STATUTORY INSTRUMENTS.

S.I. No. 316 of 2026

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013 (SECTION 48(1)) (UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES) REGULATIONS 2026

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CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013 (SECTION 48(1)) (UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES) REGULATIONS 2026

In exercise of the powers conferred on the Central Bank of Ireland (the “Bank”) by section 48 of the Central Bank (Supervision and Enforcement) Act 2013 (No. 26 of 2013)(the “Act”), the Bank, having consulted with the Minister for Finance and the Minister for Enterprise, Tourism and Employment in accordance with section 49(1) of the Act hereby makes the following regulations:

PART 1

PRELIMINARY AND GENERAL

Citation

1. (1) These Regulations may be cited as the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2026.

Interpretation

2. (1) In these Regulations, unless the context otherwise requires:

“actively managed UCITS ETF” means a UCITS ETF, in respect of which the responsible person has discretion over the composition of its portfolio and which, subject to the stated investment objectives and policies, may have the objective of outperforming an index;

“alternative investment fund” has the meaning given to the term in Regulation 5(1) of the European Union (Alternative Investment Fund Managers) Regulations 2013 (S.I. No. 257 of 2013);

“AIF” means an alternative investment fund;

“annual tracking difference” means the difference between the annual return of an index-tracking UCITS and the annual return of the tracked index;

“anti-dilution levy” means a fee that is paid to the UCITS by a unitholder at the time of a subscription, repurchase or redemption of units, that compensates the UCITS for the cost of liquidity incurred because of the size of that transaction, and that ensures that other unitholders are not unfairly disadvantaged;

“associated company” has the meaning given to the term “associated undertaking” in schedule 4, Part III Accounting Principles and Valuation Rules, paragraph 21 of the Companies Act 2014 (No. 38 of 2014);

“central counterparty” means a person specified in Regulation 8(5);

“Commission Regulation (EU) No 583/2010” means Commission Regulation (EU) No 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and

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conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website.[1]

“constitutional document” means:

(a) in the case of a unit trust, the trust deed,

(b) in the case of an investment company, the memorandum and articles of association,

(c) in the case of a common contractual fund, the deed of constitution, and

(d) in the case of an Irish Collective Asset-management Vehicle, the instrument of incorporation;

“directed brokerage services” means brokerage services in relation to a UCITS pursuant to which a commission or similar payment is paid to or secured by the entity which issues instructions;

“EMIR” means Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories[2];

“ESMA” means the European Securities and Markets Authority;

“FDI” means a financial derivative instrument;

“fulcrum fee” means a type of performance fee which provides for the level of the fee to increase or decrease proportionately with the investment performance of the UCITS over a specified period of time in relation to the investment record of an appropriate reference indicator (including a negative fee deducted from the basic fee charged to the UCITS);

“group undertaking” means an undertaking that is included in the same group for the purposes of preparing consolidated accounts, in accordance with Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 84/349/EEC[3] or in accordance with recognised international accounting rules;

“High-Water Mark” or “HWM” means the highest net asset value per unit;

“High-Water Mark model” means a performance fee model whereby the performance fee may only be charged on the basis of achieving a new High-Water Mark during the performance reference period;

“High-on-High model” means a performance fee model where a performance fee may only be charged if the net asset value exceeds the net asset value at which the performance fee was last crystallised;

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[1] OJ No. L 176, 10.7.2010, p.1
[2] OJ No. L 201, 27.7.2012, p.1
[3] OJ No. L 182, 29.6.2013, p.19

"index-tracking UCITS" means a UCITS the strategy of which is to replicate (by any means including physical or synthetic replication) or track the performance of an index or indices;

"index-tracking leveraged UCITS" means a UCITS the strategy of which is to have a leveraged exposure to an index or exposure to a leveraged index;

"indicative net asset value" means a measure of the intraday value of the net asset value of a UCITS ETF based on the most up-to-date information. For the avoidance of doubt the indicative net asset value is not necessarily the value at which investors on the secondary market purchase and sell their units;

"investment adviser" means a firm appointed by-

(a) a responsible person, or

(b) an investment manager (including any sub investment manager), to provide investment advice in respect of some or all of the assets of a UCITS and which does not have any discretionary powers over any of the assets of that UCITS;

"investment fund" means a UCITS or an AIF;

"investment manager" means a firm appointed by a responsible person to manage some or all of the assets of a UCITS on a discretionary basis and shall include any sub investment manager appointed by an investment manager;

"KID" means a key information document issued pursuant to Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs);

"KIID" means a key investor information document of a UCITS;

"legal maturity" means the date when the principal of a security is to be repaid in full and which is not subject to any optionality;

"management company" has the meaning given to the term in the UCITS Regulations, with the exception of Part 11 where the term refers exclusively to a management company for which Ireland is the management company's home Member State;

"Money Market Funds Regulation" means Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds[4];

"multilateral trading facility" has the meaning given to the term in Article 4 of MiFID;

"own funds" has the meaning given to the term in point (118) of Article 4(1) of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012[5];

"performance reference period" means the time horizon over which the performance of the UCITS is measured and compared with that of the reference

[4] OJ No. L 169, 30.6.2017, p.8
[5] OJ No. L 176, 27.6.2013, p.1

indicator, at the end of which the mechanism for the compensation for past underperformance (or negative performance) can be reset;

“reference indicator” means the reference indicator against which the relative performance of the UCITS will be measured;

“resident in the State” means a person who is present in the State for the whole of 110 business days per year;

“regulatory criteria” means those non-exhaustive considerations in respect of a regulated market, including those set out in Schedule 1, to which the responsible person shall have regard when assessing the eligibility of a market for investment;

“responsible person” means a management company, where one has been designated to act in respect of a particular UCITS and in the absence of any such designation, the UCITS itself. In the case of Regulation 50, the responsible person means the UCITS investment company where the designated management company is being replaced;

“SEC” means the Securities and Exchange Commission of the United States of America;

“soft commission” means an agreement or other arrangement under which an entity receives goods or services in return for which it agrees to direct, or in fact directs, business through or to another person or otherwise confers an economic advantage on that other person;

“structured UCITS” has the meaning given to the term in Article 36(1) of Commission Regulation (EU) No 583/2010”;

“supervisory and regulatory requirements” means any condition or requirement imposed on a UCITS by, or by virtue of, financial services legislation;

“tracking error” means the volatility of the difference between the return of the index-tracking UCITS and the return of the index or indices that is or are tracked;

“UCITS Directive” means Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities;

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

“UCITS Regulations” means European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011) (as amended);

“umbrella UCITS” means a UCITS which has one or more sub-funds;

“unitholder” means a shareholder in the case of an investment company and unitholder in the case of a unit trust or common contractual fund;

“units” mean shares of an investment company and units of a unit trust or common contractual fund;

"valuation policy" has the meaning given to that term by Regulation 38;

(2) For the purposes of these Regulations, in particular Part 2, Chapter 2 of these Regulations, any investment restrictions (which are applicable to particular types of assets invested in by a UCITS) or borrowing restrictions (which are applicable to borrowing by a UCITS) apply to the net asset value of the UCITS and to each sub-fund of an umbrella fund as if each sub-fund was a separate UCITS.

(3) A word or expression used in these Regulations and also used in the UCITS Regulations or the description or explanation of a matter set out in the UCITS Regulations and referred to in these Regulations has, unless the contrary intention appears, the same meaning (description or explanation) in these Regulations that it has in the UCITS Regulations.

PART 2

RESTRICTIONS ON UCITS

Chapter 1

General

General restrictions

3. Where a counterparty has discretion over the composition or management of a UCITS investment portfolio or of the underlying of the FDI, the arrangement between the relevant UCITS and the counterparty shall be an investment management delegation arrangement and the responsible person shall comply with the requirements on delegation in the UCITS Regulations.

