



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

2011

**Consultation on amendments to UCITS  
Notices, NU Notices and Guidance Notes to  
reflect UCITS IV and other changes**

**Consultation Paper CP 50**

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## Introduction

European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2003, as amended, which implemented Directive 85/611/EEC, will be replaced with a new set of UCITS Regulations to implement Directive 2009/65/EC (the “UCITS IV Directive”) and the relevant accompanying Level 2 measures.

The UCITS IV Directive and its accompanying Level 2 measures are supplemented by a number of Level 3 measures, (together, “UCITS IV”), which are listed below.

Level 2 measures:

- Commission Directive 2010/43/EU (organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company)
- Commission Directive 2010/44/EU (fund mergers, master-feeder structures and notification procedure)
- Commission Regulation (EU) No 583/2010 (key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website)
- Commission Regulation (EU) No 584/2010 (form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities)

Level 3 measures:

- ESMA’s (European Securities and Markets Authority) Guidelines on a common definition of European money market funds (ref: CESR/10-049)
- ESMA’s guidelines on the methodology for the calculation of the synthetic risk and reward indicator in the Key Investor Information Document (ref: CESR/10-673)
- ESMA’s guidelines on the methodology for calculation of the ongoing charges figure in the Key Investor Information Document (ref: CESR/10-674)
- ESMA’s Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (ref: CESR/10-788)<sup>1</sup>
- Selection and presentation of performance scenarios in the Key Investor Information document (KII) for structured UCITS (ref: CESR/10-1318)
- Transition from the Simplified Prospectus to the Key Investor Information document (ref:

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<sup>1</sup> Guidelines on risk measurement for structured UCITS are expected to issue during quarter 1, 2011.



CESR/10-1319)

- ESMA's guide to clear language and layout for the Key Investor Information document (ref: CESR/10-1320)
- ESMA's template for the Key Investor Information document (ref: CESR/10-1321)

The Central Bank of Ireland (the "Central Bank") publishes the UCITS Notices, the NU Notices and Guidance Notes which explain and clarify various aspects of investment fund legislation. They also set down conditions not contained in this legislation with which investment funds and firms who provide services to these funds must comply. The UCITS Notices and certain of the Guidance Notes must be amended to reflect the provisions of UCITS IV. In addition, the Central Bank has identified other amendments which it proposes to make to the UCITS Notices, NU Notices and Guidance Notes (the "General Amendments") and is using the current revision as an opportunity to introduce these amendments.

### **Purpose of the Consultation**

The Central Bank has prepared draft UCITS Notices and Guidance Notes which have been amended to reflect and, where appropriate, implement the provisions of UCITS IV. The draft UCITS Notices, NU Notices and Guidance Notes have also been amended to incorporate the General Amendments.

For the most part the changes and new requirements imposed under UCITS IV are reflected in the draft UCITS Notices and Guidance Notes without amendment. For some requirements, particularly those relating to the organisation and structure of UCITS management companies (see draft Notices UCITS 2.5, UCITS 5.3, UCITS 16.2 and draft Guidance Note 4/07), the Central Bank has elaborated on the basic UCITS IV requirements in order to provide more clarity on their application.

The purpose of the consultation is to request feedback on (i) those provisions of the draft UCITS Notices and Guidance Notes where the Central Bank has included additional clarification on the requirements and (ii) the General Amendments.

### **Transitional Arrangements**

#### **➤ UCITS management companies**

UCITS management companies must comply with the new UCITS IV requirements from 1 July 2011. In order to ensure that all necessary arrangements are in place on time, the Central Bank will require all existing UCITS management companies to submit revised business plans for review by Friday, 29 April 2011.

#### **➤ UCITS Self-managed investment companies**

- SMICs seeking authorisation from 1 July 2011 must comply with all UCITS IV requirements;
  - SMICs authorised before 1 July 2011 must comply with Level 2 measures relating to Article 14 (rules of conduct) and Article 51 (risk measurement) of the UCITS IV Directive from 1 July 2011. Accordingly, they will be required to confirm that their business plans have been amended to ensure compliance with draft Notices UCITS 10.6 and UCITS 16.2 before 1 July 2011. These revised business plans do not need to be submitted to the Central Bank before 1 July 2011. The Central Bank may request these business plans at a later stage for review and approval. SMICs must comply with all UCITS IV requirements by 1 July 2013.
- **Transition from the Simplified Prospectus to the Key Investor Information Document**
- UCITS seeking authorisation from 1 July 2011 must draw up a key investor information document (KIID).
  - In accordance with the Irish UCITS Regulations the Central Bank will allow UCITS authorised prior to 1 July 2011 to continue to publish a simplified prospectus until 30 June 2012. Draft Policy Note 1/2011 explains and clarifies the various provisions which apply to UCITS (including sub-funds of umbrella UCITS) which avail of this transitional arrangement.
- **UCITS and non-UCITS money market funds**
- UCITS and non-UCITS money market funds must comply with ESMA's Guidelines on a common definition of European money market funds by 1 July 2011. The majority of Irish authorised money market funds comply with these guidelines in respect of investment policies. However, an amendment to the prospectus of each money market fund, to indicate whether it is a 'short-term money market fund' or a 'money market fund' will be necessary before 1 July 2011. Draft prospectuses should be submitted to the Central Bank for review before Friday, 29 April 2011.

