irish funds

Irish Funds Response to CP161 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

November 2025

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Introduction

The Irish Funds Industry Association (Irish Funds) is the voice of the funds and asset management industry in Ireland. Our members include fund managers, fund administrators, transfer agents, depositaries, professional advisory firms, and other specialist firms involved in the international fund and asset management industry in Ireland. By enabling global investment managers to deploy capital around the world for the benefit of internationally based investors, we support saving and investing across economies. Ireland is a leading location in Europe and globally for the domiciling and administration of investment funds. The funds and asset management industry directly employs over 19,500 professionals across Ireland, with over 37,468 of a total employment impact right across the country[1] and provide services to almost 8,900 Irish regulated investment funds with assets of just under EUR 5 trillion[2].

Irish Funds welcomes the Central Bank of Ireland's (CBI) Consultation Paper 161 (CP161) 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.

Irish Funds welcomes the amendments proposed in CP161, particularly those aimed at updating and streamlining the domestic regulatory framework for UCITS in line with evolving European policy developments. We commend the Central Bank of Ireland (CBI) for its continued commitment to ensuring that Ireland's regulatory environment remains robust, proportionate, and aligned with international best practices. The proposed amendments appropriately modernise the UCITS Regulations to ensure consistency with the Amending Directive (EU) 2024/927.

Irish Funds also welcomes the CBI's broader efforts toward simplification, harmonisation, and greater regulatory coherence, supporting the European Commission (Commission) and European Securities and Markets Authority's (ESMA) wider objectives of regulatory simplification, burden reduction, and reporting consistency, which we believe will enhance operational efficiency, promote investor protection, and maintain Ireland's position as a leading global centre for fund domiciliation and administration.

Irish Funds have suggested targeted amendments through the consultation response that, if adopted, will further enhance the changes already proposed by the Central Bank and ensure that Ireland stays at the forefront of an evolving funds and asset management industry.

[1]Assessment of the impact of the Funds & Asset Management Industry on the Irish Economy, Indecon, 2024.
[2]Central Bank of Ireland, December 2024.

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.

Irish Funds comments on Regulation 1:

No comments. Irish Funds agrees with the proposed amendment.

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.

Irish Funds comments on Regulation 2:

In our view, the definition of “fund managed in reference to a benchmark” should be deleted from the CBI UCITS Regulations as it is not a term used in those regulations (either existing or amended).

Separately we suggest that the use of the term “index” in Regulation 40(1)(b) and Regulation 40(3) of the draft regulations is replaced with “benchmark”, as well as updating references in the draft guidance on performance fees as appropriate. The term “benchmark” is defined in the draft guidance on performance fees as “a market index against which the performance of a fund is assessed” and is used in a number of different places in both the draft regulations and draft guidance. Accordingly, it is preferable to use the same term of “benchmark” in both texts in the interests of clarity.

The definition of “performance reference period” should be updated to replace reference to “benchmark” with “reference indicator”. A ‘benchmark’ is defined as ‘a market index against which the performance of a fund is assessed’. This implies that a performance reference period is only applicable to funds seeking to measure performance against a benchmark and therefore excludes funds employing a HWM or HoH methodology or hurdle rate, which models will be permitted to apply a performance reference period set to or equal at least 5 years on a rolling basis. Furthermore, the use of the definition proposed under CP 161 is inconsistent with the provisions of the draft Regulation 40 (6) which reference “performance reference period” in the context of funds applying a HWM or HoH model.

The following definitions also need to be updated to include reference to the ICAV:

- “unitholder” means a shareholder in the case of an investment company or ICAV and unitholder in the case of a unit trust or common contractual fund;
- “units” mean shares of an investment company or ICAV and units of a unit trust or common contractual fund;

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.

Irish Funds comments on Regulation 6:

A UCITS management company can currently use amortised cost for any MMI where there is no "material" discrepancy between the amortised cost value and the market value, whereas it is proposed that this be replaced with a 10bp limit. We would point out that this 10bp limit is from MMFR and MMFR was designed for very specific types of funds, with the result that it should not be assumed that the rules can just track over to other UCITS. It is also worth noting that the 10bp limit in MMFR only applies to LVNAVs; a public debt CNAV has no such limit and can use amortised cost freely. In other words, MMFR recognises that the limit here should vary depending on the fund and asset type. Therefore the rational for this proposed change is unclear and also the current rules in the CB UCITS Regulations essentially take the same approach (by referring to "material discrepancy" without defining it) and we believe this flexibility should be retained.

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.

Irish Funds comments on Regulation 24:

No comments. Irish Funds agrees with the proposed amendment.

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.

Irish Funds comments on Regulation 26:

Irish Funds welcomes the inclusion of this wording in the updated CBI UCITS Regulations, and our understanding is such that this is intended to remove the need for ETFs to seek derogations from the current CBI UCITS Regulations in this respect as and when a UCITS ETF requires this flexibility.

However, to avoid any misunderstanding of the intent behind this additional wording, we would suggest that further clarity be introduced into the wording such that it is clear that the flexibility to provide for different dealing deadlines is automatically available in the context of UCITS ETFs. In this regard we would suggest that the revised Regulation 26 (2) should read as follows:

> "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),~~ **Notwithstanding the foregoing**, 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."

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.

Irish Funds comments on Regulation 31:

From an ETF perspective, the reference to the "original" subscription is not relevant in the context of a UCITS ETF, which facilitates both cash and in-kind subscription and redemption, and is potentially limiting and impractical given the other amendments made to Regulation 31. Where redemption in-specie is used as a BAU dealing tool by a UCITS ETF, asset allocation is not and should not be subject to approval by the depository regardless of whether the original subscription was in-specie or in cash. The focus should be on the redemption trade alone, as opposed to how the original subscription request was made. This position is consistent with ESMA's Final Report[3] on Draft Regulatory Technical Standards on Liquidity Management Tools under the AIFMD and UCITS Directive whereby ESMA acknowledged the unique role redemption in-kind plays for a UCITS ETF in the normal course of regular dealing activities by an authorised participant or market-maker.