Eligible assets: transferable securities

4. (1) A responsible person shall ensure that investment by a UCITS in a partly paid transferable security does not expose the UCITS to loss beyond the amount to be paid for it.

(2) For the purpose of ensuring the ability of the UCITS to comply with Regulation 104(1) of the UCITS Regulations, a responsible person shall -

(a) assess (and document this assessment in writing) its liquidity risk, where information is available to the responsible person that would lead it to determine that investment by the UCITS in a transferable security could compromise the ability of the UCITS to comply with Regulation 104(1) of the UCITS Regulations,

(b) assess (and document this assessment in writing), by reference to the factors specified in this sub-paragraph at a minimum, the liquidity risk of a transferable security when investing in any transferable security –

(i) the volume of and turnover in the transferable security,

(ii) if price is determined by supply and demand in the market, the issue size and the portion of the issue that the investment manager plans to buy,

(iii) the opportunity and timeframe to buy or sell the transferable security, and

(iv) an assessment of the quality of secondary market activity in the transferable security and an analysis of the quality and number of intermediaries and market makers dealing in the transferable security concerned, and

(c) assess (and document this assessment in writing) -

(i) the liquidity of transferable securities, and

(ii) the negotiability of transferable securities held in the portfolio,

where such transferable securities are not admitted to trading on a regulated market as defined in Regulation 68(1)(a) to (d) of the UCITS Regulations, in order to ensure compliance with Regulation 104(1) of the UCITS Regulations.

Closed-ended funds

5. A responsible person shall not invest the assets of a UCITS in a closed-ended fund for the purpose of circumventing the investment restrictions set out in the UCITS Regulations.

Money-market instruments

6. (1) A responsible person shall only invest assets of a UCITS in a money-market instrument where the responsible person has -

(a) assessed the liquidity of that money-market instrument, and

(b) retained written records of that assessment.

(2) In assessing the liquidity of a money-market instrument for the purpose of subparagraph (1)(a), the responsible person shall take the following factors into account:

(a) in respect of the particular money-market instrument:

(i) the frequency of trades and quotes for the instrument;

(ii) the number of dealers who are willing to purchase and sell the instrument;

(iii) the willingness of the relevant dealers to make a market in the relevant instrument;

(iv) the nature of market place trades;

(v) the size of the particular issuance or programme;

(vi) the possibility to repurchase, redeem or sell the relevant instrument in a short period and whether such repurchase, redemption or sale can be achieved at limited cost in terms of fees and bid/offer prices and with very short settlement delay;

(b) in respect of the UCITS:

(i) unitholder structure and the concentration of unitholders of the UCITS;

(ii) the purpose of funding of unitholders;

(iii) the quality of information on the cash flow patterns of the UCITS;

(iv) the prospectus's guidelines of the UCITS on limiting withdrawals.

(3) Where a responsible person considers that an amortisation method can be used to assess the value of a money-market instrument it shall 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 amortised cost method as defined in Article 2(10) of the Money Market Funds Regulation.

(4) Where the presumption of liquidity and accurate valuation provided for in paragraph 5 of Schedule 3 of the UCITS Regulations cannot be relied upon, the money-market instrument shall be subject to an appropriate assessment by the responsible person.

(5) A responsible person must be able to demonstrate that it has assessed liquidity for all money-market instruments which are traded on a regulated market but for which the responsible person was not able to rely on a presumption of liquidity.

Deposits and ancillary liquidity with credit institutions

7. (1) A responsible person shall only invest assets of the UCITS in deposits if such deposits meet the requirements of Regulation 68(1)(f) of the UCITS Regulations.

(2) Deposits, or cash booked in accounts and held as ancillary liquidity, shall only be made with a credit institution which is within at least one of the following categories:

(a) a credit institution authorised in the EEA;

(b) a credit institution authorised within a signatory state, other than a Member State of the EEA, to the Basle Capital Convergence Agreement of July 1988;

(c) a credit institution in a third country deemed equivalent pursuant to Article 107(4) of the Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

Financial derivative instruments

8. (1) A responsible person shall only invest assets of the UCITS in an FDI if -

(a) the FDI does not expose the UCITS to risks which the UCITS could not otherwise assume,

(b) the FDI does not cause the UCITS to diverge from its investment objectives disclosed in its prospectus, and

(c) the FDI is dealt in on a regulated market or alternatively the conditions in paragraph (3) are satisfied.

(2) Where a responsible person enters, on behalf of a UCITS, into a total return swap or invests in other FDIs with similar characteristics, the assets held by the UCITS shall comply with Regulations 70, 71, 72, 73 and 74 of the UCITS Regulations.

(3) A responsible person shall only invest assets of the UCITS in an OTC derivative if the derivative counterparty is within at least one of the following categories:

(a) a credit institution that is within any of the categories set out in Regulation 7;

(b) an investment firm authorised in accordance with MiFID;

(c) a group company of an entity approved as a bank holding company by the Federal Reserve of the United States of America where that group company is subject to bank holding company consolidated supervision by the Federal Reserve.

(4) Where a counterparty within paragraph (3)(b) or (c) -

(a) was subject to a credit rating by an agency registered and supervised by ESMA that rating shall be taken into account by the responsible person in the credit assessment process, and

(b) is downgraded to A-2 or below (or comparable rating) by the credit rating agency referred to in subparagraph (a) this shall result in a new credit assessment being conducted of the counterparty by the responsible person without delay.

(5) Where an OTC derivative referred to in paragraph (3)(a), (b) and (c) is subject to a novation, the counterparty after the novation must be -

(a) an entity that is within any of the categories set out in paragraph (3)(a), (b) and (c), or

(b) a central counterparty that is -

(i) authorised or recognised under EMIR, or

(ii) pending recognition by ESMA under Article 25 of EMIR, an entity classified -

(I) by the SEC as a clearing agency, or

(II) by the Commodity Futures Trading Commission of the United States of America as a derivatives clearing organisation.

(6) (a) Risk exposure to the counterparty shall not exceed the limits set out in Regulation 70(1)(c) of the UCITS Regulations, assessed in accordance with subparagraph (b).

(b) In assessing risk exposure to the counterparty to an OTC derivative for the purpose of Regulation 70(1)(c) of the UCITS Regulations -

(i) a responsible person shall calculate the exposure to the counterparty using the positive mark-to-market value of the OTC derivative with that counterparty,

(ii) a responsible person may net derivative positions with the same counterparty, provided that the UCITS is able to legally enforce netting arrangements with the counterparty. For this purpose, netting is permissible only in respect of OTC derivatives with the same counterparty and not in relation to any other exposures the UCITS has with the same counterparty,

(iii) a responsible person may take account of collateral received by the UCITS in order to reduce the exposure to the counterparty, provided that the collateral meets with the requirements specified in Regulation 24(1)(c), (3), (4), (5), (6), (7), (8), (9) and (10).

Financial Index

9. (1) A responsible person shall ensure that it is able to demonstrate that a financial index in which assets of the UCITS are invested satisfies the following:

(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 responsible person must be able to demonstrate that this cash management does not affect the objective nature of the index calculation methodology.

(2) If a financial index has been created and calculated on the request of a single market participant, or of a very limited number of market participants, and according to the specifications of that market participant, or those market participants, it shall not constitute an adequate benchmark of the market to which it refers.

(3) A responsible person shall ensure that a due diligence exercise on the quality of the financial index is carried out and documented, prior to investment of the assets of the UCITS in the index, and on an on-going basis, considering matters including the following:

(a) whether the index methodology contains an adequate explanation of the weightings and classification of the components on the basis of the investment strategy;

(b) whether the index represents an adequate benchmark;

(c) matters relating to the index components;

(d) an assessment of the availability of information on the index, including -

(i) whether there is a clear narrative description of the benchmark,

(ii) whether there is an independent audit and the scope of such an audit, and

(iii) the frequency with which the index is published and whether this will affect the ability of the UCITS to calculate its net asset value.

