UCITS RULEBOOK
CONSULTATION PAPER QUESTIONS AND RESPONSES

IRISH FUNDS INDUSTRY ASSOCIATION

Central Bank Question	Industry Response	Central Bank Response
Question 1 The Central Bank has previously placed significant reliance on the Promoter to underpin the formal regulatory regime by ensuring that only sizable entities with relevant experience could establish UCITS in Ireland, entities who could support UCITS in difficulty. To this end, the Central Bank has had a promoter approval process. We eliminated the promoter approval process for Irish authorised AIFs and placed reliance instead on the alternative investment fund manager ("AIFM"), taking into account the obligations on AIFM which the AIFMD imposes on them. In conjunction with this, we also elaborated in more detail the obligations of directors when an AIF gets into difficulties. We are proposing to take a similar approach for UCITS where we propose to also eliminate the promoter approval process. We will instead place reliance on the regulatory regime for UCITS management companies and will also elaborate the obligations of directors when a UCITS gets into difficulties. Do you agree with this approach?	The industry welcomes the proposed approach suggested by the Central Bank to eliminate the promoter approval process. This is a logical change given that this process was changed for AIFs under AIFMD. It would be useful if the Central Bank would confirm that no additional confirmations and/or documentary requirements will apply to the authorisation process for a UCITS management company and self-managed company as a consequence of this proposed change. Does this also mean that for existing promoters already approved by the Central Bank to act as such there will be no further notifications/approvals to be made to the Central Bank in relation to changes in the ownership/name/address of the promoter? Presumably the Central Bank's application form will be amended to delete the disclosure relating to the promoter. Please can the Bank confirm whether the reference to directors in this question relates to the Directors of a Management Company appointed by a corporate structure or the directors of that corporate structure.	

Central Bank Question	Industry Response	Central Bank Response
Question 2 UCITS are permitted to invest in transferable securities and financial derivative instruments which are listed or traded on stock exchanges or regulated markets. Guidance Note 1/96 sets out the Central Bank's approach to the determining whether a market meets the criteria for 'regulated markets' set out in the UCITS Regulations. Since the introduction of Commission Directive 2007/16/EC on eligible assets, there has been some overlap between matters covered by that Directive and Guidance Note 1/96. The Central Bank is removing this duplication by withdrawing that guidance note. As a result, the Central Bank will no longer review submissions on proposed regulated markets and will no longer publish a list of permitted markets for UCITS. Do you agree with this approach?	Again, the industry welcomes this approach. To meet the requirements of Regulation 45 of the UCITS Regulations, 2003 the Central Bank requires UCITS to confirm that the stock exchanges and markets listed in the prospectus are open to the public, are regulated, operate regularly and are recognised. UCITS are also required to review the list regularly. Presumably the withdrawal of Guidance Note 1/96 will not impact on these existing requirements. Please can the Central Bank confirm this. Please can the Central Bank confirm that if the Guidance Note is withdrawn it will not be replaced by other different guidance on this point or information on this issue contained in a Q&A. It is only a useful change if the decision-making on this issue is left to the UCITS.	
Question 3 To aid the Central Bank's supervision of UCITS management companies and depositaries, it is proposed to extend the current financial reporting requirements. Currently UCITS management companies and depositaries are required to submit half-yearly management accounts covering the first six months of the financial year and audited annual	We are unsure of the reason why the Central Bank is proposing to extend the reporting for management companies and depositaries as described. No rationale for its proposed additional requirement has been provided and we consider that this proposal would result in an additional cost to industry. We do not agree with this proposed amendment which is excessive and unnecessary. Significant time and effort is already required within a relatively narrow period to ensure	

Central Bank Question	Industry Response	Central Bank Response
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?	audited financial statements are available, to add an additional burden during this already challenging period, would need to be based upon a strong and compelling reason for this additional requirement. The annual financial statements include the financial information that would be included in the management accounts for the second six month period and in respect of the entire period. The annual financial statements contain more useful information as they have been audited, so we are unsure why an additional set of financial information for the second six month period would be needed by the Central Bank. The objection to this proposal is not only based on the fact that the additional information would not provide the Central Bank with any financial information that is not already provided to it. The preparation of a second set of management accounts at the same time as the audited accounts are being prepared would add significantly to the reporting and administrative burden for these entities.	