We therefore propose amending Regulation 31 as follows:

"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 mechanism 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 –~~

[3] Microsoft Word - ESMA34-1985693317-1259 Final report RTS LMTs

~~(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.”~~

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 Funds[2] (the “revised FSB recommendations”) and the International Organization of Securities Commissions (IOSCO) Final Report on Guidance on anti-dilution LMTs[3] 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 –~~

~~(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.

Irish Funds comments on Regulation 33 and Chapter 7:

As a general comment, we note that the work on the regulatory technical standards (RTS) in connection with liquidity management tools is ongoing with the European Commission and they are not in final form. We also note that the intention of the Amending Directive is to ensure that there is greater harmonisation and alignment on the use of liquidity management tools in UCITS across the EU. Accordingly, our comments on this section target that goal of maximum harmonization and the minimization of any potential gold plating.

We do however recognize that the Central Bank has concerns about relying on the obligation on UCITS management companies to report to their home competent authority on the activation/deactivation of LMTs. In that respect we would have expected there would be a regulator-to-regulator communication channel whereby the home competent authority would communicate to the host competent authority if there are funds under management by the relevant UCITS management company using the cross-border management passport that are the subject of an activation or deactivation.

In addition, in-scope Irish resident funds (being those non-money market funds, that are authorised by the Central Bank and have a non-zero NAV) must report on the activation and deactivation of LMTs on a daily basis in the Daily Investment Fund Return (DIFR), using binary fields to indicate whether each tool is active (‘1=Yes’) or not (‘2=No’), and quantitative fields for the monetary or basis point impact when applicable; and any change in status must be reflected for the relevant dealing day. This should ensure the Central Bank receives clear, automated updates on the use of LMTs as they are applied or removed.

With the above in mind, Irish Funds have identified the following proposed changes to this section:

- We suggest that the following paragraph is deleted as this obligation must be addressed in the UCITS Regulations (SI 352 of 2011) which is being updated to transpose Article 84(3)(b) of the revised UCITS Directive into Irish law. To cover in both the UCITS Regulations and the CBI UCITS Regulations is contrary to the simplification agenda being implemented by the European Commission: "*( ) 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".*

We would also request that the Central Bank confirms that such notifications can be made via the Daily Investment Funds Return reporting framework**.**

- Regarding the paragraph which begins "When selecting liquidity management tools in accordance with Article 18a(2) of the UCITS Directive [….]", we would suggest that this is not incorporated into the revised version of the CBI UCITS Regulations as this provision is expected to be covered by the ESMA guidelines on LMTs which fund managers will be required to comply with. Paragraph 15 of the draft ESMA Guidelines published in April 2025 provide as follows: *"In the selection of the two minimum mandatory LMTs, fund managers should consider, where appropriate, the merit of selecting at least one quantitative-based LMT (i.e.: redemption gates, extension of notice period) and at least one ADT (i.e.: redemption fees, swing pricing, dual pricing, ADL), taking into consideration the investment strategy, redemption policy and liquidity profile of the fund and the market conditions under which the LMT could be activated. In this context, fund managers may consider whether to select one LMT to use under normal market conditions and one LMT to be used under stressed market conditions.*[4]
- We suggest that the following paragraph is deleted as this obligation must be addressed in the UCITS Regulations (SI 352 of 2011[5]) which is being updated to transpose Article 84 (3)(a) of the revised UCITS Directive into Irish law. To require a suspension notification to be made to the Central Bank "immediately" is also inconsistent with the revised UCITS Directive which requires such notification to be made without delay. *"( ) 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".*
- We recommend that reference to suspension of the "calculation of the net asset value" be removed from the paragraph below, as the suspension of the calculation of net asset value is not a notifiable event under the Amending Directive or related RTS.

[4] ESMA34-1985693317-1160_Final_Report_on_the_Guidelines_on_LMTs_of_UCITS_and_open-ended_AIFs.pdf

[5] S.I. No. 352/2011 - European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011.

"( ) 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 paragraph titled "Side Pockets" should be deleted given that this will be covered by the UCITS Regulations which is being updated to transpose (i) the description of side pockets in Annex IIA and (ii) Article 84 (2)(a) of the revised UCITS Directive into Irish law. The wording proposed to be included in the CBI UCITS Regulations in CP 161 is not consistent with the description of side pockets contained in the revised UCITS Directive.
- With respect to the paragraph titled "Redemption Gates", we suggest defining the term "redemption gate" with reference to the definition contained in Annex V, 2, of the Amending Directive: *"a redemption gate means a temporary and partial restriction of the right of unitholders or shareholders to redeem their units or shares, so that investors can only redeem a certain portion of their units or shares".*

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.

Irish Funds comments on Regulation 40, question 2.6:

Irish Funds welcomes the proposed changes. However, we strongly encourage the Central Bank to fully align its requirements on performance fees with ESMA's guidance and to eliminate any additional obligations imposed on depositaries or other competent persons. Such alignment will help ensure a level playing field for all market participants, promote consistency, reduce unnecessary complexity, and enhance the sector's competitiveness.

In addition, we have specific feedback on Regulation 40 as follows:

1. **Clarification of available performance fee models**

(i) Fulcrum fee model

Regulation 40 should be updated to specifically reference the possibility of applying a fulcrum fee model/other performance fee model that provides for a symmetrical fee structure (as contemplated by other sections of the draft regulations/draft guidance.

If categorised as a model which falls within Regulation 40(1)(b) of the draft guidelines (being the out-performance of an index), this will have unintended consequences. For example, Regulation 40(3)(c) of the draft guidelines provides that "any underperformance of the index in preceding periods is cleared before a performance fee becomes due in subsequent periods".

Fulcrum fee models or symmetrical fee structures do not operate on the concept of a performance reference period.

This is acknowledged in paragraph 8 of the draft guidance proposed by the Central Bank in CP 161 which provides that *"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."*

(ii) Clarification that both HWM and HoH models can be adopted by Irish funds

Regulation 40 (and related definitions contained in Regulation 2 of the draft regulations) should also be revised to specifically call out that in-scope Irish funds can adopt the HoH model **or** the HWM model and clearly outline the distinction between these two models as this is not currently clear from the existing Regulation 40 or the proposed amendments thereto.

(iii) Possibility of adopting a performance fee model based on outperformance of a hurdle rate only

Regulation 40 of the draft Regulations does not contemplate the possibility of a performance fee model which is based on outperformance of a hurdle rate only.