(4) A responsible person shall not invest assets of the UCITS in a financial index where a single component's impact on the overall return of that index exceeds the diversification requirements set out in Regulation 71 of the UCITS Regulations.

(5) A responsible person shall not invest assets of the UCITS in a leveraged financial index where a single component's impact on the overall return of that index, taking into account the leverage, exceeds the diversification requirements set out in Regulation 71 of the UCITS Regulations.

(6) A responsible person shall not invest assets of the UCITS in a financial index -

(a) that rebalances on an intraday or daily basis, or the rebalancing frequency of which prevents investors from being able to replicate the financial index,

(b) in respect of which the index provider does not disclose, in a manner that is easily accessible by and free of charge to investors and prospective investors, the information prescribed in paragraph (7) on the full calculation methodology sufficient to enable investors to replicate the financial index, or

(c) information on the performance of which is not freely available to investors.

(7) The information on the full calculation methodology that must be disclosed shall include the following:

(a) index constituents;

(b) index calculation (including the effect of leverage within the index);

(c) re-balancing methodologies;

(d) index changes;

(e) information on any operational difficulties in providing timely or accurate information;

(f) important parameters or elements to be taken into account by investors to replicate the financial index.

(8) A responsible person shall only invest assets of the UCITS in a financial index if that index complies with the conditions set out in paragraph (9).

(9) (a) The conditions to which paragraph (8) refers are the following:

(i) the financial index publishes, in a manner that is easily accessible by and free of charge to investors and prospective investors, its constituents together with, in accordance with subparagraph (b), their respective weightings;

(ii) the methodology for the selection and the rebalancing of the components of the financial index is based on a set of pre-determined rules and objective criteria;

(iii) the index-provider does not accept payments from potential index components for inclusion in the index;

(iv) the methodology of the financial index does not permit retrospective changes to previously published index values;

(v) the financial index is subject to independent valuation.

(b) The requirements to which subparagraph (a)(i) refers are the following:

(i) weightings are published after each re-balancing which publication may be on a retrospective basis;

(ii) the information on the constituents of the financial index and their respective weightings shall-

(I) cover the previous period since the last rebalancing, and

(II) include all levels of the index.

(10) A responsible person shall only invest assets of the UCITS in a commodity index if the conditions specified in paragraph (11) are satisfied in respect of that investment in that commodity index.

(11) The conditions to which paragraph (10) refers are the following:

(a) the relevant commodity index is comprised of different commodities;

(b) sub-categories of a commodity shall be regarded as being the same commodity for the calculation of the diversification limits set out in Regulation 71 of the UCITS Regulations if those sub-categories are highly correlated within the meaning of paragraph (12).

(12) For the purposes of paragraph (11) two components of a commodity index that are sub-categories of the same commodity are highly correlated if 25 per cent of the correlation observations are above 0.8, where correlation observations are calculated as follows -

(a) on the basis of equally-weighted daily returns of the corresponding commodity prices, and

(b) from a 250-day rolling time window over a five-year period.

Investment through subsidiaries

10. A responsible person shall not establish a subsidiary unless the following conditions have been satisfied:

(a) the prior approval of the Bank to establish a subsidiary has been received;

(b) the subsidiary must be wholly owned and controlled by the UCITS and, in particular, the directors of either the UCITS investment company or the UCITS management company or both must form a majority of the board of directors of the subsidiary;

(c) the subsidiary must not be an investment fund or issuing body;

(d) the subsidiary must not appoint any third parties or enter into any contractual arrangements appointing third parties unless the UCITS is a party to such appointments or contractual arrangements;

(e) the prospectus of the UCITS must contain the following:

(i) a statement referring to the ability to establish wholly owned subsidiaries in accordance with this Regulation;

(ii) that the names of any subsidiaries will be contained in the annual report;

(f) the annual report of the UCITS must include a schedule of subsidiaries established;

(g) the constitutional document of the UCITS must provide for the ability of the UCITS to establish wholly owned subsidiaries with the prior approval of the Bank;

(h) the constitutional document of the UCITS must provide that the assets and shares of the subsidiary will be held by the Irish depositary;

(i) the constitutional document of the subsidiary must include provisions which restrict the subsidiary from acting other than under the control of the UCITS and which restrict any person or entity other than UCITS from holding shares in the subsidiary;

(j) the constitutional document of the subsidiary must include a sole object, or provision of equivalent effect, that reflects the investment objective and policy of the UCITS;

(k) the constitutional document of the subsidiary must provide that the assets and shares of the subsidiary are held by the Irish depositary;

(l) the assets held by the subsidiary must be valued in accordance with the UCITS' valuation rules.

Chapter 2

Investment Restrictions

Investment funds

11. (1) Where, by virtue of an investment in the units of another investment fund, a responsible person, an investment manager or an investment adviser receives a commission on behalf of the UCITS (including a rebated commission), the responsible person shall ensure that the relevant commission is paid into the property of the UCITS.

(2) Where a responsible person invests the assets of a sub-fund within an umbrella UCITS in the units of another sub-fund within that umbrella UCITS, that investment is subject to the requirements in paragraph (3), in addition to the provisions of paragraph (1).

(3) The requirements for the purposes of paragraph (2) are the following:

(a) the investment shall not be made in a sub-fund which itself holds units in any other sub-fund within the umbrella UCITS;

(b) where a responsible person, on behalf of a sub-fund (the "Investing Fund") of an umbrella UCITS invests in the units of other sub-funds of that umbrella (each a "Receiving Fund"), 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) shall not exceed the rate of the maximum annual management fee which investors in the Investing Fund may be charged in respect of the balance of the Investing Fund's assets, such that there shall be no double charging of the annual management fee to the Investing Fund as a result of its investments 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.

(4) Where a responsible person proposes that a sub-fund within an umbrella UCITS will invest in the units of another sub-fund within that umbrella by way of transfer for consideration, that responsible person shall, in writing, notify the Bank of that proposal and of the rationale for the proposed investment, in advance of the proposed date of investment.

Recently issued transferable securities

12. (1) Subject to paragraph (2), a responsible person shall not invest any more than 10 per cent of the assets of a UCITS in securities of the type to which Regulation 68(1)(d) of the UCITS Regulations applies.

(2) Paragraph (1) does not apply to investment by a responsible person in US securities known as "Rule 144A securities" provided that -

(a) the relevant securities have been issued with an undertaking to register the securities with the SEC within one year of issue, and

(b) the securities can be realised by the UCITS within seven days at the price, or approximately at the price, at which they are valued by the UCITS.

Financial derivative instruments

13. (1) For the purpose of Regulation 70 of the UCITS Regulations and the calculation of issuer concentration limits of a UCITS, a responsible person shall -

(a) include any net exposure to a counterparty generated through a securities lending or repurchase agreement, where net exposure means the amount receivable by a UCITS less any collateral provided by the UCITS,

(b) include exposures created through the reinvestment of collateral, and

(c) establish whether the exposure of the UCITS is to an OTC counterparty, a broker, a central counterparty or a clearing house.

(2) The position exposure of a UCITS, if any, to the underlying assets of an FDI, including an FDI that is embedded in transferable securities, money-market instruments or investment funds, when combined with positions resulting from direct investments -

(a) shall be calculated in accordance with paragraph (3), and

(b) shall not exceed the investment limits set out in Regulations 70 and 73 of the UCITS Regulations.

(3) For the purposes of paragraph (2) -

(a) when calculating issuer-concentration risk, the FDI (including embedded FDI) must be looked through in determining the resultant position exposure and this position exposure shall be taken into account in the issuer concentration calculations,

(b) a responsible person shall calculate the position exposure of the UCITS using the commitment approach or the maximum potential loss as a result of default by the issuer approach, whichever is greater, and

(c) a responsible person shall calculate the position exposure, regardless of whether a UCITS uses VaR for global exposure purposes.