## **Consultation Responses**

Details of the proposed General Amendments are summarised in Appendix 1.

The draft UCITS Notices, Notices NU 12.8 and NU 17.7, Guidance Notes 2/97, 1/03, 3/03, 4/07 and 1/11 and Policy Note 1/2011 accompany this Consultation Paper. These documents are marked against the current versions in force except in the case of draft Notices UCITS 2.5, UCITS 5.3, UCITS 15.5 and UCITS 16.2 and draft Guidance Note 4/07 where, due to the substantial revisions made, black lined versions are not useful. Draft Notices UCITS 17.0, UCITS 18.0, UCITS 19.0, Guidance Note 1/11 and Policy Note 1/2011 are new.

The draft UCITS Notices and many of the related Guidance Notes include references to individual UCITS Regulations. These references will be reviewed and updated when the UCITS Regulations implementing the UCITS IV Directive and the relevant accompanying Level 2 measure are finalised.

The Central Bank invites all interested parties to provide comments on the draft UCITS Notices, NU Notices and Guidance Notes. Comments should be submitted no later than 15 March 2011 to:

**Patricia Moloney**  
**Head of Funds Authorisation and Supervision Division**  
**Central Bank of Ireland**  
**Block D**  
**Iveagh Court**  
**Harcourt Road**  
**Dublin 2**

**Funds Authorisation and Supervision Division**  
**Central Bank of Ireland**  
**16 February 2011**

## Appendix 1

### Summary of the General Amendments

#### **Related party transactions**

During 2010 the Central Bank had discussions with industry representatives regarding the practices applied to related party transactions and how the fund industry ensures that the requirements of Notices UCITS 14.2 and NU 2.7 are complied with. Draft Notice UCITS 14.3 has been amended to include an additional reporting requirement. When the proposed amendments to this Notice have been finalised, corresponding amendments will be made to Notice NU 2.7 and also to draft Notice UCITS 8.3 and Notice NU 11.8. Draft Guidance Note 4/07 has been amended to require specific reference to this obligation in the business plan of a UCITS management company or self-managed investment company.

#### **Minimum capital requirements**

Draft Notices UCITS 2.5 and UCITS 4.5 have been amended to include changes to the minimum capital requirement report for management, administration and trustee companies. These amendments do not impose any additional capital requirements for firms but rather relate to the format and content of the report. Similar amendments will be made to Notices NU 5.11 and NU 7.11 post consultation. The Minimum Capital Requirement Report and Notes on Compilation, which are set out in the Annex to the UCITS Notices, are not marked against the current Annex due to the substantial changes in format.

#### **Minimum subscription requirements for professional investor funds**

In October 2010, following a review of the regulatory regime for Qualifying Investor Funds, the Central Bank amended Notice NU 24.8 to *inter alia* reduce the minimum subscription requirement for these funds from €250,000 to €100,000. In light of that change the Central Bank is now proposing to amend draft Notice NU 12.8 to reduce the minimum subscription amount for professional investor funds from €125,000 to €100,000.

#### **Closed-ended collective investment schemes**

The Central Bank is proposing to amend Guidance Note 2/97 to clarify the requirements concerning obtaining shareholder approval for changes to the duration and investment objective and policies of closed-ended collective investment schemes. It is proposed that the revised Guidance Note 2/97 will specify:

- where there is a change of investment objective and/or material change of investment policies with no opportunity for investors to redeem, votes in favour of the amendments must represent at least 75% of the shares in issue;
- where there is a change of investment objective and/or material change of investment policies with an opportunity for investors to redeem, at least 50% of the votes cast must vote in favour of the amendments;
- where there is a non-material change of investment policies with no opportunity for investors to redeem, at least 50% of the votes cast must vote in favour of the amendments;
- where there is a non-material change of investment policies with an opportunity for investors to redeem, investors should be provided with a reasonable notification period prior to the implementation of the change;
- where there is a change to the duration of the fund with no opportunity for investors to redeem, votes in favour of the change must represent 75% of the shares in issue;
- where there is a change to the duration of the fund with an opportunity for investors to redeem, at least 50% of the votes cast must vote in favour of the change;
- where there is an increase of management fees or investment management fees or redemption fees with no opportunity for investors to redeem, votes in favour of the increase must represent at least 75% of the shares in issue; and
- where there is an increase of management fees or investment management fees or redemption fees with an opportunity for investors to redeem, at least 50% of the votes cast must vote in favour of the increase.

The Central Bank intends to apply the same requirements to limited liquidity collective investment schemes.

### **NU 17.6 money market funds**

ESMA's Guidelines on a common definition of European money market funds apply to both UCITS and non-UCITS money market funds. Accordingly, draft Notice NU 17.7 is being amended to implement these guidelines.

### **Changes agreed following Consultation Paper 39**

Following Consultation Paper 39, it was agreed that an audit did not need to be carried out as at the date of a change of service provider. This change has been incorporated into draft Notices UCITS 4.5 and 5.3. Similar amendments will be made to Notices NU 5.11 and NU 8.7 post consultation.



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