This model seems to be contemplated in a number of different provisions of the draft guidance including paragraph 5(b)(i)[6] and paragraph 6(b)[7]. A definition of "hurdle rate" also been included in draft 2 of the draft Regulations but is not subsequently referenced elsewhere in those draft Regulations.

Accordingly, Regulation 40 of the draft Regulations should be updated to provide for the use of this model.

2. Regulation 40(2)

We suggest amending existing draft text as highlighted in bold below to clarify that the new high net asset value is dependent on the performance reference period:

> *"Where performance fees are payable on achieving a new high net asset value* ***during the performance reference period*** *[……….]"*

3. **Regulation 40(6)**

Regulation 40(6) should be updated to make clear that sub-paragraph (b) of paragraph (4) does not apply where the UCITS employs a HWM or HoH where the performance reference period is equal to the whole life of the UCITS and it cannot be reset.

Our suggested edits are set out below in red bold:

> ***"Sub-paragraph (a) and (b) 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."***

We would also suggest that the last paragraph of Regulation 4(6) is revised to add the additional wording below in red bold to align with the provisions of the draft guidance:

[6] Paragraph 5(b)(i) of the draft guidance provides that the reference indicator could be an index, a HWM **or** a hurdle rate or a combination of these.

[7] Paragraph 6(b) of draft guidance references the possibility of an absolute return fund applying a performance fee model based on either/**or** HWM or a hurdle rate.

"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 **on a rolling basis**"

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.

Irish Funds comments on Regulation 40, question 2.7:

The Central Bank's proposal has been thoroughly evaluated and considered. It should be emphasised that, under Article 5 of the UCITS Level 2 Delegation Regulation, depositaries have well-defined duties regarding the valuation of units and have established robust oversight programs in line with these obligations. These programs ensure comprehensive due diligence and ongoing monitoring of the Fund Administrator's operations, verifying that appropriate and consistent procedures are established for all valuation activities, including the calculation of performance fees, to meet regulatory requirements and sectoral guidance. Furthermore, they confirm that these procedures are effectively implemented and that all fees, including performance fees, are calculated in accordance with the methodology outlined in the prospectus.

With this in mind, the consensus is that the proposed amendment to the depositary verification of performance fees provision is not, in itself, of material significance. Nevertheless, it is the prevailing view that the overall provision extends beyond the scope of ESMA's guidelines on performance fees ("Guidelines") and introduces requirements that are inconsistent with established EU regulatory standards. The additional requirements imposed on depositaries or other competent persons are not aligned with ESMA's Guidelines. Eliminating these requirements will help establish a level playing field for all market participants, promote consistency, reduce unnecessary complexity, and enhance the sector's competitiveness. We strongly advocate for the Central Bank to fully align and harmonise its performance fee requirements with ESMA's Guidelines.

However, if the provision is to be retained, we recommend updating the wording as follows for greater clarity:

"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 there are procedures in place to ensure that any performance fees payable and accrued pursuant to UCITS performance fee payment cycle, are calculated in accordance with the constitutional document and the prospectus of the UCITS".

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.

Irish Funds comments on Regulation 42 and 43:

Regarding Regulation 42, we are unclear regarding the context of this new insertion of "unitholder" when unitholder/shareholder has not previously been referred to as a connected party. It would also be helpful for the CBI to provide some practical scenarios as to when a unitholder may be a connected party. There are existing rules around conflicts of interest etc. in the Directive and we would therefore resist extension of the connected parties regime.

Also, the inclusion of unitholders as connected persons would also significantly enhance the depositary's responsibilities by imposing a clearer statutory duty to monitor and control transactions involving unitholders.

For example, it would be challenging for Managers/Depositaries to definitively ascertain in practice all investor group connections, given the proposed definition of connected parties encompassing unitholders and their group affiliates. It is envisaged that certain scenarios may arise involving in-scope connected party transactions for instance, off-venue investments in the shares or bonds of a listed group affiliate, or the entry into OTC contracts or derivatives with a group entity (as may occur within banking groups). There is a potential risk and associated operational challenge that the scope of Regulation 43 could inadvertently extend to routine fund transactions that fall outside the Central Bank's intended focus, thereby imposing disproportionate or unintended obligations on managers and depositaries.

However, if the proposed change will remain, we would propose the wording be revised to make clear that the "delegate or group companies" requirements does not extend to transactions with unitholders, and the heading of this section should be updated to read:

> "Dealings by the Qualifying Investor AIF with (i) unitholders and (ii) the AIFM, depositary, management company, general partner, investment manager (or their delegates or associated group companies)".

As noted in CP162, a footnote will be included to clarify that these requirements do not apply to transactions (including subscriptions, redemptions, conversions or dividend payments) by unitholders in relation to their units in the fund. There needs to be the same express caveat added in Regulations 42/43 to ensure it is clear that this provision does not apply to unit dealings (in specie or in cash).

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.

Irish Funds comments on Regulation 47:

Irish Funds welcomes the proposed changes, noting that this requirement is already in place under the 'Fund Management Companies Guidance'[8] and that the proposed change elevates it to a legislative requirement rather than a guidance.

However, we would ask the Central Bank to clarify that the requirement for a designated email address for correspondence applies at the umbrella fund level rather than at the sub-fund level. In our view, this approach is more practical and consistent with current industry practice, as firms typically use the same designated email address for all correspondence relating to the umbrella and its sub-funds, and do not maintain separate email addresses by sub-fund.

[8] 161219_final-fund-mancos-guidance-_cd-(002).pdf

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

Irish Funds comments on Regulation 48:

The Central Bank has proposed that Regulation 48 of the CBI UCITS Regulations (which deals with increase to maximum redemption fees) be revised to reference a "charge relating to the redemption or repurchase of units" which is defined for the purposes of that regulation as "a fee relating to expenses incurred by a UCITS to arrange for the redemption or repurchase of units in that UCITS".

Irish Funds also suggests that paragraph (3) of this Regulation is changed as follows:
""charge relating to redemption or repurchase of units" means a charge which may be applied on the redemption or repurchase of units in a UCITS other than a redemption fee within the meaning of [INSERT REFERENCE TO AMENDING UCITS REGULATIONS WHICH TRANSPOSE DIRECTIVE (EU) 2024/927 INTO IRISH LAW]".

