



FINANCIAL REGULATOR
Rialtóir Airgeadais

Revocation of Dormant Collective Investment Schemes

Consultation Paper | **CP 40**

Revocation of Dormant Collective Investment Schemes (CIS)

Introduction

“Dormant CIS” consist of

- CIS, including sub-funds, authorised (or approved in the case of sub-funds) but never launched; and
- CIS, including sub-funds, which have redeemed all units and distributed all assets but which have not wound up and requested revocation.

From the monthly returns data collated by the Financial Regulator there are a significant number of authorised CIS (including sub-funds) reporting nil net asset values, some over a lengthy period.

The inclusion of dormant CIS on the CIS registers and in the monthly statistics compiled and published by the Financial Regulator is misleading and inconsistent with statistics compiled by industry sources. Dormant CIS also create problems in the calculation of the annual industry funding levy.

Regulation 102(1) (d) of the European Communities (UCITS) Regulations, 2003 provides that:

- “ *The Bank may revoke the authorisation of a UCITS if it appears to the Bank –*
- (d) that the UCITS has not made use of the authorisation within 12 months of the date on which it was authorised under these Regulations, or has failed to operate as a UCITS for a period of more than 6 months”*

Regulation 103(1) provides a procedure to apply in this instance.

Regulations 102 and 103 are also applicable to non-UCITS unit trusts, investment companies and common contractual funds under Section 15 of the Unit Trusts Act 1990, Section 258 of the Companies Act 1990, and Section 18 of the Investment Funds, Companies and Miscellaneous Provisions Act 2008 respectively.

To address our concerns regarding the number of dormant CIS, it is proposed to introduce a formal procedure under the provisions of these Regulations as follows:

A: Procedure for the revocation of authorisation of a CIS

UCITS and non-UCITS CIS are required to submit a monthly return to the Financial Regulator. On the basis of the information provided, the Financial Regulator will identify those CIS which have not made use of their authorisation within 12 months or where relevant, have not operated for a period of more than 6 months ("a dormant CIS").

A notice of intention to revoke authorisation will issue to a dormant CIS and to its trustee, in accordance with Regulation 103(1).

Where the notice of intention to revoke has issued to the dormant CIS, the CIS may, in accordance with the provisions of Regulation 103 (2), make written representations to the Financial Regulator, which will be taken into consideration in accordance with the provisions of Regulation 103 (3).

If a decision is taken to revoke the dormant CIS's authorisation, the Financial Regulator will request confirmation from the trustee that all assets of the CIS have been disbursed and that it is not aware of any outstanding claims or disputes with investors or creditors.

Subject to company law requirements, audited termination accounts for dormant CIS that have never launched will not be required. CIS which have ceased to trade will be required to provide audited termination accounts.

CIS, other than dormant CIS, which apply for revocation of authorisation are subject to our existing procedures which are outlined on our website <http://www.financialregulator.ie/> under the Funds Section.

B: Procedure for the revocation of approval of a sub-fund

As there is no legislative provisions in relation to the revocation of sub-funds within umbrella CIS, the Financial Regulator will, under the provisions of Regulation 97 of the UCITS Regulations 2003, Section 5 of the Unit Trusts Act 1990, Section 257 of the Companies Act 1990, and Section 10 of the Investment Funds, Companies and Miscellaneous Provisions Act 2005, apply similar conditions to the revocation of sub-funds. These conditions will be set out in amended Notice UCITS 13 and NU 15.

Consultation Process and Timeframe

The Financial Regulator invites all interested parties to provide comments or make a submission on the matters set out in this Consultation Paper. The proposed amendments to our UCITS and Non-UCITS Notices and draft Guidance Note 1/09 are attached as Appendix A and Appendix B respectively.

Comments should be submitted no later than 18 September 2009 to:

Patricia Moloney
Head of Financial Institutions and Funds Authorisation
Financial Regulator
PO Box 9138
College Green
Dublin 2

Or via e-mail to fifapolicy@financialregulator.ie

Appendix A

Proposed amendments to Notices

UCITS 13.34

Undertakings for Collective Investment in Transferable Securities


Umbrella UCITS

NOTE: The Regulations define an umbrella fund as... "a UCITS which is divided into a number of sub-funds, and each sub-fund shall be treated as a separate UCITS for the purposes of Part VII of these Regulations".

1. Where a UCITS is constituted as an umbrella UCITS, each sub-fund of the UCITS must comply with the Regulations and conditions governing UCITS.
2. The prospectus of an umbrella UCITS must clearly state the charges, if any, applicable to the exchange of units in one sub-fund for units in another.
3. The trust deed, deed of constitution or articles of association of an umbrella UCITS must provide that the assets of each sub-fund shall belong exclusively to the relevant sub-fund and shall not be used to discharge directly or indirectly the liabilities of or claims against any other sub-fund and shall not be available for any such purpose.
4. The prospectus of a UCITS investment company established as an umbrella UCITS, must include the words "**An umbrella fund with segregated liability between sub-funds**". Investment companies constituted as umbrella schemes which were authorised and

commenced trading before 30 June 2005 and which do not have segregated liability between sub-funds must clearly disclose the potential risks to investors arising from the absence of the segregation of liability between sub-funds.

