the KIID,~~

~~_____ state whether the relevant UCITS is a Short-Term Money-Market Fund or a Money-Market Fund.~~

~~(2) A responsible person of a UCITS that is a money-market fund shall, in its prospectus –~~

~~(a) include a risk warning highlighting the difference between the nature of a deposit and the nature of an investment in a money-market fund, including mention of the risk that the principal invested in a money-market fund is capable of fluctuation, and~~

~~(b) provide information to investors on the risk and reward profile of the fund so as to enable an investor to identify any specific risks linked to the investment strategy of the money-market fund.~~

~~(3) Information that is provided in accordance with paragraph (2)(b) shall –~~

- (a) in the case of every money-market fund, include, where relevant, investment in new asset classes, financial instruments or investment strategies that have unusual risk and reward profiles, and
- (b) in the case of a Money-Market Fund, take account of the longer WAM and WAL.

89. Short-Term Money-Market Funds

(1) A responsible person of a UCITS that is a Short-Term Money-Market Fund shall ensure that the primary investment objectives of the UCITS are to—

- (a) maintain the principal of the fund, and
- (b) provide a return in line with money-market rates.

(2) A responsible person of a UCITS that is a Short-Term Money-Market Fund shall ensure that the relevant UCITS—

(a) invests only in the following:

- (i) high quality money-market instruments, as determined by the responsible person, that comply with the criteria for money-market instruments as set out in the UCITS Regulations;
- (ii) deposits with credit institutions specified in Regulation 7;

(b) takes into account and documents the assessment by the responsible person of at least the following factors, in determining the quality of a relevant investment:

- (i) the credit quality of the instrument;
- (ii) the nature of the asset class represented by the instrument;
- (iii) in the case of a structured financial instrument, the operational and counterparty risk associated with the instrument;
- (iv) the liquidity profile of the instrument;

(c) for the purposes of subparagraph (b)(i), where a money-market instrument—

- (i) was subject to a credit rating by an agency registered and supervised by ESMA that rating shall be taken into account by the responsible person in the credit assessment process, and
- (ii) where a money-market instrument is downgraded below the two highest short-term credit ratings by the credit rating agency referred to in clause (i) this shall result in a new credit assessment being conducted of the instrument by the responsible person without delay, and

~~(d) monitors the credit quality of each of its investments on an ongoing basis.~~

~~(3) A responsible person of a UCITS that is a Short-Term Money-Market Fund shall ensure the relevant UCITS-~~

~~(a) invests only in securities or instruments that have a residual maturity until the legal redemption date of not greater than 397 days,~~

~~(b) provides daily net asset value and price calculations and has daily subscriptions and redemptions of units,~~

~~(c) ensures that the WAM of the portfolio does not exceed 60 days,~~

~~(d) ensures that the WAL of the portfolio does not exceed 120 days,~~

~~(e) takes into account the impact of FDIs, deposits and efficient portfolio management techniques and instruments when calculating the WAM and WAL,~~

~~(f) ensures that it is not exposed, directly or indirectly, to equities or commodities, including through any FDI,~~

~~(g) invests only in FDIs when these are in line with the money-market investment strategy of the UCITS,~~

~~(h) invests only in FDIs that give exposure to foreign exchange for hedging purposes,~~

~~(i) does not invest in a non-base currency unless the exposure is fully hedged,~~

~~(j) does not invest in another investment fund unless that other investment fund also is a short-term money-market fund, and~~

~~(k) has either a constant or fluctuating net asset value.~~

~~(4) For the purposes of paragraph (3)(d), when calculating the WAL for securities, including structured financial instruments-~~

~~(a) the responsible person shall base the maturity calculation on the residual maturity until the legal redemption of the instruments, and~~

~~(b) for the purposes of paragraph (a), where a financial instrument embeds a put option, the exercise date of the put option may be used instead of the legal residual maturity if the following conditions apply at all times:~~

~~(i) the put option can be exercised freely by the UCITS at its exercise date;~~

~~(ii) the strike price of the put option remains close to the expected value of the instrument at the next exercise date;~~

~~(iii) the investment strategy of the UCITS implies that there is a high probability that the option will be exercised at the next exercise date.~~

Regulation 90. Money-Market Funds

- (1) A responsible person of a UCITS that is a Money-Market Fund shall ensure that the primary investment objectives of the UCITS are to-
- (a) maintain the principal of the fund, and
 - (b) provide a return in line with money-market rates.
- (2) A responsible person of a UCITS that is a Money-Market Fund shall ensure that the relevant UCITS-
- (a) invests only in the following:
 - (i) high quality money-market instruments, as determined by the responsible person that comply with the criteria for money-market instruments as set out in the UCITS Regulations;
 - (ii) deposits with credit institutions referred to in Regulation 7;
 - (b) takes into account and documents the assessment by the responsible person of at least the following factors, in determining the quality of a relevant investment:
 - (i) the credit quality of the instrument;
 - (ii) the nature of the asset class represented by the instrument;
 - (iii) in the case of a structured financial instrument, the operational and counterparty risk associated with the instrument;
 - (iv) the liquidity profile of the instrument;
 - (c) For the purposes of subparagraph (b)(i), where a money-market instrument-
 - (i) was subject to a credit rating by an agency registered and supervised by ESMA that rating shall be taken into account by the responsible person in the credit assessment process, and
 - (ii) where a money-market instrument is downgraded below the two highest short-term credit ratings by the credit rating agency referred to in clause (i) this shall result in a new credit assessment being conducted of the instrument by the responsible person without delay, and
 - (d) monitors the credit quality of each of its investments on an ongoing basis.
- (3) A responsible person of a UCITS that is a Money-Market Fund shall ensure the relevant UCITS-

- (a) invests only in securities or instruments that have a residual maturity until the legal redemption date of not greater than two years, provided that the time remaining until the next interest reset date is not greater than 397 days,
- (b) provides daily net asset value and price calculations and has daily subscriptions and redemptions of units,
- (c) ensures that the WAM of the portfolio does not exceed six months,
- (d) ensures that the WAL of the portfolio does not exceed 12 months,
- (e) takes into account the impact of FDIs, deposits and efficient portfolio management techniques and instruments when calculating the WAM and WAL,
- (f) ensures that the UCITS is not exposed, directly or indirectly, to equities or commodities, including through FDIs,
- (g) invests only in FDIs that give exposure to foreign exchange for hedging purposes,
- (h) does not invest in a non-base currency unless the exposure is fully hedged,
- (i) does not invest in another investment fund unless that other investment fund is a short-term money-market fund or a money-market fund, and
- (j) has a fluctuating net asset value.

(4) For the purposes of paragraph (2)(d), a floating rate security must reset to a money-market rate or index.

