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Our Ref PT/MCD

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Submitted by email: fundspolicy@centralbank.ie

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Consultation on publication of UCITS Rulebook

Dear Sirs,

We welcome the opportunity to comment on the Central Bank's proposed UCITS Rulebook.

We agree with the aim of clarifying the existing regime and the consolidation, in so far as possible, of Central Bank conditions for UCITS, their management companies and depositaries into a single document.

We note that the Central Bank will publish residual guidance on its website. We have presumed that as this residual advice has not yet been published it will, in time, constitute clarifications or guidance required on the finalised text of the UCITS Rulebook (rather than confirming existing un/published requirements in a format outside of the UCITS Rulebook). We have, therefore, commented on the UCITS Rulebook as if it were (in addition to relevant legislation) the sole source of requirements for UCITS collective investment schemes, management companies and depositaries in Ireland.

We have set our responses in three schedules; Schedule A contains responses to the Questions for consideration raised by the Central Bank, Schedule B sets out additional queries we have on the draft UCITS Rulebook and schedule C contains specific comments on the text of the UCITS Rulebook.

Should you have any queries in relation to the comments raised please do not hesitate to contact Patricia Taylor or Catharine Dwyer of this office.

Yours faithfully

William Fry

WILLIAM FRY

SCHEDULE A

1. We endorse the response of the Irish Funds Industry Association (the "IFIA") that removal of the requirement for promoter approval is a logical change given the regime within which Alternative Investment Funds operate under AIFMD. We agree with the Central Bank that focus should instead be on the existence of a strong corporate governance structure (as is typically already seen in Irish collective investment schemes) and as particularly enunciated in the UCITS Regulations in the context of UCITS management companies rather than on the concept of a promoter.

2. Again, we endorse the response of the IFIA and believe that decisions as to the acceptability of a particular market or stock exchange is one which should rest with the UCITS. We note in addition, that the Central Bank has not included any of its (current) restrictions on investment in Russia. Current political uncertainty aside, we would welcome confirmation from the Central Bank as to whether additional restrictions (particularly in terms of custody arrangements and prospectus disclosure), such as those typically seen in the context of investment in Russia will continue.

3. We endorse the response of the IFIA and are strongly of the view that requirement for an additional set of half-yearly accounts for both the management company and the depositary covering the second six months in a financial year is extremely onerous. In circumstances where the same period and information would be the subject of an audit we would query the value of the production of this second set of financials.

SCHEDULE B

1. Overall we would be of the view that the UCITS Rulebook could be streamlined so that requirements for specific areas are contained in the same place. By way of example,

    a. the requirements for establishment of share classes (including hedged share classes) are dealt with in a number of sections, often with resulting duplication of text (i.e. Part I, Section 1.vii / Part I, Section 1.viii, paragraph 3,4 / Part I, Section 3.ii, paragraph 5 and again in Part I, Section 3.xiii); and

    b. the requirements for distributions out of and charging fees and expenses to capital are dealt with in a number of sections (i.e. Part I, Section 1.viii, paragraph 6 / Part I, Section 3.xii, paragraph 7 / Part I, Section 3.xii, paragraph 1,2,3 and again in Part II, Section 4).

2. Can the Central Bank please clarify the status of Central Bank guidance issued to date which exists outside of the existing UCITS Notices and Guidance Notes (specifically, Policy Documents, Letters to Industry, Questions and Answers documents). Should any of these be retained we would request that they be reissued at the same time the UCITS Rulebook is finalised so as to ensure there is clarity surrounding the sphere of UCITS regulatory documents / sources.

3. The Eligible Assets Directive[1] ("EAD") was implemented in Ireland by European Communities (Undertaking for Collective Investment in Transferable Securities) (Amendment) Regulations 2007[2]. Certain provisions of S.I. No 832 were incorporated in the UCITS Regulations as implemented in Ireland[3] (i.e. EAD requirements relating to money market instruments). However, certain provisions of S.I. No 832 were not incorporated in the UCITS Regulations (specifically, the requirements of Regulation 5[4] and Regulation 6[5] of S.I. 832).

