



Banc Ceannais na hÉireann  
Central Bank of Ireland

Eurosystem

2014

## Consultation on publication of UCITS Rulebook

### Consultation Paper CP 77

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## **Introduction**

Directive 2009/65/EC on Undertakings for Collective Investment in Transferable Securities (“the UCITS Directive”) sets out rules which apply in relation to UCITS. It is supplemented by detailed Level 2 measures and guidelines issued by the European Securities and Markets Authority (ESMA).

In Ireland, the UCITS Directive was transposed into national law by means of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011) (“the UCITS Regulations”). The UCITS Regulations provide that the Central Bank of Ireland (the “Central Bank”) may set down conditions for the authorisation of UCITS and requirements to apply to them and to their management companies and depositaries. The Central Bank (Supervision and Enforcement) Act 2013 (the “2013 Act”) also sets out that the Central Bank may make regulations for the proper and effective regulation of regulated financial service providers. The Central Bank has published a range of UCITS Notices which set down conditions with which UCITS, their management companies and depositaries must comply. The Central Bank has also issued Guidance Notes which explain and clarify the various aspects of the Irish regulatory regime applicable to UCITS.

The Central Bank proposes publishing a UCITS Rulebook which will consolidate into one document all of the conditions which the Central Bank imposes on UCITS, their management companies and depositaries. In addition, the question arises as to whether any aspects of the current regulatory regime which are within the discretion of the Central Bank are no longer necessary or appropriate.

## **Format of this Consultation Document**

The Central Bank put in place an Alternative Investment Fund (“AIF”) Rulebook in July 2013. This occurred in conjunction with the implementation in Ireland of Directive 2011/61/EU on Alternative Investment Fund Managers. The format of the UCITS Rulebook which the Central Bank is proposing follows closely that of AIF Rulebook.

The proposed UCITS Rulebook contains the following three chapters:

Chapter 1 – Product Requirements

Chapter 2 – Management Company Requirements

Chapter 3 – Depositary Requirements

Draft versions of each of these chapters form part of this Consultation Document. This should constitute a more accessible and readable regulatory framework.

This draft UCITS Rulebook is composed in a somewhat different manner than the UCITS Notices and Guidance Notes which it replaces. The aim is to eliminate duplication and texts whose standing is unclear, i.e. which provides guidance for industry on what could be done but which does not clearly constitute a regulatory requirement. Residual guidance will be published on the Central Bank’s website.

For the most part, the draft UCITS Rulebook contains conditions which are currently applied to UCITS. In a small number of instances, the Central Bank is proposing to remove existing

conditions. This consultation is seeking your views on the proposal to dispense with those conditions and on whether there are good reasons why any other conditions are no longer necessary or appropriate.

When the consultation process is complete we will conduct a technical examination of the draft UCITS Rulebook to refine drafting. The final UCITS Rulebook will then be issued on a statutory basis.

To the extent that it is appropriate to have consistency between the requirements of the UCITS Rulebook and the AIF Rulebook, the Central Bank will seek to incorporate relevant amendments and additions from the UCITS Rulebook into the AIF Rulebook when the AIF Rulebook is next updated.

### **Questions for consideration**

While we are consulting on the whole of the draft UCITS Rulebook, we would welcome stakeholders' views on the following questions in particular:

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?
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?
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?

### **Consultation responses**

The Central Bank invites all stakeholders to provide comments on the draft chapters which form part of this Consultation Document and on the questions raised in this Consultation Paper. Where a respondent proposes discontinuing with a current requirement, he/she should set out reasoned arguments as to why the current condition is no longer necessary or appropriate and/or should suggest viable alternatives.

Please make your submissions electronically by email to [fundspolicy@centralbank.ie](mailto:fundspolicy@centralbank.ie) or in writing, to:

**UCITS Consultation  
Markets Policy Division  
Central Bank of Ireland  
Block D  
Iveagh Court  
Harcourt Road  
Dublin 2**

Responses should be submitted no later than 28 March 2014

It is the policy of the Central Bank to publish all responses to its consultations. All responses will be made available on our website. Commercially confidential information should not be included in consultation responses. We will send an email acknowledgement to all responses sent by email. If you do not get an acknowledgement of an emailed response please contact us on 2246000 to correct the situation.

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2014

# UCITS RULEBOOK

Draft

January 2014



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## DEFINITIONS

For the purposes of the UCITS Rulebook the following interpretations and definitions shall apply:

**Actively-managed UCITS ETF:** A UCITS ETF, the manager of which has discretion over the composition of its portfolio, subject to the stated investment objectives and policies, (as opposed to a UCITS ETF which tracks an index and does not have such discretion). An actively-managed UCITS ETF generally tries to outperform an index.

**Alternative investment fund or AIF:** An alternative investment fund as defined in Regulation 5(1) of the European Union (Alternative Investment Fund Managers) Regulations 2013 (SI No. 257 of 2013).

**Annual tracking difference:** The difference between the annual return of the index-tracking UCITS and the annual return of the tracked index.

**Associated company:** This term has the same meaning as is given to “associated undertaking” in the European Communities (Companies: Group Accounts) Regulations, 1992 (S.I. No. 201 of 1992). In general this states that companies are associated where a significant influence may be exercised by one company over the operating and financial policy of another. This is deemed to be the case where 20 % or more of the voting rights in one company are owned directly or indirectly by another.

**Board of directors:** The board of directors of the management company or internally managed investment company.

**Constant net asset value (“NAV”) Money Market Funds:** A constant or stable NAV money market fund seeks to maintain an unchanging face value NAV (for example \$1/€1 per unit/share). Income in the fund is accrued daily and can either be paid out to the investor or used to purchase more units in the fund. Assets are generally valued on an amortised cost basis which takes the acquisition cost of the security and adjusts this value for amortisation of premiums (or discounts) until maturity.

**Constitutional document:** The trust deed, in the case of a unit trust, the memorandum and articles of association, in the case of an investment company and the deed of constitution, in the case of a common contractual fund.

**Credit ratings:** Credit ratings referred to are Standard and Poors. An “**equivalent rating**” for the purposes of the UCITS Rulebook is one which has been provided by an internationally recognised

rating agency and which is deemed equivalent to the rating stipulated in the UCITS Rulebook. An “implied rating” arises where a decision on an unrated entity is made by a UCITS on the basis of a relationship between an issuer and its rated parent, or where an issuer has a senior debt/long term rating but no short term rating.

**Directed brokerage services:** Brokerage services in relation to a UCITS pursuant to which a commission or similar payment is paid to or secured by the entity which issues instructions.

**ESMA:** European Securities and Markets Authority

**Fund Administration Services:** The administration of investment funds, including the performance of valuation services or fund accounting services or acting as transfer agents or registration agents for such investment funds.

**Group companies:** Companies which are included in the same group for the purposes of consolidated accounts, as defined in accordance with Directive 83/349/EEC<sup>1</sup> or in accordance with recognised international accounting rules.

**Hedging arrangements:** Combinations of trades on FDI and/or security positions which do not necessarily refer to the same underlying asset and where the trades on financial derivative instruments and/or security positions are concluded with the sole aim of offsetting risks linked to positions taken through the other FDI and/or security positions.

**Index-tracking UCITS:** A UCITS the strategy of which is to replicate or track the performance of an index or indices, for example, through synthetic or physical replication.

**Index-tracking leveraged UCITS:** A UCITS the strategy of which is to have a leveraged exposure to an index or exposure to a leveraged index.

**Indicative net asset value:** A measure of the intraday value of the net asset value of a UCITS ETF based on the most up-to-date information. The indicative net asset value is not the value at which investors on the secondary market purchase and sell their units.

**Individual portfolio management:** Discretionary portfolio management on a client-by-client basis.

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<sup>1</sup> Seventh Council Directive of 13 June 1983 based on article 54(3)(g) of the Treaty on consolidated accounts

**Investment and borrowing restrictions:** For the purposes of the application of investment and borrowing restrictions, references in the UCITS Rulebook to "assets" and "value of the fund" means net assets of a UCITS. UCITS may be established with mixed investment objectives. In these circumstances the investment restrictions applicable to particular types of assets apply to the net asset value of the UCITS as a whole.

**Investment adviser:** A firm which provides investment advice only and does not have discretionary powers over any of the assets of the UCITS.

**Investment fund:** This term refers to a UCITS or an AIF.

**Investment manager:** A firm appointed either directly by the UCITS or the management company of a UCITS, or indirectly, as sub-investment manager by an investment manager, to manage assets of a UCITS on a discretionary basis.

**MiFID:** Markets in Financial Instruments Directive (Directive 2004/39/EC) as amended.

**Multilateral trading facility:** A multilateral trading facility as defined in Article 14 of Directive 2004/39/EC of the European Parliament and of the Council on markets in financial instruments.

**Netting arrangements:** Combinations of trades on FDI and/or security positions which refer to the same underlying asset, irrespective – in the case of FDI– of the contracts' due date; and where the trades on FDI and/or security positions are concluded with the sole aim of eliminating the risks linked to positions taken through the other FDI and/or security positions.

**Regulatory criteria:** This phrase is understood by reference to the following 4 components, which are not exhaustive and the assessment should include a general overview of the market, having regard to issues which would be relevant to the operation of the market and investments therein:

- (a) **Regulated:** The market must be regulated. Such a market is subject to supervision by an authority or authorities, duly appointed or recognised by the state in which it is located. The authority(ies) should generally have the power to impose capital adequacy rules, to supervise directly members of the market, to impose listing standards, to ensure transparency in dealings and to impose penalties where breaches of rules or standards occur. The clearance and settlement system for transactions should also be regulated and should have acceptable settlement periods.
- (b) **Recognised:** The market must be recognised or registered by an authority or authorities, duly appointed or recognised by the state in which it is located. Investment in the market by locally based retail investment funds should be permitted by the relevant authorities.

- (c) **Operating Regularly:** Trading must take place with reasonable frequency and the market should have regular trading hours. The assessment must have regard to liquidity in the market, including the number of members/participants, and the ability of the market to provide fair prices on an on-going basis. Custody arrangements should also be satisfactory i.e. a depositary must be satisfied that it can provide for the safe-keeping of the assets of an authorised AIF in accordance with the conditions set down in the AIFM Regulations.
- (d) **Open to the public:** The market must be open to the public. The public should have direct or indirect access to the securities traded on the market. The degree to which overseas investors are permitted to invest and any rules which may impede the repatriation of capital or profits must be taken into account.

**Soft commission:** An arrangement under which an entity receives goods or services, in return for which it agrees to direct business through or in the way of another person.

**Tracking error:** The volatility of the difference between the return of the index-tracking UCITS and the return of the index or indices tracked.

**UCITS:** An undertaking for collective investment in transferable securities authorised in accordance with the UCITS Regulations.

**UCITS Directive:** Directive 2009/65/EC on the Co-ordination of Laws, Regulations and Administrative Provisions relating to Undertakings for Collective Investment in Transferable Securities (UCITS).

**UCITS ETF:** A UCITS ETF is a UCITS at least one unit or share class of which is traded throughout the day on at least one regulated market or multilateral trading facility with at least one market maker which takes action to ensure that the stock exchange value of its units does not significantly vary from its net asset value and where applicable its indicative net asset value.

**UCITS Level 2 Regulations:** Commission Regulation (EU) No 583/2010 and Commission Regulation (EU) No 584/2010

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

**Umbrella UCITS:** A UCITS which has one or more sub-funds.

**Weighted Average Life (“WAL”):** WAL is the weighted average of the remaining life (maturity) of each security held in a money market fund, meaning the time until the principal is repaid in full (disregarding interest and not discounting). Contrary to what is done in the calculation of the WAM, the calculation of the WAL for floating rate securities and structured financial instruments does not permit the use of interest rate reset dates and instead only uses a security’s stated final maturity. WAL is used to measure the credit risk, as the longer the reimbursement of principal is postponed, the higher is the credit risk. WAL is also used to limit the liquidity risk.

**Weighted Average Maturity (“WAM”):** WAM is a measure of the average length of time to maturity of all of the underlying securities in the money market fund weighted to reflect the relative holdings in each instrument, assuming that the maturity of a floating rate instrument is the time remaining until the next interest rate reset to the money market rate, rather than the time remaining before the principal value of the security must be repaid. In practice, WAM is used to measure the sensitivity of a money market fund to changing money market interest rates.

## INTRODUCTION

The UCITS Regulations, which implement the UCITS Directive, designate the Central Bank of Ireland ("the Central Bank") as the competent authority with responsibility for the authorisation and supervision of UCITS and has the power to impose conditions on them. Accordingly, any unit trust, common contractual fund, open-ended variable capital company or open-ended fixed capital company must be authorised by the Central Bank in order to be established as a UCITS in Ireland.

The conditions which the Central Bank is imposing are contained in this UCITS Rulebook which supersede all requirements set out in previous UCITS Notices. Each chapter must be read in conjunction with all the other requirements set out in the UCITS Rulebook. Each chapter must also be read in conjunction with the UCITS Regulations and the UCITS Level 2 Regulations. In the event of any difference or discrepancy between the UCITS Rulebook and the UCITS Regulations or the UCITS Level 2 Regulations, the provisions of the UCITS Rulebook and the UCITS Regulations or the UCITS Level 2 Regulations will prevail.

Where a condition set out in the UCITS Rulebook is amended or deleted, any legal proceedings, or any investigation, disciplinary or enforcement action in respect of any requirement may be continued, and any breach of the requirement so amended or deleted may subsequently be the subject of a legal proceeding, investigation, disciplinary or enforcement action by the Central Bank or other person, as if the requirement had not been amended or deleted.

Conditions in chapter 1 - Product Requirements, chapter 2 – UCITS Management Company Requirements and chapter 3 - UCITS Depositary Requirements are conditions imposed by the Central Bank under powers given to the Central Bank under the UCITS Regulations.

The UCITS Rulebook also sets out conditions which apply to the marketing, in Ireland, of a UCITS established in another Member State.

Obligations imposed on a UCITS under the UCITS Regulations and under this UCITS Rulebook are, in the case of a self-managed investment company, obligations of the investment company and in the case of unit trusts and common contractual funds or investment companies that have appointed a management company, obligations of the management company.



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## Chapter 1

# Product Requirements

**INTRODUCTION**

The UCITS Rulebook sets out the conditions which the Central Bank typically applies to UCITS. However, the definitive conditions imposed by the Central Bank on each UCITS will be set out in its letter of authorisation

**Part I: GENERAL RULES****Section 1:****UCITS restrictions****i. General restrictions**

1. Where the counterparty has discretion over the composition or management of the UCITS investment portfolio or of the underlying of the financial derivative instrument, the arrangement between the UCITS and the counterparty shall be deemed to be an investment management delegation arrangement and shall comply with the UCITS requirements on delegation.
2. A UCITS shall provide details of all sub-investment managers to unitholders on request.

**ii. Eligible assets***Transferable securities*

1. A UCITS shall ensure that a partly paid security does not expose the UCITS to loss beyond the amount to be paid for it.
2. For the purposes of paragraph 1(b) of Part 1 of Schedule 2 of the UCITS Regulations, where information is available to the UCITS that would lead it to determine that a transferable security could compromise the ability of the UCITS to comply with Regulation 104(1) the UCITS Regulations, the UCITS must assess its liquidity risk.
3. For the purpose of complying with the portfolio liquidity requirement in Regulation 104(1), a UCITS shall consider the liquidity risk of a financial instrument when investing in any financial instrument. In this regard, a UCITS shall, inter alia, consider the following:
  - the volume and turnover in the transferable security;
  - if price is determined by supply and demand in the market, the issue size, and the portion of the issue that the asset manager plans to buy; also evaluation of the opportunity and timeframe to buy or sell;

- where necessary, an independent analysis of bid and offer prices over a period of time may indicate the relative liquidity and marketability of the instrument, as may the comparability of available prices;
  - in assessing the quality of secondary market activity in a transferable security, analysis of the quality and number of intermediaries and market makers dealing in the transferable security concerned should be considered
4. Where transferable securities are not admitted to trading on a regulated market as defined in Regulation 68(1) (a) to (d), the UCITS shall assess the liquidity of such securities for the purpose of complying with Regulation 104(1).
  5. Where a transferable security is assessed as insufficiently liquid to meet foreseeable redemption requests, that transferable security may only be bought or held if there are sufficiently liquid securities in the portfolio for the purpose of complying with Regulation 104(1).
  6. Where transferable securities are not admitted to trading on a regulated market as defined in Regulation 68(1) (a) to (d), the UCITS shall assess the negotiability of securities held in the portfolio, with a view to ensuring compliance with Regulation 104(1).

#### *Closed ended funds*

7. A UCITS shall only invest in a closed ended fund where the contract on which that fund is based includes the following:
  - (a) a right to vote of the unit holders in the essential decision making processes of the fund (including appointment and removal of asset management company, amendment to the contract which set up the fund, modification of investment policy, merger, liquidation);
  - (b) a right of the unit holders to control the investment policy of the fund through appropriate mechanisms.
  - (c) The assets of the fund should be separate and distinct from that of the asset manager and the fund. The fund must be subject to liquidation rules adequately protecting the unit holders.

A UCITS shall not make investment in closed ended funds for the purposes of circumventing the investment limits set out in the Regulations.

*Money Market Instruments*

8. A UCITS may only invest in a money market instrument where the UCITS has assessed the liquidity of that money market instrument. For the purposes of assessing that liquidity, a UCITS shall take the following factors into account:

At the instrument level:

- (a) frequency of trades and quotes for the instrument in question;
- (b) number of dealers willing to purchase and sell the instrument, willingness of the dealers to make a market in the instrument in question, nature of market place trades (times needed to sell the instrument, method for soliciting offers and mechanics of transfer);
- (c) size of issuance/program;
- (d) possibility to repurchase, redeem or sell the money market instrument in a short period, at limited cost, in terms of low fees and bid/offer prices and with very short settlement delay;

At the fund level:

- (a) unit holder structure and concentration of unit holders of the UCITS;
- (b) purpose of funding of unit holders;
- (c) quality of information on the fund's cash flow patterns;
- (d) prospectuses' guidelines on limiting withdrawals.

Where one or a number of those factors are not fulfilled, this shall not automatically deem that financial instrument as non-liquid. However, a UCITS shall ensure that it has sufficient information for the purpose of structuring the portfolio and foreseeing cash flows such that it can match anticipated cash flows with the selling of appropriately liquid instruments in the portfolio to meet those demands

9. Where a UCITS considers that an amortization method can be used to assess the value of a money market instrument, it must ensure that this method will not result in a material discrepancy between the value of the money market instrument and the value calculated according to the amortization method as set out in section 2 – *Money Market UCITS* of Part II of this chapter.
10. Where the presumption of "liquidity" and "accurate valuation" provided for in paragraph 5 of Schedule 3 of the UCITS Regulations cannot be relied upon, the money market instrument should be subject to an appropriate assessment by the UCITS

*Deposits with credit institutions*

11. A UCITS shall only invest in deposits if such deposits meet the requirements of Regulation 68(1) (f) of the UCITS Regulations and  
are made with a credit institution which falls under one of the following categories:
  - (a) a credit institution authorised in the European Economic Area (EEA) (European Union Member States, Norway, Iceland, and Liechtenstein);
  - (b) a credit institution authorised within a signatory state, other than a Member State of the EEA, to the Basle Capital Convergence Agreement of July 1988 (Switzerland, Canada, Japan, United States);
  - (c) a credit institution authorised in Jersey, Guernsey, the Isle of Man, Australia or New Zealand.

*Financial derivative instruments ('FDI')*

12. A UCITS shall only invest in FDI if:
  - (a) the FDI do not expose the UCITS to risks which the UCITS could not otherwise assume;
  - (b) the FDI do not cause the UCITS to diverge from its investment objectives disclosed in its prospectus;

where a UCITS enters into a total return swap or invests in other financial derivative instruments with similar characteristics, the assets held by the UCITS must comply with Regulations 70, 71, 72, 73 and 74.

13. FDI shall be dealt in on a regulated market.
14. Notwithstanding paragraph 13 above, a UCITS shall only invest in FDI dealt in over-the-counter, "OTC derivatives" if:
  - (a) the counterparty is a credit institution listed in sub-paragraphs (a), (b) or (c) of paragraph 11 of section 1.ii – *Eligible Assets* of this Part or an investment firm, authorised in accordance with the MiFID in an EEA Member State, or is an entity subject to regulation as a Consolidated Supervised Entity ("CSE") by the US Securities and Exchange Commission;
  - (b) In the case of a counterparty which is not a credit institution, the counterparty has a minimum credit rating of A-2 or equivalent, or is deemed by the UCITS to have an implied rating of A-2 or equivalent. Alternatively, an unrated counterparty will be acceptable where the UCITS is indemnified or guaranteed against losses suffered as a

- result of a failure by the counterparty, by an entity which has and maintains a rating of A-2 or equivalent;
- (c) in the case of subsequent novation of the OTC derivative contract, the counterparty is one of:
- the entities set out in paragraph (a) or;
  - a central counterparty (CCP) authorised, or recognised by ESMA, under Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR) or, pending recognition by ESMA under Article 25 of EMIR, an entity classified as a derivatives clearing organisation by the Commodity Futures Trading Commission or a clearing agency by the SEC (both CCP).
- (d) risk exposure to the counterparty does not exceed the limits set out in Regulation 70(1)(c). In this regard the UCITS shall calculate the exposure to the counterparty using the positive mark-to-market value of the OTC derivative contract with that counterparty. The UCITS may net the derivative positions with the same counterparty, provided that the UCITS is able to legally enforce netting arrangements with the counterparty. Netting is only permissible with respect to OTC derivative instruments with the same counterparty and not in relation to any other exposures the UCITS may have with the same counterparty;

#### *Financial Indices*

15. A UCITS shall not invest in a financial index where that index has a single component the impact of which on the overall index return exceeds the diversification requirements set out in Regulation 71. Where a UCITS invests in a leveraged index, the impact of one component of that index on the overall return of the index, after having taken into account the leverage, must also comply with the diversification requirements set out in Regulation 71.
16. A UCITS shall only invest in commodity indices where those indices are comprised of different commodities. For the avoidance of doubt, sub-categories of a commodity shall be regarded as being the same commodity for the calculation of the diversification limits<sup>2</sup> if those sub-categories are highly correlated. With respect to the correlation factor, two components of a commodity index that are sub-categories of the same commodity can be considered as not being highly correlated if 75% of the correlation observations are below 0.8. For that purpose the correlation observations should be calculated (i) on the basis of

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<sup>2</sup> For instance commodities from different regions or markets or derived from the same primary products by an industrialised process. As an example, WTI Crude Oil, Brent Crude Oil, Gasoline or Heating Oil contracts should be considered as being all sub-categories of the same commodity – oil.

equally-weighted daily returns of the corresponding commodity prices and (ii) from a 250-day rolling time window over a 5-year period.