(5) _____

- (a) Subject to subparagraph (b), for the purposes of paragraph (3)(d), when calculating the WAL for a security, including a structured financial instrument, the responsible person shall base the maturity calculation on the residual maturity until the legal redemption of the instrument.
- (b) When a financial instrument embeds a put option, the exercise date of the put option may be used instead of the legal residual maturity if the following conditions apply at all times:
 - (i) the UCITS can exercise the put option, at its exercise date, freely;
 - (ii) the strike price of the put option remains close to the expected value of the instrument at the next exercise date;
 - (iii) the investment strategy of the UCITS implies that there is a high probability that the option will be exercised at the next exercise date.

91. Short-Term Money-Market Funds: valuation on the basis of amortised cost

- ~~(1) A responsible person of a UCITS that is a Short-Term Money-Market Fund shall not permit that UCITS to follow an amortised cost valuation methodology unless the UCITS or, where relevant, its delegate has demonstrated expertise in the operations of money market funds that follow this method of valuation.~~
- ~~(2) For the purposes of paragraph (1), expertise shall be demonstrable where any of the following conditions is satisfied:~~
- ~~(a) the short-term money-market fund has obtained a triple-A rating from an internationally recognised rating agency;~~
 - ~~(b) the responsible person is engaged in the management, or has been engaged in the management, of a triple-A rated money-market fund;~~
 - ~~(c) in circumstances other than those in subparagraph (a) or subparagraph (b), where the responsible person or, where relevant, its delegate, has demonstrated to the Bank (through separate application) that appropriate expertise exists in the operation of this type of Money-Market Fund.~~
- ~~(3) Where a UCITS is a Short-Term Money-Market Fund which uses the amortised cost valuation methodology, the responsible person of that UCITS shall-~~
- ~~(a) ensure that, upon appointment and at all times thereafter, the persons responsible for the operation of that UCITS, including under any delegation arrangements, have the necessary expertise;~~
 - ~~(b) carry out a weekly review of discrepancies between the market value and the amortised cost value of its money-market instruments;~~
 - ~~(c) where a discrepancy in excess of 0.3 per cent occurs between the market value and the amortised cost value of the portfolio-~~
 - ~~(i) conduct a daily review, and~~
 - ~~(ii) notify the Bank of that discrepancy and provide to the Bank a description of the action, if any, that will be taken to reduce such discrepancy;~~
 - ~~(d) in its constitutional document, provide-~~
 - ~~(i) for the escalation procedure that is required by paragraph (4); or~~
 - ~~(ii) that a review of the amortised cost valuation vis-à-vis market valuation will be carried out in accordance with the requirements of the Bank.~~
- ~~(4) For the purposes of the weekly review that is mandated by paragraph (3)(b), the responsible person shall have in place an escalation procedure to ensure that any material discrepancy between the market value and the amortised cost value of a money-market instrument is~~

brought to the attention of personnel who are responsible for the investment management of the UCITS.

(5) For the purposes of paragraph (4)-

(a) a discrepancy in excess of 0.1 per cent between the market value and the amortised cost value of the portfolio shall be brought to the attention of the responsible person, and

(b) a discrepancy in excess of 0.2 per cent between the market value and the amortised cost value of the portfolio shall be brought to the attention of senior management of the responsible person, and to the attention of the depositary.

(6) A responsible person of a UCITS that is a Short-Term Money-Market Fund, which uses the amortised cost valuation methodology, shall-

(a) document the occurrence and the outcome of every weekly review, every daily review and every engagement (if any) of the escalation procedure that is set out in paragraph (4);

(b) undertake and document a monthly portfolio analysis, incorporating stress-testing of the portfolio, to examine portfolio returns under various market scenarios to determine if the portfolio constituents are appropriate to meet pre-determined levels of credit risk, interest rate risk, market risk and investor redemptions.

(7) A responsible person shall ensure that a UCITS that is a Money Market Fund shall not follow the amortised cost valuation methodology.

Question 8.4: Do you agree with the proposed changes from Regulation 88 to 91 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 92 – European Central Bank reporting requirements

The Central Bank is proposing to align reporting requirements for MMFs with general reporting requirements for UCITS.

Proposed amendments to Regulation 92 of the Central Bank UCITS Regulations:

92. European Central Bank reporting requirements

(1) The responsible person of every a UCITS that meets the definition of "Money Market Fund" in Article 1a of Regulation (EU) No 1071/2013 of the European Central Bank of 24 September 2013 concerning the balance sheet of the monetary financial institutions sector (recast) (ECB/2013/33) in Article 2(5) of Regulation (EU) 2021/379 of the European Central Bank of 22 January 2021 on the balance sheet items of credit institutions and of the monetary financial institutions sector (recast) (ECB/2021/2) and domiciled within a Monetary Union Member State (MUMS) shall submit such period returns to the Bank as specified by the Bank from time to time. Those returns shall be in the form, and contain the information, specified by the Bank and published on the Bank's website. sets of data to the Bank at each of two frequencies—

- a. a monthly return, in accordance with paragraph (2), that shall be provided to the Bank within six business days of the last business day of the month to which it relates, and
- b. a quarterly return, in accordance with paragraph (3).

(2) A return prepared for the purposes of paragraph (1)(a) shall—

- (a) consist of aggregated and summarised balance sheet data, and
- (b) break down all components of assets into three general issuer categories
 - (i) Irish,
 - (ii) other Monetary Union Member States, and
 - (iii) the rest of the world.

(3) A return prepared for the purposes of paragraph (1)(b) shall—

- (a) be prepared, on a quarterly basis, to the end of March, the end of June, the end of September and the end of December,
- (b) be received by the Bank within ten business days of the last business day of the quarter to which it relates, and
- (c) include a more detailed breakdown of the data that is included in the monthly return that is prepared for the purposes of paragraph (1)(a), including a profile of the issuers and the maturity of the assets that the Money Market Fund holds.

Question 8.5: Do you agree with the proposed changes to Regulation 92 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Part 11 – Management companies

Regulation 98 – Operating conditions

The Central Bank proposes to amend Regulation 98 of the Central Bank UCITS Regulations to include a new requirement for the UCITS management company to ensure sufficient resources are devoted to manage and monitor the services provided to every UCITS under its management.

Proposed amendments to Regulation 98 of the Central Bank UCITS Regulations:

98. *Operating conditions*

() A management company shall ensure that it has sufficient resources to manage and monitor the services that are provided to every UCITS that is under its management.

(1) A management company shall, in accordance with paragraphs (2) and (3), prepare and submit to the Bank financial accounts of the management company.

(2) A management company shall –

a. submit to the Bank –

(i) annual audited accounts of the management company prepared in accordance with any applicable legislative requirements, and

(ii) such further information as the Bank may prescribe from time to time, and

b. submit the information required in paragraph (a) to the Bank within four months of the year-end.