    As the UCITS Regulations revoked S.I. No. 832 of 2007 we would submit that the provisions be reinserted in the UCITS Rulebook as, in their absence, a question as to the ability of a UCITS to avail of the requirements and flexibilities (or be bound by the restrictions) of the EAD is raised.

4. We acknowledge that the Central Bank is seeking to remove guidance which does not constitute a regulatory requirement. That being said, the Central Bank has adopted and reiterated, in places, Level 3 Advice issued by ESMA. This Level 3 Advice often provides guidance on the interpretation of certain provisions (for example, see our comment below under the heading "Money Market Instruments" at paragraph 8 / 9). We would be of the view that this guidance should be retained by the Central Bank in its Rulebook. To do otherwise requires industry participants to re-reference the ESMA guidance which is unnecessarily time consuming in the context of the fund authorisation process. It also raises a question as to the Central Bank's views on the guidance. If this "guidance-type" language has to be removed can the Central Bank confirm that this is a stylistic change only and that it does not affect its views on the matters raised.

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[1] Commission Directive 2007/16/EC
[2] S.I. No. 832 of 2007
[3] European Communities (Undertaking for Collective Investment in Transferable Securities) (Amendment) Regulations 2007 (S.I. No. 832 of 2007)
[4] Regulation 5 contains requirements for OTC derivatives including valuation provisions (in this respect we acknowledge the recent revision of the UCITS Notices) and specific features of OTC FDI usage (i.e. the requirement that they do not result in the delivery of certain assets, certain requirements relating to risk management).
[5] Regulation 6 contains requirements for financial indices including those relating to the diversification adequacy and publication of indices. It also confirms the position in relation to derivatives on baskets of securities which do not, of themselves, comprise financial indices.

5. We would be of the view that advantage should be taken of the opportunity now being afforded by the UCITS Rulebook to reflect the practice of the Central Bank in certain areas (particularly where practice is a relaxation of existing requirements). For example;

   a. (and save in respect of changes to the contractual arrangements put in place with depositaries which currently must have all changes pre-approved by the Central Bank), in circumstances where a material contract meets the minimum requirements of the Central Bank, there is no requirement to obtain advance Central Bank approval for changes to it. We would suggest that the current "filing only" policy requirements of the Central Bank be reflected in the UCITS Rulebook;

   b. changes to a UCITS constitutional document is a "filing only" rather than a pre-approved requirement (save in circumstances where there is a divergence from the Central Bank's application forms).

6. We note the introduction of new requirements for the investment policies of long/short funds. Chapter 1, Section 3, paragraph iii.3 requires that 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."

   In our experience the Central Bank requires disclosure of the categories of assets in which a UCITS can invest together with disclosure of an "expected" level of long/short positions at a portfolio level. The revised language implies a new requirement to disclose long/short positions at an asset class level rather than at a portfolio level (which is the current requirement).

   In the absence of understanding the Central Bank's thinking behind this proposed change we would be of the view that the existing position should be retained. We would, of course, welcome an understanding of the Central Bank's thinking in this respect as well as being afforded the opportunity to engage with the Central Bank in relation to the proposal.

   As an alternative we would submit that, given the change is a domestic regulatory one (rather than being required or driven by an European initiative) existing UCITS should be permitted to avail of "grandfathering". This should permit a UCITS to continue to retain its existing investment policy and strategies and not be required (for example in the event the prospectus document is "opened" to add a new share class or to change a part of the investment policy unrelated to the change proposed, above) to re-structure portfolios and prospectus documentation.

9A. It would be beneficial to set out, in a single location, the Central Bank's requirements for investment managers. Current requirements (as contained in the Central Bank's IVM forms) should be made clear in the UCITS Rulebook, i.e.

   a. that investment managers (which term is being used by reference to the definition currently in the UCITS Rulebook) must be cleared by the Central Bank prior to carrying out discretionary management activities for or on behalf of a UCITS;

   b. the prospectus must identify the "lead" investment manager. The prospectus must disclose the lead investment manager's ability to appoint sub-investment managers. Subject as provided below regarding remuneration of sub-investment managers, sub-investment managers need not be identified in the prospectus;

c. where a sub-investment manager is paid out of the assets of a UCITS, the sub-investment manager must be described in the prospectus;

d. where an investment advisor is appointed directly by a UCITS / management company or is paid out of the assets of a UCITS the investment advisor must be described in the prospectus.