17. A UCITS shall demonstrate that an index in which it invests satisfies the index criteria in Regulation 71 and in Regulation 6 of S.I. No. 832 of 2007, including that of being a benchmark for the market to which it refers. For that purpose:
  - (a) an index should have a clear, single objective in order to represent an adequate benchmark for the market;
  - (b) the universe of the index components and the basis on which these components are selected for the strategy should be clear to investors and competent authorities;
  - (c) if cash management is included as part of the index strategy, the UCITS should be able to demonstrate that this does not affect the objective nature of the index calculation methodology.
18. A UCITS shall not deem an index to be an adequate benchmark for the market to which it refers as required by Regulation 71(1)(a)(ii) if that index has been created and calculated on the request of one, or a very limited number of, market participants and according to the specifications of those market participants.
19. A UCITS shall not invest in a financial index, including those which rebalance on an intraday or daily basis, whose rebalancing frequency prevents investors from being able to replicate the financial index.
20. A UCITS shall not invest in financial indices for which the full calculation methodology to, inter alia, enable investors to replicate the financial index, is not disclosed by the index provider. This includes the provision of detailed information on: index constituents, index calculation (including effect of leverage within the index), re-balancing methodologies, index changes; information on any operational difficulties in providing timely or accurate information; and important parameters or elements to be taken into account by investors to replicate the financial index. A UCITS shall not invest in financial indices unless this information should be easily accessible, free of charge, by investors and prospective investors, for example, via the internet. Information on the performance of the index should be freely available to investors.
21. A UCITS shall only invest in financial indices that publish their constituents together with their respective weightings. This information should be easily accessible, free of charge, by investors and prospective investors, for example, via the internet. Weightings may be



published after each re-balancing on a retrospective basis. This information should cover the previous period since the last rebalancing and include all levels of the index.

22. A UCITS shall only invest in financial indices whose methodology for the selection and the rebalancing of its components is based on a set of pre-determined rules and objective criteria.
23. A UCITS shall not invest in financial indices whose index provider accepts payments from potential index components for inclusion in the index.
24. A UCITS shall not invest in financial indices whose methodology permits retrospective changes to previously published index values ('backfilling').
25. A UCITS shall carry out due diligence on the quality of the index. This due diligence shall take into account whether the index methodology contains an adequate explanation of the weightings and classification of the components on the basis of the investment strategy and whether the index represents an adequate benchmark. The due diligence shall also cover matters relating to the index components. The UCITS shall also assess the availability of information on the index including:
  - (a) whether there is a clear narrative description of the benchmark;
  - (b) whether there is an independent audit and the scope of such an audit;
  - (c) the frequency of index publication and whether this will affect the ability of the UCITS to calculate its net asset value.

The UCITS shall document the due diligence carried out on the quality of an index.

26. A UCITS shall not invest in a financial index unless it is subject to independent valuation.

### **iii. Investment restrictions**

#### *Investment funds*

1. Where a commission (including a rebated commission) is received by a manager /investment manager/investment adviser company by virtue of an investment in the units of another investment fund, the UCITS shall ensure that this commission is paid into the property of the UCITS.
2. Where a sub-fund within an umbrella UCITS invests in the units of another sub-fund within that umbrella UCITS, that investment is subject to the following requirements, in addition to

the provisions of paragraph 1 above, Regulation 68(1)(e) and Regulation 73 of the UCITS Regulations:

- (a) the investment shall not be made in a sub-fund which itself holds units in other sub-funds within the umbrella UCITS;
  - (b) the investing sub-fund shall not charge an annual management fee in respect of that portion of its assets invested in other sub-funds within the umbrella UCITS. 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.
3. Where a sub-fund within an umbrella UCITS investment company proposes to invest in the units of another sub-fund within that umbrella by way of transfer for consideration, the UCITS shall notify the Central Bank in writing of that proposal and the rationale for the proposed investment in advance of the proposed date of investment.

*Deposits*

4. Deposits with any one credit institution, other than those specified in sub-paragraphs (a), (b) or (c) of paragraph 11 of section 1.ii – *Eligible Assets* of this Part, held as ancillary liquidity, shall not exceed 10% of net assets. This limit is raised to 20% in the case of deposits made with the depository.

*Recently issued securities*

5. A UCITS shall invest no more than 10% of its assets in the securities provided for in Regulation 68(1)(d). The restriction contained in the preceding sentence shall not apply in relation to investment by a UCITS in certain US securities known as Rule 144A securities provided that:
- the securities are issued with an undertaking to register with the US Securities and Exchanges Commission within one year of issue; and
  - the securities are not illiquid securities i.e. they may be realised by the UCITS within seven days at the price, or approximately at the price, at which they are valued by the UCITS.

*FDI*

6. When calculating the issuer concentration limits for the purpose of Regulation 70 a UCITS shall take account of any net exposure to a counterparty generated through a securities lending or repurchase agreement. Net exposure means the amount receivable by a UCITS less any collateral provided by the UCITS. Exposures created through the reinvestment of collateral must also be taken into account in the issuer concentration calculations.

7. When calculating exposures for the purposes of Regulation 70, a UCITS shall establish whether its exposure is to an OTC counterparty, a broker or a clearing house.
8. The position exposure of a UCITS to the underlying assets of FDI, including embedded FDI in transferable securities, money market instruments or investment funds, when combined where relevant with positions resulting from direct investments, shall not exceed the investment limits set out in Regulations 70 and 73. When calculating issuer-concentration risk, the FDI (including embedded FDI) must be looked through in determining the resultant position exposure. This position exposure shall be taken into account in the issuer concentration calculations. A UCITS shall calculate its position exposure using the commitment approach or the maximum potential loss as a result of default by the issuer approach, whichever is more conservative. A UCITS is required to calculate its position exposure, regardless of whether it uses VaR for global exposure purposes.

This requirement does not apply in the case of index based FDI provided the underlying index is one which meets with the criteria set out in Regulation 71(1).

**vi. Borrowing powers**

1. A UCITS shall not offset credit balances (e.g. cash) against borrowings when determining the percentage of borrowings outstanding.
2. A UCITS with foreign currency borrowings which exceed the value of the back-to-back deposit shall treat that excess as borrowing for the purposes of Regulation 103.

**v. Financial derivative instruments**

*Cover requirements*

1. Where the initial margin posted to and variation margin receivable from a broker relating to exchange-traded or OTC derivatives is not protected by client money rules or other similar arrangements to protect the UCITS against the insolvency of the broker, a UCITS shall calculate exposure within the OTC counterparty limit as referred to in Regulation 70(1)(c).
2. A UCITS shall at all times be capable of meeting all its payment and delivery obligations incurred by transactions involving FDI.

3. A UCITS' risk management process shall include the monitoring of FDI transactions to ensure they are adequately covered. .
4. A UCITS shall ensure that a transaction in FDI which gives rise, or may give rise, to a future commitment on behalf of a UCITS is covered as follows:
  - (a) in the case of FDI which automatically, or at the discretion of the UCITS, are cash settled, a UCITS must hold, at all times, liquid assets which are sufficient to cover the exposure.
  - (b) in the case of FDI which require physical delivery of the underlying asset, the asset must be held at all times by a UCITS. Alternatively a UCITS may cover the exposure with sufficient liquid assets where:
    - (i) the underlying assets consists of highly liquid fixed income securities; and/or
    - (ii) the exposure can be covered without the need to hold the underlying assets, the specific FDI are addressed in the risk management process and details are provided in the prospectus.

*Risk management process and reporting*

5. A UCITS shall notify material amendments to the initial filing of the risk management process to the Central Bank in advance. The Central Bank may object to the amendments notified to it and amendments and/or associated activities objected to by the Central Bank shall not be made.

*Calculation of global exposure*

6. A UCITS shall ensure that it at all times complies with the limits on global exposure .
7. A UCITS shall establish and implement appropriate internal risk management measures and limits, irrespective of whether a UCITS uses a commitment or VaR approach or any other methodology to calculate global exposure. .

*Commitment approach*

8. Where a UCITS uses a conservative calculation rather than an exact calculation of the commitment for each FDI, hedging and netting arrangements cannot be taken into account to reduce commitment on the derivatives involved if it results in an underestimation of the global exposure.

*Commitment approach – structured UCITS*

9. A structured UCITS, as defined in Article 36(1) of Commission Regulation No 583/2010, shall only calculate global exposure using the commitment approach as set out in paragraph 10 below in the following circumstances:
  - (a) the UCITS is passively managed and structured to achieve at maturity the pre-defined payoff and holds at all times the assets needed to ensure that this pre-defined payoff will be met;
  - (b) the UCITS is formula based and the pre-defined payoff can be divided into a limited number of separate scenarios which are dependent on the value of the underlying assets and which offer investors different payoffs;
  - (c) an investor can only be exposed to one payoff profile at any time during the life of the UCITS;
  - (d) the use of the commitment approach as set out in paragraphs 14 to 18 of Schedule 9 of the UCITS Regulations to calculate global exposure for the individual scenarios is appropriate taking into account the provisions of paragraph 13 of this section, paragraphs 11 to 13 of Schedule 9 of the UCITS Regulations and guidelines 1, 4 and 5 of box 1 of ESMA's Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (Ref.: CESR/10-788).
  - (e) the UCITS has a final maturity not exceeding 9 years;
  - (f) the UCITS does not accept new subscriptions from the public after the initial marketing period;
  - (g) the maximum loss the UCITS can suffer when the portfolio switches from one payoff profile to another is limited to 100% of the initial offer price; and
  - (h) the impact of the performance of a single underlying asset on the payoff profile when the UCITS switches from one scenario to another complies with the diversification requirements of the Regulations based on the initial net asset value of the UCITS.
  
10. A structured UCITS, as defined in Article 36(1) of Commission Regulation No 583/2010, shall use the commitment approach as described in paragraphs 14 to 18 of Schedule 9 of the UCITS Regulations as the calculation method provided however that that approach is adjusted as :
  - (a) The formula based investment strategy for each pre-defined payoff is broken down into individual payoff scenarios.
  - (b) The FDI implied in each scenario are assessed to establish whether the derivative may be excluded from the calculation of global exposure under boxes 3 and 4 of ESMA's Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (Ref.: CESR/10-788) .

- (c) The UCITS then calculates the global exposure of the individual scenarios to assess compliance with the global exposure limit of 100% of net asset value.

*Value at Risk (VaR) approach*

11. A UCITS that calculates its global exposure using the VaR approach shall consider all of the positions of the UCITS portfolio.
12. A UCITS shall at all times set the maximum VaR limit according to its defined risk profile.
13. A UCITS shall ensure that the VaR approach used by the UCITS is the most appropriate methodology given the risk profile and investment strategy of the UCITS. In this regard, a UCITS shall use the relative VaR approach or the absolute VaR approach to calculate global exposure as set out in Appendix 3. The decision as to which approach to use and its underlying assumptions must be fully documented.
14. A UCITS shall ensure that there is consistency in the choice of the type of VaR used.
15. A UCITS shall ensure that the VaR approach takes into account, as a minimum, general market risk and, if applicable, idiosyncratic risk. A UCITS shall ensure that the event (and/or default) risks to which a UCITS is exposed following its investments shall also be taken into account, as a minimum, in the stress testing program.
16. A UCITS shall ensure that the VaR model is appropriate having regard to the investment strategy being pursued and the types and complexity of the financial instruments used by the UCITS.
17. A UCITS shall ensure that the VaR approach it selects should provide for completeness and it should assess the risks with a high level of accuracy. In particular:
  - (a) All the positions of the UCITS portfolio should be included in the VaR calculation.
  - (b) The model should adequately capture all the material market risks associated with portfolio positions and, in particular, the specific risks associated with FDI. For that purpose, all the risk factors which have more than a negligible influence on the fluctuation of the portfolio's value should be covered by the VaR model.
  - (c) The quantitative models used within the VaR framework (pricing tools, estimation of volatilities and correlations, etc.) should provide for a high level of accuracy.
  - (d) All data used within the VaR framework should provide for consistency, timeliness and reliability.

18. A UCITS shall ensure that in assessing the global exposure by means of a relative or absolute VaR approach, it complies with the quantitative and qualitative minimum requirements set out in Appendix 3.

#### *Back Testing*

19. A UCITS shall monitor the accuracy and performance of its VaR approach (i.e. prediction capacity of risk estimates) by conducting a back testing program. The back testing program shall provide, for each business day, a comparison of the one-day VaR measure generated by the UCITS model for the UCITS end-of-day positions to the one-day change of the UCITS portfolio value by the end of the subsequent business day.
20. A UCITS shall carry out the back testing program at least on a monthly basis, subject to always performing retroactively the comparison for each business day as detailed above.
21. A UCITS shall determine and monitor the 'overshootings' on the basis of this back testing program. An 'overshooting' is a one-day change in the portfolio's value that exceeds the related one-day value-at-risk measure calculated by the model. If the back testing results reveal a percentage of 'overshootings' that appears to be too high, the UCITS must review the VaR model and make appropriate adjustments.
22. Where the number of overshootings for a UCITS for the most recent 250 business days exceeds 4 in the case of a 99% confidence interval, the UCITS senior management must be informed (at least on a quarterly basis) and the Central Bank must be informed on a semi-annual basis. The information provided to the senior management of the UCITS and the Central Bank should contain an analysis and explanation of the sources of 'overshootings' and a statement of what measures, if any, were taken to improve the accuracy of the approach.

#### *Stress testing*

23. Where a UCITS uses the VaR approach, it shall conduct a rigorous, comprehensive and risk -adequate stress testing program in accordance with the qualitative and quantitative requirements set out in this chapter. Stress tests shall be carried out on a regular basis, at least once a month. Stress tests shall also be carried out whenever a change in the value or the composition of a UCITS or a change in market conditions makes it likely that the test results will differ significantly.
24. A UCITS shall ensure that the stress testing program is designed to measure any potential major depreciation of a UCITS value as a result of unexpected changes in the relevant market parameters and correlation factors. Conversely, where appropriate, the stress testing program

shall also measure changes in the relevant market parameters and correlation factors, which could result in a major depreciation of a UCITS value.

25. A UCITS shall integrate the stress tests into its risk management process and consider the results when making investment decisions for the UCITS. The design of the stress tests should be adapted in line with the composition of the UCITS and the market conditions that are relevant for the UCITS.
26. A UCITS shall ensure that the stress tests cover all risks which affect the value or the fluctuations in value of the UCITS to any significant degree. In particular, those risks which are not fully captured by the VaR model used, should be taken into account.
27. A UCITS shall ensure that the stress tests are appropriate for analysing potential situations in which the use of significant leverage would expose the UCITS to significant downside risk and could potentially lead to the default of the UCITS (i.e. NAV <0).
28. A UCITS shall ensure that the stress tests focus on those risks which, though not significant in normal circumstances, are likely to be significant in stress situations, such as the risk of unusual correlation changes, the illiquidity of markets in stressed market situations or the behaviour of complex structured products under stressed liquidity conditions.
29. A UCITS shall implement clear procedures relating to the design of, and ongoing adaptation of the stress tests. A program for carrying out stress tests must be developed on the basis of such procedures and must include an explanation as to why the program is suitable for the UCITS. Completed stress tests together with their results must be clearly documented as must the reasons behind any intention to deviate from the program.

*VaR: Additional safeguards*

30. A UCITS which calculates global exposure using a VaR methodology shall regularly monitor its leverage.
31. A UCITS shall supplement the VaR / Stress Testing framework, where appropriate by taking into account the risk profile and the investment strategy being pursued, with other risk measurement methods.



**vi. Efficient portfolio management**

1. A UCITS shall ensure that the use of efficient portfolio management techniques and instruments are in line with the best interests of the UCITS.
2. A UCITS shall ensure that the efficient portfolio management instruments and techniques cannot result in a change to the UCITS declared investment objective or add substantial supplementary risks in comparison to the general risk policy as described in its prospectus.
3. A UCITS shall ensure that all the revenues arising from efficient portfolio management techniques, net of direct and indirect operational costs, should be returned to the UCITS.

*Collateral*

4. A UCITS shall ensure that all assets received by it as a result of engaging in efficient portfolio management techniques will be considered as collateral and comply with the criteria set down in paragraph 5 below. Collateral received must at all times meet with the requirements set out in paragraphs 5 to 12 below.
5. A UCITS shall ensure that collateral received by it at all times meets the following criteria:
  - (a) Liquidity: Collateral received other than cash should be highly liquid and traded on a regulated market or multilateral trading facility with transparent pricing in order that it can be sold quickly at a price that is close to pre-sale valuation. Collateral received should also comply with the provisions of Regulation 74.
  - (b) Valuation: Collateral received should be valued on at least a daily basis and assets that exhibit high price volatility should not be accepted as collateral unless suitably conservative haircuts are in place.
  - (c) Issuer credit quality: Collateral received should be of high quality.
  - (d) Correlation: Collateral received should be issued by an entity that is independent from the counterparty and is not expected to display a high correlation with the performance of the counterparty.
  - (e) Diversification (asset concentration): Collateral should be sufficiently diversified in terms of country, markets and issuers with a maximum exposure to a given issuer of 20% of the UCITS net asset value. When UCITS are exposed to different counterparties, the different baskets of collateral should be aggregated to calculate the 20% limit of exposure to a single issuer.
  - (f) Immediately available: Collateral received should be capable of being fully enforced by the UCITS at any time without reference to or approval from the counterparty.

6. A UCITS shall ensure that its risk management process identifies, manages and mitigates risks linked to the management of collateral, such as operational and legal risks..
7. Where a UCITS receives collateral on a title transfer basis, that collateral shall be held by the depositary. Where a UCITS receives collateral on any other basis , that collateral can be held by a third party depositary provided that that depositary is subject to prudential supervision, and is unrelated to the provider of the collateral.
8. A UCITS cannot sell, pledge or re-invest non-cash collateral.
9. A UCITS shall only invest cash collateral in the following:
  - (a) deposits with relevant institutions;
  - (b) high-quality government bonds;
  - (b) reverse repurchase agreements provided the transactions are with credit institutions subject to prudential supervision and the UCITS is able to recall at any time the full amount of cash on an accrued basis;
  - (d) short-term money market funds as defined in the ESMA Guidelines on a Common Definition of European Money Market Funds (ref CESR/10-049).
10. In accordance with paragraph 2 of this section, where a UCITS invests cash collateral that investment must comply with the diversification requirements applicable to non-cash collateral.. Invested cash collateral shall not be placed on deposit with the counterparty or a related entity.
11. A UCITS receiving collateral for at least 30% of its assets shall have a stress testing policy in place to ensure regular stress tests are carried out under normal and exceptional liquidity conditions to enable the UCITS to assess the liquidity risk attached to the collateral. The liquidity stress testing policy shall prescribe, at a minimum, the following:
  - (a) design of stress test scenario analysis including calibration, certification and sensitivity analysis ;
  - (b) empirical approach to impact assessment, including back-testing of liquidity risk estimates;
  - (c) reporting frequency and limit/loss tolerance threshold/s; and
  - (d) mitigation actions to reduce loss including haircut policy and gap risk protection.
12. A UCITS shall have a haircut policy adapted for each class of assets received as collateral. When devising the haircut policy, a UCITS shall take into account the characteristics of the assets such as the credit standing or the price volatility, as well as the outcome of the stress

tests performed in accordance with paragraph 11. The UCITS shall document the haircut policy and shall justify each decision to apply a specific haircut, or to refrain from applying any haircut, to a certain class of assets.

13. The counterparty to a repurchase/reverse repurchase agreement or securities lending agreement must have a minimum credit rating of A-2 or equivalent, or must be deemed by the UCITS to have an implied rating of A-2 or equivalent. Alternatively, an unrated counterparty will be acceptable where the UCITS is indemnified or guaranteed against losses suffered as a result of a failure by the counterparty, by an entity which has and maintains a rating of A-2 or equivalent.
14. A UCITS shall ensure that it is able at any time to recall any security that has been lent out or to terminate any securities lending agreement into which it has entered.

*Repurchase/Reverse repurchase agreements*

15. A UCITS that enters into a reverse repurchase agreement shall ensure that it is able at any time to recall the full amount of cash or to terminate the reverse repurchase agreement on either an accrued basis or a mark-to-market basis. In circumstances where the cash is recallable at any time on a mark-to-market basis, the UCITS shall use mark-to-market value of the reverse repurchase agreement should be used for the calculation of the net asset value of the UCITS.
16. A UCITS that enters into a repurchase agreement shall ensure that it is at all times able to recall any securities subject to the repurchase agreement or to terminate the repurchase agreement into which it has entered.