Irish Funds would also request that the Central Bank clarifies in due course whether a redemption fee within the meaning of Annex IV of Directive 2024/927 falls outside of the scope of an "exit cost" under the PRIIPs framework and outside of the scope of an "exit charge" under the UCITS KIID framework.

Finally, the Central Bank should also consider ID 1025 of the Central Bank UCITS Q&A[9] in the context of this new charge.

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

[9] 42nd Edition UCITS QA

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.

Irish Funds comments on Regulation 51 and 52:

Irish Funds agrees in principle with the proposed removal and replacement of Regulations 51 and 52 of the Central Bank UCITS Regulations.

However, any amendments to the periodic returns and supervisory records required from responsible persons, as outlined on the Central Bank's website, should be subject to appropriate industry engagement and this required industry engagement should be appropriately reflected in Regulations 51 and 52. This is necessary to assess the potential impact of proposed changes and to ensure that sufficient notice is provided to allow firms to implement new or updated reporting requirements in an orderly manner.

In our view, it would not be acceptable for the Central Bank to publish changes on its website without prior consultation with industry and again the Regulations should reflect this point.

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.

Irish Funds comments on Regulation 53:

Irish Funds does not agree with the proposed changes and suggests that further clarification be provided by the Central Bank.

Under the UCITS Regulations, the term "management company" is defined as referring to an external management company and therefore does not encompass a self-managed investment company (SMIC). The rationale for the proposed change is unclear, and we believe that the existing reference to the "responsible person" should be retained, as this terminology is both consistent and sufficiently broad to cover all structures, including externally managed UCITS and SMICs alike.

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.

Irish Funds comments on Regulation 54:

No comments. Irish Funds agrees with the proposed amendment.

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.

Irish Funds comments on Regulation 60:

No comments. Irish Funds agrees with the proposed amendment.

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.

Irish Funds comments on Regulation 61:

No comments. Irish Funds agrees with the proposed amendment.

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.

Irish Funds comments on Regulation 62:

We would request that Regulation 62(2) should be deleted, or at a minimum revised, in order to ensure that the form of mandatory warning is accurate as to how particular ADL related LMTs operate (i.e. the statement is designed for an LMT which could change the "price"). It would be preferable to allow the responsible person the flexibility to include their own appropriate disclosure rather than a mandatory form of warning that loses its effect when it is inaccurately framed.

We also request that the following changes be considered by the Central Bank:

- Reference to "an adjustment factor that reflects the costs of liquidity" should be deleted as this concept does not appear anywhere else in the revised draft CBI UCITS Regulations.
- The mandatory statement in Regulation 62(2) refers to the calculation of the subscription or redemption price (i.e. NAV per share) on the applicable dealing day and then refers to the adjustment of that price for a "charge" to cover dealing costs and to preserve the value of the underlying assets of the UCITS. Charge is then defined as redemption fee and extends to the anti-dilution related LMTs. As such, the proposed amendments to Regulation 62(2) of the CBI UCITS Regulations propose applying the existing ADL disclosure requirements to (i) redemption fees (ii) swing pricing factor and (iii) an adjustment factor that reflects the cost of liquidity, when these mechanisms do not apply in the same fashion.
- The definition of ADL as per the Amending Directive has been incorporated into the draft CBI UCITS Regulations. However, we would suggest that reference to the following should be deleted from draft Regulation 62(2) noting it goes further than the Amending Directive: "*to cover dealing costs and to preserve the value of the underlying assets".*
- In our view, it is not appropriate to apply the proposed disclosures under draft

Regulation 62(2) of the CBI UCITS Regulations to swing pricing given the reference "adjustment to the "subscription or redemption price" which would not seem to be aligned with the related draft RTS which reference the swing factor being added to/deducted from the net asset value of the UCITS (i.e. incorporated within the finalised NAV as opposed to involving the calculation of three prices, namely the NAV, a subscription price and a redemption price).

- In our view, it is not appropriate to apply the proposed disclosures set down in draft Regulation 62(2) to "redemption fees" as the required disclosures reference adjustment to the "subscription or redemption price" which is not aligned with the description of the redemption fee mechanism contained in the draft RTS.
- We would welcome CBI confirmation as to whether the ADL contemplated under the draft Regulation 62(2) precludes the payment of the ADL from the subscription monies paid by the investor/redemption proceeds paid to the redeeming investor which is the mechanism contemplated by the draft RTS proposed by ESMA. Those draft RTS reference the ADL being deducted from the amount paid to redeeming shareholders/being charged to subscribing shareholders (i.e. being charged outside of the NAV calculations).
- Furthermore, in our view Regulation 38 of the CBI UCITS Regulations should be revoked, in order to avoid a duplicative/confusing (and evidently inconsistent) reference to an anti-dilution levy where the revised UCITS Regulations and the RTS will address anti-dilution levies. It is much more preferable that the requirements on anti-dilution levies are addressed only once in the regulatory framework and consistently within the Directive and RTS.

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.

Irish Funds comments on Regulation 63:

We would suggest a carve out for UCITS ETFs be included in Regulation 63 as well as clarification that this provision does not apply to redemption in kind transactions, in line with our proposed changes to Regulation 31. We therefore recommend the following changes to Regulation 63:

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. **This paragraph does not apply to (i) a UCITS ETF; or (ii) a redemption in kind for the purposes of Article 18a and paragraph 8 of Annex IIA of the UCITS Directive.** ~~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.*~~

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.

Irish Funds comments on Regulation 67:

Irish Funds welcomes the proposed changes. However, we would note that these proposed changes will require prospectus amendments for the funds impacted by this change.

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.

Irish Funds comments on Regulation 71:

No comments. Irish Funds agrees with the proposed amendment.

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.

Irish Funds comments on Regulation 74:

No comments. Irish Funds agrees with the proposed amendment.

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.

Irish Funds comments on the above Regulation [ ]:

While the objective of enhancing fee transparency for investors is positive, Irish Funds have some reservations about the proposed insertion of a new requirement for prospectuses to disclose the maximum fee payable for recurring charges calculated on the NAV of the UCITS and deducted from its assets.

