



FINANCIAL REGULATOR
Rialtóir Airgeadais

Amendments to the UCITS Notices and related Guidance Notes

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Consultation Paper | **CP31**

Amendments to the UCITS Notices and related Guidance Notes

Introduction

In March this year, the European Commission issued an amending Directive to Council Directive 85/611/EEC concerning eligible assets for UCITS. At the same time the Committee of European Securities Regulators (CESR) issued its guidelines concerning eligible assets for investment by UCITS and, subsequently in July of this year, issued additional guidelines on the classification of hedge fund indices as financial indices.

With effect from yesterday, the Commission Directive has been transposed into Irish Law pursuant to S.I. 832 of 2007 which amends the European Communities (UCITS) Regulations 2003 - (the "Regulations").

The purpose of this consultation paper is to:

- Outline the amendments to the UCITS Notices and related Guidance Notes with regard to eligible assets for UCITS. These amendments, which reflect the amendments to the Regulations and the CESR Guidelines, are not subject to the consultation process *per se*, unless commentators consider that we have not properly reflected the eligible assets requirements;
- Propose a number of amendments to other aspects of the UCITS framework.¹

¹ Some of these proposals are also of relevance to non-UCITS and will be reflected in the NU Series of Notices when finalised.

Part 1 - Eligible Assets for UCITS

The amendments to the Regulations and the CESR Guidelines are now included in Notice UCITS 9 and Notice UCITS 10 and can be identified in the consultation document as blue and green amendments respectively. Details of all amendments are set out in Appendix 1. Some minor amendments were required to the explanatory memorandum, Notice UCITS 6 and Guidance Note Nos. 1/00, 2/03, 3/03, 1/05 and 2/07. The amendments to these documents are also listed in Appendix 1.

Part 2 - Proposed amendments to Notices/ Guidance Notes and new Guidance Note

We are also proposing to amend the UCITS Notices and some of our Guidance Notes as outlined in this section. In this case, amendments can be identified by way of strike through and double underline.

Notice UCITS 12 - Use of Repurchase/Reverse Repurchase Agreements and Stock Lending for the purposes of efficient portfolio management

While Notice UCITS 12 has been amended to include certain CESR Guidelines, additional amendments are proposed to:

- broaden the types of eligible collateral that can be received by a UCITS under a stock lending /repurchase agreement;
- permit that up to 20% of cash collateral received may be invested in 30 day deposits;
- replace the existing condition, which requires that re-investment of certain cash collateral be diversified in terms of total invested cash with a requirement to diversify invested cash in accordance with the CESR Guidelines. This states that "*techniques and instruments*

relating to transferable securities and money market instruments can not result in a change of the fund's declared investment objective or add substantial supplementary risks in comparison to the concerned fund's general risk policy as described in its applicable sales documents";

- replace reference to Central Securities Depositories Systems in paragraph 11 with "International" Central Securities Depositories Systems. Paragraph 11 permits UCITS to engage in stock lending within Central Securities Depositories Systems such as Euroclear and Clearstream.

Guidance Note 3/03 - UCITS Financial Derivative Instruments

Guidance Note 3/03 has also been amended to include eligible assets requirements. Additional amendments are proposed to:

- clarify a number of areas including the treatment of fully funded swaps in the context of global and counterparty risk exposure;
- highlight the requirement to measure and monitor all exposures relating to the use of FDI on a daily basis.

Other amendments, details of which are listed in Appendix 2, are of a more technical nature.

Guidance Note -/08 - Valuation of assets of Money Market Funds

A new Guidance Note is proposed to provide for the valuation of assets of money market funds.

The Financial Regulator permits money market funds to provide for the use of an amortised cost valuation methodology. The principles applied to this valuation process were previously set down in Guidance Note 1/00

(Valuation of assets of collective investment schemes). These principles have now been moved from that Guidance Note to this new document.

Notice UCITS 13 - Umbrella UCITS

A technical amendment has been made to Notice UCITS 13 to clarify that where sub-funds of umbrella funds invest in sister sub-funds, the investment is subject to the restriction set out in paragraph 3 of Notice UCITS 9.

Appendix 2 sets out a complete list of the proposed amendments.

Consultation Process and Timeframe

The amendments to the UCITS Regulations came into effect on 19 December 2007. S.I. 832 of 2007 provides that UCITS authorised by the Financial Regulator before this date, have until 23 July 2008 to comply with the amended Regulations. UCITS authorised from 19 December 2007 must comply with the new requirements.

The Financial Regulator invites all interested parties to provide comments or make a submission on all matters set out in this consultation paper.

Comments should be submitted no later than 1 February 2008 to:

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Appendix 1

Part 1 - Eligible Assets for UCITS

Notice Provision	Amendment Made
Explanatory Memorandum	Definitions of " <i>transferable security</i> " and " <i>money market instrument</i> " deleted as these definitions are now provided for in Notice UCITS 9.
UCITS 6, paragraph 12 (A) (xvi)	Paragraph amended to include reference to the provisions of Guidance Note 3/03 when discussing techniques and instruments for efficient portfolio management.
UCITS 9	Title amended to read "Eligible Assets and Investment Restrictions".
UCITS 9	New numbering and referencing to reflect new paragraphs and amendments.
UCITS 9, new Paragraph 1.1	Includes the amendments to the UCITS Regulations by way of S.I. 832 of 2007 and related CESR Guidelines in respect of transferable securities.
UCITS 9, new paragraph 1.2	Includes the amendments to the UCITS Regulations by way of S.I. 832 of 2007 and related CESR Guidelines in respect of money market instruments.
UCITS 9, Old paragraphs 2-8	Paragraphs moved.
UCITS 9, paragraphs 14 and 16	Includes the amendments to the UCITS Regulations by way of S.I. 832 of 2007 and related CESR Guidelines in respect of index funds.
UCITS 9, Paragraph 25, footnote 2	Includes the CESR Guidelines in respect of prohibition on short selling money market instruments.
UCITS 9, paragraph 26	Paragraph deleted. Warrants are subject to the requirements for FDI and Global Exposure as provided for in Guidance Note 3/03.
UCITS 10	New numbering and referencing to reflect new paragraphs and amendments.
UCITS 10, paragraph 1	Re-worded to be consistent with the provisions of the UCITS Regulations 2003.
UCITS 10 Paragraph 1(iv)	Includes the amendments to the UCITS Regulations by way of S.I. 832 of 2007 and related CESR Guidelines in respect of financial indices. Includes a cross reference to Guidance Note 2/07.
UCITS 10, paragraph 1, footnote 1	Includes the amendments to the UCITS Regulations by way of S.I. 832 of 2007 in respect of financial indices.
UCITS 10, new paragraph 2	Includes the amendments to the UCITS Regulations by way of S.I. 832 of 2007 and related CESR Guidelines in respect

	of credit derivatives.
UCITS 10, paragraph 4 (iv) and (v)	Includes the amendments to the UCITS Regulations by way of S.I. 832 of 2007 and related CESR Guidelines in respect of the valuation of OTC derivatives.
UCITS 10, paragraph 5 (i)	Paragraph amended to correct referencing.
UCITS 10, new paragraphs 7 and 8	Includes the amendments to the UCITS Regulations by way of S.I. 832 of 2007 and related CESR Guidelines in respect of embedded derivatives.
UCITS 12	Title includes reference to efficient portfolio management.
UCITS 12, new paragraphs 1, 2 and 3	Includes the amendments to the UCITS Regulations by way of S.I. 832 of 2007 and related CESR Guidelines in respect of efficient portfolio management.

Guidance Note Provision	Amendment Made
Guidance Note 1/05	The Investment Policy section is amended in the fifth bullet to reflect the CESR Guidelines in respect of index replicating funds.
Guidance Note 2/03	Includes CESR Guidelines and amends the section "Acceptable types of non-UCITS"
Guidance Note 3/03	Includes the CESR Guidelines and amends Section 1.6 "Embedded Derivatives"
Guidance Note 2/07	<p>Paragraph 1.1 is amended to include a new bullet point to reflect the CESR Guidelines.</p> <p>Footnote 2 in section 1.3.2, which referred to hedge funds, is deleted.</p> <p>A new sentence is included at the end of paragraph 2.1 to reflect the CESR Guideline in respect of diversification of financial indices.</p> <p>A new section 4 is included to reflect the CESR Guidelines in respect of hedge fund indices.</p>

Appendix 2

Part 2 - Proposed amendments to Notices/ Guidance Notes; new Guidance Notice

Notice Provision	Amendment Made
UCITS 10, paragraph 11 (i)	Paragraph re-worded for clarity
UCITS 12, paragraph 5	Amended paragraph to broaden the scope of eligible collateral under a repo or stock lending arrangement.
UCITS 12, paragraph 6	Consequential amendment.
UCITS 12, paragraph 7	Reference to "credit" risk deleted.
UCITS 12, paragraph 8 (i)	Paragraph amended to permit investment of cash collateral in deposits that are capable of being withdrawn within 30 working days.
UCITS 12, paragraph 9	Amendment to the diversification requirement for cash collateral.
UCITS 12, paragraph 11	Reference to "International" Central Securities Depositories Systems included.
UCITS 13, paragraph 8	Applies the investment restriction of UCITS 9 to cross-investing sub-funds.

Guidance Note Provision	Amendment Made
Guidance Note -/08	New Guidance Note on Valuation of assets of Money Market Funds.
Guidance Note 1/00	Amended section 1 (f), second bullet to reflect CESR Guidelines in respect of OTC valuations Amended section 1 "notes" (iii) to reflect the revised requirements for amortised cost valuations
Guidance Note 3/03	Includes reference to Guidance Notes 1/00, 2/07 and 3/07 under the heading "Relevant Legislation". Section 1.1 - re-worded and included new footnote 1 to clarify the position on fully funded swaps. Included a new statement requiring daily monitoring of all exposures relating to the use of financial derivative instruments. Sections 1.2 & 1.3 - minor re-wording. Section 1.5 - including statement that exposures are monitored on a daily basis. Section 1.6 - deleted footnote 2.

	<p>Section 1.7 - amended to include reference to indices requirements as provided for in Guidance Note 2/07.</p> <p>Section 2.2 - included new footnote on fully funded swaps.</p> <p>Section 2.4 - included reference to Guidance Note 1/00 on valuation procedures for OTC derivatives.</p> <p>Section 3.1 & 3.2 - Included reference to “Financial Institutions and Funds Authorisation” and “Investment Service Providers Supervision” departments respectively.</p> <p>Section 3.2 - minor re-wording and deletions.</p> <p>Section 4 - amended to cross-refer to Guidance Note 3/07.</p> <p>Appendix 1, Section 1 - included reference to Guidance Note 1/00</p> <p>Appendix 1, Section 2 - minor re-wording.</p> <p>Checklist - minor re-wording.</p> <p>Appendix II - included additional statement requiring the UCITS to undertake exposure monitoring in all uses of FDI.</p>
Guidance Note 2/07	<p>Section 2 - included new footnote to require that the technical and marketing documents of the Index sponsor be provided to the Financial Regulator.</p>