(4) Paragraph (2) does not apply in the case of an index-based FDI provided the underlying index meets the criteria set out in Regulation 71(1) of the UCITS Regulations.

Borrowings by a UCITS

14. (1) A responsible person shall not offset credit balances of a UCITS, such as cash, against borrowings, when determining the percentage of borrowings that are outstanding.

(2) A responsible person shall ensure that a UCITS with foreign currency borrowings which exceed the value of the back to back deposit treats that excess as borrowing for the purpose of Regulation 103 of the UCITS Regulations.

Chapter 3

Financial Derivative Instruments

Cover requirements

15. (1) Where the initial margin posted to and variation margin receivable from a broker relating to an exchange-traded derivative or an OTC derivative is not protected by client money rules or other similar arrangements to protect the UCITS in the event of the insolvency of the broker, the responsible person shall calculate exposure of the UCITS within the OTC counterparty limit as referred to in Regulation 70(1)(c) of the UCITS Regulations.

(2) A responsible person shall ensure that, at all times -

(a) the UCITS is capable of meeting all its payment and delivery obligations incurred by transactions involving FDI,

(b) the risk management process of the UCITS includes the monitoring of FDI transactions to ensure that every such transaction is covered adequately, and

(c) a transaction in FDI which gives rise to, or could potentially give rise to, a future commitment on behalf of a UCITS is covered in accordance with the conditions specified in paragraph (3).

(3) The conditions to which subparagraph (c) of paragraph (2) refers are the following:

(a) in the case of an FDI that is, automatically or at the discretion of the UCITS, cash-settled, the UCITS must, at all times, hold liquid assets that are sufficient to cover the exposure;

(b) in the case of an FDI that requires physical delivery of the underlying asset, either -

(i) the asset must at all times be held by a UCITS, or

(ii) where either or both of the conditions in subparagraphs (a) and (b) of paragraph (4) applies, the UCITS must cover the exposure with sufficient liquid assets.

(4) The conditions to which paragraph (3)(b)(ii) refers are the following:

(a) the underlying asset consists, or the underlying assets consist, of highly liquid fixed income securities;

(b) (i) the exposure can be covered without the need to hold the underlying assets;

(ii) the specific FDI is addressed in the risk management process;

(iii) details of the exposure are provided in the prospectus.

Risk management process and reporting

16. (1) A responsible person shall in writing notify the Bank of material amendments to the initial filing of the risk management process of a UCITS, in advance of the amendment being made.

(2) The Bank may object to the making of any proposed amendment that is notified to it under paragraph (1).

(3) (a) No proposed amendment to which the Bank has objected under paragraph (2) shall be made to the risk management process of a UCITS.

(b) Where the Bank has objected under paragraph (2) to the making of a proposed amendment to the risk management process of a UCITS, neither -

(i) the relevant management company, nor

(ii) the relevant UCITS,

shall engage in any activity that is associated with or which would derive from the proposed amendment to which the objection has been made.

Calculation of global exposure

17. A responsible person shall ensure that, at all times -

(a) the UCITS complies with the limits on global exposure,

(b) the UCITS establishes and implements appropriate internal risk management measures and limits, irrespective of whether the UCITS uses a commitment approach or the VaR approach or any other methodology to calculate global exposure. For the purpose of paragraph 12(1) of Schedule 9 of the UCITS Regulations, a UCITS shall only select a methodology where ESMA has published guidelines on the selected methodology, and

(c) it calculates the global exposure in accordance with Schedule 2.

Global exposure: commitment approach (structured UCITS)

18. (1) The responsible person of a structured UCITS shall only calculate global exposure of a structured UCITS using the commitment approach as set out in paragraphs 14 to 18 of Schedule 9 of the UCITS Regulations in the following circumstances:

(a) the UCITS is managed passively and structured to achieve, at maturity, the pre-defined payoff and holds at all times the assets needed to ensure that this pre-defined payoff will be met;

(b) the UCITS is formula-based and the pre-defined payoff can be divided into a limited number of separate scenarios which are dependent on the value of the underlying assets and which offer investors different payoffs;

(c) an investor can be exposed to only one payoff profile at any time during the life of the UCITS;

(d) the use of the commitment approach as set out in paragraphs 14 to 18 of Schedule 9 of the UCITS Regulations to calculate global exposure for the individual scenarios is appropriate taking into account the provisions of -

(i) guideline 1, paragraph 2(d) of the ESMA Guidelines on Risk Measurement and the Calculation of Global Exposure for Certain Types of Structured UCITS (Ref: ESMA 4/2011/112),

(ii) paragraphs 11 to 13 of Schedule 9 of the UCITS Regulations, and

(iii) guidelines 1, 4 and 5 of box 1 of the ESMA Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (Ref: CESR/10-788);

(e) the UCITS has a final maturity not exceeding nine years;

(f) the UCITS does not accept new subscriptions from the public after the initial marketing period;

(g) the maximum loss the UCITS can suffer when the portfolio switches from one payoff profile to another is limited to 100 per cent of the initial offer price;

(h) the impact of the performance of a single underlying asset on the payoff profile, when the UCITS switches from one scenario to another, complies with the diversification requirements of the UCITS Regulations based on the initial net asset value of the UCITS.

(2) The responsible person of a structured UCITS shall use the commitment approach as set out in paragraphs 14 to 18 of Schedule 9 of the UCITS Regulations, adjusted as provided for in paragraph (3), as the calculation method for a structured UCITS.

(3) The adjustments to which paragraph (2) refers are that -

(a) the formula-based investment strategy for each pre-defined payoff is broken down into individual payoff scenarios,

(b) the FDI implied in each scenario is assessed to establish whether the derivative may be excluded from the calculation of global exposure under boxes 3 and 4 of the ESMA Guidelines on Risk Measurement and the Calculation of Global Exposure and Counterparty Risk for UCITS (Ref: CESR/10-788), and

(c) the responsible person calculates the global exposure of the individual scenarios to assess compliance with the global exposure limit of 100 per cent of net asset value.

Global exposure: Value at Risk approach

19. (1) A responsible person that calculates the global exposure of a UCITS using the VaR approach shall consider all of the positions of the UCITS portfolio.

(2) A responsible person shall at all times set the maximum VaR limit of a UCITS according to its defined risk profile.

(3) A responsible person shall ensure that a UCITS that uses the VaR approach uses -

(a) the relative VaR approach, or

(b) the absolute VaR approach,

whichever is the most appropriate methodology given the risk profile and investment strategy of the UCITS to calculate global exposure as set out in Schedule 4.

(4) For the purposes of paragraph (3) -

(a) a responsible person shall ensure that there is consistency in the choice of the type of VaR used by the UCITS, and

(b) the decision as to whether to use the relative VaR approach or the absolute VaR approach, and the assumptions underlying that decision, must be documented fully by the responsible person.

(5) A responsible person shall ensure that -

(a) the VaR approach used by the UCITS takes into account, as a minimum, general market risk and, if applicable, idiosyncratic risk,

(b) the event risks or the default risks, or (as the case may be) both, to which the UCITS is exposed following its investments are also taken into account in the stress testing programme for the purposes of Regulation 21,

(c) the VaR approach used by the UCITS is appropriate having regard to the investment strategy that is being pursued and the types and complexity of the financial instruments used by the UCITS,

(d) the VaR approach it selects for the UCITS -

(i) provides for completeness,

(ii) assesses the risks with a high level of accuracy, and

(iii) complies with the conditions set out in paragraph (6), and

(e) in assessing the global exposure by means of a VaR approach, it complies with the quantitative and qualitative minimum requirements set out in Schedule 4.