Firstly the purpose and benefit of the disclosure requirement is unclear as we note that there are already comprehensive cost disclosure requirements for the KID/KIID. We would therefore question the benefit of adding additional disclosure requirements when the prospectus itself may not always be the primary means by which cost disclosures are provided to investors at the point of sale. Furthermore, for ETFs operating a Total Expense Ratio (TER), such recurring fees are already required to be disclosed.

In addition, it is not clear from the draft Regulation what specific fees will be captured by this disclosure requirement. Irish Funds assumes that the Central Bank proposes that this captures those categories of NAV-based fees already required to be disclosed in the UCITS prospectus under its Section 2 form (namely management fees, investment management fees, depositary fees and administrator fees) where such fees are payable out of the assets of the relevant UCITS.

On the basis of the points outlined above, we strongly advocate that this new requirement is not included in the UCITS Regulations, due to the lack of clarity with regard to the fees captured by the requirement and the duplicative nature of the proposed disclosure

Separately, we would note that the Central Bank Section 11 Application Form currently provides that for distributors, paying agents and representative agent arrangements who are paid out of the assets of the relevant UCITS, the specific fees can be disclosed in the fund prospectus or alternatively the prospectus can note that these are charged “at normal commercial rates”. Given the number of such arrangements that may be put in place in respect of any one UCITS, this flexibility to disclose that such fees will be at normal commercial rates in the UCITS prospectus should be retained.

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~~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~~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~~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~~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~~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.

Irish Funds comments on Regulation 75 to 78:

Irish Funds agrees with the proposed amendment. However, with regard to Regulation 75 (f), the citation of ESMA Guidelines on the application of Regulation (EU) No 1286/2014 on key investor information documents for packaged retail and insurance-based products (PRIIPs) is incorrect as no such guidelines have been published by ESMA alone. If the intention was to reference the ESA Q&A on PRIIPs[10], clarification should be provided by the Central Bank as to why a UCITS KIID is required to comply with that ESA Q&A which relates to PRIIPS KID. The explanatory paragraph to this provision cites a European Commission Q&A which again seems to be incorrect.

[10] JC 2023 22 JC PRIIPs Q&As

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.

Irish Funds comments on Regulation 80:

No comments. Irish Funds agrees with the proposed amendment.

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.

Irish Funds comments on Regulation 82:

No comments. Irish Funds agrees with the proposed amendment.

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.

Irish Funds comments on Regulation 84:

No comments. Irish Funds agrees with the proposed amendment.

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.

Irish Funds comments on Regulation 85:

Irish Funds welcomes this additional wording being included in the updated CBI UCITS Regulations however we would suggest a minor clarification.

Noting that "UCITS ETF" identifier may be included at share class level, it does not make sense to include "UCITS ETF" in the first line. We would propose for clarity that the text of Regulation 85 should instead read.

"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 has one or more sub-funds or share classes,~~ **The Central Bank will permit the use of** the "UCITS ETF" identifier **either in the name of an exchange-traded sub-fund or the name of a listed share class, as the responsible person shall deem appropriate. Where a UCITS has both listed and unlisted share classes, the responsible person must ensure that investors can easily distinguish between the listed and unlisted share classes.** ~~in the name of the 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

As you will see, our proposal was to confirm the existing flexibility for different approaches to the use of the identifier, while recognising that the need to ensure clarity as to the nature of the share class rests with the responsible person. We believe this approach is consistent with the language around the use of the identifier in the existing UCITS Q&A and consistent with the obligation regarding providing clarity to investors arising under existing obligations in the UCITS Regulations, such as to ensure that the prospectus includes the information necessary for investors to be able to make an informed judgement of the investment proposed to them, and that the KIID and marketing materials, where the name would be used, are fair, clear and not misleading.

In further support of our proposal being consistent with the UCITS Q&A, while Regulation 85 is stated in CP161 as being introduced to address ID 1016, the use of the identifier needs also to be considered in conjunction with ID1088 which states that:

> *"Where a UCITS has both listed and unlisted share classes, the Central Bank will permit the use of the "UCITS ETF" identifier at the level of the sub-fund or listed share class. Where a UCITS has both UCITS ETF share classes and unlisted share classes, both must be clearly identified so that investors can easily distinguish between the listed and unlisted share classes. The Responsible Person for a UCITS ETF must ensure the prospectus discloses the implications for investors depending on whether they are invested in the ETF share class or the unlisted share class."*

Our proposed language also respects the flexible approach and position of the responsible person set out under ID1088.

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.

Irish Funds comments on Regulation 86:

No comments. Irish Funds agrees with the proposed amendment.

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 super-vised 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 super-vised 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, pro-vided 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.

Irish Funds comments on Regulation 88 to 91:

No comments. Irish Funds agrees with the proposed amendment.

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 pro-vided 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.

Irish Funds comments on Regulation 92:

Irish Funds welcomes the proposed amendments. However, this is subject to the inclusion of a definition for “Monetary Union Member State”.

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.

Irish Funds comments on Regulation 98:

Irish Funds supports the principle that UCITS management companies should have appropriate resources in place to manage and monitor services provided to UCITS. However, we do not agree with the proposed changes to Regulation 98, as it is unclear whether this represents a new obligation or a clarification of existing requirements, and how it aligns with the existing framework per the 'Fund Management Companies Guidance'[11] or 'CP 86'. In our view, this proposed new requirement is a duplicative requirement of Article 101(2)(a) of the Central Bank UCITS Regulations which states that:

"(2) The board of a management company shall put in place, and ensure adherence to, the following:

procedures that are designed to ensure compliance by the management company with every legal and regulatory requirement to which the management company and every investment fund that is under its management are subject;"

Article 106 of the same Regulations also states that "A management company shall ensure that, at all times, it has adequate management resources to conduct its activities effectively and ensure compliance with the UCITS Regulations and these Regulations".

In addition, the proposal seems to be duplicative of the requirement per Article 112(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."

We therefore recommend that the proposed change to Regulation 98 is not reflected in the final UCITS Regulation as the requirement for a UCITS management company to ensure sufficient resources are devoted to manage and monitor the services provided to every UCITS under its management is already captured in the UCITS Regulations as set out above.

[11] 161219_final-fund-mancos-guidance-_cd-(002).pdf

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.