INDUSTRY COMMENTS ON DRAFT UCITS RULEBOOK

UCITS Rulebook Reference	Industry Comments	Central Bank Response
GENERAL	Does the Central Bank intend to provide detailed guidance separate to the Rulebook that will address the points that have been removed from the Rulebook? If so, it would be useful to review this while reviewing the Rulebook, as it is difficult to provide comments in isolation from guidance. What will happen to the existing Guidance Notes? When is it expected that the UCITS Rulebook will issue? Are the Central Bank application forms being amended?	
DEFINITIONS	In the definition of "Regulatory criteria", the references to the depositary, AIF and AIFM Regulations need to be amended. There is no definition of "Relevant Institutions" or "Regulated Market" in the definition section. Page 5 of the Draft UCITS Rulebook defines 'Board of the directors' as being 'the board of directors of the management company or internally managed investment company'. This definition equates the directors of a management company of a corporate structure with those of a management company of a unit trust. Where there is a management company in a fund established as a company, that company retains its own board which acts as the ultimate governing body of the vehicle. In a unit trust however the directors of the management company are the ultimate governing body.	
CHAPTER 1 PRODUCT REQUIREMENTS		

UCITS Rulebook Reference	Industry Comments	Central Bank Response
Part I GENERAL RULES		
1. UCITS Restrictions	<u>General</u> As a general comment, the Central Bank index rules do not appear to be set out in the Rulebook.	
	<u>ii. Eligible Assets – Closed ended funds - Page 14</u> Paragraph 7 – UCITS Notice 9 paragraph 1.1.1 provides that the criteria listed here at (a) and (b) are indicators to be used as guidance in determining whether corporate governance provisions for closed ended funds in contractual form are equivalent to investment companies. Paragraph 7 of the Rulebook now indicates that these are requirements which must be complied with rather than guidance. The less restrictive wording in the current UCITS Notices should be retained. This section has its Irish origins in UCITS Regulations, Schedule 2, Section 2. The section deals with the circumstances where a closed ended fund can constitute a "transferable security". The Rulebook section refers only to closed ended funds constituted under contract (Ref: Section 2(b) and omits reference to those constituted as investment companies (Ref: Section 2(a)). We would not have been of the view that this was "guidance" but rather a regulatory requirement. The most important point here should be that reference to closed ended funds constituted as companies must be referenced as to omit it could cause confusion and is somewhat misleading. <u>ii. Eligible Assets – Money market instruments - Page 15</u> Paragraph 8 – We note the deletion of the example of 7 business days in defining a short period. The Central Bank should confirm if this will no longer apply.	

UCITS Rulebook Reference	Industry Comments	Central Bank Response
	ii. Eligible Assets – Financial derivative instruments - Page 16 Paragraph 13 –"regulated markets" should be defined? Paragraph 14 – The Consolidated Supervised Entities program no longer exists and therefore reference to CSEs as eligible OTC counterparties should be removed from this paragraph. Paragraph 14 - The IFIA has made a submission to the Central Bank in respect of the applicability of the counterparty limits to central counterparties. The outcome of such submission may need to be reflected in the final Rulebook for clarity. Paragraph 14 – We note the removal of the section of UCITS 10, providing that risk exposure may be reduced through collateral arrangements. The Central Bank should confirm that this will still be permitted. ii. Eligible assets – Financial Indices – Pages Paragraph 17 - The reference to Regulation 6 of S.I. No. 832 of 2007 should be removed as that Regulation was revoked by Regulation 139 of the UCITS IV Regulations (S.I. No. 352 of 2011). Certain provisions of S.I. No. 832 of 2007 including Regulation 6 have not been reproduced in the UCITS IV Regulations. They are, however, contained in UCITS Notice 10.10, paragraph 1(iv).The applicable terms of the Eligible Assets Directive (2007/16/EC) / Regulation 6 of S.I. No. 832 of 2007 should, therefore, be set out in full in the UCITS Rulebook. Paragraph 19 - The following sentence contained in Guideline 54 of the ESMA Guidelines on ETFs and other UCITS issues ("ESMA ETF Guidelines") and the current UCITS Notice 21.0, paragraph 6 should be included: *"Technical adjustments made to financial indices (such as leveraged indices or volatility target indices) according to publicly available criteria should not be considered as rebalancing in the context of this paragraph."* This is an important clarification and its inclusion in the UCITS Rulebook would obviate the necessity of assessing the applicability of this rule by reference to the ESMA Guidelines. Paragraph 20 – We note the deletion of the note that indices that rebalancing intraday will not	

UCITS Rulebook Reference	Industry Comments	Central Bank Response
	meet requirements. The Central Bank should confirm if this is no longer the case. Paragraph 20 – The Central Bank should confirm whether the requirement to disclose the rebalancing frequency of an index in the prospectus and the effect on costs within the strategy still applies.	
	<u>iii. Investment restrictions – Investment funds – Page 19</u> Paragraph 2 – Paragraph (b) should be amended to reflect the final position agreed with the Central Bank in respect of the AIFMD Rulebook (i.e. while the principle of no double charging is respected, the fees may be charged at the sub-fund or underlying sub-fund level or across both). Point (b) should therefore read as follows: *"(b) the rate of the annual management fee which investors in the investing fund are charged in respect of that portion of the investing fund's assets invested in receiving funds (whether such fee is paid directly at the investing fund level, indirectly at the level of the receiving funds or a combination of both) may not exceed the highest maximum annual management fee which investors may be charged in respect of the investing fund's assets or the receiving fund's assets, such that there shall be no double charging of annual management fee as a result of the investing fund's investment in the receiving fund. 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."* <u>Recently issued securities – Page 20</u> If Guidance Note 1/96 is withdrawn there should be more flexibility to invest in recently issued securities, including Rule 144A securities that do not meet the two requirements in this paragraph.	
	<u>v. Financial derivative instruments – Cover requirements – Page 22</u> Paragraphs 3 and 7 – Correction of typo – there is second full stop at the end of these paragraphs.	