9B. We are aware that the Central Bank may grant an exemption to the requirement in paragraph 9A (for example, in the context of large multi-manager UCITS) where the manager / investment manager meets certain requirements and observes certain criteria in relation to the appointment of sub-investment managers. We are of the view that these requirements and criteria should be publicly available.

SCHEDULE C

Chapter 1 - Product Requirements

Draft Rulebook Text	Comment
Part I: GENERAL RULES **Section 1:** **UCITS restrictions**	
i. General restrictions	We would suggest that the requirements in this section are not, in fact, "restrictions". Rather, they relate to the regulatory status of entities acting for a fund or the requirement to provide information. Consider deleting and inserting in a more appropriate location.
2. A UCITS shall provide details of all sub-investment managers to unitholders on request.	This requirement is repeated in the UCITS Rulebook in Chapter 1, Section 3.ii, paragraph 4 as required prospectus disclosure. Consider deleting duplication.
ii. Eligible assets	
Transferable securities	
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; - … should be considered.	The ESMA Guidelines concerning eligible assets for investment by UCITS[6] provides that "*Where information is available to the UCITS that would lead it to determine that a transferable a security could compromise the ability of the UCITS to comply with Article 37 of Directive 85/611/EEC, the UCITS must assess its liquidity risk.*" It is in this context that ESMA frames the requirement to conduct a liquidity assessment. We note the new requirement that the UCITS "shall…consider the liquidity risk…". Neither the current UCITS Notices nor CESR/07-044b use this mandatory language. Rather they refer to the fact that the UCITS "*may need to consider*". We would therefore suggest that the more onerous provision be removed in favour of CESR/07-044b paragraph 17, thereby permitting the UCITS to evaluate the liquidity risk of an instrument rather than mandating it.
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	CESR/07-044b paragraph 17 provides that "*In the case of transferable securities which are not admitted to trading on a regulated market as defined in Article 19(1) of Directive 85/611/EEC,*

[6] CESR/07-044b, paragraph 17

Draft Rulebook Text	Comment
of complying with Regulation 104(1).	*liquidity cannot automatically be presumed. The UCITS will therefore need to assess the liquidity of such securities where this is necessary to meet the requirements of Article 37*" The UCITS previously had the ability to determine whether the liquidity assessment was necessary to meet the requirements of Regulation 104(1) and this discretion has been removed by the draft text. We would therefore suggest that the discretion should be reinstated to reflect the ESMA advice, thereby permitting the UCITS to evaluate the liquidity risk of an instrument rather than mandating it.
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	We would repeat the IFIA's comments in relation to this section. Particularly we note that the UCITS Rulebook sets out the criteria for one of the two permitted types of closed ended funds. We would also note that the requirements of paragraph (c) is relevant to all types of CEFs, not solely those based on contract (and so should appear as a separate paragraph).
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 ... (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;	Paragraph (d) where it references a "short period" is missing the example of "*e.g. seven business days*" which was previously in the UCITS Notices and which originated in CESR/07-044b, paragraph 19. This is a helpful clarification and should be reinserted.
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.	This section should be prefaced with "*with respect to the criterion "value which can be accurately determined at any time*" to reflect the interpretation provided by ESMA at CESR/07-044b, paragraph 19 (and currently contained in the UCITS Notices[7]) on the interpretation of a specific phrase within the UCITS Regulations[8].
Financial Indices	
17. A UCITS shall demonstrate that an index in which it invests satisfies the index criteria in Regulation	See above comment re S.I. 832.

[7] UCITS 9.5, paragraph 1.2.3
[8] UCITS Regulations, Schedule 3, section 4.