(6) The conditions to which paragraph (5)(d)(iii) refers are the following:

(a) all the positions of the UCITS portfolio are included in the VaR calculation;

(b) the approach captures adequately all the material market risks associated with portfolio positions and, in particular, the specific risks associated with FDI. For this purpose, the VaR approach must cover all the risk factors that have more than a negligible influence on the fluctuation of the portfolio's value;

(c) the quantitative models that are used within the VaR approach, including pricing tools, estimation of volatilities and correlations, shall provide for a high level of accuracy;

(d) all data that is used within the VaR approach shall provide for consistency, timeliness and reliability.

Back-testing

20. (1) A responsible person shall conduct a back-testing programme for the UCITS for the purpose of monitoring the accuracy and performance of its VaR approach.

(2) The back-testing programme to which paragraph (1) refers shall provide, for each business day, a comparison of -

(a) the one-day VaR measure generated by the UCITS model for the UCITS end-of-day positions, and

(b) the one-day change of the UCITS portfolio value by the end of the subsequent business day.

(3) The back-testing programme to which paragraph (1) refers shall be conducted at least on a monthly basis, subject to always performing retroactively the comparison for each business day as detailed in paragraph (2).

(4) A responsible person shall determine and monitor any overshooting of a UCITS on the basis of its back-testing programme.

(5) Where the results of the back-testing programme undertaken by virtue of this Regulation reveal a percentage of overshootings that exceeds 4 for the most recent 250 business days in the case of a 99 per cent confidence interval, the responsible person must review the VaR approach and make appropriate adjustments.

(6) Where, in the case of a 99 per cent confidence interval, the number of overshootings for a UCITS for the most recent 250 business days exceeds 4, the responsible person shall-

(a) inform the senior management of the responsible person, at least quarterly,

(b) inform the Bank, at least semi-annually, and

(c) comply with paragraph (7).

(7) A responsible person shall provide the senior management of the responsible person and the Bank with -

(a) an analysis of the sources of overshootings,

(b) an explanation of the sources of overshootings, and

(c) a statement of what measures, if any, have been taken to improve the accuracy of the VaR approach.

(8) For the purposes of this Regulation, “overshooting” means a one-day change in the value of the relevant portfolio that exceeds the related one-day value-at-risk measure calculated by the VaR approach.

Stress-testing

21. (1) A responsible person shall, in accordance with paragraph (2), conduct a rigorous, comprehensive and adequate stress-testing programme for a UCITS which uses the VaR approach.

(2) The requirements to which paragraph (1) refers are the following:

(a) the stress-testing programme shall be conducted in accordance with the qualitative and quantitative requirements of paragraphs (5) and (6);

(b) without prejudice to subparagraph (c), stress tests shall be conducted regularly and in any event not less frequently than once a month;

(c) stress tests shall be conducted whenever a change in the value or the composition of a UCITS or a change in market conditions makes it likely that the test results will differ significantly from the results of the then-most-recent stress test.

(3) A responsible person shall ensure that the stress-testing programme -

(a) is designed to measure any potential major depreciation of the value of a UCITS as a result of unexpected changes in the relevant market parameters and correlation factors, and

(b) measures changes in the relevant market parameters and correlation factors which could result in a major depreciation of the value of a UCITS.

(4) A responsible person shall -

(a) integrate the stress tests required by this Regulation into the risk management process of a UCITS,

(b) consider the results of the stress tests when making investment decisions for the UCITS, and

(c) adapt the design of the stress tests in line with the composition of the UCITS and the market conditions that are relevant for the UCITS.

(5) A responsible person shall ensure that the stress tests -

(a) cover all risks that affect the value or the fluctuations in value of the UCITS to any significant degree,

(b) without prejudice to the generality of subparagraph (a), take into account those risks that are not fully captured by the VaR approach that is used,

(c) are appropriate for analysing potential situations in which the use of significant leverage would expose the UCITS to significant downside risk and could potentially lead to the UCITS having a net asset value less than zero, and

(d) focus on those risks which, though not significant in normal circumstances, are likely to be significant in stress situations, including the following:

(i) the risk of unusual correlation changes;

(ii) the illiquidity of markets in stressed market situations;

(iii) the behaviour of complex structured products under stressed liquidity conditions.

(6) A responsible person shall -

(a) establish and implement written clear procedures relating to the design of, and ongoing adaptation of, the stress tests of a UCITS,

(b) on the basis of the procedures established and implemented in accordance with subparagraph (a), develop a written programme for conducting stress tests,

(c) include in the programme developed in accordance with subparagraph (b) an explanation as to why the programme is suitable for the UCITS, and

(d) document clearly, in the programme developed in accordance with subparagraph (b) -

(i) completed stress tests,

(ii) the results of completed stress tests, and

(iii) the reasons behind any intention to deviate from the programme.

Value at Risk approach: additional safeguards

22. (1) A responsible person which calculates global exposure using a VaR approach for a UCITS shall monitor the leverage of the UCITS regularly.

(2) A responsible person shall ensure that the UCITS supplements both the VaR approach and the stress-testing framework, by taking into account the risk profile and the investment strategy that is being pursued, with other risk measurement methods.

Chapter 4

Efficient Portfolio Management

Portfolio management techniques

23. (1) A responsible person shall only use efficient portfolio management techniques and instruments for the purposes of Regulation 69(2) of the UCITS Regulations where same are in the best interests of the UCITS.

(2) A responsible person shall ensure that all the revenues arising from efficient portfolio management techniques, net of direct and indirect operational costs, are returned to the UCITS.

Collateral

24. (1) A responsible person shall ensure, in engaging in efficient portfolio management techniques and instruments, that -

(a) every asset that is received by a UCITS as a result of engaging in efficient portfolio management techniques and instruments is treated as collateral,

(b) such techniques comply with the criteria set down in paragraph (2), and

(c) at all times, collateral that is received by a UCITS meets the criteria specified in Schedule 3.

(2) A responsible person shall ensure that the UCITS risk management process identifies, manages and mitigates risks linked to the management of collateral, including operational risks and legal risks.

(3) (a) Where a UCITS receives collateral on a title transfer basis, the responsible person shall ensure that that collateral is held by the depositary.

(b) Where a UCITS receives collateral on any basis other than a title transfer basis, that collateral may be held by a third party depositary provided that that depositary is subject to prudential supervision and is unrelated and unconnected to the provider of the collateral.

(4) A responsible person shall not sell, pledge or re-invest the non-cash collateral received by the UCITS.

(5) Where a responsible person invests the cash collateral received by the UCITS, such investments shall only be made in one or more of the following:

(a) a deposit with a credit institution referred to in Regulation 7;

(b) a high-quality government bond;

(c) a reverse repurchase agreement, provided the transaction is with a credit institution referred to in Regulation 7 and the UCITS is able to recall at any time the full amount of cash on an accrued basis;

(d) a short-term MMF as defined in Article 2(14) of the Money Market Funds Regulation.

(6) Where a responsible person invests the cash collateral received by the UCITS –

(a) that investment shall comply with the diversification requirements applicable to non-cash collateral, and

(b) invested cash collateral shall not be placed on deposit with the counterparty or with any entity that is related or connected to the counterparty.

(7) A responsible person shall ensure that, where a UCITS receives collateral for at least 30 per cent of its assets -

(a) there is in place a stress testing policy that prescribes the components set out in paragraph (8), and

(b) stress tests are carried out regularly under normal and exceptional liquidity conditions to enable the responsible person to assess the liquidity risk attached to the collateral.

(8) The components of the stress-testing policy to which paragraph (7) refers are the following:

(a) the design of stress test scenario analysis including calibration, certification and sensitivity analysis;

(b) the empirical approach to impact assessment, including back-testing of liquidity risk estimates;

(c) the reporting frequency and the threshold(s) for limits and losses;

(d) the mitigation actions to be taken to reduce loss including haircut policy and gap risk protection.

(9) A responsible person shall, in accordance with paragraph (10), establish and ensure adherence to a haircut policy for the UCITS, adapted for each class of assets received as collateral.