(3) A management company shall –

- (a) prepare accounts of the management company twice in every financial year to cover, respectively –
 - (i) the first six months of the financial year of the relevant management company, and
 - (ii) the full twelve months of the relevant financial year, and
 - (b) in each case to which subparagraph (a) applies –
 - (i) submit the accounts for the first six months of the financial year to the Bank within two months of the end of the relevant period, and
 - (ii) submit the accounts for the full twelve months of the relevant financial year to the Bank within one month of the end of the relevant period, and
 - (c) prepare the accounts in subparagraph (a) in the format prescribed by the Bank from time to time.
- (4) Every set of financial accounts specified in paragraphs (3) and (4)(a)(i) shall be accompanied by a minimum capital requirement report.
- (5) A minimum capital requirement report of a management company shall be –
- (a) prepared in the format prescribed by the Bank from time to time, and
 - (b) completed by the relevant management company.
- (6) A management company shall maintain an up to date business plan.
- (7) Where, by virtue of an investment in the units of another investment fund, a management company or the delegate of a management company (as the case may be) receives a commission (including a rebated commission) –
- (a) the commission is the property of the investment fund on behalf of which the investment has been made, and
 - (b) the management company treats the commission as such property.

Question 9.1: Do you agree with the proposed changes to Regulation 98 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 100C – Transitioning for existing management companies

The Central Bank is proposing to remove the transitioning measures set out in Regulation 100C of the Central Bank UCITS Regulations, as those provisions are no longer applicable.

Proposed deletion of Regulation 100C of the Central Bank UCITS Regulations:

~~100C. Transitional measures for existing management companies~~

~~A management company authorised by the Bank to provide individual portfolio management services before or on 27 November 2023 shall, on and from 27 May 2024, comply with Regulations 100A and 100B of these Regulations.~~

Question 9.2: Do you agree with the proposed changes to Regulation 100C of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 104 – Directors

The Central Bank is proposing to make amendments to Regulation 104 of the Central Bank UCITS Regulations.

Specifically, the proposed changes seek to:

- clarify that the requirement by the UCITS management company to notify the Central Bank of the resignation or removal of a director of the management company from the office of director, or other termination of such a director’s service as such, as set out in Regulation 104(1), shall be provided in writing;
- clarify the requirement laid down in Regulation 104(3) of the Central Bank UCITS Regulations, whereby no person may act as both a director of a management company and of the depositary of any investment where both entities provide services to the same fund; and
- clarify that the residency requirements for directors and designated persons of UCITS management companies rated as “low” under PRISM will be retained as a minimum requirement for all management companies with the discretion for the Central Bank to provide at the point of authorization for additional residency requirements as deemed appropriate.

Proposed amendments to Regulation 104 of the Central Bank UCITS Regulations:

104. *Directors*

- (1) A management company shall upon the resignation or removal of a director of the management company from the office of director, or other termination of such a director’s service as such, notify the Bank **in writing** of that resignation, removal or other termination of service and, to the fullest extent known to the management company, the reason for it.
- (2) For the purpose of paragraph (1), a management company shall notify the Bank immediately in writing of the resignation, removal or other termination of the service of a director of that management company.
- (3) No person may, ~~simultaneously,~~ **act as both** be a director of a management company and of the depositary of any investment **where both entities provide services to the same fund** ~~that the relevant management company manages.~~
- (4) Subject to paragraph (6), a management company shall have a minimum of 2 directors resident in the State.
- (5) A management company shall conduct a preponderance of its management in the EEA or such other country as the Bank may, taking into account criteria regarding effective supervision, determine and advise by notice published on the website of the Bank. Such determination may be changed, including if circumstances change.
- (6) ~~Where a~~ **A** management company **shall have at least** ~~has a PRISM impact rating of-~~
 - ~~(a) Medium Low or above, the management company shall have at least-~~

- ~~(i) 3 directors resident in the State or, at least, 2 directors resident in the State and one designated person resident in State,~~
 - ~~(ii) half of its directors resident in the EEA or such other country as determined in accordance with paragraph (5), and~~
 - ~~(iii) half of its managerial functions performed by at least 2 designated persons resident in the EEA or such other country as determined in accordance paragraph (5), or~~
 - ~~(b) — Low, the management company shall have at least-~~
 - (i) 2 directors resident in the State,
 - (ii) half of its directors resident in the EEA or such other country as determined in accordance with paragraph (5), and
 - (iii) half of its managerial functions performed by at least 2 designated persons resident in the EEA or such other country as determined in accordance with paragraph (5).
- (7) A management company shall obtain from every proposed appointee to the board of directors details of all concurrent directorships that are held by those persons.
- (8) The board of a management company shall appoint a chairperson on a permanent basis.
- (9) A management company shall ensure that an organisation effectiveness role:
- (a) shall be performed by an independent Chairman or an independent board member, and
 - (b) shall not be performed by a person with responsibility in relation to any of the managerial functions specified in Schedule 10.
- (10) In the case of investment companies that have designated a management company, the following shall apply to the investment company and the management company:
- (a) paragraphs (1) to (3) and (7); and
 - (b) the requirement to have a minimum of 2 directors resident in the State.
- () Paragraph (6) is without prejudice to the Bank's power to impose additional residency requirements pursuant to conditions imposed under the UCITS Regulations.

Question 9.3: Do you agree with the proposed changes to Regulation 104 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 107 – Relationship with the Bank

The Central Bank is proposing to clarify the language in relation to the requirement set out in Regulation 107(2)(e) of the Central Bank UCITS Regulations in respect of the relationship between the UCITS management company and the Central Bank. Specifically, this provision currently provides that the management company shall notify the Central Bank of any situation or event that impacts, or potentially impacts, on the relevant UCITS or on the management company. As this language may be unclear and open to interpretation, the Central Bank proposes to clarify that this notification obligation relates to any situation or event that affects, or potentially affects, a UCITS or a management company’s ability to meet their regulatory obligations or duties to the relevant fund.

Proposed amendments to Regulation 107(2)(e) of the Central Bank UCITS Regulations:

107. Relationship with the Bank

A management company shall notify the Bank in writing immediately that the management company becomes aware of any of the following:

- (a) any breach of the UCITS Regulations or of the Bank’s requirements that are applicable to the relevant UCITS or to the management company (including these Regulations);
- (b) any breach of other Irish legislation which breach may be of prudential concern to the Bank or which may be likely to impact on the reputation or good standing of the relevant UCITS or of the management company;
- (c) the bringing of any legal proceedings by or against the relevant UCITS or the management company;
- (d) the initiation of any criminal prosecution against the relevant UCITS or the management company or against any officer or employee of the management company;
- (e) ~~any situation or event that impacts, or potentially impacts, to a significant extent on the relevant UCITS or on the management company;~~ **any situation or event that impacts, or potentially impacts, a UCITS or a management company’s ability to meet their regulatory obligations or duties to the relevant fund;**

- (f) the imposition of any fine, administrative sanction or other penalty on the relevant UCITS or on the management company by any other entity, in the State or in any other jurisdiction, that performs a prudential or regulatory function in respect of financial services entities;
- (g) a visit to the relevant UCITS or to the management company by any entity other than the Bank, in the State or in any other jurisdiction, that performs a prudential or regulatory function in respect of financial services entities.