5. A unit trust or a common contractual fund constituted as an umbrella UCITS may produce separate periodic reports for individual sub-funds. In such cases, the report of each sub-fund must name the other sub-funds and state that the reports of such sub-funds are available free of charge on request from the management company.
6. In accordance with company law, an investment company constituted as an umbrella UCITS must include accounts for all sub-funds of that company in the periodic reports issued by the company.
7. An umbrella UCITS which has been authorised by the Financial Regulator must obtain the Financial Regulator's prior approval for each sub-fund. Details of proposed sub-funds, and the amendment or supplement to the prospectus which will set out the investment objectives and policy for the new sub-funds, must be submitted for approval. Where a supplement to the prospectus is issued the supplement must state that the UCITS is constituted as an umbrella UCITS and name the other existing sub-funds.
8. Investment by a sub-fund within an umbrella UCITS in the units of another sub-fund within the umbrella is subject to the following, in addition to the provisions of paragraph 1.3 and paragraph 3 of Notice UCITS 9:
 - investment must not be made in a sub-fund which itself holds units in other sub-funds within the umbrella;
 - the investing sub-fund may not charge an annual management fee in respect of that portion of its assets invested in other sub-funds within the umbrella. This provision is also applicable to the annual fee charged by an investment manager where this fee is paid directly out of the assets of the UCITS.

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9. Investment by a sub-fund within a UCITS investment company established as an umbrella UCITS, in the units of another sub-fund within the umbrella, by way of transfer for consideration¹, is subject to prior notification to the Financial Regulator.
10. Where a sub-fund within an umbrella UCITS has been approved by the Financial Regulator, but where the approval has not been made use of within 12 months of the date on which it was given, or where the sub-fund has failed to operate for a period of more than 6 months, the sub-fund will be subject to a revocation procedure in accordance with Guidance Note 1/09.

The Financial Regulator will issue a notice of intention to revoke the approval of the sub-fund and the process as outlined in Guidance Note 1/09 will be applied in respect of the revocation.

¹ Regulation 32A of the Regulations permits an umbrella investment company to acquire shares in a sister sub-fund by way of subscription or *transfer for consideration*. It is expected that, generally, such cross-investments will be processed as subscriptions, under normal dealing arrangements. In the event that a transfer for consideration is proposed the UCITS must notify the Financial Regulator in advance setting out the rationale behind the proposed transaction.

COLLECTIVE INVESTMENT SCHEMES OTHER THAN
UCITS

Umbrella schemes

1. Where a collective investment scheme is constituted as an umbrella scheme, each sub-fund of the scheme must comply with the laws, regulations and conditions governing collective investment schemes.
2. The prospectus of an umbrella scheme must clearly state the charges, if any, applicable to the exchange of units in one sub-fund for units in another.
3. The trust deed, deed of constitution or articles of association must provide that the assets of each sub-fund shall belong exclusively to the relevant sub-fund and shall not be used to discharge directly or indirectly the liabilities of or claims against any other sub-fund and shall not be available for any such purpose.
4. The prospectus of an investment company constituted as an umbrella scheme must include the words "**An umbrella fund with segregated liability between sub-funds**". Investment companies constituted as umbrella schemes which were authorised and commenced trading before 30 June 2005 and which do not have segregated liability between sub-funds must clearly disclose the potential risks to investors arising from the absence of the segregation of liability between sub-funds.
5. Investment companies authorised before 30 June 2005, which have as an investment objective the employment of leverage, may not

establish additional sub-funds unless the umbrella scheme has taken measures necessary to apply segregated liability between sub-funds.

6. A unit trust scheme or common contractual fund constituted as an umbrella scheme may produce separate periodic reports for individual sub-funds. In such cases, the report of each sub-fund must name the other sub-funds and state that the reports of such sub-fund are available free of charge on request from the management company.
7. In accordance with company law, an investment company must include accounts for all sub-funds of that company in its periodic reports.
8. An umbrella scheme which has been authorised by the Financial Regulator must obtain the Financial Regulator's prior approval for each sub-fund. Details of proposed sub-funds, and the amendment or supplement to the prospectus which will set out the investment objectives and policy for the new sub-funds, must be submitted for approval. Where a supplement to the prospectus is issued the supplement must state that the scheme is constituted as an umbrella scheme and name the other existing sub-funds.
9. Investment by a sub-fund within an umbrella scheme in the units of another sub-fund within the umbrella is, in addition to the provisions of paragraph 8(c), NU 13, subject to the following:
 - investment must not be made in a sub-fund which itself holds units in other sub-funds within the umbrella;
 - the investing sub-fund may not charge an annual management fee in respect of that portion of its assets invested in other sub-funds within the umbrella. This provision is also applicable to the annual fee charged by an investment manager where this fee is paid directly out of the assets of the scheme.

