

## Guidance Note 2/03

### Undertakings for Collective Investment in Transferable Securities (UCITS)

#### Acceptable investments in other collective investment undertakings

Regulation 51 of the European Communities (UCITS) Regulations 2003, as amended, ("the Regulations"), provides that a UCITS may invest in other collective investment undertakings, ("CIS"). Investment is permitted in both UCITS and non-UCITS CIS.

#### General rules:

- (i) Investment in any one CIS may not exceed 20% of the net asset value of a UCITS. Where the CIS being invested in is an umbrella fund, each sub-fund of the umbrella fund may be regarded as a separate CIS for the purposes of applying this limit.
- (ii) Investment in a CIS, which can itself invest more than 10% of net assets in other CIS,<sup>1</sup> is not permitted.
- (iii) Where a UCITS invests in a linked CIS<sup>2</sup>, the manager of the underlying CIS cannot charge subscription or redemption fees on account of the investment.
- (iv) A UCITS which intends to invest more than 20% of its net assets in other CIS:
  - must provide information on the maximum level of management fees that may be charged to the UCITS and to the underlying CIS, in its prospectus; and
  - disclose information in relation to the management fees which have been charged to the UCITS and to the underlying CIS, in its annual report.

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<sup>1</sup> Regulation 45(e) of the amended Regulations provides that *..no more than 10%. of the assets of the (CIS), whose acquisition is contemplated, can, according to their trust deed, deed of constitution, memorandum and articles of association or prospectus, be invested in aggregate in units of other (CIS).*

<sup>2</sup> A CIS will be regarded as a linked CIS where both the UCITS and the CIS are managed, directly or by delegation, by the same management company or where the management company of the UCITS is linked by common management or control, or by a substantial direct or indirect holding, to the management company of the CIS.

**Investment in non-UCITS:**

Regulation 45(e)(ii) of the amended Regulations sets out criteria in relation to permitted investments in CIS, which are not UCITS. Specifically, non-UCITS CIS must be:

- collective investment undertakings within the meaning of sub-paragraphs (a) and (b) of Regulation 3(2) of the amended Regulations;
- authorised under laws which provide that they are subject to supervision considered by the Irish Financial Services Regulatory Authority ("the Financial Regulator") to be equivalent to that specified in a Community Act, and that cooperation between authorities is sufficiently ensured.
- subject to a regulatory regime such that the level of protection for unit-holders is equivalent to that provided for unit-holders in a UCITS, and in particular that the rules on segregation of assets, borrowing, lending and uncovered sales of transferable securities and money market instruments are equivalent to the requirements of the UCITS Directive (Directive 85/611/EEC, as amended by EC Council Directive 2001/108/EC).
- required to report on a half-yearly and annual basis to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period.

Investment in non-UCITS CIS may not exceed, in aggregate, 30% of the net asset value of a UCITS.

**Acceptable Types of non-UCITS CIS**

Subject to completion of the specific application procedure detailed below, the Financial Regulator will permit investment by UCITS in the following categories of non-UCITS CIS. Other jurisdictions and types of CIS may be considered by the Financial Regulator on the basis of submissions made for that purpose.

In assessing any submissions made, the Financial Regulator will have regard to:

- memoranda of understanding (bilateral or multilateral), membership of an international organisation of regulators, or other co-operative arrangements (such as an exchange of letters) to ensure satisfactory cooperation between the Financial Regulator and the competent authority of the CIS;
- the management company of the target CIS, its rules and its choice of trustee have been approved by its regulator;
- the CIS is authorised in an OECD jurisdiction.

The following factors can be used by the Financial Regulator to guide a decision on equivalence:

- Rules guaranteeing the autonomy of the management of the CIS, and management in the exclusive interest of the unit holders;
- the existence of an independent trustee/custodian with similar duties and responsibilities in relation to both safekeeping and supervision. Where an independent trustee/custodian is not a requirement of local law as regards the CIS, robust governance structures may provide a suitable alternative;
- availability of pricing information and reporting requirements;
- redemption facilities and frequency;
- restrictions in relation to dealings by related parties;
- the extent of asset segregation; and
- the local requirements for borrowing, lending and uncovered sales of transferable securities and money market instruments regarding the portfolio of the CIS.

Such submissions would need to be detailed and comprehensive and should contain supporting documentation from the jurisdiction in question. In view of the detailed review which such a proposal would require, the complete submission would need to be provided to the Financial Regulator well in advance of an authorisation application.

1. schemes established in Guernsey and authorised as Class A Schemes;
2. schemes established in Jersey as Recognised Funds;
3. schemes established in the Isle of Man as Authorised Schemes;
4. non-UCITS retail CIS authorised by the Financial Regulator provided such CIS comply in all material respects with the provisions of the UCITS Notices.
5. non-UCITS CIS authorised in a Member State of the EEA, the US, Jersey, Guernsey or the Isle of Man and which comply, in all material respects, with the provisions of the UCITS Notices.

The consideration of “all material respects” should include, *inter alia*, consideration of the following:

- the existence of an independent trustee/custodian with similar duties and responsibilities in relation to both safekeeping and supervision;
- requirements for the spreading of investment risk including concentration limits, ownership restrictions, leverage and borrowing restrictions, etc.;
- availability of pricing information and reporting requirements;

- redemption facilities and frequency;
- restrictions in relation to dealings by related parties.

### **Cross investment within umbrella investment companies**

A sub-fund within an umbrella investment company may not invest in another sub-fund within the umbrella unless the umbrella investment company, or its delegate, has the systems capability to provide disclosure in relation to the cross-holdings, in accordance with industry adopted standards.

### **Specific application procedures**

- The UCITS must confirm in writing to the Financial Regulator that investments in non-UCITS CIS will fall under the categories outlined in this Guidance Note. It is not necessary to refer to this confirmation in the prospectus.
- The trustee must confirm in writing to the Financial Regulator that;
  - it will satisfy itself that the UCITS has adequate procedures in place to ensure that all of the underlying CIS fall under the categories outlined in this Guidance Note, and
  - it will periodically review the decisions of the manager to ensure that the adopted procedures are being adhered to.
- In the case of UCITS which may invest more than 20% of net assets in other CIS the prospectus must list;
  - the jurisdictions in which prospective CIS investments will be domiciled, and
  - the types of CIS in which the UCITS will invest, including a description of their regulatory status.