UCITS Rulebook Reference	Industry Comments	Central Bank Response
	Paragraph 7 – We note the deletion of the statement that the selected methodology must be one in respect of which ESMA has issued guidance. The Central Bank should confirm if this requirement will no longer apply.	
	<u>vi. Efficient Portfolio Management – Page 27</u> Paragraph 5 – This paragraph may need to be updated following the completion of the EMSA consultation regarding the diversification of collateral requirements in the context of money market funds. Paragraph 5 – A provision should be included that the collateral requirements are also applicable in the context of over-the-counter financial derivative instruments as per Guideline 41 of the ESMA ETF Guidelines and UCITS Notices 10.10, paragraph 6 and 12.7, paragraph 6. Paragraph 9 – Point (a) should be amended to include certificates of deposit with relevant institutions. The Central Bank has confirmed this as an acceptable investment for cash collateral. "Relevant institutions" in Paragraph 9 point (a) should be defined as per Guideline 43 (j) of the ESMA ETF Guidelines and UCITS Notice 12.7, paragraph 10 (i), (i.e. credit institutions in the EEA, Switzerland, Canada, Japan, USA, Jersey, Guernsey, the Isle of Man, Australia, New Zealand). Paragraph 16 – We note the deletion of the footnote that fixed term repurchase and reverse repurchase agreements that do not exceed seven days should be considered as arrangements on terms that all the assets to be realised at any time by the UCITS. The Central Bank should confirm whether this flexibility will still be permitted.	

UCITS Rulebook Reference	Industry Comments	Central Bank Response
	viii. Constitutional documents – Page 31 Paragraph 2 – This is no longer a requirement of the Central Bank (letter to the industry of October 2010) and such a list is only required in the prospectus with the constitutional document cross-referring to the list in the prospectus. This paragraph should therefore be removed or amended to reflect the present position. Paragraph 8 - The third bullet point is permissive and this flexibility should not therefore be framed as a mandatory requirement for inclusion in constitutional documents that allow redemption in specie. In the final sub-paragraph of paragraph 8, reference to "a UCITS ETF" should be removed / substituted with "a UCITS". The determining factor in the non-applicability of the requirements under the first and third bullet points is that the original subscription is made in specie not the exchange traded nature of the UCITS. For example, an index tracking fund that is not exchange traded may allow in specie subscriptions	

UCITS Rulebook Reference	Industry Comments	Central Bank Response
	ix. Dealing – Page 33 Paragraph 1 – The imposition of a 5% limit on the subscription charge is a new requirement and should be deleted. Flexibility must be retained to allow funds to track the pricing arrangements they may have in place across their products globally. Paragraph 3 – Insert 'the' before 'dealing deadline' in line 1 and 'subscription or redemption' in line 3. Paragraph 3 - We agree with this principle. We note that where the UCITS has appointed Distributors and investors are placing trades with a Distributor (for onward transmission to the Administrator) then the time of receipt for subscriptions or redemptions of units may be considered the time of receipt by the Distributor rather than at the management company or Administrator. To ensure inclusion of trades in "cash flow prediction reports" issued by the Administrator, the Administrator may agree a short time allocation after the dealing deadline to allow the Distributor time to "bundle" (i.e. collate these deals) for dispatch to the Administrator. In rare circumstances, where the dealing deadline is equal to the valuation point then this may result in the Administrator receiving the trades shortly after valuation point, although they would have been received by the Distributor before valuation point. Where investors are placing trades with a Distributor (for onward transmission to the Administrator) the procedure is generally as follows: • The Administrator and Distributor will agree that additional time (post the Dealing Deadline) is required by the Distributor to 'bundle' these trades and dispatch them. • It is the responsibility of the Distributor to monitor deal receipt times and ensure compliance with the Prospectus. The Administrator should ensure that this responsibility is clearly documented in the Distribution Agreement. Paragraph 5 – point (b) should be amended to refer to "the UCITS decides to refuse to redeem	

UCITS Rulebook Reference	Industry Comments	Central Bank Response
	any units in excess of 10% or higher" to ensure that the UCITS has the ability to redeem units in excess of 10% but to be able to implement the gate at this higher percentage. In addition, it should be made clear that where redemption requests are gated these requests can be dealt with on subsequent dealing days either in priority to subsequent requests received or pro rata with other requests received on that next dealing day. It is the UCITS choice to decide how to deal with these requests. This section is silent as regards duties and charges. It should be clarified that the issue and redemption price of units may be adjusted for duties and charges.	