Question 9.4: Do you agree with the proposed changes to Regulation 107 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 112 – Assessment: governance issues

The Central Bank proposes to amend Regulation 112 of the Central Bank UCITS Regulations in respect of governance issues. While drafting changes are proposed to its paragraph (1) for clarification purposes, new paragraphs are proposed relating to the use of powers by the competent authorities of the UCITS home Member State to activate or deactivate LMTs pursuant to Article 84(2)(b) of the UCITS Directive, which will be transposed into Irish law by amending the UCITS Regulations.

Where such powers to activate or deactivate LMTs are used by a competent authority other than the Central Bank for UCITS authorised in another Member State, the proposed new Regulation sets out an obligation for the management company of the UCITS to notify the Central Bank immediately upon being aware that the competent authority exercises these powers and to take all the necessary steps to keep the Central Bank informed of the relevant information regarding the management of the UCITS that is the subject of the exercised powers.

Where the powers referred to in Article 84(2)(b) have been exercised by the Central Bank as the competent authority of the home Member State of the UCITS, the proposed new

provisions set out a requirement for the management company of the UCITS to take all necessary steps to keep the Central Bank informed of relevant information regarding the management of the UCITS that is the subject of the exercised powers.

Proposed amendments to Regulation 112 of the Central Bank UCITS Regulations:

112. *Assessment: governance issues*

- (1) ~~A management company that is managing a UCITS that is authorised in another Member State shall have in place, and utilise, resources to develop awareness by the management company of the manner in which the competent authority of the home state of the relevant UCITS operates, both in terms of the UCITS authorisation process and ongoing supervision.~~ **A management company that is managing a UCITS that is authorised in another Member State shall have in place, and utilise, resources to ensure that it complies with the UCITS authorisation process and ongoing supervision applied by the competent authority of the home state where the UCITS is authorised or approved.**
 - (2) A management company that is managing a UCITS that is authorised in another Member State shall include in the programme of operations that it submits to the Bank –
 - (a) the identity of the employee of the management company, or designated persons, who has expertise concerning the regulatory requirements applicable in the home state of the relevant UCITS,
 - (b) a description of how the management company will monitor compliance with regulatory requirements that are applicable in the home state of the relevant UCITS on a day-to-day basis,
 - (c) where a UCITS is an investment company, the resources that the management company is putting in place to address the need to have a representative available to travel to the home state of the relevant UCITS to attend and report at board meetings of the relevant UCITS, and
 - (d) an analysis of the impact that managing a UCITS that is authorised in another Member State is likely to have on the management company’s minimum capital requirement and how this impact will be addressed.
 - (3) A management company shall ensure that it has in place, and utilises, sufficient resources to supervise the services that are provided to every UCITS that is under its management.
- () A management company that is managing a UCITS authorised in another Member State shall notify the Bank immediately when it becomes aware that the competent authorities of the UCITS home Member State exercise powers pursuant to Article 84 paragraph 2(b) of the UCITS Directive. The management company shall take all necessary steps to keep the Bank informed of relevant information with respect to the management of the UCITS that is the subject of the exercised powers.**

() Where the Bank has exercised powers pursuant to Article 84 paragraph 2(b) of the UCITS Directive, the management company shall take all necessary steps to keep the Bank informed of relevant information with respect to the management of the UCITS that is the subject of the exercised powers.

Question 9.5: Do you agree with the proposed changes to Regulation 112 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 114 – Assessment: depositary issues

Changes to Regulation 114(1) of the Central Bank UCITS Regulations are proposed for clarification purposes.

Proposed amendments to Regulation 114 of the Central Bank UCITS Regulations:

114. Assessment: depositary issues

- (1) A management company shall ensure that ~~ne~~the agreement between it and a depositary that is located outside the State ~~impairs the ability of~~permits the Bank to gain access to relevant documents and information of the management company, evidencing any and all matters which are potentially relevant to the arrangements and organisational decisions described in Regulation 29(1) of the UCITS Regulations. **This paragraph applies to –**
 - (a) agreements entered into after the date of the commencement of these Regulations, and
 - (b) existing agreements that are renewed after the date of commencement of these Regulations.
- (2) A management company shall, in the programme of operations that it submits to the Bank, specify the steps that it will take to ensure compliance with this Regulation.

Question 9.6: Do you agree with the proposed changes to Regulation 114 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Part 12 – UCITS depositaries

Regulation 120 – Operating conditions

The Central Bank is proposing to remove the term ‘simultaneously’ in Regulation 120(1) of the Central Bank UCITS Regulations for drafting purposes.

Proposed amendments to Regulation 120(1) of the Central Bank UCITS Regulations:

120. Operating conditions

- (1) A depositary shall not have a director who is also ~~simultaneously~~ a director of –
 - (a) the relevant management company,
 - (b) the relevant administration company, or
 - (c) the relevant UCITS investment company.

Question 10.1: Do you agree with the proposed changes to Regulation 120 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 122 – Permitted markets

The proposed change to Regulation 122(1)(a) of the Central Bank UCITS Regulations seek to clarify the language.

Proposed amendments to Regulation 122(1)(a) of the Central Bank UCITS Regulations:

122. Permitted markets

(1)

- (a) A depositary shall review the list of stock exchanges and markets that are ~~mentioned~~ **set out** in the UCITS prospectus to ascertain if the depositary can provide, at the date of the prospectus, for the safe-keeping of the assets of a UCITS which may be traded on these exchanges or markets, by or under the UCITS Regulations.

Question 10.2: Do you agree with the proposed changes to Regulation 122 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Part 13 – Miscellaneous provisions

Regulation 129 – Transitional arrangements

The Central Bank is proposing to delete Regulation 129 of the Central Bank UCITS Regulations, as these provisions are obsolete.

