



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

2015

Feedback Statement on CP 77 – Consultation on publication of UCITS Rulebook



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Introduction

1. On 2 January 2014 the Central Bank of Ireland (the “Central Bank”) published Consultation Paper CP 77 *Consultation on publication of UCITS Rulebook* (“CP77”). The closing date for comments was 28 March 2014 and 11 responses were received.
2. CP77 relates to the publication of a UCITS Rulebook which consolidates into one document all of the conditions which the Central Bank imposes on UCITS, their management companies and depositaries.
3. CP77 raised 3 specific questions for respondents to address. The section headed “Feedback on CP77” briefly summarises the responses received to each question along with the Central Bank’s comments and decisions.
4. As stated in CP77, the Central Bank is issuing the final UCITS Rulebook on a statutory basis. Having considered the options available to the Central Bank to achieve this, the Central Bank has decided to publish the final UCITS Rulebook in the form of Central Bank regulations. This is pursuant to the provisions of the Central Bank (Supervision and Enforcement) Act 2013 which permit the Central Bank to make regulations for the proper and effective regulation of regulated financial service providers.
5. This paper is published in conjunction with the publication of the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1))(Undertakings for Collective Investment in Transferable Securities) Regulations 2015 (the “Central Bank (UCITS) Regulations 2015”). The Central Bank (UCITS) Regulations 2015 incorporate any policy changes resulting from the consultation process.
6. The Central Bank will keep its requirements under review at all times and welcomes on-going discussion on how best to protect investors, while facilitating management of the costs arising.
7. Nothing in this feedback statement should be read with, seen as a clarification of or a supplement to the Central Bank (UCITS) Regulations 2015. This feedback statement is published to promote understanding of the policy formation process within the Central Bank and is not relevant to assessing compliance with regulatory requirements.

Feedback on CP77

Question 1: The Central Bank has previously placed significant reliance on the Promoter to underpin the formal regulatory regime by ensuring that only sizable entities with relevant experience could establish UCITS in Ireland, entities who could support UCITS in difficulty. To this end, the Central Bank has had a promoter approval process. We eliminated the promoter approval process for Irish authorised AIFs and placed reliance instead on the alternative investment fund manager (“AIFM”), taking into account the obligations on AIFM which the AIFMD imposes on them. In conjunction with this, we also elaborated in more detail the obligations of directors when an AIF gets into difficulties. We are proposing to take a similar approach for UCITS where we propose to also eliminate the promoter approval process. We will instead place reliance on the regulatory regime for UCITS management companies and will also elaborate the obligations of directors when a UCITS gets into difficulties. Do you agree with this approach?

8. Respondents agreed with the proposal to dispense with the promoter regime.
9. One respondent queried whether the Central Bank would seek additional documentation or introduce additional ongoing obligations for UCITS management companies or UCITS self-managed investment companies as a result of discontinuing the promoter regime for UCITS.

Central Bank: The Central Bank is dispensing with the promoter regime for UCITS. The Central Bank is not introducing new obligations on UCITS management companies and UCITS self-managed investment companies as a result of this change but it has elaborated on the obligations of directors when a UCITS gets into difficulties. Instead of the UCITS promoter regime, the Central Bank will place reliance on the regulatory regime for UCITS management companies and on this elaboration of obligations of directors when a UCITS gets into difficulties as set out in the Central Bank’s guidance.

Question 2: UCITS are permitted to invest in transferable securities and financial derivative instruments which are listed or traded on stock exchanges or regulated markets. Guidance Note 1/96 sets out the Central Bank’s approach to the determining whether a market meets the criteria for ‘regulated markets’ set out in the UCITS Regulations. Since the introduction of Commission Directive 2007/16/EC on eligible assets, there has been some overlap between matters covered by that Directive and Guidance Note 1/96. The Central Bank is removing this duplication by withdrawing that guidance note. As a result, the Central Bank will no longer review submissions on proposed regulated markets and will no longer publish a list of permitted markets for UCITS. Do you agree with this approach?

10. Respondents agreed with the Central Bank’s proposal.

Central Bank: The Central Bank is withdrawing Guidance Note 1/96. It will no longer review submissions on proposed regulated markets and will no longer publish a list of permitted markets for UCITS. The UCITS management company or self-managed UCITS investment company must ensure that the UCITS complies with the relevant requirements which are set out in Regulation 68(1) of the EC (UCITS) Regulations 2011 and Schedule 1 to the Central Bank (UCITS) Regulations 2015.

Question 3: To aid the Central Bank’s supervision of UCITS management companies and depositaries, it is proposed to extend the current financial reporting requirements. Currently UCITS management companies and depositaries are required to submit half-yearly management accounts covering the first six months of the financial year and audited annual accounts. It is proposed to require the additional submission of half-yearly management accounts covering the second six months of the financial year. Do you believe that the proposal would add significantly to the current reporting burden placed on UCITS management companies and depositaries?

11. Respondents disagreed with the Central Bank’s proposal to require UCITS management companies and depositaries to submit an additional set of half-yearly management accounts covering the second six months of the financial year. The new requirement would place an additional burden, both in terms of time and cost, on UCITS management companies and depositaries. However, the rationale for the proposal was not clear and it was not apparent what benefits would be.