UCITS Rulebook Reference	Industry Comments	Central Bank Response
	x. Valuation – Page 34 Paragraph 4 – This should be amended by the addition of reference to ", if different," after "the bid and the offer price".	
2. Supervisory Requirements	ii. Replacement of depositary – Page 52 The following text should be inserted at the end of the section (consistent with the current *Trust Deeds/Custodian Agreement policy paper*). *"A trust deed/custodian agreement can provide that in the event that a replacement custodian is not found that the scheme must apply for a revocation of its authorisation. Provisions for termination of appointment of a custodian upon the appointment of a liquidator to a scheme are not permitted as such provisions can be viewed as an attempt to pre-empt a decision by the liquidator regarding control of the scheme's assets."* We note that the wording that the procedures to be followed in relation to the replacement of the depositary or management company does not refer to the protection of unitholders. The Central Bank should confirm whether this change is intended. ii. Monthly and quarterly returns – Page 52 Paragraph 2 - we note the new items that must be included in the returns and have no objection to points (a) to (c) but (k) to (m) add significantly to the monthly reporting burden. This information is included in the prospectus and/or the accounts so should be deleted.	
3. Prospectus and Key Information Document Requirements	i. General requirements – Page 54 Paragraph 3 – We note the guidance as to the meaning of the term material. However, the following section of paragraph does not deal with non-material changes to investment policies. The Central Bank should confirm whether these changes still require reasonable advance notification to unitholders.	

UCITS Rulebook Reference	Industry Comments	Central Bank Response
	Paragraph 5 – The Central Bank should confirm that these funds will not be required to apply to the Central Bank for revocation of their authorisation as we note that this phrase has been deleted. The original wording required revocation of the UCITS if the minimum viable size was not reached. This has now been deleted and is a positive change. Paragraph 9(i) – Amend 'advertisements' to read 'advertisement'. <u>ii. General information concerning the UCITS – Page 58</u> Paragraph 1 – this paragraph should be deleted given the removal of the promoter requirement. <u>iii. Investment policy – Page 59</u> Paragraph 2 – The requirements to include a 'prominent statement' and an indication if the FDI may be used for investment purposes and/or solely for the purpose of hedging, have not been retained but are in any case contained in Regulation 90(1) of the UCITS Regulations so may not need to be repeated in the UCITS Rulebook. Neither has the requirement for a 'warning' where the UCITS invests principally in FDI been retained but this likewise remains a requirement under Regulation 90(2) of the UCITS Regulations. Is this intended? Paragraph 3 – This is a new requirement and should be deleted. We also disagree with this insertion in terms of its drafting as it may not be possible for a UCITS to disclose the percentage of assets allocated in short/long positions as this may vary over time depending on market conditions and so such a disclosure is not meaningful. Paragraph 7 – For clarity, amend to read 'A structured UCITS as defined in Article 36(1) of Commission Regulation No 583/2010...'Paragraph 9 – Point (a) does not accurately reflect Guideline 9(a) of the ESMA ETF Guidelines which states: *"The prospectus of an index-tracking UCITS should include a clear description of the indices including information on their underlying components. In order to avoid the need to update the document frequently, the prospectus can direct investors to a web site where the exact compositions of the indices are published"*. The wording of point (a) suggests that if the details of the website are included the description	

UCITS Rulebook Reference	Industry Comments	Central Bank Response
	of the index including information on the underlying components need not be included. This does not appear to be the intended effect of this provision. We would suggest amending in line with the Guideline 9(a) of the ESMA ETF Guidelines. The following provision should be inserted wording immediately after *"information on how the index will be tracked"* in sub-paragraph (b) for consistency with Guideline 9(b) of the ESMA ETF Guidelines and UCITS Notice 6.6, paragraph 14 (Index-Tracking Funds): "*(for example, whether it will follow a full or sample based physical replication model or a synthetic replication)".* We would submit that this example is an important clarification to the purpose of this disclosure requirement and should not be omitted from the UCITS Rulebook. As a further refinement, the following sentence may be added to reflect the answer to Question 1a of the ESMA Q&A dated 27 November 2013 on ESMA ETF Guidelines: *"If the UCITS intends to use both replication methodologies either at the same time or alternatively, this should be reflected in the prospectus"*. Paragraph 10 – Typo. Delete the open bracket in line one of paragraph (a) Paragraph 10 – The statements in parentheses of the paragraphs below should be included to reflect Guideline 13 of the ESMA ETF Guidelines and UCITS Notice 6.6, paragraph 14 (Index Tracking leveraged funds): *"The prospectus of an index-tracking leveraged UCITS should include the following information:* *(a) a description of the leverage policy, how this is achieved* ***(i.e. whether the leverage is at the level of the index or arises from the way in which the UCITS obtains exposure to the index)****, the cost of the leverage (where relevant) and the risks associated with this policy* *(b) a description of the impact of any reverse leverage* ***(i.e. short exposure)****"* These clarifications are helpful and their inclusion in the UCITS Rulebook would obviate the necessity of interpreting these rules by reference to the ESMA ETF Guidelines.	