**vii. Share classes**

1. Subject to paragraphs 3, 4 and 5 below, a UCITS shall only create one or more share classes within the UCITS, or within a sub-fund of an umbrella UCITS, where the following requirements are satisfied:
  - (a) the constitutional document of the UCITS must provide for the creation of share classes. In the case of an umbrella UCITS the provision in the constitutional document to establish the way in which sub-funds, and share classes within sub-funds, are created must be clear and unambiguous;
  - (b) each UCITS or sub-fund thereof must consist of a single common pool of assets;
  - (c) assets may not be allocated to individual share classes;

- (d) the capital gains/losses and income arising from that pool of assets must be distributed and/or must accrue equally to each unitholder relative to their participation in the UCITS or sub-fund thereof;
- (e) unitholders in a share class must be treated equally; and
- (f) where more than one share class exists, all the unitholders in the different share classes must be treated fairly.

Share classes may be established which may be differentiated on the basis of distribution policies, charging structure, currency hedging, interest rate hedging, different levels of participation in the performance of the underlying portfolio or different levels of capital protection .

2. A UCITS shall ensure that all share classes within the UCITS or sub-funds thereof have the same dealing procedures and frequencies.
3. Where a UCITS engages in currency hedging at share class level, it shall:
  - (a) ensure that over-hedged positions do not exceed 105% of the net asset value of the hedged currency share class;
  - (b) keep hedged positions under review to ensure that over-hedged positions do not exceed the level permitted by paragraph (a) above. This review shall incorporate a procedure to ensure that positions materially in excess of 100% shall not be carried forward from month to month;
  - (c) clearly attribute transactions to a specific class. A UCITS shall not combine or offset currency exposures of different currency classes and it shall not allocate currency exposures of assets of the UCITS to separate share classes; and
  - (d) ensure that the costs and gains/losses of the hedging transactions will accrue solely to the relevant class.
4. A UCITS or sub-fund thereof shall only provide for the creation of a hedged interest rate share class where the constitutional document of the UCITS clearly establishes how the resultant costs and gains/losses will be charged to the relevant share class.
5. A UCITS shall only use FDIs at share class level to provide a different level of participation in the performance of an underlying portfolio or different levels of capital protection where:
  - (a) the FDI for each share class is based on the same underlying portfolio or index;
  - (b) the transactions do not result in a leveraged return per share class, i.e. the participation rate does not exceed 100% of the relevant share class' performance of the underlying portfolio;

- (c) the UCITS holds a legal opinion that the OTC counterparty's recourse to the UCITS is limited to the relevant share class' participation in the UCITS assets; and
- (d) the board of the investment company/management company submits confirmation to the Central Bank that they have reviewed and are satisfied that the arrangements will, as a result of the agreement between the UCITS and the over-the-counter counterparty, not result in any prejudice for unitholders in one class over another and that there will be no cross liability between share classes.

**viii. Constitutional documents**

1. The maximum annual fee<sup>3</sup> charged by a management company of a unit trust, a common contractual fund or an investment company as provided for in the trust deed, deed of constitution or management agreement shall not be increased without approval on the basis of a majority of votes cast at general meeting<sup>4</sup>. In the event of an increase in the annual fee a reasonable notification period must be provided by the UCITS to enable unitholders redeem their units prior to the implementation of the increase. The provisions of this paragraph are also applicable to the annual fee charged by an investment manager where this fee is paid directly out of the assets of the UCITS.
2. The constitutional document shall list all of the stock exchanges and markets on which the UCITS may invest.
3. A UCITS shall not create share classes unless this has been specifically provided for in its constitutional document and unless the constitutional document contains clear provisions for the charging of any resultant gains/losses on the transaction to the relevant share class. A UCITS shall disclose in its constitutional document where it intends to create hedged and/or unhedged currency share classes.
4. Where it is proposed or envisaged that hedged currency share classes will be created the constitutional documents shall, in respect of the currency hedging transactions at class level, contain valuation and allocation provisions and provisions for the charging of the resultant costs and gains/losses to the relevant share class.

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<sup>3</sup> The annual fee includes any performance related fee charged by the management company or by the investment manager.

<sup>4</sup> If the fee disclosed in the prospectus is less than the maximum fee permitted in these documents, unitholder approval will also be required for an increase in the fee disclosed in the prospectus unless the prospectus also provides that a higher fee may be charged.

*Umbrella UCITS*

5. The constitutional document of an umbrella UCITS shall 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.

*Distributions out of and charging of fees and expenses to capital*

6. A UCITS is prohibited from making distributions from or charging fees and expenses to capital in the absence of provisions to this effect in its constitutional document. The UCITS shall only make distributions from or charge fees and expenses to capital, in accordance with express provisions contained in its constitutional document.

*Dealing in specie*

7. A UCITS shall ensure that where its constitutional document provides for subscription in specie, the following provisions must also be included in its constitutional document:
  - the nature of the assets to be transferred into the UCITS would qualify as investments of the UCITS in accordance with the investment objectives, policies and restrictions of the UCITS;
  - assets to be transferred must be vested with the depositary or arrangements are made to vest the assets with the depositary;
  - the number of units to be issued must not exceed the amount that would be issued for the cash equivalent; and
  - the depositary is satisfied that the terms of any exchange will not be such as are likely to result in any material prejudice to the existing unitholders of the UCITS or the depositary is satisfied that there is unlikely to be any material prejudice to the existing unitholders of the UCITS.
8. A UCITS shall ensure that where its constitutional document provides for redemption in specie, the following provisions must also be included in the constitutional document:
  - redemption in specie is at the discretion of the UCITS and with the consent of the redeeming unitholder;
  - asset allocation is subject to the approval of the depositary; and
  - a determination to provide redemption in specie may be solely at the discretion of the UCITS where the redeeming unitholder requests redemption of a number of units that represent 5% or more of the net asset value of the UCITS. In this event the UCITS will, if requested, sell the assets on behalf of the unitholder. The cost of the sale can be charged to the unitholder.

The requirements set out in the first and third bullet points above are not applicable for a UCITS ETF where the original subscription was made in specie.

9. The UCITS shall ensure that where its constitutional document provides for distribution in specie on a winding up the following provisions must also be included in its constitutional document:
  - an ordinary/special resolution is required; and
  - the UCITS agrees to sell the assets if requested by a unitholder. The costs of such sale can be charged to redeeming unitholders.

*Replacement of depositary*

10. In accordance with the provisions of section 2.ii of Part I – (*Replacement of depositary*), the UCITS shall ensure its constitutional document provides that:
  - (a) the appointment of the new depositary shall be approved by the Central Bank;
  - (b) the old depositary shall not retire until a new depositary is appointed; and
  - (c) if no new depositary is appointed:
    - (i) a general meeting shall be convened at which an ordinary resolution to wind up the UCITS will be considered; and
    - (ii) the old depositary's appointment shall only be terminated on the revocation of the UCITS authorisation.

**ix. Dealing**

1. A UCITS shall not apply a subscription charge in excess of 5% of the amount subscribed.
2. A UCITS shall not apply a redemption charge in excess of 3% of the redemption amount.
3. A UCITS shall accept applications for subscription or redemption of units after dealing deadline in exceptional circumstances only. A UCITS shall not accept applications for subscription or redemption of units after the valuation point under any circumstances.
4. A UCITS shall pay the redemption proceeds to a redeeming unitholder within 14 calendar days (10 business days) of the dealing deadline.
5. Where:
  - (a) total requests for redemption on any dealing day for a UCITS exceed 10% of the total number of units in the UCITS or 10% of the net asset value of the UCITS; and

- (b) the UCITS decides to refuse to redeem any units in excess of 10%

the UCITS shall reduce rateably any request for redemption on that dealing day and shall treat the redemption requests as if they were received on each subsequent dealing day until all the units to which the original request related have been redeemed.

**x. Valuation**

1. A UCITS shall establish a valuation policy which sets out its valuation methodology.
2. A UCITS shall specify in its constitutional document the method by which its assets shall be valued.
3. A UCITS valuation methodologies and the pricing of units shall treat fairly incoming, existing and outgoing investors in the UCITS.
4. The valuation methodologies utilised in calculating both the bid and the offer price shall be disclosed in the UCITS constitutional document.
5. Valuation methodologies, including provisions which allow for a switch from a mid-market to a bid or offer basis, shall be applied on a consistent basis throughout the life of the UCITS
6. A UCITS shall ensure consistency in the valuation methodologies adopted throughout the various categories of assets. If a UCITS provides for a switch to valuation on an offer basis in one category (because of subscriptions exceeding redemptions), it shall include the same provision for the other categories.
7. Dealing in the units of a UCITS shall be carried out at forward prices i.e. the Net Asset Value next computed after receipt of subscription and redemption requests.
8. A UCITS shall ensure that frequency of valuation set out in its constitutional document or prospectus is consistent with dealing arrangements.

*Methods of valuation*

9. A UCITS shall value its assets in accordance with the following rules unless an alternative method of valuation has been agreed in advance with the Central Bank.



- (a) **Securities which are listed or traded on a regulated market:**
- Valuation shall be the closing or last known market price. The UCITS shall determine that this shall be one of the closing bid, the last bid, the last traded, the closing mid-market or the latest mid-market price.
  - Where a security is listed on several exchanges, the relevant market shall be the one
    - which constitutes the main market, or
    - the one which the manager/directors/general partner determines provides the fairest criteria in a value for the security.
- (b) **Securities which are listed or traded on a regulated market where the market price is unrepresentative or not available and unlisted securities:**
- The value of the security is its probable realisation value which shall be estimated with care and in good faith.
  - The security shall be
    - valued by the UCITS, or
    - valued by a competent person<sup>5</sup> appointed by the UCITS and approved for the purpose by the depositary, or
    - valued by any other means provided that the value is approved by the depositary.
- (c) **Investment funds:**
- Valuation shall be based on the latest bid price or latest net asset value, as published by the investment fund.
  - Valuation based on a mid or offer price is acceptable if consistent with valuation policy, i.e. the other assets held by a UCITS should be valued on the same basis.
  - A UCITS can value based on market prices where the investment fund in which the investment is made is listed on a regulated market, in accordance with a) above.
- (d) **Cash (in hand or deposit):**
- Value is the nominal/face value plus accrued interest

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<sup>5</sup> Where the “competent person” is a related party to the UCITS, the prospectus should disclose the possible conflict of interests which may arise (e.g. valuation provided by an investment adviser; the advisers fee will increase as the value of the UCITS increases)

(e) **Exchange traded futures and options contracts, including index futures:**

- Valuation is based on the settlement price as determined by the market where the exchange traded future or option contract is traded. If a settlement price is not available they may be valued in accordance with (b) above.

*Adjustments*

10. Where a UCITS adjusts the value of an asset, the rationale for adjusting the value shall be clearly documented.

*Amortised cost*

11. Where it is not the intention or objective to apply amortised cost valuation to the portfolio as a whole, money market instruments within such portfolios shall only be valued on an amortised basis if the money market instruments have a residual maturity of less than three months and have no specific sensitivity to market parameters, including credit risk.

*Responsibility*

12. A UCITS is responsible for all valuations.
13. A UCITS shall ensure that securities prices and currency rates are up to date and are provided from a reputable source. The reliability of the source of prices and rates shall be kept under review by the UCITS.
14. A UCITS shall have systems and procedures in place to at least:
- verify uncertain prices and rates;
  - ensure that investment restrictions are not breached;
  - ensure that dividends, expenses and taxes are properly accounted for;
  - provide movement thresholds at which price movements are reviewed;
  - query prices which appear stale, i.e. little or no movement over time;
  - provide for the valuation policy in relation to unlisted or illiquid securities;
  - provide for the valuation policy in relation to OTC derivatives.
15. A UCITS shall maintain full and detailed records of the valuations, particularly in the case of unlisted or illiquid securities and OTC derivatives where the records can be reviewed.
16. A UCITS shall ensure that reconciliation of cash, debtors and creditors takes place at the same frequency as the frequency of the valuation.

*Anti-dilution levy*

17. Where a UCITS proposes to apply an anti-dilution levy, the UCITS shall specify in its constitutional document that:
  - (a) in calculating the redemption price for the UCITS the directors may on any dealing day when there are net redemptions adjust the redemption price by deducting an anti-dilution levy to cover dealing costs and to preserve the value of the underlying assets of the UCITS; and
  - (b) in calculating the subscription price for the UCITS the directors may on any dealing day when there are net subscriptions adjust the subscriptions price by adding an anti-dilution levy to cover dealing costs and to preserve the value of the underlying assets of the UCITS.

**xi. Remuneration**

1. A UCITS shall not pay the fees and expenses of the directors of the management company directly out of the assets of the UCITS in addition to the management fee.

**x. Dealings by management company, general partner, depositary, investment manager or by delegate or group companies of these**

1. Any transaction between a UCITS and its manager, depositary, investment adviser and/or associated or group companies of these (“connected parties”) shall be conducted as if negotiated at arm’s length. Transactions shall be in the best interests of the unitholders.
2. A UCITS and a connected party may only enter into a transaction with each other subject to complying with the following requirements:
  - (a) the value of the transaction is certified by a person approved by the depositary as independent and competent, or a person approved by the UCITS as independent and competent in the case of transactions involving the depositary; or
  - (b) execution on best terms on organised investment exchanges under their rules; or
  - (c) where (a) and (b) are not practical, execution on terms which the depositary, or the UCITS in the case of transactions involving the depositary, is satisfied conform to the principles outlined in paragraph 1 above.

The depositary or UCITS, in the case of transactions involving the depositary, must document how it complied with paragraphs (a), (b) or (c). Where transactions are conducted in accordance with paragraph (c), the depositary, or UCITS in the case of transactions involving the depositary, must document their rationale for being satisfied that the transaction conformed to the principles outlined in paragraph 1 above.

**xii. Directed brokerage services and similar arrangements**

1. The UCITS shall ensure that where a person, acting on its behalf, successfully negotiates the recapture of a portion of the commissions charged by brokers or dealers in connection with the purchase and/or sale of securities, the rebated commission shall be paid to the UCITS.
2. The UCITS shall not reimburse out of its assets the operator of the directed brokerage services or similar arrangement for reasonable properly vouched costs, fees and expenses directly incurred by the operator in relation to the services or arrangement unless the prospectus disclosure required by paragraph 1 of section 3.xi (*Directed brokerage programmes and similar arrangements*) of this Part has been made. The UCITS must be separately invoiced for these fees and expenses by the operator of the directed brokerage services.

## Appendix 1

### Conversion Methodologies

1. The commitment conversion methodology for standard derivatives is the market value of the equivalent position in the underlying asset or the notional value or the price of the futures contract, whichever is the more conservative. For non-standard derivatives, where it is not possible to convert the derivative into the market value or notional value of the equivalent underlying asset, an alternative approach shall be used only in circumstances where the total amount of the derivatives represent a negligible portion of the UCITS portfolio.
2. When using the commitment approach to calculate global exposure, the UCITS shall take the following steps:
  - (a) Calculate the commitment of each individual derivative (as well as any embedded derivatives and leverage linked to EPM techniques).
  - (b) Identify netting and hedging arrangements. For each netting or hedging arrangement, calculate a net commitment as follows:
    - (i) Gross commitment is equal to the sum of the commitments of the individual FDI (including embedded FDI) after FDI netting;
    - (ii) If the netting or hedging arrangement involves security positions, the market value of security positions can be used to offset gross commitment;
    - (iii) The absolute value of the resulting calculation is equal to net commitment.
  - (c) Calculate the global exposure which shall be equal to the sum of the following:
    - (i) The absolute value of the commitment of each individual derivative not involved in netting or hedging arrangements; and
    - (ii) The absolute value of each net commitment after the netting or hedging arrangements as described above; and
    - (iii) The sum of the absolute values of the commitment linked to the efficient portfolio management techniques.
3. A UCITS shall base the calculation of gross and net commitment on an exact conversion of the FDI position into the market value of an equivalent position in the underlying asset of that FDI.
4. The commitment calculation of each FDI position shall be converted to the base currency of the UCITS using the spot rate.

5. Where any currency derivative has two legs that are not in the base currency of the fund, both legs shall be taken into account in the commitment calculation.

**Conversion Methodologies – Standard Derivatives**

6. A UCITS shall apply the following conversion methods to the non-exhaustive list of standard derivatives below.

**(a) Futures**

- Bond Future:

Number of contracts \* notional contract size \* market price of the cheapest-to-deliver reference bond

- Interest Rate Future:

Number of contracts \* notional contract size

- Currency Future:

Number of contracts \* notional contract size

- Equity Future:

Number of contracts \* notional contract size \* market price of underlying equity share

- Index Futures:

Number of contracts \* notional contract size \* index level

**(b) Plain Vanilla Options (bought/sold puts and calls)**

- Plain Vanilla Bond Option:

Notional contract value \* market value of underlying reference bond \* delta

- Plain Vanilla Equity Option:

Number of contracts \* notional contract size \* market value of underlying equity share \* delta

- Plain Vanilla Interest Rate Option:

Notional contract value \* delta

- Plain Vanilla Currency Option:

Notional contract value of currency leg(s) \* delta

- Plain Vanilla Index Options :

Number of contracts\*notional contract size\* index level \* delta

- Plain Vanilla Options on Futures:

Number of contracts\*notional contract size\* market value of underlying asset \* delta

- Plain Vanilla Swaptions:

Reference swap commitment conversion amount (see below) \* delta

- Warrants and Rights:

Number of shares/bonds \* market value of underlying referenced instrument \* delta

### **(c) Swaps**

- Plain Vanilla Fixed/Floating Rate Interest Rate and Inflation Swaps

Market value of underlying (the notional value of the fixed leg may also be applied)

- Currency Swap:

Notional value of currency leg(s)

- Cross currency Interest Rate Swaps:

Notional value of currency leg(s)

- Basic Total Return Swap:

Underlying market value of reference asset(s)

- Non-Basic Total Return Swap:

Cumulative underlying market value of both legs of the TRS

- Single Name Credit Default Swap:

Protection Seller – The higher of the market value of the underlying reference asset or the notional value of the Credit Default Swap.

Protection Buyer – Market value of the underlying reference asset

- Contract for Differences:

Number of shares/bonds \* market value of underlying referenced instrument

### **(d) Forwards**

- FX forward:

Notional value of currency leg(s)

- Forward Rate Agreement:

Notional value

**(e) Leveraged exposure to indices or indices with embedded leverage**

A derivative providing leveraged exposure to an underlying index, or indices that embed leveraged exposure to their portfolio, must apply the standard applicable commitment approach to the assets in question.

**Conversion Methodologies – Embedded Derivatives**

7. A UCITS shall apply the following conversion method to the non-exhaustive list below of financial instruments which embed derivatives below.

**- Convertible Bonds:**

Number of referenced shares \* market value of underlying reference shares \* delta

**- Credit Linked Notes:**

Market value of underlying reference asset(s)

**- Partly Paid Securities:**

Number of shares/bonds \* market value of underlying referenced instruments

**- Warrants and Rights:**

Number of shares/bonds \* market value of underlying referenced instrument \* delta

**Conversion Methodologies – Non-Standard (Exotic) Derivatives**

8. The following instruments are given as examples of non-standard FDI with the related commitment methodology to be used.

**- Variance Swaps**

Variance swaps are contracts that allow investors to gain exposure to the variance (squared volatility) of an underlying asset and, in particular, to trade future realized (or historical) volatility against current implied volatility. According to market practice, the strike and the variance notional are expressed in terms of volatility. For the variance notional, this gives:

$$\text{variance notional} = \frac{\text{vega notional}}{2 \times \text{strike}}$$



The vega notional provides a theoretical measure of the profit or loss resulting from a 1% change in volatility.

As realised volatility cannot be less than zero, a long swap position has a known maximum loss. The maximum loss on a short swap is often limited by the inclusion of a cap on volatility. However without a cap, a short swap's potential losses are unlimited.

The conversion methodology to be used for a given contract at time  $t$  is:

Variance Notional \* (current) Variance <sub>$t$</sub>  (without volatility cap)

Variance Notional \* min [(current) Variance <sub>$t$</sub> ; volatility cap<sup>2</sup>] (with volatility cap)

whereby: (current) variance <sub>$t$</sub>  is a function of the squared realized and implied volatility, more precisely:

$$(current) variance_t = \frac{t}{T} * realized\ volatility(0,t)^2 + \frac{T-t}{T} * implied\ volatility(t,T)^2$$

#### - Volatility Swaps

A UCITS shall apply the following conversion formulae to volatility swaps:

Vega Notional \* (current) Volatility <sub>$t$</sub>  (without volatility cap)

Vega Notional \* min [(current) Volatility <sub>$t$</sub> ; volatility cap] (with volatility cap)

Whereby the (current) volatility <sub>$t$</sub>  is a function of the realized and implied volatility.

### 9. Barrier (knock-in knock-out) Options

Number of contracts \* notional contract size \* market value of underlying equity share \* maximum delta

Whereby the maximum delta is equal to the highest (if positive) or lowest (if negative) value that the delta of the option may attain taking into account all possible market scenarios.

## Appendix 2

### Netting and Hedging

#### Netting

1. A UCITS shall only net positions:
  - (a) between FDI, if the FDI refer to the same underlying asset, including where the maturity date of the FDI is different;
  - (b) between a FDI which has as an underlying asset that is a transferable security, money market instrument or a collective investment undertaking and that same corresponding underlying asset;
  - (c) in accordance with the duration-netting rules set out below.