Proposed deletion of Regulation 129 of the Central Bank UCITS Regulations:**~~129. Transitional arrangements~~**

- ~~(1) Where, at the commencement of these Regulations, the responsible person is not in compliance with the requirement in Regulation 56(2) in relation to a prospectus approved by the Bank before the commencement of these Regulations, that person shall ensure that any subsequent amendments to the prospectus ensure compliance with Regulation 56(2).~~
- ~~(2) A responsible person shall ensure that a UCITS, which is authorised by the Bank prior to the commencement of this Regulation, complies with Regulation 40(4) 18 months from the date these regulations enter into force, or such later date that the Bank may specify in writing in Iris Oifigiúil.~~

Question 11: Do you agree with the proposed changes to Regulation 129 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Regulation 130 – Disapplication of certain provisions

The Central Bank is proposing to remove Regulation 130 of the Central Bank UCITS Regulations as a result of:

- the proposed removal of obsolete provisions under Regulations 2 and 88 to 91 referred to in paragraphs (1)(a) and (e) of this provision;
- the expiration of transitional arrangements laid down in paragraph (2) and (3) of this provision; and
- the proposed amendments to the requirements in respect of UCITS investing in MMIs that are not MMFs set out in Regulations 6(3)(a), 23 to 25 and 84 referred to in paragraphs (1)(b), (c) and (d) of this provision.

Proposed removal of Regulation 130 of the Central Bank UCITS Regulations:

~~130. Disapplication of certain provisions~~

~~(1) This Regulation shall apply to the following Regulations:~~

~~(a) in Regulation 2, the definition of WAM and WAL;~~

~~(b) Regulation 6(3)(a);~~

~~(c) Regulations 23 to 25;~~

~~(d) Regulation 84;~~

~~(e) Regulations 88 to 91.~~

~~(2) The Regulations specified in subparagraph (1) shall apply to a UCITS that is a money market fund as defined in Regulation 84 which was authorised by the Bank prior to 20 July 2018 until:~~

~~(a) that UCITS is authorised pursuant to Money Market Funds Regulation, or~~

~~(b) until 21 March 2019.”~~

~~(3) The Regulations specified in subparagraph (1) do not apply to a UCITS that is a short term MMF or a standard MMF, as defined in Article 2(14) and 2(15) of the Money Market Funds Regulation, and which is authorised by the Bank on or after 20 July 2018.~~

Question 12: Do you agree with the proposed changes to Regulation 130 of the Central Bank UCITS Regulations?

Yes

No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Part 14 – Revocations and saver

Regulation 131 – Revocations

As a result of the proposed amendments to the Central Bank UCITS Regulations set out in this Consultation Paper, the Central Bank is proposing to update the list of regulations that will be revoked.

Proposed amendments to Regulation 131 of the Central Bank UCITS Regulations:

131. *Revocations*

The following Regulations are revoked:

- (a) The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015 [S.I. 420 of 2015];
- (b) The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2016 [S.I. 307 of 2016];
- (c) The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2017 [S.I. 344 of 2017];
- (d) The Central Bank (Supervision and Enforcement) Act 2019 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2019 [S.I. 230 of 2019]; and
- (e) The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2023 [S.I. 565 of 2023].

Question 13: Do you agree with the proposed changes to Regulation 131 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Schedule 2

Regulation 17 – Netting and Hedging

The Central Bank is proposing changes to Regulation 17 in Schedule 2 of the Central Bank UCITS Regulations for drafting purposes.

Proposed amendments to Regulation 17 in Schedule 2 of the Central Bank UCITS Regulations:

Regulation 17. *Netting and Hedging*

2. *Hedging*

The responsible person may only take hedging arrangements into account when calculating global exposure where the hedging arrangements offset the risks linked to ~~some~~ **any** assets and if the hedging arrangements comply with all of the following:

- (i) They do not aim to generate a return;
- (ii) They result in a verifiable reduction of risk at the UCITS level;
- (iii) They offset risk linked to FDI;
- (iv) They relate to the same asset class;
- (v) They are efficient in stressed market conditions.

Question 14: Do you agree with the proposed changes to Regulation 17 in Schedule 2 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Schedule 3

Regulation 24(1) – Conditions for Collateral Received by a UCITS

The proposed drafting changes to paragraph (4) of Regulation 24(1) in Schedule 3 of the Central Bank UCITS Regulations seek to clarify this provision in respect of the conditions for collateral received by a UCITS.

Proposed amendments to Regulation 24(1) in Schedule 3 of the Central Bank UCITS Regulations:

24(1). *Conditions for Collateral Received by a UCITS*

4. *Correlation*

Collateral received should be issued by an entity that is independent from the counterparty. There should be a reasonable grounds for the responsible person to expect that ~~the collateral~~ would not display a high correlation with the performance of the counterparty;

Question 15: Do you agree with the proposed changes to Regulation 24(1) in Schedule 3 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Schedule 5

Regulation 36(1) – Methods of Valuation

The Central Bank is proposing to remove paragraph (6) of Regulation 36(1) in Schedule 5 of the Central Bank UCITS Regulations in light of proposed amendments to Regulation cross-references to the MMFR.

Proposed deletion of paragraph (6) of Regulation 36(1) in Schedule 5 of the Central Bank UCITS

Regulations:

36(1). *Methods of Valuation*

~~6. Amortised cost~~

~~Where it is not the intention or objective of a responsible person to apply amortised cost valuation to the portfolio of a UCITS as a whole, a money-market instrument within such a portfolio shall only be valued on an amortised basis if the money-market instrument has a residual maturity of less than three months and does not have any specific sensitivity to market parameters, including credit risk.~~

Question 16: Do you agree with the proposed changes to Regulation 36(1) in Schedule 5 of the Central Bank UCITS Regulations?

- Yes
- No

If you have further comments in relation to the proposal, please provide with reference to the specific provision of the Central Bank UCITS Regulations and provide reasons for your answer.

Appendix

Central Bank Guidance on performance fees for UCITS and certain types of Retail Investor AIFs

Proposed amendments to the Central Bank Guidance on performance fees in UCITS and certain types of AIFs:

Performance fees of UCITS and certain types of Retail Investor AIFs – Guidance

Scope (paras. 1-2)

Published date 01 April 2021 []

1. This Guidance applies only to UCITS and to Retail Investor AIFs other than those Retail Investor AIFs that are closed-ended and open-ended Retail Investor AIFs that have been established as ~~EuVECA, EuSEF~~ a European venture capital fund, a European social entrepreneurship fund, an ELTIF or follow venture capital, private equity or real estate strategies ~~(in-scope funds)~~.
2. The Guidance applies at fund level. ~~New classes within an existing in-scope fund with performance fees availing of the transition period shall continue to comply with the regulatory regime that applies to other classes within the fund.~~

Responsibility (para. 3)

Published date 01 April 2021 []

3. Where the Guidance is being applied in the context of a UCITS, responsibility for compliance with this Guidance rests with the Responsible Person of the UCITS as such term is defined in the Central Bank UCITS Regulations [~~Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2019 (S.I. 230 of 2019) (Central Bank UCITS Regulations)~~ **INSERT REFERENCE TO CENTRAL BANK UCITS REGULATIONS, AS AMENDED**]. Where the Guidance is being applied in the context of a Retail Investor AIF, responsibility rests with the ~~Retail Investor AIF~~ **Alternative Investment Fund Manager (AIFM) as such term is defined in Regulation 5(1) of the European Union (AIFM) Regulations 2013 (SI No. 257 of 2013)**.