UCITS Rulebook Reference	Industry Comments	Central Bank Response
	v. Dealing – Page 61 Paragraph 4 – The third bullet point is permissive and this flexibility should not therefore be framed as a mandatory requirement where redemption in specie is provided for. In the final sub-paragraph or paragraph 4, "an exchange traded fund" should be substituted with "a fund". The determining factor in the non-applicability of the requirements under the first and third bullet points is that the original subscription is made in specie not the exchange traded nature of the fund. For example, an index tracking fund that is not exchange traded may allow in specie subscriptions. vi. Remuneration and costs arising – Page 62 Paragraph 2 – The second sentence is an operational requirement and is not a prospectus disclosure requirement. This is supported by the provisions of Guideline 28 of the ESMA ETF Guidelines which do not require that this statement is contained in the prospectus. This interpretation has been confirmed by the Central Bank in its letter of April 2013 to at least one of our member legal firms. It would, therefore, be appropriate if this sentence was removed from this section which deals with prospectus disclosure requirements and instead contained in Chapter 1, Section 1, part vi which deals with operational requirements relating to efficient portfolio management. The third sentence is a disclosure requirement contained in Guideline 28 of the ESMA ETF Guidelines, however it may be satisfied by disclosure in the prospectus or the annual report. This is confirmed in the answer to Question 4c of the ESMA Q&A dated 27 November 2013 on ESMA ETF Guidelines. We would, therefore, suggest that the third sentence is amended by inserting *"in the prospectus or in the annual report"* after *"shall disclose"*.	

UCITS Rulebook Reference	Industry Comments	Central Bank Response
	ix. Risk disclosures – Page 63 Paragraph 2 and Paragraph 3 – The requirement that these risk warning be included at the beginning of the prospectus is not appropriate in the case of umbrella funds and may potentially be confusing for investors. It would be more appropriate for such warnings to be included in the specific information relating to the sub-fund (such as the description of the investment policy of the sub-fund) or otherwise in a prominent position. Paragraph 4 – This paragraph should be amended to refer to: *"Where a UCITS ~~may~~ **whose investment objective or policy is to** invest substantially in deposits or money market instruments".* Such a warning should not be required where funds may temporarily hold a large percentage of the fund in cash but rather should be directed towards funds whose specific objective/policy is directed towards holding deposits and/or money market instruments. Distributions out of and charging of fees and expenses to capital – Page 65 Paragraph 3 – This requires a UCITS which invests more than 20% in fixed income instruments and which has as a priority the generation of income rather than capital growth to set this priority out in the prospectus. The reference to a UCITS which invests more than 20% in fixed income instruments is a new requirement and is not, as far as we are aware, a current requirement of the Central Bank and should be deleted. xi. Directed brokerage services and similar arrangements – Page 65 Paragraph 1 – The UCITS Application Form at section 2.17.11(a) is more detailed, in giving examples of what constitutes 'similar arrangements' (fee sharing, commission rebates, retrocessions, hard commissions) and in specifying that 'full details' includes setting out the fees payable to the Manager relating to such arrangements. Will the requirements set out in the Application form remain in place? xiv. Key Investor Information Document ("KIID") – Page 67 The following provisions should be included for consistency with the requirements contained in	

UCITS Rulebook Reference	Industry Comments	Central Bank Response
	Guideline 10 of the ESMA ETF Guidelines and UCITS Notice 19.1, paragraph 8: *"In the case of an index-tracking UCITS, the KIID must include, in summary form, information on how the index will be tracked (for example, whether it will follow a full or sample based physical replication model or a synthetic replication) and the implications of the chosen method for unitholders in terms of their exposure to the underlying index and counterparty risk."* The following provisions should be included for consistency with the requirements contained in Guideline 14 of the ESMA ETF Guidelines and UCITS Notice 19.1, paragraph 9: *"In the case of an index-tracking leveraged UCITS, the KIID must include, in summary form, the following information:* *(a) a description of the leverage policy, how this is achieved (i.e. whether the leverage is at the level of the index or arises from the way in which the UCITS obtains exposure to the index), the cost of the leverage (where relevant) and the risks associated with this policy;* *(b) a description of the impact of any reverse leverage (i.e. short exposure);* (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."* Paragraph 16 – Paragraph 16 deals with new sub-funds of an umbrella UCITS, and paragraph 17 deals with existing UCITS, but new standalone UCITS are not expressly provided for in this section. The original wording from Guidance Note 1/11, page 12, was clearer. <u>General Comment</u> UCITS Notice 5.4, paragraph 15 The requirement in paragraph 15 of UCITS Notice 5.4 that proceeds of an issue of shares be paid into the assets of a UCITS within a reasonable time, which the prospectus shall disclose, does not seem to be contained in the UCITS Regulations or in the UCITS Application Form, and thus will be lost unless it is included in the UCITS Rulebook. Is this intended?	