#### Duration-Netting rules

2. Only UCITS that invest primarily in interest rate derivatives shall make use of the duration-netting rules set out in this section in order to take into account the correlation between the maturity segments of the interest rate curve.
  3. A UCITS shall not apply the duration-netting rules if application of these rules results in an incorrect assessment of the risk profile of the UCITS. UCITS which apply duration – netting rules shall not include other sources of risk in their interest rate strategy. 3. The UCITS shall ensure that the use of the duration-netting rules does not generate any unjustified level of leverage through investment in short-term positions.
- . A UCITS shall convert its interest rate derivative into its equivalent underlying asset position by taking the following steps::

1. Allocate each interest rate FDI to the appropriate range ('bucket') of the following maturity-based ladder:

Bucket	Maturities range
1	0 - 2 years
2	2 - 7 years
3	7 - 15 years
4	> 15 years

2. Calculate the equivalent underlying asset position of each interest rate derivative instrument as its duration divided by the target duration of the UCITS and multiplied by the market value of the underlying asset:

$$\text{Equivalent underlying asset position} = \frac{\text{duration}_{\text{FDI}}}{\text{duration}_{\text{target}}} \times \text{MtM}_{\text{Underlying}}$$

where:

- $\text{duration}_{\text{FDI}}$  is the duration (sensitivity to interest rates) of the interest rate derivative instrument,
  - $\text{duration}_{\text{target}}$  is in line with the investment strategy, the directional positions and with the expected level of risk at any time and will be regularised otherwise. It is also in line with the portfolio duration under normal market conditions.
  - $\text{MtM}_{\text{underlying}}$  is the market value of the underlying asset as detailed in paragraph 2.1
3. Net the long and short equivalent underlying asset positions within each bucket. The amount of the former which is netted with the latter is the *netted position* for that bucket.
  4. Net the amount of the remaining unnetted long (or short) position in the bucket (*i*) with the amount of the remaining short (long) position remaining in the bucket (*i+1*).
  5. Net the amount of the unnetted long (or short) position in the bucket (*i*) with the amount of the remaining short (long) position remaining in the bucket (*i+2*).
  6. Calculate the netted amount between the unnetted long and short positions of the two most remote buckets.
  7. A UCITS shall calculate its total global exposure as the sum of:
    - (a) 0% of the netted position for each bucket;
    - (b) 40% of the netted positions between two adjoining buckets (*i*) and (*i+1*);
    - (c) 75% of the netted positions between two remote buckets separated by another one, meaning buckets (*i*) and (*i+2*);
    - (d) 100% of the netted positions between the two most remote buckets; and
    - (e) 100% of the remaining unnetted positions.

5. A UCITS which applies a hedging framework shall only apply the duration –netting rules to interest rate derivatives which are not included in the hedging framework.

### Hedging

6. A UCITS shall take hedging arrangements into account when calculating global exposure only if the hedging arrangements offset the risks linked to some assets and if the hedging arrangements comply with all of the following criteria:
  - (a) the hedging arrangements do not aim to generate a return;
  - (b) the hedging arrangements result in a verifiable reduction of risk at the UCITS level;
  - (c) the hedging arrangements offset risks linked to FDI;
  - (d) the hedging arrangements relate to the same asset class; and
  - (e) the hedging arrangements are efficient in stressed market conditions.

7. A UCITS shall only take hedging arrangements which do not meet the criteria set out in paragraph 6 above into account when calculating the UCITS global exposure if the FDI in question are used for currency hedging purposes (i.e. they do not add any incremental exposure, leverage and/or other market risks).
8. A UCITS shall not include market neutral or long/short investment strategies as part of its hedging arrangements when calculating global exposure.

### Appendix 3

#### Calculation of Global Exposure using the Value at Risk (VaR) Approach

##### Relative VaR approach

1. A UCITS shall calculate global exposure under the relative VaR approach, as follows:
  - (a) Calculate the VaR of the UCITS current portfolio, including derivatives;
  - (b) Calculate the VaR of a reference portfolio;
  - (c) Verify that the VaR of the UCITS portfolio is not greater than twice the VaR of the reference portfolio in order to ensure a limitation of the global leverage ratio of the UCITS to 2. This limit shall be presented as follows:

$$\frac{(\text{VaR UCITS} - \text{VaR Reference Portfolio})}{\text{VaR Reference Portfolio}} \times 100 \leq 100\%$$

2. A UCITS shall ensure that the reference portfolio and the related processes comply with the following criteria:
  - (a) The reference portfolio should be unleveraged and should, in particular, not contain any FDI or embedded FDI, except that:
    - (i) a UCITS engaging in a long/short strategy may select a reference portfolio which uses FDI to gain the short exposure;
    - (ii) a UCITS which intends to have a currency hedged portfolio may select a currency hedged index as a reference portfolio.
  - (b) The risk profile of the reference portfolio should be consistent with the investment objectives, policies and limits of the UCITS portfolio;
  - (c) If the risk/return profile of a UCITS changes frequently or if the definition of a reference portfolio is not possible, then the relative VaR method should not be used.
  - (d) The process relating to the determination and the ongoing maintenance of the reference portfolio should be integrated in the risk management process and be supported by adequate procedures. Guidelines governing the composition of the reference portfolio should be developed. In addition, the actual composition of the reference portfolio and any changes should be clearly documented.

##### Absolute VaR approach

3. A UCITS shall only use the absolute VAR approach subject to the requirements set out in this chapter.

**VaR approach: Quantitative requirements**

4. The absolute VaR of a UCITS shall not be greater than 20 % of its NAV.
5. The calculation of the absolute and relative VaR shall be carried out in accordance with the following parameters:
  - (a) one-tailed confidence interval of 99 %;
  - (b) holding period equivalent to 1 month (20 business days);
  - (c) effective observation period (history) of risk factors of at least 1 year (250 business days) unless a shorter observation period is justified by a significant increase in price volatility (for instance extreme market conditions);
  - (d) quarterly data set updates, or more frequent when market prices are subject to material changes;
  - (e) at least daily calculation.
6. A confidence interval and/or a holding period differing from the default parameters above may be used by a UCITS provided the confidence interval is not below 95% and the holding period does not exceed 1 month (20 days).
7. For UCITS referring to an absolute VaR approach, the use of other calculation parameters goes together with a rescaling of the 20% limit to the particular holding period and/or confidence interval. The rescaling can only be done under the assumption of a normal distribution with an identical and independent distribution of the risk factor returns by referring to the quantiles of the normal distribution and the square root of time rule.

**VaR approach: Qualitative requirements**

8. The UCITS Regulations provide that the risk management function is responsible inter alia for ensuring compliance with the UCITS risk limit system, including statutory limits concerning global exposure. A UCITS shall ensure that its risk management function is responsible for:
  - (a) sourcing, testing, maintaining and using the VaR model on a day-to-day basis;
  - (b) supervising the process relating to the determination of the reference portfolio where the UCITS reverts to a relative VaR approach;
  - (c) ensuring on a continuous basis that the model is adapted to the UCITS portfolio;
  - (d) performing continuous validation of the model;

- (e) validating and implementing a documented system of VaR limits consistent with the risk profile of the UCITS; the risk profile of the UCITS shall be approved by senior management and the board of directors;
  - (f) monitoring and controlling the VaR limits;
  - (g) monitoring on a regular basis the level of leverage generated by the UCITS;
  - (h) producing on a regular basis reports relating to the current level of the VaR measure (including back testing and stress testing) for senior management.
9. A UCITS shall ensure that the VaR model and the related outputs represent an integral part of the daily risk management work. A UCITS shall ensure that the VaR approach and its related outputs are integrated into the investment process led by the investment managers as part of the risk management program of the UCITS to keep the UCITS risk profile under control and consistent with its investment strategy.
10. A UCITS shall ensure that its VaR approach is validated as sound and adequate in respect of all material risks by an independent person, when developed. An independent person for this purpose is a person who has not been engaged in the development of the VaR approach. Where there is any significant change to the VaR approach, a UCITS shall ensure that this change is independently validated. A significant change for these purposes shall include the use of a new product by the UCITS, the need to improve the model following the back testing results, or a decision taken by the UCITS to change certain aspects of the model in a significant way.
11. In accordance with paragraph 8(d) above, the risk management function shall perform ongoing validation of the VaR model (this includes, but is not limited to back testing) in order to ensure the accuracy of the model's calibration. The review shall be documented. Where necessary, the model shall be adjusted.

#### **Documentation and procedures**

12. A UCITS shall document its VaR approach and related processes and techniques in accordance with the documentation requirements referred to in paragraph 1(a) of Schedule 9 of the UCITS Regulations and shall include, inter alia, the following:
- (a) the risks covered by the model;
  - (b) the model's methodology;
  - (c) the mathematical assumptions and foundations;
  - (d) the data used;
  - (e) the accuracy and completeness of the risk assessment;

- (f) the methods used to validate the model;
- (g) the back testing process;
- (h) the stress testing process;
- (i) the validity range of the model; and
- (j) the operational implementation.



**Section 2:****Supervisory requirements****i. General conditions**

1. An umbrella UCITS authorised by the Central Bank shall obtain the Central Bank's prior approval for the establishment of 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 each of for the new sub-funds, shall be submitted to the Central Bank for approval.
2. A UCITS shall notify the Central Bank in advance of proposed amendments to its prospectus. The Central Bank may object to the amendments notified to it and amendments objected to by the Central Bank shall not be made.
3. A UCITS shall notify the Central Bank in advance of proposed amendments to material agreements entered into with third parties. The Central Bank may object to the amendments notified to it and amendments objected to by the Central Bank shall not be made.
4. A UCITS shall notify the Central Bank in advance of any proposal to replace third parties which have entered into a material agreement with a UCITS. The Central Bank may object to the proposals and replacements objected to by the Central Bank shall not proceed.
5. A UCITS shall notify the Central Bank in advance of any proposed change of auditor and of the reasons for the proposed change.
6. A UCITS shall not increase the maximum charge relating to the redemption or repurchase of units without approval of unitholders on the basis of a majority of votes cast at a general meeting. The maximum permitted charge for the redemption of units is 3% of the redemption amount<sup>6</sup>. In the event of an increase in the redemption or repurchase charge a reasonable notification period must be provided by the UCITS to enable unitholders redeem their units prior to the implementation of the increase.

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<sup>6</sup> If the fee disclosed in the prospectus is less than the maximum fee permitted, unitholder approval will also be required for an increase in the fee disclosed in the prospectus unless the prospectus also provides that a higher fee may be charged.

**ii. Replacement of depositary**

1. In accordance with the provisions of paragraph 10 of 1.viii of Part I – (*Constitutional documents*) section, the Central Bank requires that the procedures to be followed in relation to the replacement of a depositary must be approved by the board of the investment company or management company in the case of a unit trust or common contractual fund. Where the UCITS replaces its depositary, the UCITS must ensure that the Central Bank receives, as required, confirmation from both the retiring depositary and new depositary that they are satisfied with the transfer of assets.
2. The UCITS shall only terminate the appointment of the depositary:
  - (a) upon the appointment of a successor depositary; or
  - (b) upon the revocation of the authorisation of the UCITS.

**iii. Replacement of management company, general partner or third party**

1. The Central Bank requires that the procedures to be followed in relation to the replacement of a management company or administration company be approved by the board of the investment company or management company in the case of a unit trust or common contractual fund.

**iv. Monthly and quarterly returns**

1. A UCITS shall submit a monthly return to the Statistics Division of the Central Bank using the Central Bank's Online Reporting System. The contents of the monthly return are set out below in paragraph 2 of this section.
2. The following information shall be included in the monthly returns:
  - (a) the Central Bank code issued to the sub-fund of the UCITS;
  - (b) the base currency of the UCITS (the return must be denominated in the base currency of the UCITS);
  - (c) the UCITS type (designated by investment strategy);
  - (d) total gross asset value of the UCITS at end-month;
  - (e) total net asset value of the UCITS at end-month;
  - (f) number of units in circulation at end-month;
  - (g) net asset value per unit at end-month;
  - (h) payments received from the issues of units during month;

- (i) payments made for the repurchase of units during month;
- (j) net amount from issues and repurchases during month;
- (k) profit/loss from operations during the period;
- (l) investment management fees accrued during the period (excluding performance fees);  
and
- (m) all other expenses accrued during the period (excluding investment management fees).

This return must be submitted to the Statistics Division of the Central Bank within 10 working days of the end-month to which it refers. Relevant guidance is available at the following web address:

[http://www.centralbank.ie/polstats/stats/reporting/Pages/navs\\_online.aspx](http://www.centralbank.ie/polstats/stats/reporting/Pages/navs_online.aspx)

3. The UCITS shall submit a quarterly Money Market and Investment Fund return on the Central Bank's Online Reporting System within ten working days of the end-quarter to which it refers. The contents of the quarterly return are set out in the relevant guidance, which is available at the following web address:

<http://www.centralbank.ie/polstats/stats/reporting/Pages/RevisedOFIRreportingMMIFQuarterlyReturn.aspx>

**Section 3:****Prospectus and Key Investor Information Document requirements****i. General requirements**

1. A UCITS shall only translate its prospectus into other languages if such translations contain the same information and have the same meaning as in the prospectus submitted to the Central Bank.
2. A UCITS shall comply with the terms of its prospectus.
3. A change to the investment objectives, or a material change to the investment policies of a UCITS, as disclosed in the prospectus, shall not be effected without the prior written approval of all unitholders or without approval on the basis of a majority of votes cast at general meeting. “Material” shall be taken to mean, although not exclusively:

*“changes which would significantly alter the asset type, credit quality, borrowing limits or risk profile of the UCITS”.*

In the event of a change of investment objectives and/or investment policy, on the basis of a majority of votes cast at a general meeting, a reasonable notification period must be provided by the UCITS to enable unitholders redeem their units prior to implementation of these changes.

4. Material changes to the content of the prospectus shall be notified to unitholders in the subsequent periodic report.
5. In the event that a stated minimum viable size is not reached within a specified period the prospectus shall state that the UCITS will return any subscriptions to the unitholders.
6. The prospectus shall list<sup>7</sup> those stock exchanges, markets and regulated derivatives markets<sup>8</sup> on which investment assets of the UCITS are listed or traded. Only those stock exchanges,

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<sup>7</sup> Stock Exchanges in the European Economic Area, Australia, Canada, Hong Kong, Japan, New Zealand, Switzerland and the United States need not be listed individually.

<sup>8</sup> Derivative markets in the European Economic Area need not be listed individually

markets and regulated derivatives markets which meet with the regulatory criteria, at the date of the prospectus, shall be included in the prospectus.

*Advertisement*

7. The name of the UCITS and its regulatory status shall be clearly shown in any advertisement.
8. Advertising shall not contain information which is false or misleading or presented in a manner which is deceptive. Advertising shall refer to the key investor information document and prospectus issued by the UCITS and shall not be inconsistent with these.
9. UCITS marketing their units in Ireland or marketing their units in jurisdictions with no statutory regulation of marketing shall comply with the following advertising standards:
  - (a) The design and presentation of an advertisement shall be clear, fair, accurate and not misleading such that it can be easily and clearly understood. Where footnotes are used in an advertisement they should be of sufficient size and prominence to be easily legible; where appropriate they should be linked to the relevant part of the main copy.
  - (b) It shall be clear from the design and presentation of an advertisement that it is an advertisement such that any person who looks at it can see immediately that it is an advertisement.
  - (c) Any statements made or risk warnings given in an advertisement must not be obscured or disguised in any way by the content, design or format of the advertisement.
  - (d) An advertisement should not mislead investors about any matter likely to influence their attitudes to the investment either by inaccuracy, ambiguity, exaggeration, omission or otherwise.
  - (e) All advertisements shall be prepared with care and with the aim of ensuring that potential investors fully grasp the nature of any commitment into which they may enter. A UCITS shall take into account the fact that the complexities of finance may well be beyond many of those to whom the opportunity being offered will appeal and accordingly advertisements shall not take advantage of inexperience or credulity.
  - (f) When an advertisement contains a forecast or projection, whether of a specific growth rate or of a specific return or rate of return it should make clear the basis upon which that forecast or projection is made, explaining, where relevant
    - whether reinvestment of income is assumed

- whether account has been taken of the incidence of any taxes or duties and, if so, how
  - whether the forecast or projected rate of return will be subject to any deductions other than upon premature realisation or otherwise.
- (g) Advertisements leading to the employment of money in anything the value of which is not guaranteed shall include a warning that the value of the investment can go down as well as up and that the return upon the investment will therefore necessarily be variable.
- (h) An advertisement must not describe an investment as guaranteed or partially guaranteed unless there is a legally enforceable agreement with a third party who undertakes, in the case of a full guarantee to meet, in full, an investor's claim under the guarantee, or in the case of a partial guarantee to meet, to whatever extent is stated in the advertisement, the investor's claim under the guarantee. Where values are guaranteed sufficient detail should be included to give the reader a fair view of the nature of the guarantee.
- (i) An advertisements making claims, whether specific or not, as to anticipated growth in value or rate of return should include a prominent statement to the effect, as appropriate, that neither past experience nor the current situation are necessarily accurate guides to the future growth in value or rate of return.
- (j) An advertisement which contains information on past performance shall also contain the following warning:
- "Past performance may not be a reliable guide to future performance".
- (k) An advertisement which quotes past experience in support of a forecast or projected growth in the value or rate of return should not be misleading in relation to present prospects of an investment and should indicate the circumstances in which, and the period over which, such experience has been gained in a way that is fair and representative.
- (l) An advertisement relating to offers to facilitate the planned withdrawal from capital as an income equivalent (e.g. by cashing in units of the UCITS) shall contain a statement clearly explaining the effect of such withdrawals upon the investment.

- (m) When claims to investment skill in an advertisement are based upon an asserted increase in the value of particular items purchased or recommended for purchase by the advertiser in the past, that person must be in a position to substantiate that the purchase or recommendation upon which his assertion is based was made at the time claimed and that the present value asserted for the investment corresponds to the price actually obtained for identical items when sold in the open market in the period immediately preceding the advertisement. No claim to an increase in the value of investments or collectibles should be based upon the performance within a given market of selected items only unless that claim can be substantiated in the form set out above.
- (n) Phrases such as tax-free, tax-paid shall not be used
- unless it is made clear which particular tax(es) and/or duties are involved and
  - the advertiser clearly states what liabilities may arise and by whom they will be paid.
- (o) When the achievement or maintenance of the return claimed or offered for a given investment in an advertisement is in any way dependent upon the assumed effects of tax or duty, this fact should be clearly explained and the advertisement should make it clear that no undertaking can be given that the fiscal system may not be revised with consequent effect upon the return offered.
- (p) Where an advertisement relates to a high volatility UCITS it shall state that the investment may be subject to sudden and large falls in value, and, if it is the case, that the investor could lose the total value of the initial investment.
- (q) Where a UCITS is described as being likely to yield income or as being suitable for an investor seeking income from the investment, and where the income from the UCITS can fluctuate, the advertisement shall contain the following warning:
- "Income may fluctuate in accordance with market conditions and taxation arrangements".
- (r) Where a UCITS is denominated in a currency other than that of the country in which the advertisement is issued, the advertisement shall contain the following warning:
- "Changes in exchange rates may have an adverse effect on the value price or income of the product".

- (s) An advertisement shall, where relevant,
- state that the difference at any one time between the sale and repurchase price of units in the UCITS means that the investment should be viewed as medium to long term;
  - refer to the impact of a redemption charge.

**ii. General information concerning the UCITS**

1. A UCITS shall disclose in its prospectus the identity and brief details of the financial group promoting the UCITS.
2. A UCITS shall disclose in its prospectus details of the persons who accept responsibility for information contained in the prospectus.
3. A UCITS shall disclose in its prospectus:
  - (a) details of the principal investment manager of the UCITS; and
  - (b) details of sub-investment managers if these are paid directly by the UCITS.
4. A UCITS shall state in its prospectus that details of all sub-investment managers will be provided to unitholders on request.
5. A UCITS shall disclose in its prospectus where it proposes to create hedged currency share classes.
6. A UCITS shall disclose in its prospectus the distribution provisions on the termination/winding up of the UCITS, in particular those affecting unitholders.

**iii. Investment policy**

1. The prospectus shall set out the UCITS investment policy which discloses the assets in which it proposes to invest and the basis upon which it will select its investments. It shall also outline where a UCITS will invest, indicating the countries or regions in which such investments will be made. Where it is intended to seek exposure to a country or region through investment in companies/instruments listed or traded on stock exchanges or markets located in other jurisdictions, this shall be disclosed.



*UCITS which use FDI*

2. Where a UCITS uses FDI, it shall include in its prospectus a description of the permitted types of FDI and the extent to which the UCITS may be leveraged.

A UCITS shall disclose in its prospectus the method used to calculate global exposure.

Where a UCITS uses the VaR approach, it shall disclose in its prospectus the expected level of leverage and the possibility of higher leverage levels. Leverage shall be calculated as the sum of the notionals of the derivatives used. This may be supplemented with leverage calculated on the basis of a commitment approach. A UCITS using the VaR approach shall take into account the creation of leveraged exposure to an index via FDI, or the inclusion of a leverage feature in an index, in meeting the prospectus disclosure requirements.

Where a UCITS uses the relative VaR approach, it shall disclose information on the reference portfolio in its prospectus.

A UCITS using total return swaps, or other FDI with the same characteristics, shall include the following in its prospectus:

- (a) Information on the underlying strategy or index and composition of the investment portfolio or index;
- (b) information on the counterparty(ies) to the transactions;
- (c) a description of the risk of counterparty default and the effect on investor returns; and
- (d) details on the extent to which the counterparty assumes any discretion over the composition or management of the UCITS investment portfolio or over the underlying of the FDI, and whether the approval of the counterparty is required in relation to any UCITS investment portfolio transaction.