Effective date **Definitions** (para. 4)

Published date 01 April 2021 []

4. The date of application of the Guidance is:

- a. ~~for in-scope funds which are established or which amend or introduce a performance fee on or after 5 January 2021 the Guidance applies from the date of establishment, amendment or introduction.~~
- b. ~~for in-scope funds with existing performance fees as at 5 January 2021, the Guidance will apply from the beginning of the accounting period, which occurs six months after the Effective Date (5 July 2021) [For example, a fund with an accounting period ending on 31 December 2021 must comply for the period starting 1 January 2022. If a fund has an accounting period ending on 30 September 2021, then they must comply from 1 October 2021.].~~

Definitions

“benchmark”	a market index against which the performance of a fund is assessed to assess the performance of a fund
“benchmark model”	a performance fee model whereby the performance fees may only be charged on the basis of outperforming the reference benchmark
“crystallisation frequency”	the frequency at which the an accrued performance fee, if any , becomes payable to the management company of the UCITS or AIFM
“excess performance”	the difference between the net performance of the portfolio and the performance of the benchmark
“fulcrum fee”	a type of performance fee which provides for the level of the fee to increase or decrease proportionately with the investment performance of the fund over a specified period of time in relation to the investment record of an appropriate reference indicator (including a negative fee deducted from the basic fee charged to the fund)
“fund managed in reference to a benchmark”	a fund where the benchmark plays a role in the management of the fund, for example, in the

	explicit or implicit definition of the portfolio’s composition and/or the fund performance objectives and measures
“High-Water Mark” or “HWM”	the highest NAV per share or unit
“High-Water Mark model” or “HWM model”	a performance fee model whereby the a performance fee may only be charged on the basis of achieving a new High-Water Mark HWM during the performance reference period. Under this model a performance fee is payable where a new highest NAV per share or unit is achieved during the performance reference period
“High-on-High (HoH) model”	a performance fee model whereby the a performance fee may only be charged if the NAV exceeds the NAV of the fund at which the performance fee was last crystallised. Under this model a performance fee is payable where the NAV of the fund exceeds the NAV of the fund at which the performance fee was last crystallised
“hurdle rate”	a predefined minimum fixed rate of return
KIID	a key investor information document of a UCITS
KID	a key information document issued pursuant to Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs)
“NAV”	net asset value
“performance reference period”	the time horizon over which the performance of an authorised fund is measured and compared with that of the reference indicator benchmark, at the end of which the mechanism for the compensation for past underperformance (or negative performance) can be reset. The performance reference period shall be the whole life of the fund

“reference indicator”	the reference indicator against which the relative performance of the fund will be measured
“unitholder”	<p>in the context of a UCITS, a shareholder in the case of an investment company and unitholder in the case of a unit trust or common contractual fund</p> <p>in the context of a Retail Investor AIF, a shareholder in the case of an investment company, a limited partner in the case of an investment limited partnership and a unitholder in the case of a unit trust or common contractual fund</p>
“units”	<p>in the context of a UCITS, shares of an investment company and units of a unit trust or common contractual fund</p> <p>in the context of a Retail Investor AIF, shares of an investment company, interests of the partners in an investment limited partnership and units of a unit trust or common contractual fund</p>

Performance fee calculation methodology (para. 5)

Published date 01 April 2021 []

5. A Responsible Person [~~As~~ defined in the Central Bank UCITS Regulations.] or ~~Retail Investor AIF~~ **AIFM**, in respect of a performance fee calculation methodology shall ensure that:

- a. ~~should ensure~~ the calculation of a performance fee is verifiable and not open to the possibility of manipulation;
- b. ~~should ensure~~ the performance fee calculation methodology includes, at least, the following elements:
 - i. the reference indicator to measure the relative performance of the fund. For this purpose, the reference indicator can be an index (~~e.g. Eonia, Eurostoxx 50, etc.~~), a HWM, a hurdle rate (2%) or a combination of an **index and/or a HWM and/or a hurdle rate** (~~e.g.: HWM + hurdle rate~~).

- ii. the crystallisation frequency at which the accrued performance fee, if any, becomes payable to the manager and ~~at~~ the crystallisation date at which the performance fee is credited to the manager;
 - iii. the performance reference period;
 - iv. the performance fee rate which may also be referred to as the “flat rate” ~~i.e. which is~~ the rate of performance fee ~~which that~~ may be applied in all models;
 - v. the performance fee methodology defining the method for the calculation of the performance fees based on the abovementioned inputs ~~and~~ **as well as** any other relevant inputs; and
 - vi. the computation frequency, which should coincide with the calculation frequency of the NAV (for example, if the fund calculates its NAV daily, the performance fee should be calculated and accrued in the NAV on a daily basis);
- c. ~~should ensure in relation to UCITS, reference to a new high net asset value in Regulation 40(1)(a) of the Central Bank UCITS Regulations is understood to include either a High-Water Mark model or a High-on-High model; and reference to an index in Regulations 40(1)(b) and 40(3) of the Central Bank UCITS Regulations is understood to include a benchmark or a hurdle rate.~~
 - d. ~~should ensure~~ the performance fee calculation methodology is designed to ensure that performance fees are always proportionate to the actual investment performance of the fund. Artificial increases **in NAV** resulting from new subscriptions ~~should~~ **shall** not be taken into account when calculating fund performance;
 - e. ~~should ensure~~ they are always able to demonstrate how the performance fee model of a fund constitutes a reasonable incentive for the manager and is aligned with investors’ interests;
 - f. ~~should ensure~~ the **application of the performance fee provisions calculation methodology** and their final payments **of performance fees is** are allocated and reversed in a symmetrical way; ~~For example, it should not be possible to apply simultaneously an allocation rate (e.g. 20% of the performance of the fund when the performance increases) and a different reversal rate (e.g. 15% of the – negative – performance of the fund when the performance decreases).~~
 - g. ~~could calculate~~ performance fees **are calculated** on a single investor **unitholder** basis;

- h. **the calculation of the performance fee is verified by the depositary. The depositary shall not permit performance fees to be paid by or on behalf of the fund unless the process and methodology for the calculation of the fee has been verified by the depositary or by a competent person appointed by the Responsible Person or AIFM and approved for the purpose by the depositary.**

~~should, in the case of Retail Investor AIFs which have multiple managers or advisers, ensure that a performance fee is payable only on the performance of that part of the portfolio for which the investment manager or adviser is responsible.~~

Consistency between performance fee model and the fund's investment objectives, strategy and policy (para. 6)