(10) The requirements to which paragraph (9) refers are the following:

(a) when devising the haircut policy, a responsible person shall take into account the characteristics of the assets, such as the credit standing or the price volatility, as well as the outcome of the stress tests performed in accordance with Regulation 21;

(b) the responsible person shall document the haircut policy;

(c) the responsible person shall justify and document each decision to apply a specific haircut or to refrain from applying any haircut, to any specific class of assets.

(11) Where a counterparty to a repurchase or a securities lending agreement, which has been entered into by the responsible person on behalf of the UCITS –

(a) was subject to a credit rating by an agency registered and supervised by ESMA that rating shall be taken into account by the responsible person in the credit assessment process, and

(b) where a counterparty is downgraded to A-2 or below (or comparable rating) by the credit rating agency referred to in subparagraph (a) this shall result in a new credit assessment being conducted of the counterparty by the responsible person without delay.

(12) A responsible person shall ensure that it is at all times able to recall any security that has been lent out or to terminate any securities lending agreement to which it is party.

Repurchase and reverse repurchase agreements

25. (1) A responsible person that enters into a reverse repurchase agreement on behalf of a UCITS shall ensure that the UCITS is at all times able to recall the full amount of cash or to terminate the relevant agreement on either an accrued basis or a mark-to-market basis.

(2) In circumstances in which cash is, by virtue of the obligation under paragraph (1), recallable at any time on a mark-to-market basis, the responsible person shall use the mark-to-market value of the reverse repurchase agreement for the calculation of the net asset value of the UCITS.

(3) A responsible person that enters into a repurchase agreement shall ensure that a UCITS is at all times able to recall any securities that are subject to the repurchase agreement or to terminate the repurchase agreement into which it has entered.

Chapter 5

Share Classes

Creation of share classes in a UCITS

26. (1) Subject to paragraphs (2) and (3), a responsible person may create a share class, or more than one share class, within the relevant UCITS, or within a sub-fund of an umbrella UCITS, only if the following conditions are satisfied:

(a) the constitutional document of the UCITS provides for the creation of share classes and, in the case of an umbrella UCITS, the provision in the constitutional document to establish the way in which sub-funds, and share classes within sub-funds, are created, is clear and unambiguous;

(b) each UCITS and, in the case of umbrella UCITS, each sub-fund thereof consists of a single common pool of assets;

(c) the capital gains or losses and income arising from the common pool of assets must be distributed or must accrue equally to each unitholder relative to their participation in the UCITS or sub-fund thereof, or must both be distributed and accrue in that manner;

(d) unitholders in a share class must be treated equally and fairly, or where there is more than one share class all unitholders in the different share classes must be treated fairly.

(2) A responsible person shall ensure that all share classes within the UCITS or sub-funds thereof have the same dealing procedures and frequencies. Notwithstanding the foregoing, a UCITS ETF may have:

(a) different dealing cut-off times for cash and in-kind dealings; and/or

(b) different cut-off times where a UCITS ETF with hedged and unhedged share classes implements currency hedging at share class level.

(3) Where a UCITS engages in currency hedging at the level of a share class, the responsible person shall do the following:

(a) ensure that over-hedged positions do not exceed 105 per cent of the net asset value of the share class and under-hedged positions do not fall below 95 per cent of the portion of the net asset value of the share class where it is to be hedged against currency risk;

(b) keep hedged positions under review to ensure that over-hedged positions and under-hedged positions do not exceed the level permitted by subparagraph (a);

(c) in the review that is required by virtue of subparagraph (b), incorporate a procedure to ensure that any position that is materially in excess of 100 per cent of net assets shall not be carried forward from month to month;

(d) clearly attribute transactions to a specific class;

(e) not combine or offset currency exposures of different currency classes or allocate currency exposures of assets of the UCITS to separate share classes;

(f) ensure that the costs and gains or losses of the hedging transactions will accrue solely to the relevant class;

(g) implement stress tests to quantify the potential impact of losses on all share classes within the UCITS in the event of a share class exceeding its net asset value. The results of such stress test shall be made available to the Bank on request;

(h) ensure that where the introduction of the share class gives rise to administrative costs, those costs are borne by the relevant share class;

(i) ensure that –

(i) any risk, or

(ii) any administrative costs,

arising from the use of derivative overlay to hedge the currency risk in a share class is borne by the relevant share class only;

(j) ensure the coverage available to a share class, either in the form of the underlying financial instrument or in the form of liquid assets, is sufficient to meet all future obligations of that share class;

(k) ensure the notional of the derivative transaction does not lead to a payment or delivery obligation with a value exceeding that of the share class;

(l) ensure that counterparty exposure is assessed at the level of the share class in accordance with Regulation 70(1)(c) of the UCITS Regulations.

Chapter 6

Constitutional Documents

Fees

27. (1)(a) Subject to subparagraph (b), a responsible person shall ensure that the constitutional document of the UCITS specifies, as applicable -

(i) the maximum fee that may be charged by the management company, and

(ii) the maximum fee that may be charged by an investment manager appointed by the responsible person, where that fee is paid directly out of the assets of the UCITS.

(b) In the case of a UCITS constituted as an ICAV or investment company the matters specified in subparagraph (a) may be included in either the constitutional documents of the UCITS or in the relevant management agreement.

(2) Any fee under paragraph (1) that is specified as being payable to a management company or to an investment manager shall include any performance related fee that that management company or investment manager (as the case may be) may charge.

(3) (a) The maximum fee that may be charged by a management company or an investment manager pursuant to paragraph (1) shall not be increased without approval of the unitholders of the UCITS on the basis of a simple majority of votes cast in general meeting or such other majority as is specified in the constitutional document of the relevant UCITS or with the prior written approval of all unitholders of the fund (in accordance with the constitutional documents).

(b) If a fee that is disclosed in the prospectus for a UCITS is less than the maximum relevant fee that is permitted in the constitutional document, prior unitholder approval is required for any proposed increase in the fee that is disclosed in the prospectus, unless the prospectus also provides that a fee greater than the fee disclosed in the prospectus may be charged.

(4) (a) A responsible person shall provide unitholders of a UCITS with reasonable notice in the event of an increase in the maximum fee that may be charged by a management company or an investment manager.

(b) Notice given for the purposes of subparagraph (a) must be sufficient to enable a unitholder to redeem some or all of the unitholder's units prior to the implementation of the proposed increase.

Investment

28. A responsible person shall include a list of the stock exchanges, markets and regulated derivatives markets in which the UCITS may invest in the constitutional document of the UCITS.

Umbrella UCITS

29. A responsible person shall ensure that the constitutional document of an umbrella UCITS provides that the assets of each sub-fund -

(a) belong exclusively to the relevant sub-fund, and

(b) may not be used to discharge, directly or indirectly, the liabilities of or claims against any other sub-fund and are not available for any such purpose.

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

30. (1) A responsible person shall not make any distribution from, or charge any fee or expense to, the capital of a UCITS, unless permitted by the constitutional document of the UCITS.

(2) Where, in accordance with paragraph (1), a responsible person is permitted by the constitutional document of a UCITS to make distributions from or charge fees and expenses to the capital of a UCITS, every such distribution or charge must be in accordance with any provisions contained in that constitutional document concerning the making of a distribution or the imposition of a charge.

(3) A responsible person of a UCITS which proposes to make distributions out of capital shall -

(a) include the risk warning in its prospectus, as specified in Regulation 72(1)(b),

(b) ensure that any income statement issued to unitholders includes a statement to explain the effect of this accounting policy, including wording to the effect that the investor's capital amount has been reduced, and

(c) include the following in bold text in the subscription application form, if fees and expenses which may be charged to capital include management fees:

> "Unit holders should note that all or part of fees and expenses including (if applicable) management fees may be charged to the capital of the UCITS. This will have the effect of lowering the capital value of your investment."