UCITS Rulebook Reference	Industry Comments	Central Bank Response
4. General Operational Requirements	(ii) Directed brokerage services or similar arrangements – Page 70 We note that this is a new requirement for UCITS and mirrors the requirements imposed on AIFs pursuant to the AIF Rulebook. We would suggest that the definition of "directed brokerage services" be expanded upon to provide further clarity in respect of the exact arrangements subject to this provision. We note the requirements imposed on investment managers, or their delegates, currently provided for in the Section 9 UCITS Application Form and this would offer some guidance in respect of the arrangements that might be contemplated by Section 4, however, as noted, this provision applies to investment managers, not the UCITS themselves. However, we are unclear as to how these requirements can be reconciled in the case of UCITS.	

UCITS Rulebook Reference	Industry Comments	Central Bank Response
5. Annual and Half Yearly Reports	General Comment We note that UCITS Notice 8.5 currently lists all of the information required to be disclosed in the annual/half-yearly report, including that information outlined in the UCITS Regulations. However, Section 5 of the UCITS Rulebook only lists that information required to be disclosed by the Central Bank. We note the Central Bank's view that the UCITS Rulebook should only disclose information required in addition to the UCITS Regulations but the resulting text looks odd. We would suggest that both the Central Bank's and the UCITS Regulation requirements be outlined in Section 5, as is currently the case in UCITS Notice 8.5, to avoid any confusion. Paragraph 1 - we note that less detail is required to be provided in the annual reports in terms of the statements of assets and liabilities and the portfolio analysis. Central Bank to confirm that this is an intended change in the rules. i. Publication of annual and half-yearly reports – Page 71 This wording is not clear and seems to indicate that accounts may be published after their submission to the Central Bank. We suggest that the wording included in paragraph 2 of UCITS Notice 8.5 be replicated for clarity. ii. Information to be contained in the annual report – Page 71 We note that this section does not list the Auditor's Report (as required by Regulation 93 of the UCITS Regulations) as an item for disclosure in the annual report of a UCITS. However, it is currently included in Appendix A of UCITS Notice 8.5. We suggest that the Auditor's Report be included in this section. This corresponds with our general comment above that all of the applicable requirements be included to avoid any confusion.	

UCITS Rulebook Reference	Industry Comments	Central Bank Response
Part II **SPECIFIC FUND-TYPE REQUIREMENTS** **Exchange Traded Funds**	Exchange Traded Funds i. Identifier and specific disclosure – Page 77 Paragraph 1 – point (b) should be amended to clarify that this requirement applies in the case of the UCITS umbrella ETFs (and not in the case of UCITS umbrellas which have certain sub-funds which are ETFs). We would suggest adding the following sentence at the end of this paragraph to reflect the answer to Question 2 of the ESMA Q&A dated 27 November 2013 on ESMA ETF Guidelines: *"If all sub-funds of a UCITS umbrella are UCITS ETFs, the "UCITS ETF" identifier may be applied to the umbrella level as well"*. iii. Treatment of secondary market investors of UCITS ETFs – Page 78 Paragraph 2 – The following provision as contained in Guideline 23 of the ESMA ETF Guidelines and the footnote to UCITS Notice 20.0, paragraph 8 should be inserted after the first sentence: "*For example, this may apply in cases of market disruption such as the absence of a market maker*." This example is helpful in determining whether the circumstances envisaged by this rule exist and its inclusion in the UCITS Rulebook would obviate the necessity of assessing the applicability of this rule by reference to the ESMA ETF Guidelines.	

UCITS Rulebook Reference	Industry Comments	Central Bank Response
2. Money Market UCITS	<u>i. Short-Term Money Market Funds – Page 79</u> Paragraph 3 – We note the inclusion of a new requirement to "*document its assessment* " of the quality of the securities. Was this intentional? Paragraph 6 – Typo, should say "*shall ensure that the WAM of the portfolio does not…"* Paragraph 8 – Typo, delete comma at the end of the sentences after WAL. Paragraph 10 – This statement differs to the current UCITS notices and I do not believe that the change is intentional, ie, it says that a Short-Term MMF shall only use FDI which give exposure to a foreign exchange for hedging purposes, which suggests that FDI may only be used to hedge currency risk, however, FDI may also be used to hedge other risk, eg, interest rate risk. Would suggest retaining the old language which was clearer. <u>ii. Money Market Funds– Page 82</u> Paragraph 10 – Typo on second line at the end of the first sentence. New line for paragraph 10. <u>iii. Short Term Money Market Funds – Valuation on the basis of amortised cost – Page 82</u> Paragraph 1 – Typo at the end of the first sentence, delete space after valuation. We also note the deletion of the words "in exceptional circumstances" from (c), presume this was intentional and welcome this change. <u>General Comment</u> Sometimes references are to UCITS and sometimes to Short-Term MMFs. We would suggest using the same term each time.	
3. Guaranteed UCITS	<u>Guaranteed UCITS – Page 85</u> Paragraph 1 – Typo in first line. Delete "of" before " the word "guaranteed"".	