Published date 01 April 2021 []

- 6. A Responsible Person or ~~Retail Investor AIF~~ **AIFM**, ~~shall~~ **ensure that there is** consistency between the performance fee model and the fund's investment objectives, strategy and policy **by:**

- a. ~~implementing and maintaining a~~ **documented** process in order to demonstrate ~~and periodically review~~ that the performance fee model is consistent with the fund's investment objectives, strategy and policy;

- b. ~~when~~ **regularly** assessing the consistency ~~of between~~ the performance fee model and the fund's investment objectives, strategy and policy, ~~by~~ **check:**

- i. ~~whether~~ **confirming that** the chosen performance fee model is suitable for the fund given its investment policy, strategy and objective;

~~(.)~~ **considering f**For a fund that pursues an absolute return objective, ~~whether a HWM model and/or a hurdle rate may should be considered as being more appropriate than a performance fee calculated with reference to an index because where the fund is not managed with a reference to a benchmark;~~

~~(.)~~ **in addition, considering** ~~ation should be given to the extent a whether the HWM model for a fund with an absolute return objective should might need to include a hurdle rate to align the model to the fund's risk-reward profile;~~

- ii. **considering** whether, for a fund that calculates the performance fee with reference to a benchmark, the benchmark is appropriate in the context of the fund's investment policy and strategy, and adequately represents the fund's risk reward profile. This assessment should also take into account any material difference of risk ~~(e.g. volatility)~~ between the fund's

investment objective, and the chosen benchmark, as well as and the consistency indicators included below under paragraph 6(d). For example, it should not be deemed appropriate for a fund with a predominantly long equity-focused strategy to calculate the performance fee with reference to a money market index;

- c. ensuring that, where a fund is managed in with reference to a benchmark and where it employs a performance fee model based on a benchmark, that the two indices are the same. For the purposes of this paragraph, this includes; in the case of:
 - i. in the case of performance measures; the fund has a performance objective linked to the performance of a benchmark (e.g.: Index A + positive absolute return objective; Index A + HWM; Index A + X% hurdle rate etc); and or,
 - ii. in the case of portfolio composition; the fund portfolio holdings are based upon the holdings of the benchmark, ensuring that in such cases, the benchmark used for the portfolio composition is the same as the benchmark used for the calculation of the performance fee; (e.g.: the individual holdings of the fund's portfolio do not deviate materially from those of the benchmark).
 - iii. ensure in such cases, the benchmark used for the portfolio composition is the same as the benchmark used for the calculation of the performance fee.

- d. Ensuring that where a fund is managed in with reference to a benchmark but the fund's portfolio holdings are not based upon the holdings of the benchmark (e.g.: the index is used as a universe from which to select securities), that the benchmark used for the portfolio composition should be consistent with the benchmark used for the calculation of the performance fee. Such consistency should be primarily assessed against the similar risk return profile of different benchmarks (e.g.: they fall into the same category in terms of Synthetic Risk Reward Indicator and/or volatility and expected return). The following non-exhaustive cumulative list of "consistency indicators" should be taken into account based on the type of investment of the fund (for example, equities, bonds or derivatives):

Consistency Indicators

- expected return;
- investment universe;

- beta exposure to an underlying asset class;
- geographical exposure;
- sector exposure;
- income distribution of the fund;
- liquidity measures (e.g.: daily trading volumes, bid-ask spreads etc);
- duration;
- credit rating category;
- volatility and/or historical volatility.

e. ~~not selecting a reference indicator that would set a systematically lower threshold for fee calculation than the actual benchmark~~, where performance fees are payable on the basis of out-performance of a benchmark, ~~take a reference indicator that would set a systematically lower threshold for fee calculation than the actual benchmark.~~;

~~().ensuring that where the calculation of a performance fee is based on a fulcrum fee model, the performance fee is based on the same benchmark used to determine excess performance;~~

f. ~~calculating~~ the excess performance net of all costs ~~(for example, management fees or administrative fees)~~. Excess performance may be calculated without deducting the performance fee itself provided that in doing so it is in the **best interest of** investors' ~~best interests~~;

g. **ensuring that** if the reference indicator changes during the reference period, ~~calculating~~ the performance of the reference indicator for the period by linking the benchmark that was previously in force until the date of the change and **from the date that** the new reference indicator **was then applied** ~~used afterwards~~.

Frequency for the crystallisation of the performance fee (paras. 7 and ())

Published date 01 April 2021 []

7. A Responsible Person or ~~Retail Investor AIF/AIFM~~, should, as regards frequency for the crystallisation of the performance fee **shall ensure that**:
 - a. ~~ensure~~ the frequency for the crystallisation and the subsequent payment of the performance fee is defined in such a way as to ensure **the** alignment of interests between

the portfolio manager and the ~~shareholders~~ **unitholders**, and the fair treatment among ~~of unitholders~~ **investors**;

- b. ~~in the case of retail AIFs, ensure the~~ crystallisation frequency ~~occurs no~~ **should not be** more frequently than once a year;
- c. ~~ensure~~ the crystallisation date is the same for all share classes that **apply** ~~levy~~ a performance fee;
- d. in case of ~~a closure~~ **or** merger of funds ~~and/or upon~~ **the redemption of a unitholder** ~~investors' redemptions, ensure,~~ that performance fees, if any, crystallise in due proportions on the date of the ~~closure~~ **or** merger ~~and/or investors' unitholder~~ redemption. In case of ~~a~~ merger of funds, the crystallisation of the performance fees of the merging fund should be authorised subject to the best interest of ~~investors~~ **unitholders** of both the merging and the receiving fund. ~~For instance, in case where all involved funds are managed by the same manager (e.g. in the context of a cross-border merger), crystallisation of performance fees should be presumed contrary to investors' best interest unless justified otherwise by the manager.~~

(.) unless it can be justified otherwise by the responsible person or AIFM, where all UCITS or Retail Investor AIFs involved in the merger are managed by the same manager, the crystallisation of performance fees should be presumed contrary to unitholders' best interest;

- e. ~~seek to align~~ the crystallisation date **is aligned** with 31 December or with the end of the financial year of the fund.

() A derogation from paragraph 6(b) above is permitted where the fund employs the following models:

- a. a HWM or a HoH model where the performance reference period is equal to the whole life of the fund and it cannot be reset; or
- b. a fulcrum fee model or other performance fee models which provide for a symmetrical fee structure (whereby performance fees would decrease or increase based on the performance of the fund).