A UCITS shall identify the counterparty as an investment manager in its prospectus if the counterparty has discretion over the composition or management of the UCITS investment portfolio or of the underlying of the FDI

3. Where a UCITS proposes to take short positions, it shall 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.

*Financial Indices*

4. Where indices are used for investment purposes, the prospectus shall provide sufficient disclosure to allow a prospective investor understand the market the index is representing, why it is being used as part of the UCITS investment strategy, whether the investment will be made directly through investment in the constituents or indirectly through FDI and where additional information on the index may be obtained.
5. A UCITS which intends to make use of the increased diversification limits referred to in Regulation 71, shall disclose this intention and a description of the exceptional market conditions which justify this investment in the prospectus.
6. A UCITS shall disclose in the prospectus the rebalancing frequency of the financial index in which it invests and its effects on the costs within the strategy.

*Structured UCITS*

7. A structured UCITS shall ensure that the prospectus contains full disclosure regarding the investment policy, underlying exposure and payoff formulas in clear language which can be easily understood by the retail investor.

*Funds of Funds*

8. Where a UCITS may invest more than 20% of its assets in other investment funds it shall include a prominent statement to this effect in its prospectus and in any promotional literature which it issues.

*Index-Tracking Funds*

9. A UCITS which is an index-tracking UCITS shall include the following in its prospectus:
  - (a) a description of the index including information on the underlying components or details of the website where the exact composition of the index is published;
  - (b) information on how the index will be tracked and the implications of the chosen method for unitholders in terms of their exposure to the underlying index and counterparty risk;
  - (c) information on the anticipated level of tracking error in normal market conditions;
  - (d) a description of factors that are likely to affect the ability of the UCITS to track the performance of the index, such as transaction costs, small illiquid components or dividend re-investments.

*Index Tracking leveraged funds*

10. A UCITS which is an index-tracking leveraged UCITS shall include the following information in its prospectus:

- (a) a description of the leverage policy and how this is achieved (, the cost of the leverage (where relevant) and the risks associated with this policy;
- (b) a description of the impact of any reverse leverage;
- (c) a description of how the performance of the UCITS may differ significantly from the multiple of the index performance over the medium to the long term.

**iv. Efficient portfolio management**

1. A UCITS shall disclose in its prospectus information on the collateral policy of the UCITS arising from OTC derivative transactions or efficient portfolio management techniques. Disclosure shall include permitted types of collateral, level of collateral required and haircut policy and, in the case of cash collateral, the re-investment policy and the risks arising from the re-investment policy.

**v. Dealing**

1. A UCITS shall disclose the initial offer period and the initial offer price in its prospectus.
2. A UCITS shall disclose the maximum redemption charge in bold at the beginning of the prospectus.
3. Where a UCITS proposes to apply an anti-dilution levy, the UCITS shall include the following text in its prospectus:

“In calculating the subscription/redemption price for the UCITS the Directors may on any dealing day when there are net subscriptions/redemptions adjust the subscription /redemption price by adding/deducting an anti-dilution levy to cover dealing costs and to preserve the value of the underlying assets of the UCITS.”

*Redemption in Specie*

4. Where the prospectus provides for redemption in specie, the UCITS shall also provide for the following in its prospectus:
  - redemption in specie is at the discretion of the UCITS and with the consent of the redeeming unitholder;
  - asset allocation is subject to the approval of the depositary; and

- a determination to provide redemption in specie may be solely at the discretion of the UCITS where the redeeming unitholder requests redemption of a number of units that represent 5% or more of the net asset value of the UCITS. In this event the UCITS will, if requested, sell the assets on behalf of the unitholder. The cost of the sale can be charged to the unitholder.

The requirements set out in the first and third bullet points are not applicable for an exchange traded fund where the original subscription was made in specie.

**vi. Remuneration and costs arising**

1. All information on remuneration, costs and expenses to be borne by the UCITS shall be contained in the same section of the prospectus and in a form that can be easily understood and analysed by unitholders and prospective investors.
2. A UCITS shall disclose in its prospectus its policy regarding direct and indirect operational costs/fees arising from efficient portfolio management techniques that may be deducted from the revenue delivered to the UCITS. These costs and fees should not include hidden revenue. The UCITS shall disclose the identity of the entity(ies) to which the direct and indirect costs and fees are paid and indicate if these are related parties to the UCITS management company or the depositary.
3. The prospectus of an umbrella UCITS shall clearly state the charges, if any, applicable to the exchange of units in one sub-fund of the umbrella UCITS for units in another sub-fund of the umbrella UCITS.

**vii. Umbrella UCITS**

1. An umbrella UCITS investment company shall include the words "**An umbrella fund with segregated liability between sub-funds**" in its prospectus.
2. Where a supplement to the prospectus is issued in relation to the establishment of a new sub-fund, the supplement shall state that the UCITS is constituted as an umbrella UCITS and name the other existing sub-funds.

**viii. Authorisation status**

1. The prospectus of a UCITS shall state that the authorisation of the UCITS is not an endorsement or guarantee of the UCITS by the Central Bank nor is the Central Bank responsible for the contents of the prospectus and shall incorporate the following statement:

**“The authorisation of this UCITS by the Central Bank shall not constitute a warranty as to the performance of the UCITS and the Central Bank shall not be liable for the performance or default of the UCITS.”**

**ix. Risk disclosures**

1. The prospectus of a UCITS shall identify, and describe in a comprehensive manner, the risks applicable to investing in that particular UCITS. In particular the prospectus shall make reference to at least:
  - (a) the fact that prices of units may fall as well as rise;
  - (b) the desirability of consulting a stockbroker or financial adviser about the contents of the prospectus; and
  - (c) where relevant, the fact that the difference at any one time between the sale and repurchase price of units in the UCITS means that the investment should be viewed as medium to long term.
2. UCITS with investment objectives or investment policies which involve investing more than 20% in emerging markets, more than 30% in below investment grade bonds or in warrants shall insert a risk warning informing investors that an investment in the UCITS should not constitute a substantial proportion of an investment portfolio and may not be appropriate for all investors. This warning shall be inserted and highlighted at the beginning of the prospectus and must cross reference to the more detailed disclosure of risk factors which are contained in the body of the prospectus. The prospectus shall contain a full description of the risks involved.

*UCITS which use FDI*
3. Where a UCITS will invest principally in FDI, it shall insert a warning of this intention at the beginning of the prospectus and any other promotional literature.

*Cash/Money Market Funds*

4. Where a UCITS may invest substantially in deposits or money market instruments that UCITS shall provide a risk warning in its prospectus drawing attention to the difference between the nature of a deposit and the nature of an investment in the UCITS, with particular reference to the risk that the principal invested in the UCITS may fluctuate.

*Structured UCITS*

5. A structured UCITS, as defined in Article 36(1) of Commission Regulation No 583/2010, shall include in its prospectus a prominent risk warning informing investors who redeem their investment prior to maturity that they do not benefit from the pre-defined payoff and may suffer significant losses.

*Umbrella UCITS*

6. Investment companies constituted as umbrella UCITS which were authorised and commenced trading before 30 June 2005 and which do not have segregated liability between sub-funds shall clearly disclose the potential risks to investors arising from the absence of the segregation of liability between sub-funds.

*Distributions out of capital*

7. A UCITS which proposes to make distributions out of capital and which invests greater than 20% in fixed income instruments must highlight, in its prospectus, the greater risk of capital erosion given the lack of potential for capital growth and the likelihood that, due to capital erosion, the value of future returns would also be diminished.

**x. Conflicts of interest**

1. A UCITS shall include in its prospectus a description of the potential conflicts of interest which could arise between the management company, investment adviser and the UCITS, with details, where applicable, of how these are going to be managed.
2. A UCITS shall include in its prospectus a description of soft commission arrangements which may be entered into by a management/administration company of that UCITS.
3. Where it is envisaged that a UCITS and connected parties may enter into transactions with one another, full disclosure shall be made in the prospectus issued by the UCITS of the fact that such transactions may occur.

**xi. Directed brokerage services and similar arrangements**

1. A UCITS shall, in its prospectus, disclose full details of any directed brokerage services or similar arrangement operated in relation to a UCITS (including details of services provided).

**xii. Distributions out of and charging of fees and expenses to capital**

1. A UCITS may only make distributions out of capital where its prospectus has included the following disclosures:
  - (a) the rationale behind the policy;
  - (b) a prominent risk warning, at the front of the prospectus, which describes the effects of making distributions from capital. This warning must include the following:
    - that capital will be eroded;
    - that the distribution is achieved by forgoing the potential for future capital growth;
    - this cycle may continue until all capital is depleted; and
  - (c) highlight that distributions out of capital may have different tax implications to distributions of income and recommend that investors seek advice in this regard.
2. A UCITS shall only charge fees and expenses, including management fees, to capital where its prospectus has included the following disclosures:
  - (a) indicate that fees and expenses, including management fees, or a portion thereof, may be charged to capital;
  - (b) the rationale behind the policy;
  - (c) a prominent risk warning in bold text at front of prospectus which states:  
**“Unitholders/Shareholders should note that all or part of fees and expenses, including (if applicable) management fees, will be charged to the capital of the UCITS. This will have the effect of lowering the capital value of your investment”**; and
  - (d) a description of the effects of the charging of fees and expenses, including management fees, to capital i.e. that capital may be eroded.
3. Where a UCITS invests more than 20% in fixed income instruments and the priority of the UCITS is the generation of income rather than capital growth this priority shall be specified in the prospectus. In addition the prospectus must include a statement that distributions made during the life of the UCITS must be understood as a type of capital reimbursement.

**xiii. Share classes**

1. Where a UCITS uses FDI at share class level, it shall include in its prospectus a clear description of the strategies being pursued and the effect this will have on the relevant share class.
2. A UCITS shall include in its prospectus a description of the general currency hedging strategies of the UCITS and the features of individual currency share classes.
3. Where the UCITS intends to invest in assets denominated in currencies other than the base currency, the prospectus shall disclose whether it is the intention of the UCITS to hedge the resulting currency exposure back into the base currency and, if so, to what extent. The general costs and/or exchange rate risks associated with the currency strategy shall also be disclosed.
4. In the case of an unhedged currency share class, the prospectus shall disclose that a currency conversion will take place on subscription, redemption and distributions at prevailing exchange rates. Where appropriate it shall disclose that the value of the share expressed in the class currency will be subject to exchange rate risk in relation to the base currency. In the case of hedged share classes, the prospectus shall indicate that, to the extent that hedging is successful, the performance of the class is likely to move in line with the performance of the underlying assets and that investors in the hedged class will not benefit if the class currency falls against the base currency and/or the currency in which the assets of the UCITS are denominated.
5. In the case of hedged currency share classes, the prospectus shall disclose the implications of the hedging policy including at least the following:
  - a statement indicating the extent to which the UCITS intends to hedge against currency fluctuations and noting that while not the intention, over-hedged or under-hedged positions may arise due to factors outside of the control of the UCITS. The prospectus shall provide that over-hedged positions will not be permitted to exceed 105% of the net asset value of the class;
  - a statement that the hedged positions will be kept under review to ensure that over-hedged positions do not exceed the permitted level. This review shall also incorporate a procedure to ensure that positions materially in excess of 100% shall not be carried forward from month to month;
  - a statement that transactions will be clearly attributable to a specific class. (Therefore currency exposures of different currency classes shall not be combined or offset and



currency exposures of assets of the UCITS may not be allocated to separate share classes);

- disclosure that the costs and gains/losses of the hedging transactions will accrue solely to the relevant class.

**xiv. Key Investor Information Document ('KIID')**

1. The KIID shall comply with the guidelines issued by ESMA. The KIID shall be drawn up in accordance with the format prescribed in ESMA's guide to clear language and layout of the key investor information document (Ref: CESR/10-1320).

*Individual sections of the KIID - Investment objective and policy*

2. The investment objective of the UCITS shall be clearly stated in the KIID to allow investors to assess the suitability of the UCITS for their needs.
3. The investment policy of the UCITS, as set out in the KIID, shall indicate how the investment objective of the UCITS will be achieved..
4. Only investment instruments likely to have a material impact on the performance of the UCITS shall be included in the KIID.
5. In the context of structured UCITS as defined in Article 36(1) of Commission Regulation No 583/2010, it shall be made clear in the KIID if the pre-determined pay off is only available to those investors who buy units at a certain point and hold them until a certain date. The KIID shall detail the consequences for an investor of buying and selling their units in the UCITS other than in instances where the pre-determined pay off is available. If a guarantee from an independent third party is offered this shall be explained in this section.
6. Where a UCITS intends to invest or has invested more than 20% of its assets in other investment funds, the UCITS shall include in the KIID a description of the quantitative or qualitative approach taken for selecting the underlying investment funds.
7. Where a UCITS is established as a feeder fund, the UCITS shall disclose in the KIID where relevant, the possibility to hold assets other than the shares of the master fund.

*Risk and Reward Profile*

8. A UCITS shall calculate a synthetic risk and reward indicator in accordance with the methodology prescribed in ESMA Guidelines CESR/10-673.
9. The description of the feeder UCITS risk and reward profile in the KIID shall not be materially different to the risk and reward profile of the corresponding master UCITS. Where the ancillary assets held by the feeder UCITS impact on its risk and reward profile, this shall be clearly disclosed by the feeder UCITS in the KIID.

*Portfolio transaction costs*

10. Where the potential impact of the portfolio transaction costs on investors return is known by the UCITS or considered by the UCITS as likely to be material, the UCITS shall include a statement in the KIID that these costs are paid out of the assets of the UCITS. This shall be disclosed under the investment objective and policy section of the KIID.

*Performance Fees*

11. A UCITS shall disclose in the KIID the performance fee (if any) of the management company or investment manager and the methodology used to calculate the performance fee.

*Cross-references to other sources of information*

12. The KIID shall avoid cross-referencing to such a degree that comprehension of the essential information is not possible.
13. Where a KIID contains cross-references, these shall direct the reader to a specific section of the relevant source of information. All cross-references to the prospectus or the annual or half-yearly financial statements shall be to the current versions of those documents.

*Preparation of the KIID*

14. The KIID shall be prepared in accordance with ESMA's template.

*Updates*

15. A UCITS shall review the KIID before entering into any new initiative that is likely to result in a significant number of new investors acquiring units in the UCITS.

*Filing Requirements*

16. An umbrella UCITS must submit a KIID to the Central Bank prior to the approval of a new sub-fund. The filing of the KIID must be accompanied by a written confirmation from the UCITS or its legal advisor to the Central Bank that the KIID complies in full with the

requirements of the UCITS Regulations, Commission Regulation (EU) No 583/2010, all related ESMA Guidelines and this chapter. This confirmation must also state that the information in the KIID does not conflict with the content of the prospectus, where relevant.

17. In the case of existing UCITS, a new KIID or an amended KIID (including annual updates) and the confirmation from the UCITS or its legal advisor shall be forwarded by email to the Central Bank at UCITSKIID@centralbank.ie.<sup>9</sup>

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<sup>9</sup> Electronic filing will not be applicable if other UCITS documents are also being amended.

**Section 4:****General operational requirements****i. Regulated markets**

1. A UCITS shall regularly review the list of stock exchanges and regulated markets specified in its prospectus to ensure that those stock exchanges and regulated markets continue to meet with the regulatory criteria.
2. A UCITS shall consult with the depositary to ensure that adequate custody arrangements are in place before including additional stock exchanges or markets in the prospectus.

**ii. Directed brokerage services or similar arrangements**

1. A UCITS shall, at a minimum, and on an annual basis, formally review any directed brokerage services or similar arrangements and associated costs where such services or arrangements are being operated in relation to it.

**Section 5:****Annual and half-yearly reports****i. Publication of annual and half-yearly reports**

1. A UCITS shall prepare and submit to the Central Bank its first set of accounts (whether annual or half-yearly) within 9 months of the launch date and publish them within 2 months if half-yearly or 4 months if annual. The first annual reports must be within 18 months of incorporation/establishment and published within 4 months.
2. A unit trust or a common contractual fund constituted as an umbrella UCITS which produces separate periodic reports for individual sub-funds shall name in the report for each sub-fund the other sub-funds and state that the reports of such sub-funds are available free of charge on request from the management company.
3. The periodic reports shall state whether:
  - (a) the board of directors are satisfied that there are arrangements (evidenced by written procedures) in place, to ensure that the obligations set out in paragraph 1 of section 1.xii (*Dealings by management company, general partner, depositary, investment manager or by delegate or group companies of these*) of this Part are applied to all transactions with connected parties; and
  - (b) the board of directors are satisfied that transactions with connected parties entered into during the period complied with the obligations set out in paragraph 1 of section 1.xii (*Dealings by management company, general partner, depositary, investment manager or by delegate or group companies of these*) of this Part.

**ii. Information to be contained in the annual report**

1. In addition to the requirements set out in the UCITS Regulations, a UCITS shall include the following information in its annual report:
  - (a) a statement of assets and liabilities or balance sheet separately showing the following:
    - money market instruments;
    - investment funds
    - deposits with credit institutions
    - FDI

- (b) an analysis, in accordance with the criteria set out in Schedule 12 of the UCITS Regulations, of its portfolio which distinguishes between:
  - (i) UCITS and AIFs;
  - (ii) deposits;
  - (iii) FDI dealt in on a regulated market;
  - (iv) OTC FDI;
  
- (c) a general description of the use of FDI and the efficient portfolio management techniques employed during the reporting period and the resulting amount of commitments. This description shall identify the types of FDI concerned, including OTC derivatives, the underlying exposures and, where relevant, the type and amount of collateral received to reduce counterparty exposure. This description shall also indicate the purposes behind the use of the various instruments together with the attendant risks to allow unitholders assess the nature of those instruments.

Open financial derivative positions at the date of the annual report shall be marked to market and specifically identified in the portfolio statement required by paragraph 4 of Schedule 12 to the UCITS Regulations. Information on open option positions shall include the strike price, final exercise date and an indication whether such positions are covered or not. Counterparties to OTC derivatives shall also be identified.

Treatment of realised and unrealised gains or losses arising from financial derivative transactions and from the use of efficient portfolio management techniques shall be explained in a note to the annual report.

A UCITS which engages in efficient portfolio management techniques shall disclose:

- (i) the exposure obtained through efficient portfolio management techniques;
- (ii) the identity of the counterparty(ies) to these efficient portfolio management techniques;
- (iii) the type and amount of collateral received by the UCITS to reduce counterparty exposure; and
- (iv) the revenues arising from efficient portfolio management techniques for the entire reporting period together with the direct and indirect operational costs and fees incurred.

A UCITS shall disclose the method used to calculate global exposure (Where a UCITS uses a relative VaR approach, information on the reference portfolio must be included.

Where a UCITS uses the VaR approach it shall disclose the level of leverage employed during the relevant period. Leverage should be calculated as the sum of the notionals of the derivatives used. This may be supplemented with leverage calculated on the basis of a commitment approach. A UCITS using the VaR approaches shall take into account the creation of leveraged exposure to an index via FDI, or the inclusion of a leverage feature in an index in meeting the prospectus disclosure requirements.

A UCITS shall disclose information regarding the VaR measure and in this regard shall disclose at a minimum the lowest, the highest and the average utilization of the VaR limit calculated during the financial year. A UCITS shall disclose the model and inputs used for calculation

- (d) A UCITS which is an index-tracking UCITS shall disclose the following:
- the size of the tracking error at the end of the period under review together;
  - an explanation of any divergence between the anticipated and realised tracking error for the relevant period;
  - the annual tracking difference between the performance of the UCITS and the performance of the index tracked; and
  - an explanation for the annual tracking difference.
- (e) a depositary's report;
- (f) a description of soft commission arrangements affecting the UCITS during the period;
- (g) full details of the amounts paid under any directed brokerage services or similar arrangements;
- (h) details of any distributions out of capital;
- (i) a description of any material changes in the prospectus during the reporting period;
- (j) a list of exchange rates used in the annual report;
- (k) a report from the board of directors in accordance with paragraph 3 of section 5.i (*Publication of annual and half-yearly reports*) of this Part; and

- (l) details of all sub-investment managers engaged by the investment manager to act in relation to the UCITS.
2. A UCITS shall document in its annual report all material changes in the disposition of the assets of the UCITS. Material changes are defined as aggregate purchases of a security exceeding 1 % of the total value of purchases for the period and aggregate disposals greater than 1 % of the total value of sales. If there were fewer than 20 purchases which met the material changes definition, the UCITS shall disclose those purchases and such number of the next largest purchases so that at least 20 purchases are disclosed. If there were fewer than 20 sales which met the material changes definition, the UCITS shall disclose those sales and such number of the next largest sales so that at least 20 sales are disclosed..
3. Investments by sub-funds within an umbrella investment company in the units of other sub-funds within that umbrella shall be disclosed in the annual report. The policies adopted by the umbrella investment company to disclose cross-investments between sub-funds within that umbrella investment company shall be explained in a note to the annual report.

**iii. Information to be contained in the half-yearly report**

1. In addition to the requirements set out in the UCITS Regulations, a UCITS shall include the following information in its half-yearly report:
  - (a) a statement of assets and liabilities or balance sheet separately showing the following:
    - money market instruments;
    - investment funds;
    - deposits with credit institutions;
    - FDI;
  - (b) an analysis, in accordance with the criteria set out in Schedule 12 of the UCITS Regulations, of its portfolio which distinguishes between:
    - (i) investment funds;
    - (ii) deposits;
    - (iii) FDI dealt in on a regulated market;
  - (c) a description of soft commission arrangements affecting the UCITS during the reference period;



- (d) a general description of the use of FDI and the efficient portfolio management techniques employed during the reporting period and the resulting amount of commitments. This description shall identify the types of FDI concerned, including OTC derivatives, the underlying exposures and, where relevant, the type and amount of collateral received to reduce counterparty exposure. The description shall also indicate the purposes behind the use of the various instruments together with the attendant risks to allow unitholders assess the nature of those instruments.