Draft Rulebook Text	Comment
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	Consider re-inserting the provisions of UCITS Notice 10.10, paragraph 10(iv), UCITS Notice 9.5, paragraphs 14-16 and Guidance Note 2/07.
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.	The following sentence contained in ESMA Guidelines on ETFs and other UCITS issues dated 17 February 2012[9] and previously, the UCITS Notices 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.*"
v. Financial derivative instruments	
Calculation of global exposure	
2. A UCITS shall ensure that it at all times complies with the limits on global exposure.	The following statement from CESR's Guidelines on Risk Measurement and Calculation of Global Exposure and Counterparty Risk for UCITS[10] Box 1, paragraph 2, the source of this text should be added (it would also reflect the current UCITS requirements)[11] "*Depending on the investment strategy of the UCITS it may be necessary to calculate global exposure intra-day*".
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.	Prospectus disclosure requirement contained in ESMA's Guidelines for competent authorities and UCITS management companies[12] Guideline 25 is not reflected in Rulebook. This requires that *"A UCITS should inform investors clearly in the prospectus of its intention to use the techniques and instruments referred to in Article 51(2) of the UCITS Directive and Article 11 of the Eligible Assets Directive. This should include a detailed description of the risks involved in these activities, including counterparty risk and potential conflicts of interest, and the impact they will have on the performance 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.	"..."as described in its prospectus" should be amended to state "as described <u>*in its sales documents*</u>" for consistency with ESMA/2012/832 Guideline 27.
Collateral	
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	It should be made clear that these collateral requirements are also applicable in the context of OTC FDI (see ESMA/2012/832 , Guideline 43).

[9] ESMA/2012/832
[10] CESR/10-788
[11] UCITS 10.10, paragraph 24
[12] ESMA/2012/832

Draft Rulebook Text	Comment
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.	
vii. Share classes	
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.	Note that this is repeated at page 66, paragraph 5, first bullet point.
viii. Constitutional documents	
ix. Dealing	
1. A UCITS shall not apply a subscription charge in excess of 5% of the amount subscribed.	This is a new requirement and is inconsistent with the position previously agreed with the Central Bank. In this respect we refer to the Central Bank's letter to Industry of 25 April 2001 where the Central Bank stated that ideally the market would determine the level of subscriptions and that while it "*does not prescribe maximum levels of subscription charges*" it could, however, query them when greater than 5%. We would request that the Central Bank retains the existing position and permit the market to dictate levels of subscriptions.
x. Valuation	
4. The valuation methodologies utilised in calculating both the bid and the offer price shall be disclosed in the UCITS constitutional document.	This should be prefaced by reference to the ability of the UCITS to dual price as reflected in the existing Guidance Note 1/00, paragraph 1 Note (iv) i.e. "*A trust deed, deed of constitution, articles of association or partnership agreement may provide for the calculation of a separate bid and offer price on its units, i.e. dual pricing.*"

Draft Rulebook Text	Comment
	Otherwise, "*if different*" should be inserted after "*the bid and offer price*".
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.	Add, per Guidance Note 1/00 1/00, paragraph 1 Note (v), "*There may be some exceptions to this principle because an offer quote is not available.*"
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. **1. 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.	A provision to deal with securities bought / sold at a premium/discount (as contained in the existing Guidance Note 1/00) should be added. Add in third bullet point "*Securities listed or traded on a regulated market, but acquired or traded at a premium or at a discount outside or off the relevant market may be valued taking into account the level of premium or discount at the date of the valuation.*" We presume this is an oversight given the obligation placed on depositaries in Chapter 3, (iv)(8). We note that the ability to price on a matrix basis has not been retained (i.e. "*Matrix pricing (i.e. valuing securities by reference to the valuation of other securities which are considered comparable in rating, yield, due date and other characteristics) may be an appropriate method of valuation for fixed income securities, where reliable market quotations are not available. Provision may be made for matrix pricing provided the securities used in the matrix are comparable to the securities being valued. Matrix pricing must not ignore a reliable market quotation. The matrix methodology will be compiled by the manager, directors, general partner or competent person, as outlined above.*"). Can the Central Bank clarify if it is intended that this flexibility be removed.
Adjustments	
10. Where a UCITS adjusts the value of an asset, the rationale for adjusting the value shall be clearly documented.	Note that Guidance Note 1/00, paragraph 1, Note (ii) set out circumstances where the value of an asset could be adjusted. Can the Central Bank confirm it is intended that the circumstances where an adjustment takes place is not now proscribed.