Negative performance (loss) recovery (para. 8)

Published date ~~01 April 2021~~ **[]**

- 8. **Where there is negative performance by a fund, the** ~~A Responsible Person or Retail Investor AIF/AIFM shall ensure that,~~ **should,** as regards negative performance (loss) recovery:

- a. ~~in the case of retail Investor AIFs, only pay a performance fee~~ **is only payable** in circumstances where positive performance has been accrued during the performance reference period. Any underperformance or loss previously incurred during the performance reference period should be recovered before a performance fee becomes payable;
 - b. ~~provide a prominent warning~~ **in bold text is provided to the investors in the fund's prospectus, the KID and, where applicable, the KIID, indicating that a performance fee may be payable where the fund** ~~when, in order to avoid misalignment of interests between the manager and investors, the fund pays a performance fee if it has outperformed the reference benchmark but overall had a negative performance;~~
 - c. ~~ensure~~ the performance fee model is designed to ensure that the manager is not incentivised to take excessive risks and that cumulative gains are duly offset by cumulative losses;
- (.) the manager's performance is assessed and remunerated on a time horizon that is consistent with the recommended investors' holding period;**
- d. ~~in the case of a Retail Investor AIF, where the Retail Investor AIF a fund employs a performance fee model based on a benchmark index, ensure that any underperformance of the Retail Investor AIF fund compared to the benchmark in preceding periods is clawed back before any performance fee becomes payable in subsequent periods. To this purpose, the length of the performance reference period should be set equal to the whole life of the Retail Investor AIF.~~ **The criteria outlined in the performance reference period definition shall apply in the case of funds using this model. If the length of the performance reference period is shorter than the whole life of the fund, then this period should be set to at least 5 years;**
 - e. ~~in the case of a Retail Investor AIF, where a fund utilises a HWM model, ensure the a~~ **performance fee is only payable where, during the performance reference period, the new HWM exceeds the last HWM. The starting point to be considered in the calculations should be the initial offering price per unit. The criteria outlined in the performance reference period definition shall apply in the case of funds using this model. For the HWM model, in case the performance reference period is shorter than the whole life of the fund, the performance reference period should be set to equal or at least 5 years on a rolling basis. In this case, performance fees may only be paid if the outperformance exceeds any underperformance during the defined performance reference period which should be set to equal or at least 5 years, and performance fees should not crystallise more than once a year; or paid on the increase of the net asset value per share over the amount in subparagraph (i) or (ii), whichever is higher.**

- i. ~~the previous highest net asset on which a performance fee was paid or accrued; or~~
- ii. ~~the initial offer price, if higher. The starting point to be considered in the calculations should be the initial offering price per share.~~

~~For the HWM model, the performance reference period should be the whole life of the Retail Investor AIF.~~

(~~).~~ the performance reference period shall not apply to the fulcrum fee model and other models which provide for a symmetrical fee structure, as in these models the level of the performance fee increases or decreases proportionately with the investment performance of the fund;

Disclosure of the performance fee model (para. 9)

Published date 01 April 2021 []

9. A Responsible Person or ~~Retail Investor AIF~~ AIFM, shall ~~include~~, as regards disclosure of the performance fee model, **ensure that**:
 - a. ~~ensure~~ investors are adequately informed about the existence of performance fees and ~~about~~ their potential impact on the investment return. **The UCITS/Retail Investor AIF shall clearly indicate in its prospectus where a performance fee will be applied along with the rules governing the operation of that performance fee. Such rules shall comply with the requirements detailed in this Guidance;**
 - b. where a performance fee may be paid also in times of negative performance (for example, the fund has out-performed its ~~reference~~ benchmark index but, overall, has a negative performance), **include that a prominent warning in bold text is provided to investors in the prospectus, the KID and, where applicable, the KIID; KIID if there is one and, if there is no KIID, in the prospectus.**
 - c. in the case **of** a fund managed in reference to a benchmark, **that the computations of performance fees with a benchmark model based on a different but consistent benchmark (as per the case under paragraph 6(d)); should clearly explain the choice of benchmark in the prospectus;**
 - d. **it is** clearly set out in the prospectus and, if relevant, any ex-ante information documents as well as marketing material, all information necessary to enable investors to understand ~~properly~~ the performance fee model and the computation methodology. ~~Such documents should~~ **This includes** a description of the performance fee calculation method, with specific reference to parameters and the date when the performance fee is

paid, without prejudice to other more specific requirements set out in specific legislation or regulation;-

- e. ~~ensure~~ the main elements of the performance fee calculation methodology are ~~indicated~~ and ~~disclosed~~ the following in the prospectus ~~in line with the principles set out in paragraph 5 above, including at least the following:~~
 - i. the calculation period for determining the performance fee;
 - ii. the first calculation period;
 - iii. how the performance fee is calculated, for example in the context of UCITS, whether it is calculated in accordance with Regulation 40(1)(a) or (b) of the Central Bank UCITS Regulation;
 - iv. the amount of the performance fee payable, i.e. the percentage payable; and
 - v. accrual basis of performance fee and when it is actually paid.
- f. in the prospectus, ~~concrete examples are provided to investors with concrete examples~~ of how the performance fee will be calculated to provide investors with a better understanding of the performance fee model especially where the performance fee model allows for performance fees to be charged even in case of negative performance;
- g. ~~include~~ a risk warning ~~is included~~ in the prospectus which provides that performance fee is based on net realised and ~~net~~ unrealised gains and losses as at the end of each calculation period and ~~that~~, as a result, incentive fees may be paid on unrealised gains which may subsequently ~~never~~ not be realised;-
- h. ~~ensure~~ the KID ~~or, where applicable, the KIID~~, clearly sets out all information necessary to explain the existence of the performance fee, the basis on which the fee is charged and when the fee applies, consistently with ~~Article 10(2)(c) of the KIID Regulation~~ ~~Article 5 of the Delegated Regulation (EU) 2017/653 as amended by the Delegated Regulation (EU) 2021/2268~~. Where performance fees are calculated based on performance against a reference benchmark index, the ~~prospectus and the KID or, where applicable, the KIID~~ and the prospectus should display the name of the benchmark and show past performance ~~of the fund~~ against it, ~~and a link or reference to where the information can be accessed;~~ [See Section II Key Investor Information Document (KIID) for UCITS, Question 8 (Disclosure of the benchmark index in the objectives and investment policies) of the UCITS Q&A document (ESMA34-43-392), [Guidelines 48 - to remain guidance]] or provide a signpost as to where such information can be freely and easily located (such as a website).

- i. ~~ensure~~ the annual and half-yearly reports and any other ex-post information indicates, for each relevant share class, the impact of the performance fees by clearly displaying:
 - i. the actual amount of performance fees charged and
 - ii. the percentage of the fees based on the share class NAV;
- j. ~~in the case of a fund which has multiple managers or advisers, include in the prospectus a risk warning that it is possible that performance fees may be payable to one or more of the investment managers or advisers where the overall net asset value of the fund may not have increased.~~

Issued: 01 April 2021[]

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