UCITS Rulebook Reference	Industry Comments	Central Bank Response
	General Comment The existing Guidance Note on Guaranteed Collective Investment Schemes 3/97 provides that the guarantor "as a general guideline" should be a credit institution with paid up share capital in excess of €100 million and authorised in the EEA, or a signatory state to the Basle Convergence Agreement or in Jersey, Guernsey, Isle of Man, Australia or New Zealand. The Guidance Note also provides that an institution or company with sufficient substance and standing and subject to similar or equivalent regulatory oversight to that applied to the credit institutions listed above may be also be acceptable. The Rulebook (Chapter 1, Part II Section 3) provides that the guarantor **must** be a credit institution and the possibility of other entities being acceptable has not been included. While we appreciate that the requirements have not changed substantively, it could be helpful to retain the possibility of other entities being acceptable as guarantor. Such an appointment is still subject to the approval of the Central Bank and accordingly we would suggest that this language be included.	
4. Distributions out of and charging fees and expenses to capital	General Comments As a general point, we would question the need to have a separate section which deals with some of the Central Bank's requirements in respect of "Distributions out of and charging fees and expenses to capital" which then cross refers to an earlier section of the rulebook (Section 3.xii) which sets out the rest of the Central Bank's requirements. It would be clearer if all of the Central Bank's requirements, including the requirements in the application form relating to the proceeds from which distributions can be paid, were set out in one section. In addition, Section 3.xii does not cross refer to Section 4. There is no reference in Section 4 or Section 3.xii to the need to have a provision in the constitutional document of the UCITS which allows it to make distributions out of capital and presumably this should be set out as it is a requirement in Section 2 of the Central Bank's UCITS Application Form.	

UCITS Rulebook Reference	Industry Comments	Central Bank Response
Part III CROSS-BORDER NOTIFICATION OF UCITS	i. Outward Marketing – Page 88 General comment – Whilst much of the detail has been deleted as it is set out in the Regulations we would suggest that the following be re-inserted, as it is specific to Ireland: - As each member state can issue its own form, the Irish version of the form should be included and a fillable version be included on the CBI's website for download; - Has the requirement to translate the KIID into Irish or English been deleted? - CBI notification procedure and email address; ii. Inward Marketing – Page 88 General comment – The Central Bank's address for notifications should be provided.	
CHAPTER 2 MANAGEMENT COMPANY REQUIREMENTS	Introduction – Page 90 General comment – The Rulebook states that the Central Bank will issue a letter of authorisation that will set out the definitive conditions imposed by the Central Bank on each management company. This procedure is consistent with AIFMD, however, Industry had concerns over such procedure and that the issue of detailed rules might lead to the application of rules that were not appropriate for the management company in question. Will existing UCITS be issued with new authorisation letter? Page 92 (section 6) – typo in 1st paragraph "commission is paid **(to the)** into the property of the investment fund". iv. Code of conduct in relation to collective portfolio management – Page 94 General comment – The Rulebook contains a brief code of conduct for collective portfolio management which replaces UCITS Notice 16. The revised code of conduct is not as detailed or	

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	prescriptive as the UCITS Notices, which is to be welcomed. One technical point to note is that an investor should be notified of its right to refer complaints to the Financial Services Ombudsman instead of the Central Bank, as currently stated in the UCITS Notices. v. Directors – Page 94 General comment – Similar to AIFMD, the Rulebook clarifies what it expects from directors of UCITS and management companies that are in distress. The Rulebook requires the filing of the relevant form with the Central Bank prior to a director's retirement and in the absence of such filing, the board or the chair must determine if such retirement is appropriate. To impose a requirement to notify the Central Bank in advance would delay a director's retirement, who should be able to retire with immediate effect. Furthermore, the obligation of the board to decide if a director should be permitted to immediately retire by taking into account the "concerns of the Central Bank" is very unclear and imposes on boards a very difficult obligation to second-guess the views of the Central Bank. viii. Relationship with the Central Bank – Page 96 Paragraph 2 – A management company should be required to notify the Central Bank of any significant legal proceedings against it or the UCITS it manages. Requiring notification of all legal proceedings irrespective of their materiality is unduly burdensome. Paragraph 3 – A management company should be permitted to inform the Central Bank of changes to its address, telephone number or e-mail, not necessarily "in writing", but by other means acceptable to the Central Bank, particularly as reliance is increasingly placed on the ONR system and email confirmations. x. Conditions relating to investment companies which do not designate a management company (internally-managed investment companies) – Page 98 Paragraph 1 – It appears that: the first bullet point should be amended to clarify that the annual audit requirement applies to internally managed UCITS.	