Open financial derivative positions at the date of the half-yearly report shall be marked to market and specifically identified in the portfolio statement required by paragraph 4 of Schedule 12 to the UCITS Regulations. Information on open option positions shall include the strike price, final exercise date and an indication whether such positions are covered or not. Counterparties to OTC derivatives shall also be identified.

Treatment of realised and unrealised gains or losses arising from financial derivative transactions and from the use of efficient portfolio management techniques shall be explained in a note to the half-yearly report.

UCITS which have engaged in efficient portfolio management techniques shall disclose:

- (i) the exposure obtained through efficient portfolio management techniques;
  - (ii) the identity of the counterparty(ies) to these efficient portfolio management techniques;
  - (iii) the type and amount of collateral received by the UCITS to reduce counterparty exposure; and
  - (iv) the revenues arising from efficient portfolio management techniques for the entire reporting period together with the direct and indirect operational costs and fees incurred;
- (e) A UCITS which is an index-tracking UCITS shall disclose the size of the tracking error at the end of the period under review;
  - (f) details of any distributions out of capital;
  - (g) a description of any material changes in the prospectus during the reporting period;
  - (h) a list of exchange rates used in the half-yearly report.

- (i) a report from the board of directors in accordance with paragraph 3 of section 5.i (*Publication of annual and half-yearly reports*) of this Part.
  - (j) details of all sub-investment managers engaged by the investment manager to act in relation to the UCITS.
2. A UCITS shall document in its half-yearly report all material changes in the disposition of the assets of the UCITS. Material changes are defined as aggregate purchases of a security exceeding 1 % of the total value of purchases for the period and aggregate disposals greater than 1 % of the total value of sales. If there were fewer than 20 purchases which met the material changes definition, the UCITS shall disclose those purchases and such number of the next largest purchases so that at least 20 purchases are disclosed. If there were fewer than 20 sales which met the material changes definition, the UCITS shall disclose those sales and such number of the next largest sales so that at least 20 sales are disclosed..
3. Investments by sub-funds within an umbrella investment company in the units of other sub-funds within that umbrella shall be disclosed in the half-yearly report. The policies adopted by the umbrella investment company to disclose cross-investments shall be explained in a note to the half-yearly report.

**Part II: SPECIFIC FUND-TYPE REQUIREMENTS****Section 1:****Exchange Traded Funds****i. Identifier and specific disclosure**

1. A UCITS ETF shall use the identifier 'UCITS ETF' which identifies it as an exchange-traded fund. This identifier shall be used in:
  - (a) its name;
  - (b) the trust deed, deed of constitution or articles of association;
  - (c) the prospectus;
  - (d) the key investor information document; and
  - (e) marketing communications.
2. A UCITS which is not a UCITS ETF shall not use the 'UCITS ETF' identifier nor 'ETF' nor 'exchange-traded fund'.
3. A UCITS ETF shall disclose in its prospectus, key investor information document and marketing communications the policy regarding portfolio transparency and where information on the portfolio may be obtained, including where the indicative net asset value, if applicable, is published.
4. A UCITS ETF shall disclose in its prospectus how the indicative net asset value is calculated, if applicable, and the frequency of calculation.

**ii. Actively-managed UCITS ETFs**

1. A UCITS which is an actively-managed UCITS ETF shall disclose in its prospectus, key investor information document and marketing communications that it is an actively managed UCITS ETF.
2. A UCITS which is an actively-managed UCITS ETF shall disclose in its prospectus, key investor information document and marketing communications how it will meet the stated investment policy including, where applicable, its intention to outperform an index.

**iii. Treatment of secondary market investors of UCITS ETFs**

1. In circumstances where units of a UCITS ETF purchased on a secondary market may not be redeemable from the UCITS, the UCITS shall include the following wording in its prospectus and marketing communications:

**‘UCITS ETF’s units purchased on the secondary market cannot usually be sold directly back to UCITS ETF. Investors must buy and sell units on a secondary market with the assistance of an intermediary (e.g. a stockbroker) and may incur fees for doing so. In addition, investors may pay more than the current net asset value when buying units and may receive less than the current net asset value when selling them.’**

2. Where the stock exchange value of the units of the UCITS ETF significantly varies from its net asset value, a UCITS shall ensure that investors who have acquired their units (or, where applicable, any right to acquire a unit that was granted by way of distributing a respective unit) on the secondary market, may sell them directly back to the UCITS ETF. In such situations, information should be communicated to the regulated market indicating that the UCITS ETF is open for direct redemptions at the level of the UCITS ETF.
3. A UCITS ETF shall disclose in its prospectus the process to be followed by investors who purchased their units on the secondary market should the circumstances described in paragraph 2 above arise, as well as the potential costs involved. The UCITS ETF shall ensure that the costs are not excessive

**Section 2:****Money market UCITS**

1. A UCITS which is a money market fund must indicate in its prospectus and in its KIID whether it is a Short-Term Money Market Fund or a Money Market Fund. A UCITS which is a money market fund shall include in its prospectus a risk warning about the difference between the nature of a deposit and the nature of an investment in a money market fund with particular reference to the risk that the principal invested in a money market fund is capable of fluctuation.
2. A UCITS shall provide information to investors on the risk and reward profile of the fund so as to enable investors identify any specific risks linked to the investment strategy of the money market fund.
  - (a) In the case of Money Market Funds this shall take account of the longer WAM and WAL.
  - (b) In the case of all money market funds this shall take account, where relevant, of investment in new asset classes, financial instruments or investment strategies with unusual risk and reward profiles.

**i. Short-Term Money Market Funds**

1. A UCITS which is a Short-Term Money Market Fund shall have a primary investment objective of maintaining the principal of the fund and shall aim to provide a return in line with money market rates.
2. A UCITS which is a Short Term Money Market Fund shall only invest in “high quality” money market instruments, as determined by the UCITS, which comply with the criteria for money market instruments as set out in the Regulations and deposits with credit institutions.
3. A UCITS which is a Short –Term Money Market Fund shall take into account and document its assessment of, at a minimum, the following factors in order to determine “high quality”:
  - (a) the credit quality of the instrument, a money market instrument shall not be considered to be of high quality unless it has been awarded one of the two highest available short-term credit ratings by each recognised credit rating agency that has rated the

- instrument, or, if the instrument is not rated, it is of an equivalent quality as determined by the UCITS). Credit quality must be monitored on an ongoing basis;
- (b) the nature of the asset class represented by the instrument;
  - (c) the operational and counterparty risk, in the case of structured financial instruments;
  - (d) the liquidity profile.
4. A UCITS which is a Short-Term Money Market Fund shall only invest in securities or instruments with a residual maturity until the legal redemption date of less than or equal to 397 days.
  5. A UCITS which is a Short-Term Money Market Fund shall provide daily NAV and price calculations and have daily subscriptions and redemptions of units.
  6. A UCITS which is a Short-Term Money Market Fund shall ensure that the WAM of the portfolio does not exceed 60 days.
  7. A UCITS which is a Short-Term Money Market Fund shall ensure that the WAL of the portfolio does not exceed 120 days. When calculating the WAL for securities, including structured financial instruments, the UCITS shall base the maturity calculation on the residual maturity until the legal redemption of the instruments. However, when a financial instrument embeds a put option, the exercise date of the put option may be used instead of the legal residual maturity only if the following conditions apply at all times:
    - (a) the put option can be freely exercised by the UCITS at its exercise date;
    - (b) the strike price of the put option remains close to the expected value of the instrument at the next exercise date; and
    - (c) the investment strategy of the UCITS implies that there is a high probability that the option will be exercised at the next exercise date.
  8. A UCITS which is a Short-Term Money Market Fund shall take into account the impact of FDI, deposits and efficient portfolio management techniques when calculating the WAM and WAL, .
  9. A UCITS which is a Money Market Fund shall ensure that it is not exposed, directly or indirectly to equities or commodities, including through FDI.
  10. A UCITS which is a Short-Term Money Market Fund shall only invest in FDI when these are in line with the money market investment strategy of the UCITS. A UCITS which is a Short-Term Money Market Fund shall only use FDI which give exposure to a foreign exchange for

hedging purposes; investment in non-base currencies is not permitted unless the exposure is fully hedged.

11. A UCITS which is a Short-Term Money Market Fund shall not invest in other investment funds unless those investment funds are also Short-Term Money Market Funds.
12. A UCITS which is a Short-Term Money Market Fund shall have either a constant or fluctuating NAV.

## ii. Money Market Funds

1. A UCITS which is a Money Market Fund shall have a primary investment objective of maintaining the principal of the fund and aim to provide a return in line with money market rates.
2. A UCITS which is a Money Market Fund shall only invest in “high quality” money market instruments, as determined by the UCITS, which comply with the criteria for money market instruments as set out in the Regulations and deposits with credit institutions.
3. A UCITS which is a Money Market Fund shall take into account and document its assessment of, at a minimum, the following factors in order to determine “high quality”:
  - (a) the credit quality of the instrument. A money market instrument may not be considered to be of high quality unless it has been awarded one of the two highest available short-term credit ratings by each recognised credit rating agency that has rated the instrument, or, if the instrument is not rated, it is of an equivalent quality as determined by the UCITS). Credit quality must be monitored on an ongoing basis;
  - (b) the nature of the asset class represented by the instrument ;
  - (c) the operational and counterparty risk, in the case of structured financial instruments ;
  - (d) the liquidity profile.
4. A UCITS which is a Money Market Fund shall only invest in securities or instruments with a residual maturity until the legal redemption date of less than or equal to 2 years, provided that the time remaining until the next interest reset date is less than or equal to 397 days. Floating rate securities must reset to a money market rate or index.
5. A UCITS which is a Money Market Fund shall provide daily NAV and price calculations and have daily subscriptions and redemptions of units.

6. A UCITS which is a Money Market Fund shall ensure that the WAM of the portfolio does not exceed 6 months.
7. A UCITS which is a Money Market Fund shall ensure that the WAL of the portfolio does not exceed 12 months. When calculating the WAL for securities, including structured financial instruments, the UCITS shall base the maturity calculation on the residual maturity until the legal redemption of the instruments. However, when a financial instrument embeds a put option, the exercise date of the put option may be used instead of the legal residual maturity only if the following conditions apply at all times:
  - (a) the put option can be freely exercised by the UCITS at its exercise date;
  - (b) the strike price of the put option remains close to the expected value of the instrument at the next exercise date; and
  - (c) the investment strategy of the UCITS implies that there is a high probability that the option will be exercised at the next exercise date.
8. A UCITS which is a Money Market Fund shall take into account the impact of FDI, deposits and efficient portfolio management techniques when calculating the WAM and WAL.
9. A UCITS which is a Money Market Fund shall ensure that it is not exposed, directly or indirectly to equities or commodities, including through FDI<sup>10</sup>. A UCITS which is a Money Market Fund shall only invest in FDI which give exposure to foreign exchange for hedging purposes. Investment in non-base currencies is not permitted unless the exposure is fully hedged.
11. A UCITS which is a Money Market Fund shall not invest in other investment funds unless those investment funds are Short-Term Money Market Funds or Money Market Funds.
12. A UCITS which is a Money Market Fund shall have a fluctuating NAV.

**iii. Short-Term Money Market Funds – valuation on the basis of amortised cost**

1. A UCITS that is a Short-Term Money Market Fund shall only follow an amortised cost valuation methodology where the UCITS or, where relevant, its delegate have demonstrable expertise in the operations of money market funds which follow this method of valuation . Such expertise shall be demonstrable where:
  - (a) the Short-Term Money Market Fund has obtained a triple-A rating from an internationally recognised rating agency; or



- (b) the management company or investment manager is engaged in the management, or has been engaged in the management, of a triple-A rated money market fund; or
  - (c) in circumstances other than (a) or (b), where the UCITS or, where relevant, its delegate, has demonstrated to the Central Bank (through separate application) that appropriate expertise exists in the operation of this type of money market fund.
- 2. Where a UCITS is a Short-Term Money Market Fund it shall ensure and be satisfied at all times that the persons responsible for the operation of that UCITS including under any delegation arrangements have and continue to have the necessary expertise.
- 3. Where a UCITS is a Short-Term Money Market Fund it shall carry out a weekly review of discrepancies between the market value and the amortised cost value of the money market instruments. Escalation procedures shall be in place to ensure that material discrepancies between the market value and the amortised cost value of a money market instrument are brought to the attention of personnel charged with the investment management of the UCITS. In this regard:
  - (a) discrepancies in excess of 0.1% between the market value and the amortised cost value of the portfolio shall be brought to the attention of the management company or the investment manager;
  - (b) discrepancies in excess of 0.2% between the market value and the amortised cost value of the portfolio shall be brought to the attention of senior management/directors of the management company or the board of directors and the depositary
- 4. The UCITS shall conduct a daily review where discrepancies occur in excess of 0.3% between the market value and the amortised cost value of the portfolio occur. The UCITS must notify the Central Bank with an indication of the action, if any, which will be taken to reduce such dilution.
- 5. The UCITS shall, in its constitutional document, provide for the escalation procedures set out in paragraph 3 and 4 of this section or, alternatively, provide that a review of the amortised cost valuation vis-à-vis market valuation will be carried out in accordance with the requirements of the Central Bank.

A UCITS which is a Short-Term Money Market Fund shall document (i) the occurrence and (ii) the result of weekly reviews, daily reviews and any engagement of the escalation procedures set out in paragraphs 3 and 4 of this section.

6. The UCITS shall undertake and complete monthly portfolio analysis incorporating stress testing to examine portfolio returns under various market scenarios to determine if the portfolio constituents are appropriate to meet pre-determined levels of credit risk, interest rate risk, market risk and investor redemptions. The results of the monthly portfolio analysis must be available to the Central Bank on request.
7. A UCITS which is a Money Market Fund shall not follow an amortised cost valuation methodology.

**iv. European Central Bank reporting requirements**

1. Each money market fund which meets the definition contained in Article 1a, of Regulation of the European Central Bank (EU) No 883/2011 of 25 August 2011 amending Regulation (EC) No 25/2009 concerning the balance sheet of the monetary financial institutions sector (ECB/2008/32) (ECB/2001/12) and domiciled within a Monetary Union Member State (MUMS) shall submit two sets of data to the Central Bank:<sup>10</sup>
  - (a) Monthly Data - This return shall be prepared on a monthly basis and shall be received by the Statistics Division of the Central Bank within six 6 working days of the end-month to which it relates. The return shall consist of aggregated and summarised balance sheet data,. All components of assets shall be broken into three general issuer categories (Irish, other MUMS and the rest of the world); and
  - (b) Quarterly Data - This return shall be prepared on a quarterly basis end March, June, September and December and shall be received by the Statistics Division of the Central Bank within ten 10 working days of the end-quarter to which it relates. This return requires a more detailed breakdown of the monthly data. The additional information relates primarily to a profile of the issuers and maturity of the assets held by the MMF.

The relevant forms and guidance are available by contacting the Statistics Division of the Central Bank at the address [stats\\_mmfinst@centralbank.ie](mailto:stats_mmfinst@centralbank.ie).

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<sup>10</sup> The ECB's reporting requirements are set out in Council Regulation (EC) No 25/2009 of the ECB of 19 December 2008 (ECB/2008/32).

**Section 3:****Guaranteed UCITS**

1. The UCITS shall not use of the word “guaranteed” in the name of a UCITS unless there is, as per paragraph 2 below a specific legally enforceable guarantee between the UCITS and a legally independent third party of substance, for the benefit of the unitholders. The UCITS must clearly disclose in its prospectus the material provisions of the guarantee.

*Legal Agreement*

2. The guarantee shall, at a minimum, satisfy the following:
  - (a) it must be evidenced in a contract e.g. a deed of guarantee or an irrevocable letter of credit, which is legally enforceable under Irish law<sup>11</sup>;
  - (b) the guarantor must have the legal authority to enter into the contract;
  - (c) the contract must not contain onerous provisions in respect of the UCITS which would permit the guarantor to invalidate the guarantee;
  - (d) the UCITS shall, in advance of using “guaranteed” in its name, provide to the Central Bank a letter from its legal advisers to confirm that the guarantee conforms to these criteria;
  - (e) certain parties to a UCITS, in particular, the investment company itself or the management company to a UCITS may not act as guarantors. The guarantor must be an entity of substance and good standing; and
  - (f) the guarantor must be a credit institution with paid-up share capital in excess of €100million which is either:
    - (i) a credit institution authorised in the European Economic Area (EEA) (European Union Member States, Norway, Iceland, Liechtenstein); or
    - (ii) a credit institution authorised within a signatory state, other than a Member State of the EEA, to the Basle Capital Convergence Agreement of July 1988 (Switzerland, Canada, Japan, United States); or
    - (iii) a credit institution authorised in Jersey, Guernsey, the Isle of Man, Australia or New Zealand.

*Disclosure*

3. The UCITS shall disclose in a prominent position in its prospectus the following material provisions of the guarantee:
  - (a) the name of the guarantor;

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<sup>11</sup> The Central Bank may permit non-Irish law and/or non-exclusive foreign jurisdiction to be applied where this is shown to be best market practice and does not prejudice the interests of unit-holders.

- (b) the obligations of the UCITS under the guarantee, including detail on the cost of the guarantee.
- (c) the nature, timing and terms of the guarantee
- (d) a warning to the effect that eventual performance of the guarantee is dependent on the solvency of the guarantor;
- (e) a clear description of the upside limitation as well as the downside protection, sufficient for an investor to make an informed judgement about its value.
- (f) where relevant, the impact on investors who sell their units prior to the maturity of the guarantee.

**Section 4:****Distributions out of and charging fees and expenses to capital**

1. A UCITS which proposes to make distributions out of capital shall include the risk warning specified in paragraph 1(b) of section 3.xii (*Distributions out of and charging of fees and expenses to capital* ) of Part I in any subscription form or marketing material.
2. A UCITS which proposes to charge fees and expenses, including management fees, to capital shall include the following in bold text in the subscription application form:  
**“Unitholders/Shareholders should note that all or part of fees and expenses, including (if applicable) management fees may be charged to the capital of the UCITS. This will have the effect of lowering the capital value of your investment.”**
3. The UCITS shall ensure that any income statement issued to unitholders or shareholders where fees and expenses have been charged to capital shall include a statement to explain the effect of this accounting policy, including wording to the effect that the investor’s capital amount has been reduced.

**Part III: CROSS-BORDER NOTIFICATION OF UCITS****i. Outward marketing – UCITS authorised under the Regulations**

1. A UCITS shall notify the Central Bank on receipt of approval to market units in a jurisdiction other than a Member State of the European Union.
2. A UCITS shall notify the Central Bank in the event that it ceases to market units in another jurisdiction.

**ii. Inward marketing – UCITS authorised in another Member State**

1. The UCITS shall provide the Central Bank with a written confirmation from the facilities agent that it has agreed to act for the UCITS.
2. The prospectus shall provide the following information for Irish investors:
  - (i) details of the facilities agent and the facilities maintained;
  - (ii) provision of Irish tax laws, if applicable.
3. The UCITS shall comply with the advertising standards set out in paragraph 9 of section 3.i (*General requirements*) of Part I.
4. Where the UCITS ceases marketing to Irish investors, or in the case of an umbrella UCITS ceases marketing some sub-funds, the UCITS shall inform the Central Bank in writing.

2013

## Chapter 2

# Management Company Requirements

**INTRODUCTION:**

The UCITS Rulebook sets out the conditions which the Central Bank typically applies to management companies. However, the definitive conditions imposed by the Central Bank on each such management company will be set out in its letter of authorisation.



**PART I: GENERAL RULES****Section 1:****i. Operating conditions**

1. A management company shall prepare and submit two sets of half-yearly financial accounts of the management company to the Central Bank. The first half-yearly accounts shall cover the first six months of the financial year and shall be submitted within two months of the financial half-year end. The second half-yearly accounts shall cover the second six months of the financial year and shall be submitted within two months of the financial year end.
2. Both sets of half-yearly accounts of the management company must be accompanied by the Minimum Capital Requirement Report, which (together with the Notes on Compilation thereto) forms part of this chapter and is set out in Annex 1 to this chapter. The Minimum Capital Requirement Report must be completed by the management company and must be signed by a director or a senior manager of the management company.
3. A management company shall prepare and submit annual audited accounts of the management company to the Central Bank. The annual accounts shall be submitted within four months of the year end.
4. A management company shall keep the business plan submitted as part of its application for authorisation up-to-date. Where material amendments are made to its business plan, a management company shall submit the amended version of the business plan to the Central Bank. Material shall be taken to mean, although not exclusively: a change to the composition of the board resulting in the re-allocation of responsibilities for a managerial function; and a change of service provider or delegate. The Central Bank may object to the amendments notified to it and amendments objected to by the Central Bank shall not be made.
5. A management company shall update its business plan to take account of any significant new activities, establishing any branches, offices or subsidiaries or any material increase in the activities carried out by the management company which would affect the nature, scale and complexity of its business and the nature and range of services and activities undertaken in the course of that business.

6. Where a commission (including a rebated commission) is received by management company or any of its delegates by virtue of an investment in the units of another investment fund, the management company shall ensure that this commission is paid to the into the property of the investment fund which made the investment.

**ii. Capital requirements**

1. A management company shall be in a position to demonstrate its compliance with the minimum capital requirements throughout the reporting period.