Irish Funds comments on Regulation 100C:

No comments. Irish Funds agrees with the proposed amendment.

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

(ii) 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.

Irish Funds comments on Regulation 104:

Irish Funds generally supports the proposed changes to Regulation 104, which strengthen governance requirements for management company directors and clarify the prohibitions on dual directorships. However, we have the following observations and recommendations:

- Organisational Effectiveness Director (OE Director): We refer to our previous submission in December 2023 regarding the OE Director which questions the continued requirement for a dedicated OE Director role to be held within management companies in all cases. This is on the basis of the evolved nature of the industry from a resourcing and substance perspective.
- Timing of notifications: We would recommend replacing the word "immediately" with "without undue delay", as this would provide for a more practical and enforceable standard.
- Paragraph consolidation: Paragraphs 1 and 2 appear to cover the same requirements and could therefore be combined to improve clarity and reduce duplication.
- Form of notifications: The regulation should clarify what constitutes "in writing", as in practice, notifications are typically submitted via the Central Bank portal or by email.
- Scope: The requirement should be explicitly stated as not applying to fund boards.
- Terminology: We recommend changing "Chairman" to "Chairperson" to reflect inclusive language standards.
- Equivalence for non-EEA countries: The regulation refers to equivalence for non-EEA jurisdictions and indicates this will be "published on the website". We would point out that this information is not currently available, and it is therefore unclear which jurisdictions are considered equivalent. Clarification is required to ensure firms can comply appropriately.

Overall, we support the objectives of the proposed amendments, but the above refinements would improve clarity, consistency, and practical application.

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.

Irish Funds comments on Regulation 107:

Irish Funds supports the principle that management companies should notify the Central Bank of situations that could affect their ability, or the UCITS' ability, to meet regulatory obligations or duties to the fund. However, we have concerns regarding the proposed wording of Regulation 107.

Regulation 107 of the CBI UCITS Regulations imposes a requirement on Irish UCITS management companies to notify the Central Bank immediately on the happening of a range of events, including any breach by it or a UCITS under management of the UCITS Regulations or CBI UCITS Regulations. We recommend replacing "immediately" a standard of "promptly" or "without undue delay".

Requiring UCITS management companies to notify the Central Bank "immediately" is not practical and risks generating high volumes of low value reports before facts are verified, potentially diluting supervisory focus. In addition, an immediate notification has the potential to undermine the integrity and accuracy of the information being provided to the Central Bank, especially as a UCITS management company may want to ascertain the scope of any particular breach, proceeding or other event before reporting.

Reporting "promptly" or "without undue delay" allows a UCITS management company the requisite time to inform the Central Bank of all salient facts. In this regard, Irish Funds requests a consistent notification requirement of "promptly" or "without undue delay" be applied by the Central Bank in respect of (i) Irish UCITS management companies under Regulation 107 of the CBI UCITS Regulations (ii) Irish authorised AIFMs and (iii) Irish AIFs under the AIF Rulebook.

In addition, we would suggest that Irish management companies only be required to notify the Central Bank of "material" breaches of the UCITS Regulations, the CBI UCITS Regulations or any of the Central Bank's requirements which are applicable to the UCITS management company. As noted in Irish Funds response to CP 162, an obligation to report all breaches, irrespective of materiality, will likely result in a high volume of reporting to the Central Bank and distract the Central Bank from a focus on material issues that are of importance for the regulated entity or of a more systemic nature. In this regard, Irish Funds requests the application of a materiality threshold for breach reporting across (i) AIFs and (ii) Irish authorised AIFMs under the AIF Rulebook and (iii) Irish UCITS management companies under Regulation 107 of the CBI UCITS Regulations.

With respect to the proposed revised wording of Regulation 107 (e) of the CBI UCITS Regulations, we note that the Central Bank proposes removing the materiality threshold so that Irish UCITS management companies must notify the Central Bank of 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. The removal of a materiality threshold (which had applied by virtue of the reference to "to a significant extent" in the existing Regulation 107(e) of the CBI UCITS Regulations) will again result in reporting of non-critical information to the Central Bank which may result in dilution of supervisory focus. It is also important that there is consistency of reporting obligations between the domestic UCITS framework and the domestic AIFM frameworks. We therefore suggest that Regulation 107(e) be updated to revert to the existing standard as highlighted in red below (which aligns with the standard which the Central Bank proposes to apply to Irish AIFMs under its proposed amendments to the AIF Rulebook outlined in CP 162):

> *"any situation or event that impacts, or potentially impacts, to a significant extent on the relevant UCITS or on the management company ~~a UCITS or a management company's ability to meet their regulatory obligations or duties to the relevant fund~~."*

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.

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.

Irish Funds comments on Regulation 112:

Irish Funds agrees with this proposed amendment however we suggest the timeframe for notification under the newly inserted fourth paragraph be changed from "immediately" to "without delay" to align with the notification requirement relating to suspensions set down in the Amending Directive itself.

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 ~~no~~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.

Irish Funds comments on Regulation 114:

No comments. Irish Funds agrees with the proposed amendment.

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.

Irish Funds comments on Regulation 120:

No comments. Irish Funds agrees with the proposed amendment.

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.

Irish Funds comments on Regulation 122:

Irish Funds welcomes the proposed changes. However, we recommend replacing "mentioned" with "listed" would provide even greater clarity. "Listed" is a more precise legal term, indicating a formal, explicit, and comprehensive listing within the prospectus.

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.

Irish Funds comments on Regulation 129:

Irish Funds would welcome the inclusion in the CBI UCITS Regulations of a transitional period to allow time for existing UCITS to comply with the changes being introduced. This should be consistent with the transitional period applicable for changes to the UCITS Directive arising from AIFMD 2.

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.

Irish Funds comments on Regulation 130:

Irish Funds agrees with the proposed deletion of Regulation 130, subject to the point raised below regarding the removal of Regulation 130(3) and the potential inadvertent application of Regulations 23–25 of the Central Bank UCITS Regulations[12] to MMFs.