APPENDIX I

Netting and Hedging	
Duration-Netting rules	
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.	This paragraph omits reference to the optional nature of the duration netting which is expressly stated by CESR/10-788, Box 7, paragraph 4. This should be retained.
Calculation of Global Exposure using the Value at Risk (VaR) Approach	

VaR approach: Quantitative requirements	
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.	We note that this paragraph is derived from CESR/10-788, Box 22, paragraph 3. At paragraph 3 ESMA provided that the UCITS' obligation in terms of the VaR approach is to ensure that the approach is validated as "conceptually sound". By removing reference to "conceptually" and obliging the UCITS to ensure that the VaR approach is validated as "sound" the Central Bank is placing a higher burden on the UCITS. A more reasonable approach is to revert to the ESMA requirement to obtain "conceptually sound" validation.
Section 2: **Supervisory requirements**	
i. General conditions	
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.	Please see our comment in Schedule B, above. We would suggest that this condition should reflect the "filing only" policy of the Central Bank.
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[13]. 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.	It has been the practice to date that, where a redemption charge is increased (to a level within the maximum level set out in the constitutional documents) this requires shareholder notice only. To require prior shareholder notice is unduly burdensome in circumstances where shareholders will be afforded reasonable notice to redeem without imposition of the higher redemption charge prior to implementation of the increase. We would therefore suggest that the current requirements be retained.
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.	This section should reflect the Central Bank permitted exceptions to this i.e in the case of consolidated prospectuses for third country registrations.
ii. General information concerning the UCITS	
5. A UCITS shall disclose in its prospectus where it proposes to create hedged currency share classes.	Seems out of place, this should be in the section dealing with currency share classes (Chapter 1, Section 1(vii)).
iii. Investment policy	
UCITS which use 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.	This is a new requirement. It is particularly onerous that long/short positions be allocated to asset categories. It should be sufficient to provide an "expected" level of long / short exposure on a portfolio basis as has been the practice to date with the Central Bank. Please see our comment above in Schedule B.

[13] 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.

Financial Indices	Query why all requirements relating to financial indices are not in the same place. Consider moving.
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.	The Central Bank should retain the last paragraph of the existing Guidance Note 2/07 which "*recognises that a UCITS investment strategy may not, in all cases, be able to specify the exact indices that the strategy may require exposure to, or that it may be impractical to provide such detail in the prospectus. In such situations it is considered that, in such situations the UCITS will provide sufficient detail on the types of indices being used in order to satisfy the investment strategy being pursued and where more specific information may be accessed insofar as that is practical and permitted.*" To omit this language is to unnecessarily circumscribe the UCITS possible scope of investment in financial indices. It will also require revision to existing prospectus documentation (and possibly investment portfolios) to address the requirements. Including this language is consistent with ESMA Q&A document[14], Answer 7b, which acknowledges that UCITS (other than index tracking UCITS) can invest in financial indices but that the priority is compliance with Guidelines 48-61
vi. Remuneration and Costs Arising	
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.	ESMA/2013/927, Question 4c clarifies that the disclosure may be satisfied by disclosure in the prospectus or the UCITS annual report. It is not therefore appropriate for the second and third sentences to appear in the prospectus disclosure section without being appropriately carved out as a statement / information that does not necessarily need to be disclosed in the prospectus.
ix. Risk disclosures	
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.	Reference to a quantitative amount of investment in fixed income instruments rather than having a "priority" of generating income rather than capital (which is the current position) is a new requirement. It is unnecessarily prescriptive and does not take account of other strategies which will enable a fund to make distributions out of capital. Please see our comment, above, in Schedule B.
xiii. Share classes	
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	This section is a repetition of Rulebook, page 30, paragraph 3

[14] ESMA/2013/1574

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.	
Section 5: **Annual and half-yearly reports**	
ii. Information to be contained in the annual report	
1 (c) a general description of the use of FDI and the efficient portfolio management A UCITS which engages in efficient portfolio management techniques shall disclose: (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.	We note Central Bank advice, regarding point (iv)[15] that "*a reasonable interpretation of the reference to "revenue" in Guideline 35(d), subject to any clarification which may be provided by ESMA, would be that it is applicable only to revenue from securities lending arrangements and repurchase/reverse repurchase agreements.*" Can the Central Bank confirm the status of this guidance following publication of the UCITS Rulebook.
iii. Information to be contained in the half-yearly report	
1. (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;	We note reference to "FDI dealt in on a regulated market". This therefore excludes OTC FDI. We presume this was unintended and should be corrected.