**iii. Organisational requirements**

1. The board of a management company shall be responsible for the following managerial functions:
  - (a) decision making: The board shall have clear responsibility and competence in relation to all material decisions affecting the operation and conduct of the business of the management company;
  - (b) monitoring compliance: The board shall put in place, and ensure adherence to, procedures designed to ensure compliance with all applicable legal and regulatory requirements of the management company itself and all investment funds under management;
  - (c) risk management: The board shall put in place, and ensure adherence to, procedures designed to ensure that all applicable risks pertaining to the management company and to the investment funds under management can be identified, monitored and managed at all times;
  - d) monitoring of investment policy, investment strategies and performance: The board shall put in place, and shall ensure adherence to, procedures to
    - (i) ensure and verify that the investment policies and strategies of each investment fund are complied with; and
    - (ii) ensure availability of up to date information on portfolio performance;
  - (e) financial control: The board shall put in place, and ensure adherence to, procedures to ensure all relevant accounting records of the management company and of the investment funds under management are properly maintained and are readily available, including production of annual and half-yearly financial statements;

- (f) monitoring of capital: The board shall put in place, and ensure adherence to, procedures to ensure compliance with regulatory capital requirements of the management company;
  - (g) internal audit: The board shall put in place, and ensure adherence to, procedures to ensure effective internal audit procedures for the management company and for the investment funds under management;
  - (h) supervision of delegates: The board shall have clear structures in place for the ongoing monitoring of work delegated to third parties;
  - (i) complaints handling: The board shall have arrangements in place to ensure that complaints from unitholders are addressed promptly and effectively;
  - (j) accounting policies and procedures: The board shall put in place, and ensure adherence to, procedures to ensure that proper accounting policies and procedures are employed in respect of the management company and all investment funds under management.
2. Where a management company delegates activities the business plan must identify the board member or other individual ("designated person") who will, on a day-to-day basis, monitor and control each of the individual activities identified in paragraph 1 of this section and must specify how this monitoring and control will be achieved including through the receipt of reports from delegates. The board of the management company shall formally adopt a statement of responsibility in relation to the functions and the procedures which will apply in each case.
3. Where a management company delegates activities, the business plan shall provide for the following requirements in relation to the reports to be received by the designated person and the required action, in the context of each function identified in paragraph 1 of this section:
- (a) Types of reports received: A list of reports which the designated person will receive from parties who have an involvement, by delegation or otherwise, in the performance of the function and the identity of those third parties.
  - (b) Frequency of the reports: The provisions relating to frequency must include procedures for immediate reporting to the designated person of all material issues which arise.
  - (c) Action carried out: Circumstances in which action by a designated person is required and procedures to be followed by the designated person in this event, including escalation to the board.
4. The responsibilities set out in paragraph 40 of Schedule 5 to the UCITS Regulations cannot be delegated and must be carried out by senior management.

**iv. Code of conduct in relation to collective portfolio management**

1. A management company shall have in place, and ensure adherence to, procedures to prevent late trading.
2. A management company shall have in place, and ensure adherence to, procedures to take into account the risks associated with market timing.
3. A management company shall put in place, and ensure adherence to adequate written procedures for the effective consideration and proper handling of complaints.
4. A management company shall ensure that the complainant is notified of their right to refer their complaint to the Financial Services Ombudsman

**v. Directors<sup>12</sup>**

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<sup>12</sup> Persons considering taking appointments as directors of UCITS management companies and existing directors should be aware of their duty to act *bona fide* at all times in the best interests of the company.

The Central Bank expects that where a management company manages investment funds which are in distress that directors do not resign if this is not in the best interests of the management company or, more importantly, if this is not in the interests of the unitholders of those investment funds.

In difficult or stressed situations, the Central Bank will seek to work with the directors of the management company to resolve the issues facing the management company and the investment funds under management. For that reason, the Central Bank will want to see that directors continue in their positions, to work for the company and with the Central Bank, to seek the best resolution. The Central Bank would remind directors, importantly, that resignation based on a mere entitlement to resign would not in the opinion of the Central Bank satisfy the fulfilment by the director of his or her duty to the management company and the unitholders of the investment funds under management, where resignation goes against the ability of the management company and/or the Central Bank to resolve prevailing issues. Where a director is unable to continue in his or her role for substantial personal or, other, unavoidable reasons which make their continuation of the role impractical, the Central Bank will, of course, not seek the continued service of that director.

The Central Bank will expect, in addition to the separate requirement on the board to complete procedures around a resignation, that the resigning director will set out his/her reasons for resigning, and the intention to resign, to the Central Bank in order to permit the director, the board and the Central Bank to prepare a solution.

The fulfilment, or otherwise, by a person of his or her duties in a previous role, and the overall performance by a person in a previous role, are matters relevant to the fitness and probity of that person, and hence will be taken into account by the Central Bank when assessments are being made in the future of a person's fitness for a future role or of that person's probity.

It is also important to note that the Central Bank shares information concerning such matters with other regulators in accordance with its legal mandate and powers and its arrangements for cooperation it has with other regulators.

1. Departures from the office of director and the reason for the departure must be notified to the Central Bank immediately by filing the relevant Central Bank form which is available on the Central Bank's website. In all cases where a director wishes to resign and prior to completing the relevant Central Bank form, the board or its Chair must form a view as to the impact of the resignation on the management company having regard to the current and prospective financial state of the management company and the investment funds under management. In the event that the board or, in the absence of a board meeting, the Chair forms the view that the situation is one which could create such concern on the part of the Central Bank, it must state this on the relevant Central Bank form. The board or its Chair may consult with the Central Bank in order to help it form a view on that matter.
2. The board shall not have directors in common with the board of the depositary of the investment funds under management.
3. A management company shall have a minimum of two directors that are Irish residents.
4. A management company shall obtain from proposed appointees to the board of directors details of all concurrent directorships held by those persons.
5. The board must appoint a Chairman on a permanent basis.

**vi. Recordkeeping requirements**

1. A management company shall retain, in a readily accessible form, for a period of at least six years, a full record of each transaction entered into by it (whether on its own behalf or on behalf of investment funds under management) and all records required to demonstrate compliance with the provisions of the UCITS Regulations, including conditions imposed by the Central Bank and any records required by the Central Bank under Regulation 126. Original documentation shall be retained where appropriate. Any record shall be produced for inspection to the Central Bank within a reasonable period of time and, where it is not retained in legible form, shall be capable of being reproduced in that form.
2. In the event of the termination of its authorisation by the Central Bank, a management company shall retain the records referred to in paragraph 1 above for the outstanding term of the six year period.

3. A management company shall put in place, and ensure adherence to, adequate procedures for the maintenance, security, privacy and preservation of records and working papers of the management company or of the investment funds under management so that the records and working papers are reasonably safeguarded against loss, unauthorised access, alteration or destruction.

**vii. Resources**

1. A management company shall at all times have adequate management resources to conduct its activities effectively.

**viii. Relationship with the Central Bank**

1. In addition to the provisions of the Regulations, a management company shall consult with the Central Bank prior to -
  - (a) engaging in any significant new activities; or
  - (b) establishing new branches, offices or subsidiaries.
2. A management company shall notify the Central Bank immediately where it becomes aware of:
  - (a) any breaches of the Regulations or of the Central Bank's requirements which are applicable to the UCITS or the management company;
  - (b) breaches of other Irish legislation which may be of prudential concern to the Central Bank or which may impact on the reputation or good standing of the UCITS or the management company;
  - (c) the commencement of any legal proceedings by or against the UCITS or the management company;
  - (d) any situations or events which impact, or potentially impact, on the UCITS or the management company to a significant extent;
  - (e) the imposition on the UCITS or the management company of fines by another supervisory authority; or
  - (f) a visit to the UCITS or the management company by another supervisory authority.
3. A management company may only change its name with the prior approval of the Central Bank. In addition, a management company shall inform, the Central Bank in writing

promptly of any change to the management company's address, telephone number or email address.

4. A management company shall state, on its headed paper, that it is regulated by the Central Bank. A management company shall not include, in any material or documents issued by it or on its behalf or by its delegate, any references to the role of the Central Bank in relation to its supervision of the management company's activities that are misleading.
5. Where a management company provides management services to an investment funds not authorised by the Central Bank, it must be satisfied that the prospectus issued by the investment fund does not imply, in any way, that the investment fund is regulated by the Central Bank.

Where a management company provides fund administration services to such investment funds, it shall submit a quarterly return containing the following aggregate information for all such investment funds under management, within each base currency category:

- domicile of the investment funds
- number of investment funds
- number of unitholders
- total net asset value.

**ix. Financial control, management and company secretarial information**

1. A management company shall ensure that its records contain as a minimum the following:

*Financial*

- (a) details of all money received and expended by the management company whether on its own behalf or on behalf of the investment funds under management, together with details of how such receipts and payments arose;
- (b) a record of all income and expenditure of the management company explaining its nature;
- (c) a record of all assets and liabilities of the management company, long and short positions and off balance sheet items, including any commitments or contingent liabilities;
- (d) details of all purchases and sales of investment instruments by the management company distinguishing those which are made by the management company on its own

account and those which are made on behalf of the investment funds under management;

- (e) any working papers necessary to show the preparation of any return submitted to the Central Bank;

*Management information*

- (f) management information records maintained in a manner such that they disclose, or are capable of disclosing, in a prompt and appropriate manner, the financial and business information which will enable the management company to:
- identify, quantify, control and manage the management company's risk exposures;
  - make timely and informed decisions;
  - monitor the performance of all aspects of the management company's business on an up-to-date basis; and
  - monitor the quality of the management company's assets.

*Company Secretarial*

- (g) the share register;
- (h) the register of directors' and secretary's interests;
- (i) signed copies of the minutes of meetings of the board of directors;
- (j) other statutory documents required under the Companies Acts.

2. A management company shall notify the Central Bank in advance of any proposed change of auditor and the reasons for the proposed change.

**x. Conditions relating to investment companies which do not designate a management company (internally-managed investment companies)**

1. An internally-managed investment company must comply with the provisions of:
- paragraphs 4 and 5 of section i (*Operating conditions*) of this chapter;
  - paragraphs 1-3 of section iii (*Organisation requirements*) of this chapter;
  - paragraphs 1-4 of section iv (*Code of conduct in relation to collective portfolio management*) of this chapter;
  - paragraph 5 of section v (*Directors*) of this chapter;
  - paragraphs 1-3 of section vi (*Recordkeeping requirements*) of this chapter;



- paragraphs 2 and 3 of section viii (*Relationship with the Central Bank*) of this chapter;
- paragraphs 1 and 2 of section ix (*Financial control, management and company secretarial information*) of this chapter;
- Schedule 4 of the UCITS Regulations; and
- paragraphs 30-32, 34-40 (excluding 40(c)), 41-43, 54-61 and 64 of Schedule 5 to the UCITS Regulations.

**xi. Management company passport**

*Management company passport notifications*

1. Where a management company proposes to avail of the management company passport, it shall prepare a programme of operations of the management company. The programme of operations shall set out the proposed activities to be provided by way of passporting, a description of the risk management process and a description of the procedures and arrangements for complaints handling and making information available to investors. In the case of branches, details of the address of the branch and the names of those responsible for the branch shall also be included.

*Assessment of impact on nature, scale and complexity – general requirements*

2. Where a management company proposes to avail of the management company passport, it shall revisit its assessment of the nature, scale and complexity of its business, and the nature and range of services and activities undertaken in the course of that business to determine the impact which utilising the management company passport will have on the nature, scale and complexity of its business, particularly its organisational structure and resources.
3. When making the assessment required in paragraph 2 above, a management company must consider at least the impact which the management company passport shall have on (i) its corporate governance, (ii) its administration function and (iii) its interaction with the non-Irish trustee/depositary. In particular, the management company shall specify in its programme of operations:
  - how it will address any increased strain on its corporate governance due to increased workload and responsibilities on its board; and
  - the steps being taken by it to ensure that the delegation of its administration activities to an entity not authorised or supervised by the Central Bank will not interfere with the effective supervision of the management company by the Central Bank.

*Assessment of impact on nature, scale and complexity – Corporate governance issues*

4. A management company managing non-Irish UCITS shall have in place, and utilise, resources to develop awareness of the manner in which the competent authority in the UCITS home Member State operates, both in terms of the UCITS authorisation process and ongoing supervision. In the programme of operations which accompanies its management company passport application, a management company shall identify who among its staff or designated persons has expertise concerning the regulatory requirements applicable in the UCITS home Member State. The programme of operations shall specifically address how the management company will monitor compliance with these requirements on a day-to-day basis.
5. The programme of operations shall detail the resources being put in place by the management company to address the need to have representatives available to travel to the UCITS home Member State to attend and report at board meetings of the UCITS where the UCITS is an investment company. .
6. A management company shall ensure that it has sufficient resources in place to supervise the services provided to all UCITS under management.
7. The programme of operations shall address the impact which managing non-Irish UCITS is likely to have on the management company's minimum capital requirement and how this impact will be addressed.

*Assessment of impact on nature, scale and complexity – Administrator issues*

8. To ensure that the Central Bank has similar oversight where a non-Irish administrator is engaged, the management company shall ensure that the delegation agreement provides the Central Bank with effective access to data related to the delegated functions and, to the business premises of the non-Irish administrator unless there is a compelling reason not to do so (e.g. if the granting of such access was prohibited by the laws of the jurisdiction in which the non-Irish administrator was established). The Central Bank must be able to exercise those rights of access. The management company shall also ensure that the delegation agreement provides that the non-Irish administrator will cooperate with the Central Bank in connection with the delegated functions. The management company's programme of operations shall specify any additional record keeping procedures which it is establishing to address the fact that the records of the administrator are not located in the State.
9. The programme of operations shall address how the management company will ensure that persons with the requisite detailed knowledge of the day-to-day operation of the UCITS will be available to the Central Bank.

10. The management company must undertake annual due diligence assessments of any non-Irish administrators it engages to ensure a high standard of oversight by the management company over its non-Irish administrator(s)..

*Assessment of impact on nature, scale and complexity – Trustee issues*

11. The management company shall ensure that the agreement between a management company and a non-Irish trustee does not impair the ability of the Central Bank to gain access to relevant documents and information from the management company, or otherwise, evidencing any and all matters which are, in the view of the Central Bank at its sole discretion from time to time, potentially relevant to the arrangements and organisational decisions described in Regulation 29(1). In its programme of operations, a management company shall specify the steps which it will take to ensure compliance with this requirement.

## ANNEX 1

**MINIMUM CAPITAL REQUIREMENT REPORT NOTES ON COMPILATION  
(UCITS MANAGEMENT COMPANY)****1. Initial Capital Requirement**

1.1 The **Initial Capital Requirement** is specified in Regulation 17(1)(b) of the UCITS Regulations.

**2. Additional Amount**

2.1 The **Additional Amount** requirement is specified in Regulation 17(4) of the UCITS Regulations.

2.2 A UCITS management company need not provide up to 50% of the Additional Amount if:

- (a) it benefits from a guarantee of the same amount given by a credit institution or insurance undertaking; and
- (b) the form of guarantee is approved by the Central Bank.

2.3 The total of the Initial Capital Requirement and the Additional Amount required to be held by a UCITS management company is not required to exceed the amount set out in Regulation 17(5) of the UCITS Regulations.

2.4 A UCITS management company is required to provide the total of its assets under management at each reporting date to facilitate assessment of whether it is required to provide the Additional Amount.

**3. Expenditure Requirement**

3.1 The **Expenditure Requirement** is calculated as one quarter of a UCITS management company's total expenditure taken from the most recent annual accounts.<sup>13</sup> However, the Central Bank reserves the right to increase this amount should it be deemed not to reasonably reflect the current position of the UCITS management company.

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<sup>13</sup> The Minimum Capital Requirement Report submitted with the audited annual accounts must take the total expenditure figure from those accounts. For example, the Minimum Capital Requirement Report submitted with the audited annual accounts for 2010 will take the total expenditure figure from those 2010 audited annual accounts.

- 3.2 Total expenditure includes all expenditure incurred by a UCITS management company. The following may be deducted from the expenditure figure:
- (a) Depreciation;
  - (b) Profit shares, bonuses etc.;
  - (c) Net losses arising in the translation of foreign currency balances;
  - (d) Shared commissions paid (other than to officers and staff of the UCITS management company) that have been previously agreed with the Central Bank; and
  - (e) Exceptional and extraordinary non-recurring expense items which have been previously agreed with the Central Bank.
- 3.3 All deductions from the total expenditure figure should be either clearly identified in the most recent audited annual accounts or supported with a letter from the auditors confirming the figures.

#### 4. Minimum Capital Requirement

- 4.1 A UCITS management company's **Minimum Capital Requirement** is the higher of:
- the Initial Capital Requirement plus the Additional Amount (if required); or
  - the Expenditure Requirement.

#### 5. Financial Resources

- 5.1 A UCITS management company is required to have **Financial Resources** at least equal to its Minimum Capital Requirement.
- 5.2 Financial Resources for a UCITS management company will be based on the half yearly accounts or the annual audited accounts, whichever is most recent.
- 5.3 Financial Resources are calculated as the aggregate of:
- Fully paid up equity capital;
  - Perpetual non-cumulative preference shares;
  - **Eligible Capital Contribution** (see 5.4 below);
  - Qualifying **Subordinated Loan Capital** (see 5.4 below);
  - Share premium account;
  - Disclosed revenue and capital reserves (excluding revaluation reserves);
  - Interim net profits (may only be included if they have been audited); and
  - Other reserves.

Less

- Current year losses not included in disclosed revenue and capital reserves above.

#### 5.4 Conditions for Eligible Capital Contributions and Subordinated Loan Capital

The following conditions apply to Eligible Capital Contributions and to Subordinated Loan Capital (both perpetual and redeemable):

- The prior approval of the Central Bank must be obtained in respect of the inclusion of the Eligible Capital Contribution or Subordinated Loan Capital in the Financial Resources for capital adequacy purposes. Subordinated Loan Capital may not be incorporated in the calculation of the Initial Capital Requirement.
- The Central Bank must be provided with documentary evidence<sup>14</sup> that the Eligible Capital Contribution or Subordinated Loan Capital has been received by the UCITS management company.
- The UCITS management company must use the Capital Contribution Agreement, Perpetual Loan Subordination Agreement or the Loan Subordination Agreement (for redeemable Subordinated Loan Capital), without amendment. These documents are available on the Central Bank's website.

The following additional conditions apply to the use of redeemable Subordinated Loan Capital:

- The extent to which such loans rank as Financial Resources will be reduced on a straight-line basis over the last five years before repayment date.
- The qualifying amount of redeemable subordinated debt is calculated as follows:

Remaining term to maturity	_____
Gross Amount	_____
Less Amortisations	_____
= Qualifying Amount	_____

## 6. Eligible Assets

6.1 A UCITS management company is required to hold the higher of the Expenditure Requirement or the Initial Capital Requirement in the form of Eligible Assets. **Eligible Assets**

<sup>14</sup> Documentary evidence should include a copy of the original bank statement showing receipt of the relevant funds by the UCITS management company. The Central Bank may request independent confirmation of the receipt of additional capital, for example, auditor confirmation

must be easily accessible and free from any liens or charges and maintained outside the UCITS management company's group.

6.2 The Central Bank requires the amount of Eligible Assets, which ensures that the minimum capital requirement is adequately provided for, to be held in an account that is separate to the account(s) used by a UCITS management company for the day-to-day running of its business.

6.3 The Central Bank must be provided with a recent documentary independent statement evidencing the location of total Eligible Assets.

6.4 Eligible Assets are calculated as follows:

Total Assets (Non-current Assets plus Current Assets)

**Less the following ineligible assets**

- Fixed assets
- Intangible assets
- Cash or cash equivalents held with group companies
- Debtors
- Bad debt provisions
- Prepayments
- Intercompany amounts (gross)
- Loans
- investment fund investments which are not daily dealing (see 6.5 below)
- Any other assets which are not easily accessible not included above.

6.5 When a UCITS management company invests all or part of its capital in one or more investment funds, the Central Bank reviews the relationships linking the investment funds and the UCITS management company. It is the Central Bank's view that it is likely that where the UCITS management company invests in investment funds promoted by other group companies or to which other group companies provide services, its access to those investment funds is likely to be restricted, in the event that the related firm gets into difficulty. Accordingly, investments in such investment funds will not rank as Eligible Assets for the purposes of satisfying the UCITS management company's Minimum Capital Requirement.

7. A UCITS management company must be in a position to demonstrate its ongoing compliance with the capital adequacy requirements outlined in this document. Where a UCITS management company's financial position changes materially at any time between reporting dates, which would impact on its compliance with its regulatory capital requirements, it must notify the Central Bank immediately and take any necessary steps to rectify its position.

**MINIMUM CAPITAL REQUIREMENT REPORT<sup>15</sup>**  
**UCITS MANAGEMENT COMPANY**

NAME OF FIRM: \_\_\_\_\_

Period under review: \_\_\_\_\_ Currency: \_\_\_\_\_

<b>1. INITIAL CAPITAL REQUIREMENT PLUS ADDITIONAL AMOUNT</b>		
<b>UCITS MANAGEMENT COMPANY</b>		
Initial Capital Requirement	€125,000 (A)	
Assets under Management at Reporting Date	_____	
Excess over €250,000,000 (if applicable)	_____	
<b>Additional Amount</b> (if applicable) [0.02% of Excess over €250m]	<div style="border: 1px solid black; width: 100px; height: 20px; display: inline-block;"></div>	<b>(B)</b>
Initial Capital Requirement (A) plus Additional Amount (B) (if applicable)		<div style="border: 1px solid black; width: 100px; height: 20px; display: inline-block;"></div>
(The amount to be included at (C) is not required to exceed €10,000,000.)		