In this section, the Central Bank has proposed deleting Regulation 130(3) in its entirety, which has until now operated to disapply certain provisions of the Central Bank UCITS Regulations to Irish MMFs. If Regulation 130(3) is deleted as proposed, Irish MMFs would then be required to comply with the regulations listed in Regulation 130(1). While some of these provisions are obsolete and therefore unproblematic, and while the proposed revised Regulation 84 (requiring UCITS management companies to ensure that MMFs comply with stress testing rules) is also appropriate, the deletion of Regulation 130(3) would appear to have the unintended consequence of bringing Regulations 23–25 into scope for MMFs.

Regulations 23–25 relate to portfolio management techniques, collateral requirements, and repurchase/reverse repurchase agreements, and therefore their application to MMFs would not appear consistent with the Money Market Funds Regulation (MMFR). This seems to be an oversight on the part of the Central Bank, as the rationale for the proposed change in CP161 does not support such an interpretation. Specifically, CP161 explains that "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." However, Chapter 4 of the UCITS Regulations concerns efficient portfolio management (EPM), not money market instruments purchased by non-MMFs, which suggests a misalignment.

Furthermore, Chapter 4 provides that "A responsible person shall only use efficient portfolio management techniques and instruments for the purposes of Regulation 69(2) of the UCITS

[12] S.I. No. 230/2019 - Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2019

Regulations where same are in the best interests of the UCITS."[13] Regulation 69(2) of the UCITS Regulations (reflecting Article 51(2) of the UCITS Directive) is expressly disapplied to MMFs under MMFR Article 8(2), which states that:

> *"MMFs authorised as UCITS shall not be subject to the obligations concerning investment policies of UCITS laid down in Articles 49 to 50a, Article 51(2), and Articles 52 to 57 of Directive 2009/65/EC, unless explicitly specified otherwise in this Regulation."*[14]

On that basis, CP161 would appear to seek to apply EPM requirements to MMFs in error. We therefore recommend that the Central Bank retain a provision equivalent to Regulation 130(3), or otherwise clarify that Regulations 23–25 of the UCITS Regulations do not apply to MMFs.

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].

[13] S.I. No. 230/2019 - Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2019
[14] L_2017169EN.01000801.xml

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.

Irish Funds comments on Regulation 131:

No comments. Irish Funds agrees with the proposed amendment.

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.

Irish Funds comments on Regulation 17:

No comments. Irish Funds agrees with the proposed amendment

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 ~~it~~ 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.

Irish Funds comments on Regulation 24(1):

No comments. Irish Funds agrees with the proposed amendment.

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.

Irish Funds comments on Regulation 36(1):

Under paragraph 6 of Schedule 5 of the existing Central Bank UCITS Regulations, a non-MMF UCITS holding a money market instrument (MMI) with a residual maturity of less than three months and no specific sensitivity to market parameters could value that instrument using the amortised-cost method. Regulation 6 of the existing UCITS Regulations further required that, where the amortised-cost methodology was used, it must not result in a material discrepancy versus the mark-to-market or mark-to-model valuation, although "material discrepancy" was not defined.

The proposed amendments delete paragraph 6 of Schedule 5 and remove the related requirement in Regulation 6, replacing it with a cross-reference to Article 29(2) to (4) of the Money Market Fund Regulation[15] (MMFR). This amendment clarifies that, where a non-MMF UCITS holds MMIs, such instruments must be valued in accordance with the MMFR valuation requirements.

While we acknowledge and support the objective of aligning with the MMFR framework, we note that this amendment effectively replaces the existing qualitative "material discrepancy" standard with a fixed 10 basis-point threshold derived from the MMFR. The 10bp limit was developed for a specific subset of funds under the MMFR - in particular, low-volatility NAV (LVNAV) MMFs - and does not apply to all MMF structures (for example, public debt CNAV MMFs may continue to use amortised cost without such a limit). Accordingly, it should not be assumed that the MMFR's 10bp threshold is suitable for all UCITS.

[15] L_2017169EN.01000801.xml

The current "material discrepancy" approach in the Central Bank UCITS Regulations provides appropriate flexibility and proportionality, recognising that valuation sensitivity can differ across fund and asset types. We therefore suggest that this flexibility be retained.

For completeness, we note that Article 29(2) to (4) of the MMFR provides as follows:

"(2) The assets of an MMF shall be valued by using mark-to-market whenever possible.

(3) When using mark-to-market:

(a) the asset of an MMF shall be valued at the more prudent side of bid and offer unless the asset can be closed out at mid-market;

(b) only good quality market data shall be used; such data shall be assessed on the basis of:

(i) the number and quality of the counterparties;

(ii) the volume and turnover in the market of the asset of the MMF;

(iii) the issue size and the portion of the issue that the MMF plans to buy or sell.

(3) *Where use of mark-to-market is not possible or market data is not of sufficient quality, an asset of an MMF shall be valued conservatively by using mark-to-model.*

The model shall accurately estimate the intrinsic value of the asset, based on:

(a) the volume and turnover in the market of that asset;

(b) the issue size and the portion of the issue that the MMF plans to buy or sell;

(c) market risk, interest rate risk, and credit risk attached to the asset.

When using mark-to-model, the amortised-cost method shall not be used."[16]

[16] L_2017169EN.01000801.xml

Appendix

Irish Funds comments on draft performance fee guidance contained in the Appendix to CP 161:

- **Alignment of descriptions of HWM and HOH models with finalised Regulations**: as noted above, we suggest that Regulation 40 of the draft regulations is updated to specifically address each of the HWM and HoH models and to clarify the conditions applicable to each model. Necessary amendments to the draft guidance to ensure alignment between the finalised regulations and the guidance should also be made.

- **Definition of "crystallisation frequency":** the draft guidance should be updated to remove reference to AIFM/Responsible Person in recognition that a performance fee may be payable to a delegate investment manager. We suggest, consistent with other provisions of the draft Regulations and draft guidance, that it is amended as follows "the frequency at which an accrued performance fee becomes payable by a fund".