10. Investment by a sub-fund within an investment company constituted as an umbrella scheme, in the units of another sub-fund within the umbrella, by way of transfer for consideration¹, is subject to prior notification to the Financial Regulator.

11. Where a sub-fund within an umbrella scheme has been approved by the Financial Regulator, but where the approval has not been made use of within 12 months of the date on which it was given, or where the sub-fund has failed to operate for a period of more than 6 months, the sub-fund will be subject to a revocation procedure in accordance with Guidance Note 1/09.

The Financial Regulator will issue a notice of intention to revoke the approval of the sub-fund and the process as outlined in Guidance Note 1/09 will be applied in respect of the revocation.

¹ Section 255(3) of the Companies Act 1990 Part XIII permits an umbrella investment company to acquire shares in a sister sub-fund by way of subscription or *transfer for consideration*. It is expected that, generally, such cross-investments will be processed as subscriptions under normal dealing arrangements. In the event that a transfer for consideration is proposed the scheme must notify the Financial Regulator in advance setting out the rationale behind the proposed transaction.

Guidance Note 1/09

Revocation of Collective Investment Schemes (“CIS”)

Background and Overview

Regulation 102(1) (d) of the European Communities (UCITS) Regulations, 2003 provides that:

- “ *The Bank may revoke the authorisation of a UCITS if it appears to the Bank –*
(d) that the UCITS has not made use of the authorisation within 12 months of the date on which it was authorised under these Regulations, or has failed to operate as a UCITS for a period of more than 6 months”

Regulation 103(1) provides a procedure to apply in this instance.

Regulation 102(3) of the European Communities (UCITS) Regulations, 2003 provides that

- “ *The Bank may revoke the authorisation of a UCITS at the request of a management company or investment company or trustee of the UCITS; ...”*

Regulation 102 and 103 are also applicable to non-UCITS unit trusts, investment companies and common contractual funds under Section 15 of

the Unit Trusts Act 1990, Section 258 of the Companies Act 1990, and Section 18 of the Investment Funds, Companies and Miscellaneous Provisions Act 2008 respectively.

This note provides guidance on the procedure for revocation of a CIS and the policy of the Financial Regulator with respect to dormant CIS.

Revocation at the request of the CIS

The Financial Regulator will revoke the authorisation of a CIS on receipt of a complete application for revocation. The Financial Regulator's website www.financialregulator.ie includes procedures for the revocation of authorisation of a CIS. It also includes a procedure for the withdrawal of approval of a sub-fund.

Revocations are processed at the end of each calendar quarter. Applications must be received by the Financial Regulator no later than 5 working days prior to the end of the relevant calendar quarter.

Dormant CIS

Dormant CIS consist of

- CIS, including sub-funds, authorised (or approved in the case of sub-funds) but never launched; and
- CIS, including sub-funds, which have redeemed all units and distributed all assets but which have not wound up and requested revocation.

A: Procedure for the revocation of authorisation of a dormant CIS

UCITS and non-UCITS CIS are required to submit a monthly return to the Financial Regulator. On the basis of the information provided, the Financial Regulator will identify those CIS which have not made use of their authorisation within 12 months or where relevant, have not operated for a period of more than 6 months ("a dormant CIS").

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Where the notice of intention to revoke has issued to the dormant CIS, the CIS may, in accordance with the provisions of Regulation 103 (2), make written representations to the Financial Regulator, which will be taken into consideration in accordance with the provisions of Regulation 103 (3).

Once a decision is taken to revoke the dormant CIS's authorisation, the Financial Regulator will request confirmation from the trustee that all assets of the CIS have been disbursed and that it is not aware of any outstanding claims or disputes with investors or creditors.

Subject to company law requirements, termination accounts for dormant CIS that have never launched will not be required. CIS which have ceased to trade will be required to provide termination accounts.


B: Procedure for the revocation of approval of a sub-fund

The procedure as outlined in A above will also apply to sub-funds of umbrella CIS which have not made use of their approval within 12 months or where relevant, have not operated for a period of more than 6 months.

Industry Funding Levy

In 2003, the Irish Government gave the Financial Regulator the power to raise an annual Industry Funding Levy ('the levy') directly from the financial service providers it authorises and regulates.

At present, the levy funds approximately 50% of the cost of the Financial Regulator's annual budget. The remaining 50% is paid by the Central Bank and Financial Services Authority of Ireland.



A CIS is levied based on its structure. In 2009, a CIS will pay a fee of €2,000 whether they are an umbrella or a standalone CIS. Umbrella style CIS also pay a contribution of €450 per sub-fund up to a maximum contribution for umbrella CIS of €4,250.

The industry funding levy applies to all CIS until authorisation is revoked, and must be provided for during their winding down phase. CIS must pay the industry funding levy before the revocation process can be finalised. An invoice will issue to the CIS on receipt of an application for revocation covering any outstanding levy payments. This will be calculated on a pro-rata basis, by reference to the Regulations for the previous calendar year, in cases where the revocation requests is received prior to the coming into effect of the annual Regulations setting the levy for a particular calendar year. Revocation requests received following the making of the Regulations will be calculated pro-rata based on those Regulations.