<b>2. EXPENDITURE REQUIREMENT</b>		
Total Expenditure (taken from P&L Account)	_____	
<b>LESS:</b>		
Depreciation	_____	
Profit Shares, Bonuses, etc.	_____	
Net losses on translation of foreign currency balances	_____	
Shared Commissions paid (Note 4.2(d))	_____	
Exceptional and Extraordinary Items (Note 4.2e))	_____	
Any other Non-recurring Expense (Note 4.2(e))	_____	
<b>Net Qualifying Expenditure</b>	<div style="border: 1px solid black; width: 100px; height: 20px; display: inline-block;"></div>	
<b>EXPENDITURE REQUIREMENT</b> [One quarter of Net Qualifying Expenditure]		<div style="border: 1px solid black; width: 100px; height: 20px; display: inline-block;"></div>

<sup>15</sup> This Minimum Capital Requirement Report and the Notes on Compilation hereto form part of the UCITS Notices.



**3. MINIMUM CAPITAL REQUIREMENT**

<b>UCITS MANAGEMENT COMPANY</b>	
Higher of <b>initial capital requirement</b> plus <b>Additional Amount</b> (if applicable) (C) and <b>Expenditure Requirement (D)</b>	
	_____
<b>MINIMUM CAPITAL REQUIREMENT</b> – [Higher of (C) and (D)]	<input style="width: 150px; height: 20px;" type="text"/> (E)

**4. FINANCIAL RESOURCES**

Equity Capital fully paid up	_____
Perpetual Non-cumulative Preference Shares	_____
Eligible Capital Contributions	_____
Qualifying Subordinated Loan Capital (See ‘Note on Qualifying Subordinated Loan Capital’ below)	_____
Share Premium Account	_____
Disclosed Revenue and Capital Reserves (excluding Revaluation Reserves) (from most recent audited figures)	_____
Audited Interim Net Profits (Note 6.3)	_____
Other Reserves	_____
<b>Total</b>	<input style="width: 150px; height: 20px;" type="text"/>
<i><b>LESS: Current Year Losses not included in Disclosed Reserves and Capital Reserves above</b></i>	_____
<b>FINANCIAL RESOURCES</b>	<input style="width: 150px; height: 40px;" type="text"/> (F)

**5. ELIGIBLE ASSETS (Must be held outside the Group)**

Total Non-current Assets (taken from Balance Sheet)	_____
Current Assets (taken from Balance Sheet)	_____
<b>TOTAL ASSETS</b>	<input style="width: 150px; height: 20px;" type="text"/>
<b>Less: Ineligible Assets</b>	
Fixed Assets	_____
Intangible Assets	_____
Cash held with group companies	_____
Debtors	_____
Bad Debt Provisions	_____
Prepayments	_____
Intercompany Amounts (gross)	_____
Loans	_____
Collective investment schemes which are not daily dealing (Note 7.4)	_____

Any other assets which are not easily accessible not included above	_____	_____	
<b>Total Ineligible Assets</b>			<b>(G)</b>
<b>ELIGIBLE ASSETS</b>			

<b>Additional Amount covered by guarantee previously agreed with Central Bank(H)</b> (if applicable)	_____
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<b>Are Financial Resources (F) plus Additional Amount covered by guarantee (H)</b> <b>(if applicable) at least equal to Minimum Capital Requirement (E)?</b>		_____ <b>YES / NO</b>
Are Eligible Assets (G) at least equal to the higher (D) or (A)?		_____ <b>YES / NO</b>
Where are Eligible Assets held? (Attach recent independent statement evidencing location)		
Was the firm in compliance with the capital adequacy requirements throughout the period under review? (Note 8)		_____ <b>YES / NO</b>

<b><u>Note on Qualifying Subordinated Loan Capital</u></b> The qualifying amount of <b>redeemable subordinated debt</b> is calculated as follows:	
Remaining term to maturity	_____
Gross Amount	_____
Less Amortisations	_____
= Qualifying Amount	_____

<b>Signature, Position and Date</b>	<b>(of Director/Senior Manager)</b>
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2013

## Chapter 3

# UCITS Depositary Requirements

**INTRODUCTION:**

The UCITS Rulebook sets out the conditions which the Central Bank typically applies to depositaries of UCITS. However, the definitive conditions imposed by the Central Bank on each such depositary will be set out in its letter of authorisation

## UCITS DEPOSITARIES

### i. Eligibility criteria

1. The depositary shall:
  - (a) organise and control its internal affairs in a reasonable manner with proper records and adequate arrangements for ensuring that employees are suitable, adequately trained and properly supervised; and
  - (b) have defined procedures in place to ensure compliance with regulations.

### ii. Conditions applicable to depositaries which fall within Regulation 35(2)(c) of the UCITS Regulations

1. A depositary which falls within Regulation 35(2)(c) of the UCITS Regulations shall comply with the following:
  - (a) The depositary shall have at all times:
    - initial capital of at least €125,000 (“Initial Capital Requirement”); or
    - one quarter of its total expenditure taken from the most recent annual accounts (“Expenditure Requirement”)whichever is higher (“Minimum Capital Requirement”).

The depositary shall:

- calculate its Minimum Capital Requirement in accordance with Annex I;
- have financial resources, calculated in accordance with paragraph 4 of the Minimum Capital Requirement Report, Notes on Compilation (UCITS Depositary), at least equal to its Minimum Capital Requirement (“Financial Resources”);
- hold its Minimum Capital Requirement in the form of Eligible Assets, as specified in paragraph 5 of the Minimum Capital Requirement Report, Notes on Compilation (UCITS Depositary).
- be in a position to demonstrate its compliance with the Minimum Capital Requirement throughout the reporting period..

- (b) The depositary shall notify the Central Bank immediately where a person performing a pre-approval controlled function no longer performs that function..
- (c) The depositary shall have at least two directors that are Irish resident.
- (d) The depositary shall obtain the approval of the Central Bank for any proposed change in ownership or in significant shareholdings. A significant shareholding for the purpose of this condition is defined as a shareholding of 10 % or more in the company.
- (e) The depositary shall prepare and submit two sets of half-yearly financial accounts of the depositary to the Central Bank. The first half-yearly accounts shall cover the first six months of the financial year and shall be submitted within two months of the financial half-year end. The second half-yearly accounts shall cover the second six months of the financial year and shall be submitted within two months of the financial year end.

Both sets of half-yearly accounts of the depositary must be accompanied by the Minimum Capital Requirement Report, which (together with the Notes on Compilation thereto) forms part of this chapter and is set out in Annex 1 to this chapter. The Minimum Capital Requirement Report must be completed by the depositary and must be signed by a director or a senior manager of the depositary.

A depositary shall prepare and submit annual audited accounts of the depositary to the Central Bank. The annual accounts shall be submitted within four months of the financial year end. Annual audited accounts of the corporate shareholder(s) of the company must also be submitted.

### **iii. Depositary tasks**

1. The depositary shall not delegate the duties provided for in paragraph 3 below and in Regulation 34 and Regulation 47 of the UCITS Regulations to a third party.
2. In relation to any breach of the UCITS Regulations by the UCITS or the depositary, the requirements imposed on the UCITS or the depositary by the Central Bank or provisions of the UCITS prospectus, the depositary shall:
  - (a) have written procedures to handle breaches; and
  - (b) maintain a log of all breaches and steps taken to resolve those breaches.

3. The depository shall notify the Central Bank promptly of any material breach of the UCITS Regulations by the UCITS or the depository, the requirements imposed on the UCITS or the depository by the Central Bank or provisions of the UCITS prospectus.
4. The depository shall notify the Central Bank promptly of any non-material breach of the UCITS Regulations by the UCITS or the depository, the requirements imposed on the UCITS or the depository by the Central Bank or provisions of the UCITS prospectus if that breach is not resolved within 4 weeks.
5. Where a UCITS proposes to invest in other investment funds, the depository shall, prior to the investment being made, (i) confirm in writing to the Central Bank that the UCITS has adequate procedures in place to ensure that all of the underlying investment funds meet the requirements of the UCITS Regulations and the Central Bank and (ii) confirm that the depository will regularly review the decisions of the management company to ensure that the adopted procedures are being adhered to.
6. The depository shall:
  - (a) ensure that there is legal separation of non-cash assets held under custody and that such assets are held on a fiduciary basis. In jurisdictions where fiduciary duties are not recognised the depository shall ensure that the legal entitlement of the UCITS to the assets is assured;
  - (b) maintain appropriate internal control systems to ensure that records identify the nature and amount of all assets under custody, the ownership of each asset and where documents of title to that asset are located.

Where the depository utilises the services of a sub-custodian the depository shall ensure that these standards are maintained by the sub-custodian.

7. Where the depository utilises the services of a global sub-custodian the depository shall ensure that:
  - (a) the non-cash assets are held on a fiduciary basis by the global sub-custodian's network of custodial agents. This shall be confirmed by those agents on a regular basis. In jurisdictions where fiduciary duties are not recognised the depository shall ensure that the legal entitlement of the UCITS to the assets is assured;

- (b) the depositary maintains records of the location and amounts of all securities held by each of the custodial agents; and
- (c) the relationship between the depositary and the global sub-custodian is set out in a formal contract between the two entities.

**iv. Operating conditions**

1. The depositary shall not have directors in common with the board of directors of the management company/administration company or the investment company
2. The depositary cannot register securities in the name of the UCITS unless:
  - this is standard market practice within the market in question;
  - securities so registered cannot be assigned, transferred, exchanged or delivered without the prior authority of the depositary or the depositary's agent; and
  - a clause to this effect is contained in the depositary agreement.
3. The termination of the appointment of a depositary shall only be permitted:
  - (a) on revocation of the authorisation of a UCITS or
  - (b) upon the appointment of a replacement depositary.

*Depositary agreement*

4. The depositary shall ensure that the depositary agreement provides that the depositary shall exercise care and diligence in choosing and appointing a third party as a safe-keeping agent so as to ensure that the third party has and maintains the expertise, competence and standing appropriate to discharge the responsibilities concerned. The depositary shall maintain an appropriate level of supervision over the safe-keeping agent and make appropriate inquiries from time to time to confirm that the obligations of the agent continue to be competently discharged.
5. The depositary shall ensure that the depositary agreement does not include a clause which provides that liability is limited only to those duties described in the depositary agreement.

*Permitted markets*

6. The depositary shall review the list of stock exchanges and markets in the UCITS prospectus to ascertain if it can provide, at the date of the prospectus, for the safe-keeping of the assets of a UCITS, which may be traded on these exchanges or markets, by or under the UCITS Regulations. If the depositary cannot provide custody in accordance with this requirement it



must consult with the UCITS to ensure that the relevant exchanges or markets are removed from the list.

7. A depository must ensure that a UCITS keeps the list of permitted stock exchanges and markets in the prospectus under review to ensure that the markets meet with the regulatory criteria on an ongoing basis.

#### *Valuation of UCITS*

8. Where a UCITS values securities listed or traded on a regulated market taking into account the level of premium or discount at the date of the valuation, the depository shall ensure that valuing securities on this basis is justifiable in the context of establishing the probable realisation value of the securities.
9. The depository shall ensure that the valuation methodologies provided for in the constitutional document of the UCITS are adhered to and the operations of the UCITS are properly controlled.
10. The depository shall carry out (i) a detailed initial review and (ii) subsequent periodic reviews of the overall valuation procedures.

#### *Dealing in specie*

11. Subscriptions of units of UCITS on an in specie basis may only be accepted if the depository is satisfied that the terms of any exchange will not be such as are likely to result in any material prejudice to the existing unitholders of the UCITS or the depository is satisfied that there is unlikely to be any material prejudice to the existing unitholders of the UCITS.
12. Redemptions of units of UCITS on an in specie basis may only be accepted if the depository approves the asset allocation.

#### **v. Relationship with the Central Bank**

1. Where a depository provides services to an investment fund not authorised by the Central Bank, it must be satisfied that the prospectus issued by the investment fund does not imply, in any way, that the investment fund is regulated by the Central Bank.

Where the depository provides depository services to investment funds not authorised by the Central Bank, it shall submit a quarterly return containing the following aggregate

information for all investment funds not authorised by the Central Bank to which services are provided, within each base currency category:

- domicile of the investment funds;
- number of investment funds;
- number of unitholders; and
- total net asset value.

Information is not required in respect of those investment funds, which are included in the return prepared by an authorised firm in accordance with paragraph 5 of section viii (*Relationship with the Central Bank*) of chapter 2 – Management Company Requirements.

## ANNEX 1

**MINIMUM CAPITAL REQUIREMENT REPORT  
NOTES ON COMPILATION  
(UCITS DEPOSITARY)**

For the purposes of these Notes, the depository is referred to as a “Firm”.

**1. Initial Capital Requirement**

1.1 The **Initial Capital Requirement** specified in paragraph 1 of section ii – Conditions applicable to depositaries which fall within Regulation 35(2)(c) is €125,000.

**2. Expenditure Requirement**

2.1 The **Expenditure Requirement** is calculated as one quarter of a Firm’s total expenditure taken from the most recent annual accounts.<sup>16</sup>

2.2 Total expenditure includes all expenditure incurred by a Firm. The following may be deducted from the expenditure figure:

- (a) Depreciation;
- (b) Profit shares, bonuses etc.;
- (c) Net losses arising in the translation of foreign currency balances;
- (d) Shared commissions paid (other than to officers and staff of the Firm) that have been previously agreed with the Central Bank; and
- (e) Exceptional and extraordinary non-recurring expense items which have been previously agreed with the Central Bank.

2.3 All deductions from the total expenditure figure should be either clearly identified in the most recent annual audited accounts or supported with a letter from the auditors confirming the figures.

**3. Minimum Capital Requirement**

3.1 A Firm’s **Minimum Capital Requirement** is the higher of:

- the Initial Capital Requirement; or
- the Expenditure Requirement.

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<sup>16</sup> The Minimum Capital Requirement Report submitted with the audited annual accounts must take the total expenditure figure from those accounts. For example, the Minimum Capital Requirement Report submitted with the audited annual accounts for 2010 will take the total expenditure figure from those 2010 audited annual accounts.

#### 4. **Financial Resources**

- 4.1 A Firm is required to have **Financial Resources** at least equal to its Minimum Capital Requirement.
- 4.2 Financial Resources for a Firm will be based on the half yearly accounts or the annual audited accounts, whichever is most recent.
- 4.3 Financial Resources are calculated as the aggregate of:
- Fully paid up equity capital;
  - Perpetual non-cumulative preference shares;
  - **Eligible Capital Contribution** (see 4.4 below);
  - Qualifying **Subordinated Loan Capital** (see 4.4 below);
  - Share premium account;
  - Disclosed revenue and capital reserves (excluding revaluation reserves);
  - Interim net profits (may only be included if they have been audited); and
  - Other reserves.

Less

- Current year losses not included in disclosed revenue and capital reserves above.

#### 4.4 **Conditions for Eligible Capital Contributions and Subordinated Loan Capital**

The following conditions apply to Eligible Capital Contributions and to Subordinated Loan Capital (both perpetual and redeemable):

- (a) the prior approval of the Central Bank must be obtained in respect of the inclusion of the Eligible Capital Contribution or Subordinated Loan Capital in the Financial Resources for capital adequacy purposes. Subordinated Loan Capital may not be incorporated in the calculation of the Initial Capital Requirement;
- (b) the Central Bank must be provided with documentary evidence<sup>17</sup> that the Eligible Capital Contribution or Subordinated Loan Capital has been received by the Firm; and
- (c) the Firm must use the Capital Contribution Agreement, Perpetual Loan Subordination Agreement or the Loan Subordination Agreement (for redeemable Subordinated Loan Capital), without amendment. These documents are available on the Central Bank's website.

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<sup>17</sup> Documentary evidence should include a copy of the original bank statement showing receipt of the relevant funds by the Firm. The Central Bank may request independent confirmation of the receipt of additional capital, for example, auditor confirmation.

The following additional conditions apply to the use of redeemable Subordinated Loan Capital:

- (a) The extent to which such loans rank as Financial Resources will be reduced on a straight-line basis over the last five years before repayment date.
- (b) The qualifying amount of redeemable subordinated debt is calculated as follows:

Remaining term to maturity	_____
Gross Amount	_____
Less Amortisations	_____
= Qualifying Amount	_____

## 5 Eligible Assets

5.1 A Firm is required to hold the higher of the Expenditure Requirement or the Initial Capital Requirement in the form of **Eligible Assets**. Eligible Assets must be easily accessible and free from any liens or charges and maintained outside the Firm's group.

5.2 The Central Bank requires the amount of Eligible Assets, which ensures that the minimum capital requirement is adequately provided for, to be held in an account that is separate to the account(s) used by a Firm for the day-to-day running of its business.

5.3 The Central Bank must be provided with a recent documentary independent statement evidencing the location of total Eligible Assets.

5.4 Eligible Assets are calculated as follows:

Total Assets (Non-current Assets plus Current Assets)

**Less the following ineligible assets**

- Fixed assets
- Intangible assets
- Cash or cash equivalents held with group companies
- Debtors
- Bad debt provisions
- Prepayments
- Intercompany amounts (gross)
- Loans
- Investment funds which are not daily dealing (see 5.5 below)
- Any other assets which are not easily accessible not included above.

- 5.5 When a Firm invests all or part of its capital in one or more investment fund, the Central Bank reviews the relationships linking the investment fund and the Firm. It is the Central Bank's view that it is likely that where the Firm invests in investment fund promoted by other group companies or to which other group companies provide services, its access to those investment fund is likely to be restricted, in the event that the related Firm gets into difficulty. Accordingly, investments in such investment fund will not rank as Eligible Assets for the purposes of satisfying the Firm's Minimum Capital Requirement.
6. The Firm must be in a position to demonstrate its ongoing compliance with the capital adequacy requirements outlined in this document. Where a Firm's financial position changes materially at any time between reporting dates, which would impact on its compliance with its regulatory capital requirements, it must notify the Central Bank immediately and take any necessary steps to rectify its position.

**MINIMUM CAPITAL REQUIREMENT REPORT  
UCITS DEPOSITARY**

**NAME OF FIRM:**

\_\_\_\_\_

**Period under review:** \_\_\_\_\_ **Currency:** \_\_\_\_\_

<b>1. <u>INITIAL CAPITAL REQUIREMENT</u></b>	
<b>UCITS DEPOSITARY</b>	
Initial Capital Requirement	_____ €125,000 (A)

<b>2. <u>EXPENDITURE REQUIREMENT</u></b>	
Total Expenditure (taken from P&L Account)	_____
<b><u>LESS:</u></b>	
Depreciation	_____
Profit Shares, Bonuses, etc.	_____
Net losses on translation of foreign currency balances	_____
Shared Commissions paid (Note 3.2(d))	_____
Exceptional and Extraordinary Items (Note 3.2(e))	_____
Any other Non-recurring Expense (Note 3.2(e))	_____
<b>Net Qualifying Expenditure</b>	<input style="width: 100px; height: 20px;" type="text"/>
<b>EXPENDITURE REQUIREMENT</b> [One quarter of Net Qualifying Expenditure]	<input style="width: 100px; height: 20px;" type="text"/> <b>(B)</b>

<b>3. <u>MINIMUM CAPITAL REQUIREMENT</u></b>	
Higher of <b>Initial Capital Requirement (A)</b> and <b>Expenditure Requirement (B)</b>	
<b>MINIMUM CAPITAL REQUIREMENT</b> – [Higher of (A) and (B)]	<input style="width: 100px; height: 20px;" type="text"/> <b>(C)</b>

<b>4. FINANCIAL RESOURCES</b>	
Equity Capital fully paid up	_____
Perpetual Non-cumulative Preference Shares	_____
Eligible Capital Contributions	_____
Qualifying Subordinated Loan Capital (See 'Note on Qualifying Subordinated Loan Capital' below)	_____
Share Premium Account	_____
Disclosed Revenue and Capital Reserves (excluding Revaluation Reserves) (from most recent audited figures)	_____
Audited Interim Net Profits (Note 5.3)	_____
Other Reserves	_____
<b>Total</b>	<input type="text"/>
<i>LESS: Current Year Losses not included in Disclosed Reserves and Capital Reserves above</i>	_____
<b>FINANCIAL RESOURCES</b>	<input type="text"/> <b>(D)</b>

<b>5. ELIGIBLE ASSETS</b> (Must be held outside the Group)	
Total Non-current Assets (taken from Balance Sheet)	_____
Current Assets (taken from Balance Sheet)	_____
<b>TOTAL ASSETS</b>	<input type="text"/>
<b>Less: Ineligible Assets</b>	
Fixed Assets	_____
Intangible Assets	_____
Cash held with group companies	_____
Debtors	_____
Bad Debt Provisions	_____
Prepayments	_____
Intercompany Amounts (gross)	_____
Loans	_____
Collective investment schemes which are not daily dealing (Note 6.4)	_____
Any other assets which are not easily accessible not included above	_____
<b>Total Ineligible Assets</b>	<input type="text"/>
<b>ELIGIBLE ASSETS</b>	<input type="text"/> <b>(E)</b>

Are Financial Resources (D) at least equal to Minimum Capital Requirement (C)?	_____ <b>YES / NO</b>
--	-----------------------



Are Eligible Assets (E) at least equal to (C)?

\_\_\_\_\_  
**YES / NO**  
\_\_\_\_\_

Where are Eligible Assets held?  
(Attach recent independent statement evidencing location)

--

Was the firm in compliance with the capital adequacy requirements throughout the period under review? (Note 7)

\_\_\_\_\_  
**YES / NO**  
\_\_\_\_\_

**Note on Qualifying Subordinated Loan Capital**

The qualifying amount of **redeemable subordinated debt** is calculated as follows:

Remaining term to maturity \_\_\_\_\_

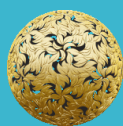
Gross Amount \_\_\_\_\_

Less Amortisations \_\_\_\_\_

= Qualifying Amount \_\_\_\_\_

**Signature, Position and Date**      (of Director / Senior Manager)

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Eurosystem

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