- **Amendment on Para 5(b)(ii):** a related amendment should be made to para 5(b)(ii) of the draft guidance as highlighted in red below:

  > "The crystallisation frequency at which the accrued performance fee, if any, becomes payable ~~to the manager~~ by the fund and the crystallisation date at which the performance fee is credited to the entity receiving the performance fee"

- **Definition of "performance reference period":** as per suggested edits to the definition of "performance reference period" in the draft Regulations, this definition in the draft guidance should be updated to replace reference to "benchmark" with "reference indicator". A 'benchmark' is defined as 'a market index against which the performance of a fund is assessed', and so this implies that a performance reference period is only applicable to funds seeking to measure performance against a benchmark and therefore excludes funds employing a HWM or HoH methodology or hurdle rate, which models will be permitted to apply a performance reference period set to or equal at least 5 years on a rolling basis.

  Furthermore, the use of the definition proposed under CP 161 is inconsistent with the provisions of the draft Regulation 40 (6) which reference "performance reference period" in the context of funds applying a HWM or HoH model.

- **Paragraph 5(g): Calculation of performance fees on a single unitholder basis:** this provision now provides that a "Responsible Person [as defined in the Central Bank UCITS Regulations] or AIFM, in respect of a performance fee calculation methodology shall ensure that [….] performance fees are calculated on a single unitholder basis".

  Under the existing CBI web-based guidance on performance fees, this had previously read "could calculate performance fees on a single investor basis" which was aligned with the related ESMA guidelines (which provides that performance fees "could" be calculated on a single investor basis).

  The Central Bank has also previously clarified the position in ID 1090 of the Central Bank UCITS Q&A:

  > **Q.** Where a UCITS will have performance fees as permitted by Regulation 40 of the Central Bank UCITS Regulations, is it required to charge such fees on an individual investor basis?
  >
  > **A.** No. It is acceptable to charge performance fees at (i) an individual investor level or (ii) at a share class / fund level, as adjusted for subscriptions and redemptions.

  Paragraph 5(g) of the revised guidance (and the related introductory text to paragraph 5) should therefore be revised to confirm that a Responsible Person [as defined in the Central Bank UCITS Regulations] or AIFM, in respect of a performance fee calculation methodology could calculate performance fees on a single unitholder basis.

- **Paragraph 5(h): Verification of calculation of performance fee by depositary/competent person appointed by the Responsible Person and approved for the purpose by the depositary:** The first line in paragraph 5(h) of the draft guidance suggests that the calculation of the performance fee, when payable by the relevant fund, must be verified by the depositary. This indicates that it is **not** possible for a competent person appointed by the UCITS management company/AIFM and approved for the purpose by the depositary (**Competent Person**) to verify the calculation of the performance fees payable by the relevant fund on an ongoing basis during the life of the fund.

  However, this is at odds with the wording of Regulation 40(5) of the draft CBI UCITS Regulations which indicates that the Competent Person can verify the payment of a performance fee during the life of the UCITS.

  Separately, the draft guidance goes on to provide that the "process and methodology" for the calculation a performance fee can be verified by the depositary **or** by a Competent Person.

This indicates that while a Competent Person can review and approve the performance fee methodology, it cannot verify any performance fee payable during the life of the fund.
The draft regulations and the draft guidance should be revised to clearly set out whether the Competent Person can:

i. verify the process and methodology for the calculation of a performance fee and/or
ii. verify the calculation of the performance fee payable

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- **Amendments to last paragraph of section 7 of the guidance:** the last paragraph of Section 7 of the draft guidance should be updated as follows:

  "A derogation from paragraph ~~6(b)~~ **7(b) and paragraph 7(e)** above is permitted where the fund employs the following models: [………]

  Reference to paragraph 6(b) would seem to be a typo. Separately, funds which crystallise more frequently than annually should not be subject to the requirement under paragraph 7(e) of the draft guidance which provides that the crystallisation date must be aligned with 31 December or with the end of the financial year of the fund. Accordingly, a derogation from this requirement should be provided to those funds operating a HWM, HoH or fulcrum fee model (or equivalent).

- **Para 8: Consistency between the time horizon for assessing performance fees and recommended investors' holding period:** This provision should be updated as highlighted in red bold above in order to align with the corresponding ESMA guidelines.

  *"( ). the manager's performance is assessed and remunerated on a time horizon**, as far as possible,** that is consistent with the recommended investors' holding period;".*

  It should also be subject to an appropriate transition period to allow UCITS management companies/their delegates adequate time, if necessary, to consider if any adjustments may need to be made to the existing performance fee model to align with this requirement.

- **Para 8(d): Negative performance (loss) recovery in benchmark model:** last sentence to be updated to add the wording in bold:

  *"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 **on a rolling basis**"*

- **Para 8 (e): Negative performance (loss) recovery in HWM model:** paragraph 8 (e) of the draft guidance should be updated to make clear that the ability to apply a performance reference period of shorter than life of the fund (but subject to a minimum period of at least 5 years on a rolling basis) is applicable to the High-on-High model.

- **Typo in para 8(e) of draft guidance:** revise sentence to read "*the performance reference period should be set equal to at least 5 years on a rolling basis*".

- **Paragraph 9(b): Prospectus/KID/KIID Disclosures:** paragraph 9(b) of the draft guidance provides as follows:

  "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.

Noting the extension of the requirement to include the above risk warning in each of the UCITS prospectus **and** the PRIIPS KID (and if applicable the KIID), industry requests that the guidance be clarified to include a transitional timeframe for compliance with this requirement in the case of existing funds so that the risk warning can, where relevant, be incorporated into the relevant documents "at the next available opportunity" following the publication of the guidance.

- **We would also suggest:**
  - That the reference to "index" be deleted, given the definition of "benchmark" included in the draft guidance.
  - That references to the "Responsible Person of the UCITS" be amended to refer to the Management Company.
  - That, in relation to the definition of "reference indicator", the example in section 5(b)(i) be included in the definition section.
  - That, in relation to the definitions of "unitholder" and "units", references to ICAV be included throughout.
  - That, in relation to section 5(h), it be amended to read:
    "The calculation of the performance fee is verified by the depositary or by a competent person appointed by the Responsible Person or AIFM and approved for the purpose by the depositary".
  - That, in relation to section 7, the CBI clarify whether the "derogation" from the requirement that crystallization frequency should not be more than once a year for:
    - a HWM or HoH model where the performance reference period is equal to the whole life of the fund and cannot be reset; or

- a fulcrum fee model or other performance fee models which provide for a symmetrical fee structure is required to be formally requested from the CBI, or whether the derogation applies automatically in these circumstances.