Dealing in specie

31. (1) A responsible person shall ensure that, where the constitutional document of a UCITS provides for subscription in specie, it also contains provisions that require, in respect of such a subscription in specie, that -

(a) the nature of the assets to be transferred into the UCITS would qualify as investments of the UCITS in accordance with the investment objectives, policies and restrictions of the UCITS,

(b) assets that are to be transferred must be vested with the depositary or arrangements must be made to vest the assets with the depositary,

(c) the amount of units to be issued must not exceed the amount that would be issued for the cash equivalent of the subscription in specie, and

(d) the depositary is satisfied that either -

(i) the terms of any exchange will not be such as are likely to result in any material prejudice to the existing unitholders of the UCITS, or

(ii) there is unlikely to be any material prejudice to the existing unitholders of the UCITS.

(2) (a) A responsible person shall ensure that, where the constitutional document of a UCITS provides for exchange of assets in order to meet a redemption request, it also contains provisions that require, in respect of such an exchange of assets in order to meet a redemption request, that asset allocation is subject to the approval of the depositary.

(b) The responsible person may determine to provide exchange of assets in order to meet a redemption request subject to such redemption being provided for in the constitutional document.

(c) This paragraph does not apply to -

(i) a UCITS ETF, or

(ii) a redemption in kind for the purposes of Regulation 28A and paragraph 8 of Schedule 5A of the UCITS Regulations.

(3) A responsible person shall ensure that, where the constitutional document of a UCITS provides for distribution in specie upon a winding up, it shall also require that, in respect of such a distribution in specie upon a winding up -

(a) an ordinary resolution or the prior written approval of all unitholders of the relevant fund or a resolution passed by such majority as is specified in the constitutional document, is required, and

(b) the UCITS must sell the assets if a unitholder requests it to do so, in which event the costs of such sale may be charged to the redeeming unitholder.

Replacement of depositary

32. For the purposes of Regulation 52, a responsible person shall ensure that the constitutional document of a UCITS provides that -

(a) the appointment of the new depositary must be approved in advance by the Bank,

(b) the current depositary may not retire until a new depositary is appointed in accordance with paragraph (a), and

(c) if -

(i) despite attempts by the responsible person to appoint a new depositary, no replacement for the current depositary has been appointed in accordance with this Regulation, and

(ii) the current depositary is unwilling or unable to continue to act as such,

then -

(I) a general meeting of the UCITS shall be convened at which an ordinary resolution, or such a resolution passed by such majority as is specified in the constitutional document, to wind up or otherwise dissolve the UCITS is proposed, and

(II) the appointment of the current depositary may be terminated only upon the revocation of the authorisation of the UCITS.

Chapter 7

Dealing

Subscriptions and redemptions

33. (1)(a) Subject to subparagraph (b), a responsible person shall not accept an application for subscription or redemption of units in a UCITS after the dealing deadline.

(b) A responsible person may in exceptional circumstances accept an application for subscription or redemption of units in a UCITS after the dealing deadline, and before the valuation point, provided that -

(i) the decision to accept the application after the dealing deadline has been approved by senior management of the responsible person, and

(ii) the exceptional circumstances under which the application was received is fully documented by the responsible person.

(2) A responsible person shall pay the redemption proceeds to a redeeming unitholder within ten business days of the relevant dealing deadline.

Liquidity Management Tools - General operational requirements

34. (1) A responsible person shall ensure that the UCITS discloses in its prospectus the selected liquidity management tools and the terms and conditions under which a liquidity management tool can be activated and deactivated.

(2) When selecting liquidity management tools in accordance with Regulation 28A of the UCITS Regulations, the responsible person should consider selecting -

(a) at least one quantitative-based liquidity management tool from Schedule 5A of the UCITS Regulations, namely, redemption gates, extension of notice period or, redemption in kind, and

(b) at least one anti-dilution based liquidity management tool from Schedule 5A of the UCITS Regulations, namely, redemption fees, swing pricing, dual pricing or, anti-dilution levy.

(3) Paragraph (2) is subject to the derogation in Regulation 28A(4) of the UCITS Regulations for UCITS that are authorised as a money market fund under the Money Market Funds Regulation.

Suspensions

35. (1) Where the responsible person activates or deactivates the suspension of the calculation of the net asset value of the UCITS and/or the suspension of subscriptions, repurchase and redemption of the units of the UCITS, the responsible person must inform the Bank without delay upon such activation or deactivation taking effect.

(2) Without prejudice to paragraph 1, and in circumstances where a suspension has not been lifted within 21 working days of taking effect, the responsible person shall provide the Bank with an update on the suspension at the expiration of the 21 working day period and each subsequent period of 21 working days where the temporary suspension continues to apply.

(3) Where any competent authority under Article 84(2)(b) of the UCITS Directive requires the responsible person of the UCITS to suspend the calculation of the net asset value or activate or deactivate the suspension of subscriptions, repurchases and redemptions, the responsible person must without delay inform the Bank when it becomes aware of this instruction.

(4) The responsible person shall take all necessary steps to keep the Bank informed of relevant information with respect to the management of the UCITS that is the subject of the exercised powers as detailed in paragraph (3) of this section.

Side pockets

36. A responsible person may establish a side pocket for assets whose economic or legal features have changed significantly or become uncertain due to exceptional circumstances either by physical segregation or accounting segregation where provided for in the constitutional document of the UCITS.

Redemption Gates

37. Where the responsible person decides on any dealing day to activate a redemption gate, any request for redemption on such dealing day shall be reduced rateably and the redemption requests shall be treated as if they were received on each subsequent dealing day until all the units to which the original request related have been redeemed.

Chapter 8

Valuation

Valuation policy

38. (1) A responsible person shall establish and ensure adherence to a valuation policy that satisfies the requirements of paragraph (2).

(2) (a) A valuation policy shall set out the valuation methodology of the assets of the UCITS, in accordance with paragraph (3).

(b) The valuation policy shall be included in the constitutional document of the UCITS.

(3) A valuation policy shall provide and ensure that -

(a) the valuation methodologies of a UCITS and the pricing of units treat incoming, existing and outgoing investors in the UCITS fairly,

(b) where the valuation policy is to calculate both a bid and offer price for units in a UCITS, the methodologies for both must be clear, unambiguous and disclosed,

(c) the valuation methodologies, including provisions which allow for a switch from a mid-market to a bid or offer basis, are applied on a consistent basis throughout the life of a UCITS, and

(d) there is consistency in the valuation methodologies adopted throughout the various categories of assets.

Dealing

39. (1)(a) A responsible person may deal in the units of a UCITS only at forward prices.

(b) In this Regulation "forward prices" means the net asset value next computed after receipt of subscription or redemption requests.

(2) A responsible person shall ensure that the frequency of valuation set out in the constitutional document of a UCITS is consistent with dealing arrangements.

Methods of valuation

40. (1) A responsible person shall value the assets of a UCITS in accordance with Schedule 5 unless an alternative method of valuation has been agreed in

advance with the Bank or the Bank has, in advance of a valuation date, required the responsible person to adopt an alternative method of valuation.

(2) Where a responsible person adjusts the value of an asset of a UCITS, the rationale for doing so must be documented clearly.

Responsibility for valuation policy

41. (1) A responsible person shall -

(a) ensure that securities prices and currency rates used by a UCITS for valuation purposes are -

(i) up-to-date, and

(ii) provided by or obtained from a source that the responsible person considers to be reputable and reliable, and

(b) keep the reliability of its sources of prices and rates under review.

(2) A responsible person shall establish and maintain systems and procedures to enable the responsible person to, at least, do the following in respect of the relevant UCITS:

(a) verify uncertain prices and rates;

(b) ensure that investment restrictions are not breached;

(c) ensure that dividends, expenses and taxes are accounted for properly;

(d) provide movement thresholds at which price movements are reviewed;

(e) query prices in which there appears to be little or no movement over time;

(f) provide for the valuation policy in relation to unlisted or illiquid securities;

(g) provide for the valuation policy in relation to OTC derivatives.