UCITS Rulebook Reference	Industry Comments	Central Bank Response
	the fourth bullet point (*Directors*) should be amended to cross refer to paragraphs 1 to 5 of Section 1 (v). xi. Management Company Passport – Page 99 The Rulebook sets out a new section dealing with the requirements for the cross border management of UCITS by Irish management companies. The Central Bank should confirm the basis for the requirement that a management company managing UCITS on a cross-border basis should implement a programme of operations. While a programme of operations is required for a management company establishing a branch in another Member State, no such requirement applies to the cross border management of the UCITS. Additional analysis to be provided on this requirement.	

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CHAPTER 3 **UCITS DEPOSITARY REQUIREMENTS**	ii. Conditions applicable to depositaries which fall within Regulation 35(2)(c)of the UCITS Regulations – Page 111 Paragraph 1(d) – There are already "acquiring transactions" regimes for both IIA, MiFID, and Credit Institution depositaries operating in the State (e.g. see Part IV of the Investment Intermediaries Act 1995; and Part 13 of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. No. 60 of 2007). We ask that the Central Bank should ensure that this requirement only be retained where it does not overlap or conflict with an existing statutory requirement, and where it is necessary that it be retained. iii. Depositary tasks– Page 112 Paragraph 1 – We welcome the deletion of the requirement on the location of service provision. iii. Depositary tasks – page 112 Paragraph 2 – We would like to clarify that 'any breach' of the Regulations solely refers to a breach of the fund in so far as it relates to the depositary obligations. The depositary cannot be expected to report 'all breaches' of the UCITS Regulations by the UCITS where it is not obliged to monitor. Paragraph 3 – We would like to clarify that 'any material breach' of the Regulations solely refers to a breach of the fund in so far as it relates to the depositary obligations. The depositary cannot be expected to report 'all breaches' of the UCITS Regulations by the UCITS where it is not obliged to monitor. iii. Depositary tasks – page 112 Paragraph 4 – We note that an additional requirement to report "aged" non-material items to the Central Bank has been added; and that this is contained in neither the underlying legislation nor the AIFMD equivalent rules. We do not understand the rationale behind its being added and would therefore request that this paragraph be deleted in its entirety for the following reasons:	

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	a) Non-material items are considered as much for a reason, and where they do warrant regulatory attention, they would be escalated, as required. Otherwise, given that it may often take four weeks, or more, before a non-material issue is wholly resolved. The requirement would add administrative burden with little or no benefit. b) There is no clarity in the requirement as to what the Central Bank means by a "non-material breach". This, in turn, would lead to inconsistent reporting from depositaries and it would then be questionable as to what value this would add to the Central Bank itself. c) We are not aware of this requirement from other European regulators. <u>iii. Depositary tasks – page 112</u> Paragraph 5 – We would request that this paragraph be deleted in its entirety as it is requiring a level of pre-trade enquiry which depositaries do not currently engage in and have no obligation to do. If any comfort is required in this regard it should be confined to ensuring ONLY that the management company/IM has procedures in place to carry out the necessary checks to ensure these matters for themselves (as they have a primary obligation) and not place an obligation on the depositaries to do it for them. We do not understand why investment in other collective investment schemes is singled out by the Central Bank for such a confirmation when the depositary is expected to have oversight of the manager's adherence to all UCITS investment restrictions, and as such suggest the removal of this requirement in its entirety. <u>iv. Operating Conditions – page 114</u> Paragraph 5 – This paragraph would appear to prohibit the depositary from limiting liability with respect to services not described in the depositary agreement. The depositary will only be providing those services outlined in the depositary agreement, and any further services would be subject to their own, separate agreement. We understand that the Depositary should not try to limit liability with respect to core depositary services and if this is what the Bank wants, we would request the Central Bank to confirm accordingly. <u>iv. Operating Conditions – page 115</u> Paragraph 7 – We consider it important that the Central Bank ensures that there is clarity as to	

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	who is responsible for a UCITS investing in only permitted regulated markets. We would consider that it is important that this remain the responsibility of the management company/UCITS, not the depositary. Paragraph 8 – The obligation on the depositary to ensure that the basis of valuation of securities is justifiable in the context of establishing the probable realisation value is similar to an existing obligation and it is important to ensure that the depositary obligation is not further extended in this regard. Paragraph 12 – We would view the decision regarding asset allocation being one determined by the Investment Manager and approved by the Board of the fund making the redemption. The Depositary's oversight role in this regard would be to review the policies and procedures in place by the Investment Manager for in-specie redemptions and ensure adherence. The language appears in two other places: Chapter 1, Part I, Section 1(viii)(8) on page 32 and Chapter 1, Part I, Section 3(v)(4) on page 61. <u>v. Relationship with the Bank – page 115</u> Paragraph 1 – The wording here should state "authorised by the Central Bank".	