Central Bank: The Central Bank is of the view that the submission of half-yearly management accounts covering both 6 month periods is an important and necessary supervisory tool and is proceeding to introduce this requirement. It will provide the Central Bank with more complete and more timely information and will allow the Central Bank to compare and analyse reports from the first 6 months of the year with the second 6 months – something which is not possible under current reporting requirements. It should also provide better quality and more timely key risk indicators and alerts on PRISM. This approach is consistent with the reporting requirements for other firms supervised by the Markets Directorate (e.g. MiFID firms)

Other feedback:

12. Respondents submitted a number of comments on the draft UCITS Rulebook. It is not possible to address each individual comment in this paper. However, those comments which were especially noteworthy, particularly issues which were raised by a number of different respondents, are summarised below.
- a. Respondents queried whether current guidance would be retained and what format this would now take.
 - b. Some respondents queried the format of the draft UCITS Rulebook and suggested that, similar to the UCITS Notices, rules be grouped by topic (e.g. all rules regarding financial derivative instruments should be located together).
 - c. Some respondents noted that separate provisions regarding the contents of UCITS annual and half-yearly accounts are located in the UCITS Rulebook and the EC (UCITS) Regulations 2011¹. They queried whether these could be consolidated in the UCITS Rulebook for ease of reference.
 - d. Some respondents identified provisions which were previously contained in the UCITS Notices but have not been retained in the UCITS Rulebook. These respondents queried why these provisions had not been retained and requested that the provisions be included in the UCITS Rulebook.
 - e. Some respondents queried whether the Central Bank would amend its rule on the diversification of collateral in line with the revised ESMA position published in March 2014.
 - f. Some respondents queried how the OTC counterparty exposure limits should be calculated where an OTC is centrally cleared.
 - g. Some respondents queried the rationale for introducing requirements on depositaries regarding dealings in specie, valuation and investing in other investment funds.
 - h. Some respondents commented on the new requirement for depositaries to report to the Central Bank non-material breaches which remain unresolved for 4 weeks. They argued that this obligation is overly burdensome on depositaries.
 - i. One respondent noted the introduction of a new requirement on boards of UCITS management companies to ‘ensure adherence to’ its policies and procedures. This respondent believes that it results in an extension and, to a certain extent, underwriting by the management company of the policies it has put in place.
 - j. Regarding cross investment by one sub-fund in another sub-fund of the same umbrella, one respondent proposed that management fees should be capable of being charged at either the level of the investing sub-fund or the investee sub-fund.

¹ European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011)

- k. In relation to the imposition of redemption gates, one respondent commented that it should be made clear that where redemption requests are gated these requests can be dealt with on subsequent dealing days either in priority to subsequent requests received or pro rata with other requests received on that next dealing day, at the choice of the UCITS. Another respondent thought that priority should not be applied.
- l. One respondent queried what grandfathering arrangements would apply to the new requirement that where a UCITS proposes to take short positions, it must disclose in its prospectus, in relation to each of the categories of assets in which it may invest, whether it will take long or short positions or both. It shall also disclose the percentage of its assets which it anticipates will be invested in long positions and in short positions.
- m. One respondent queried if changes to the shareholdings in the promoter must continue to be notified to the Central Bank.

Central Bank: The Central Bank has considered these items and advises as follows:

- a. Similar to the approach taken for alternative investment funds, the current Guidance Notes are being withdrawn and restructured as website guidance. The website guidance will retain all of the guidance currently located in the Guidance Notes and UCITS Notices.
- b. The general format of the Central Bank (UCITS) Regulations 2015 follows that of the AIF Rulebook. Rules are grouped firstly by entity and secondly by subject matter. For example, in the Central Bank (UCITS) Regulations 2015 all of the rules regarding the prospectus are now located together whereas in the UCITS Notices these are located across a number of different Notices.
- c. The Central Bank (UCITS) Regulations 2015 only contains those rules which the Central Bank is imposing on UCITS, UCITS management companies and depositaries. It does not repeat legislative requirements.
- d. In many instances, the provisions identified either replicated legislative requirements or were guidance. As the Central Bank (UCITS) Regulations 2015 does not contain rules which are otherwise provided for in legislation, those provisions which repeated legislative requirements have not been included in the Central Bank (UCITS) Regulations 2015. Provisions which constituted guidance will now be located in the Central Bank's UCITS website guidance. In a small number of instances, respondents identified provisions which had been inadvertently omitted and these omissions have now been corrected in the Central Bank (UCITS) Regulations 2015.
- e. The Central Bank's Feedback Statement on Consultation Paper CP84 is being published at the same time as this paper. The Central Bank (UCITS) Regulations 2015 reflect the outcome of CP84.
- f. This matter is addressed in the opinion issued by ESMA (ESMA opinion 2015/ESMA/880 dated 22 May 2015).
- g. These are existing requirements which are currently located in guidance notes and application forms and are not new rules as such.

In relation to investing in other investment funds, the Central Bank's website guidance provides that the confirmations from the depositary are required when the UCITS is being established rather than prior to an investment being made.

- h. The Central Bank is of the view that 4 weeks is a reasonable period within which to resolve any breach and it would be concerned to be aware of instances where this is not the case. The Central Bank will keep the operation of this rule under review to ensure that it is workable and proportionate. It will consider revising the rule if this proves not to be the case.
- i. The Central Bank views this as clarifying an existing requirement rather than introducing a new requirement. The Central Bank believes that the regulatory regime would be deficient if the board of a UCITS management company was only required to put relevant policies and procedures in place but was not also required to ensure adherence to these.

- j. The Central Bank will follow the approach adopted for the AIF Rulebook. This provides that the maximum management fee which can be charged is that set at the level of the investing sub-fund but it allows the management fees to be collected at either the level of the investment sub-fund or the investee sub-fund.
- k. The Central Bank agrees that applying priority to redemption requests which have been subject to a gate may materially prejudice investors, particularly small investors. Where a UCITS may apply a redemption gate, unsatisfied redemption requests will not receive priority. Therefore on the dealing day following the application of the gate, all redemption requests will be dealt with on a pro rata basis should the gate continue to apply.
- l. UCITS should include this disclosure in their prospectus when it is next updated.
- m. It is no longer necessary to notify these changes.

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