



FINANCIAL REGULATOR
Rialtóir Airgeadais

Revisions to Notices issued by the Financial Regulator

July 2009

Consultation Paper | **CP39**



Consultation Document


Collective investment schemes – audit on change of service provider

The Financial Regulator publishes two series of Notices, the UCITS Notices and the NU Series of Notices, which explain and clarify various aspects of collective investment scheme (“CIS”) legislation and set down conditions not contained in this legislation with which UCITS and non-UCITS must comply.

UCITS Notice 2, paragraph 11 and Notice NU 5, paragraph 33 state that:
“The Financial Regulator requires a scheme/UCITS to be audited at the date of replacement of a management, administration or trustee company.”

In addition to the audit requirement, the Notices specify that a management company or trustee may not be replaced without the approval of the Financial Regulator. Furthermore in relation to other service providers (including administrators), the Financial Regulator must be notified in advance of any proposed change and any proposal, to which we object, may not proceed. The Financial Regulator also has detailed procedures which must be followed with respect to a change of service provider, copies of which are available on our website – www.financialregulator.ie.

The Financial Regulator has granted derogations from the audit requirement in certain circumstances, for example where a change of management company is proposed but the trustee and administration company will remain in place. However, in general this requirement has



been imposed for all changes and this has resulted in increased costs for the CIS involved.

Following representations from industry participants the Financial Regulator conducted a review of this policy which included a survey of the practices followed by other European competent authorities. As a result of this review the Financial Regulator is proposing an amendment to the Notices to remove the requirement for CIS to be audited on a change of service provider.

It is also proposed to include an additional notice requirement, in the case of a change of trustee, to ensure that the next audited financial statements of the CIS includes a report from both the old and new trustee covering their respective periods of appointment.

Draft amended extracts of UCITS Notices 2 and 4, incorporating the proposed changes, are set out in the attached appendix. Corresponding amendments will be made to Notice NU 5 and NU 7.

The Financial Regulator invites all interested parties to provide comments on all matters set out in this consultation paper. Comments should be submitted no later than 7 August 2009 to:

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Or via e-mail to fifapolicy@financialregulator.ie

Financial Institutions and Funds Authorisation
Financial Regulator
24 July 2009

Appendix

UCITS 2.34

Undertakings for Collective Investment in Transferable Securities

General supervisory and reporting requirements for UCITS authorised by the Financial Regulator and certain firms providing services to such UCITS

- A. **Conditions relating directly to the UCITS - unit trust, common contractual fund and investment company**
11. ~~The Financial Regulator requires a UCITS to be audited at the date of replacement of a management, administration or trustee company.~~ **The Financial Regulator requires that the procedures to be followed in relation to the replacement of a management, administration or trustee company must be approved by the board of the investment company or management company in the case of a unit trust or common contractual fund.**


Undertakings for Collective Investment in Transferable Securities

Trustees - duties and conditions

6. The trustee must enquire into the conduct of the management company or the investment company in each annual accounting period and report thereon to the unit holders. The trustee's report shall be delivered to the management company or investment company in good time to enable the management company or investment company to include a copy of the report in its Annual Report. The trustee's Report shall state whether in the trustee's opinion the unit trust, the common contractual fund or the investment company has been managed in that period:
- (i) in accordance with the limitations imposed on the investment and borrowing powers of the manager or investment company and trustee by the trust deed, the deed of constitution or memorandum and articles of association and the Regulations; and
 - (ii) otherwise in accordance with the provisions of the trust deed, the deed of constitution or memorandum and articles of association and the Regulations.

If the management company or investment company does not comply with (i) or (ii) above, the trustee must state why this is the case and outline the steps which the trustee has taken to rectify the situation.

Where there has been a change of trustee during the accounting period, the Annual Report must include a trustee report from both the retiring and new trustee to cover their respective periods of appointment.

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22. ~~The Financial Regulator requires a UCITS to be audited at the date of replacement of a trustee.~~ **The Financial Regulator requires that the procedures to be followed in relation to the replacement of a trustee must be approved by the board of the investment company or management company in the case of a unit trust or common contractual fund.** In addition the Financial Regulator requires confirmation from both the retiring trustee and new trustee that they are satisfied with the transfer of assets.