Chapter 2 - Management Company Requirements

Draft Rulebook Text	Comment
Part I: GENERAL RULES	
iii. Organisational requirements	
1. The board of a management company shall be responsible for the following managerial functions: (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	The guidance issued in this section is derived from CESR's Technical Advice to the European Commission on Level 2 measures relating to the UCITS Management Company Passport[16]. While we note that the guidance as previously set out in UCITS Notice 2 has been retained we note the introduction, in paragraphs (b), (c), (d), (e), (f), (g) and (j) of an obligation on the management company to "*ensure adherence to…*" various procedures. We disagree with the introduction of this higher standard and consider that it results in an

[15] Implementation of ESMA guidelines on ETFs and other UCITS issues: Issues arising. 23 January 2013.
[16] CESR/09-963

Draft Rulebook Text	Comment
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; (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.	extension and, to a certain extent, underwriting by the management company of the policies it has put in place. The role of a board is to put policies and procedures in place that are designed to ensure compliance (as well as to carry out effective monitoring, in the manner currently in place under UCITS IV). To additionally expect a board to "ensure adherence" to these policies is, we feel, unreasonable and in excess of that required by ESMA. On this basis we would request that the current requirements be retained.
vi. Recordkeeping requirements	
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.	We note the introduction of the new requirement to "*ensure adherence to…*" various procedures and would reiterate our concerns, noted above.
xi. Management company passport	
Assessment of impact on nature, scale and complexity – general requirements	
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.	The existing requirements provide "*the increased complexity in the Central Bank's ability to oversee a management company which delegates its administration activities to an entity not authorised or supervised by the Central Bank*". We submit that the Central Bank should determine the level of oversight required rather than a management company being obliged to second guess these requirements as it will result in a management company ultimately enter into a negotiating process with the Central Bank. This in turn could potentially result in varying obligations and requirements being agreed with the

Draft Rulebook Text	Comment
	Central Bank for different management companies and therefore in a potentially uneven playing field for similar types of management companies passporting into the same jurisdiction. A management company which proposes to passport should, in principle, be able to access clear information dealing with the Central Bank's requirements for passporting. This does not prevent the Central Bank imposing differing requirements depending on the particularities of the management company in question. It does, however, permit all management companies to start from and be assessed from the same vantage point by the Central Bank.

Chapter 3 – UCITS Depositary Requirements

Draft Rulebook Text	Comment
UCITS DEPOSITARIES	
ii. Conditions applicable to depositaries which fall within Regulation 35(2)(c)of the UCITS Regulations	
(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	The requirement for a second set of half yearly unaudited financial accounts is new and particularly onerous.
iii. Depositary tasks	
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.	We understand that the depositary would always have been expected to have procedures to deal with breaches of investment and borrowing restrictions, maintain a log of the breaches and undertake steps to resolve those breaches. However, this provision relates to logging and handling "all breaches". Under the UCITS Directive/ Regulations, the depositary is not required to monitor all breaches. This is an extremely broad requirement and in our view should be limited to investment and borrowing restrictions.
3. The depositary shall notify the Central Bank promptly of any material 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.	Same comments as immediately above.

Draft Rulebook Text	Comment
4. The depositary shall notify the Central Bank promptly of any non-material 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 if that breach is not resolved within 4 weeks.	This is a new requirement and is quite onerous. The Central Bank's Reporting Requirements for Irish authorised CIS already require a regulatory report to be filed online by the depositary on the occurrence of a material breach, a material error (i.e. an operational, administrative, custodial or other event that has an impact of the valuation or functional capability of the sub-fund), a significant matter, and advertent breach or a NAV/dealing suspension. If the proposed new requirement is to include all non-material breaches, it may possibly include items of a very minor nature which are not capable of being resolved within a short period of time
Valuation of UCITS	
9. The depositary 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.	Despite the existing nature of this requirement (Guidance Note 1/00, paragraph 3) we would note its onerous nature and suggest that the opportunity be taken to reflect the responsibility of the UCITS as well as the oversight role of the depositary. We would suggest that this paragraph be amended to provide "The depositary shall *monitor the UCITS with a view to ensuring* 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."