(3) A responsible person shall ensure that full and detailed records of the valuations of a UCITS are maintained to permit any valuation to be re-performed.

(4) A responsible person shall ensure that reconciliation of cash, debtors and creditors of a UCITS takes place at the same frequency as the valuation.

Chapter 9

Remuneration

Restriction on payment of certain fees

42. A responsible person shall not pay the fees and expenses of the directors of the management company directly out of the assets of the UCITS.

Performance fees

43. (1) A responsible person shall ensure that performance fees are only payable by the UCITS where positive performance, net of any loss or under-performance incurred, has accrued during the performance reference period regardless of the method used to calculate performance fees.

(2) Where performance fees are payable on achieving a new high net asset value, the responsible person shall ensure that –

(a) no performance fee is accrued or paid until the net asset value per share exceeds –

(i) the previous highest net asset value per share on which the performance fee was paid or accrued, or

(ii) the initial offer price, if higher. The initial offer price shall be taken as the starting price for this calculation, and

(b) the performance fee is only payable or paid on the increase of the net asset value per share over the amount in subparagraph (a)(i) or (a)(ii), whichever is higher.

(3) The responsible person shall ensure that —

(a) the performance fee methodology is consistent with the UCITS' investment objectives, strategy and policy, and

(b) the performance fee is payable only on the amount by which the UCITS outperforms the reference indicator applied under the method for calculation of performance fees.

(4) In calculating the performance fees payable, the responsible person shall ensure that the calculation of the performance fee does not crystallise more than once per year.

(5) The responsible person shall ensure that the depositary or a competent person appointed by the responsible person and who is approved by the depositary, verifies that procedures have been effectively implemented to ensure that any performance fees payable and accrued pursuant to UCITS performance fee payment cycle, are calculated in accordance with the constitutional document and the prospectus of the UCITS.

(6) Paragraph (4) shall not apply where -

(a) the UCITS employs a High-Water Mark model or a High-on-High model where the performance reference period is equal to the whole life of the UCITS and it cannot be reset,

(b) the UCITS employs a fulcrum fee model or other performance fee model that provides for a symmetrical fee structure whereby performance fees would decrease, or increase based on the performance of the UCITS,

(c) the UCITS is wound-up,

(d) the UCITS merges with another UCITS, or

(e) a unitholder redeems their units in the UCITS.

(7) For the purposes of this Regulation, where the performance reference period is less than the life of the UCITS, the performance reference period shall be at least five years on a rolling basis.

(8) For the purposes of paragraph (1), where a UCITS employs a fulcrum fee or other performance fee model that provides for a symmetrical fee structure whereby performance fees would decrease or increase based on the performance of the UCITS, the responsible person is not required to apply a performance reference period.

Calculation of annual management fee of structured UCITS

44. (1) A responsible person shall ensure that where a UCITS charges an annual management fee calculated on the initial offer price per share of the UCITS –

(a) the UCITS is a structured UCITS which provides a pre-defined return to investors, and

(b) the fee charged is a percentage of the initial offer price per share of the UCITS.

Chapter 10

Transactions involving Connected Parties

Interpretation: Chapter 10 of Part 2

45. (1) In this Chapter, “connected party” means the management company or depositary to a UCITS; and the delegates or sub-delegates of such a management company or depositary (excluding any non-group company subcustodians appointed by a depositary); and any associated or group company of such a management company, unitholder, depositary, delegate or sub-delegate.

(2) A unitholder shall not be a “connected party” for the purposes of transactions relating to their units, including subscriptions, redemptions, conversions or dividend payments.

Restrictions on transactions with connected parties

46. (1) A responsible person shall ensure that any transaction between a UCITS and a connected party is -

(a) conducted at arm’s length, and

(b) in the best interests of the unitholders of the UCITS.

(2) A responsible person may enter into a transaction, on behalf of a UCITS, with a connected party only if at least one of the conditions in paragraphs (a), (b) or (c) is complied with:

(a) the value of the transaction is certified by either -

(i) a person who has been approved by the depositary as being independent and competent, or

(ii) a person who has been approved by the responsible person as being independent and competent in the case of transactions involving the depositary;

(b) execution is on best terms on an organised investment exchange under the rules of the relevant exchange;

(c) execution is on terms which the depositary or, in the case of a transaction involving the depositary, the responsible person is satisfied conform to the requirements set out in paragraph (1) above.

(3) In the event of a transaction to which this Chapter applies -

(a) the depositary or, in the case of a transaction involving the depositary, the responsible person shall document how it has complied with paragraph (2), and

(b) where a transaction is conducted in accordance with subparagraph (c) of paragraph (2), the depositary or, in the case of a transaction involving the depositary, the responsible person shall document their rationale for being satisfied that the transaction conforms with the requirements set out in paragraph (1).

Chapter 11

Directed Brokerage Services

Rebates of commission

47. A responsible person shall ensure that, where a person, acting on its behalf, successfully negotiates the recapture of a portion of any commission charged by a broker or a dealer in connection with the purchase or sale of securities, the rebate of commission is paid to the UCITS.

Costs, fees and expenses of directed brokerage services

48. (1) A responsible person shall only reimburse out of the assets of the UCITS the operator of a directed brokerage service or similar arrangement for the costs, fees and expenses of that directed brokerage service or similar arrangement where the requirements set out in paragraph (2) are met.

(2) The requirements for the purposes of paragraph (1) are the following:

(a) the costs, fees and expenses of the relevant directed brokerage service or similar arrangement -

(i) are reasonable and vouched properly, and

(ii) have been incurred directly by the operator in providing the relevant services or arrangement;

(b) the prospectus disclosure required by Regulation 74 has been made;

(c) the operator of the directed brokerage services or other arrangement invoices the responsible person separately for the relevant costs, fees and expenses.

PART 3

SUPERVISORY REQUIREMENTS

General conditions

49. (1)(a) Where a UCITS is authorised by the Bank as an umbrella UCITS, the responsible person shall on behalf of the UCITS obtain the prior approval of the Bank for the establishment of each sub-fund of that umbrella UCITS.

(b) An application to the Bank for approval for the purposes of subparagraph (a) shall include -

(i) details of proposed sub-funds, and

(ii) the proposed amendment or the proposed supplement (as the case may be) to the prospectus which will set out the investment objectives and policy of each of the proposed new sub-funds.

(c) The responsible person of a UCITS shall, unless disclosed in the annual report, ensure that the prospectus of the UCITS discloses the following:

(i) a statement to the effect that relevant direct and indirect operational costs and fees, arising from efficient portfolio management techniques, may be deducted from the revenue delivered to the UCITS. These costs and fees should not include revenue;

(ii) the identity of the entity to which the relevant direct and indirect operational costs and fees are paid;

(iii) if the entity to which the relevant direct and indirect operational costs and fees are paid is a related party to the management company or the depositary, that fact.

(2) Subject to paragraph (4), a responsible person shall notify the Bank of each of the following, should it arise:

(a) any proposal to amend the prospectus of the UCITS;

(b) any proposal to amend any material agreement that has been entered into with a third party by or on behalf of a UCITS;

(c) any proposal to replace a third party that has entered into a material agreement with the UCITS;

(d) any proposal to change the auditor of the UCITS and the reasons for the proposed change.

(3) A notification made for the purposes of paragraph (2) shall include sufficient information on the proposal to enable the Bank to consider and assess the proposal.

(4) If the Bank objects to a proposal notified to the Bank pursuant to paragraph (2)(a), (b) or (c), it shall not proceed.

Relationship with the Bank

50. A responsible person shall ensure that -

(a) each UCITS which has been authorised by the Bank establishes and maintains an email address for correspondence with the Bank,

(b) the email address in subparagraph (a) is monitored on a daily basis, and

(c) the Bank is informed in writing promptly of any change to the email address in subparagraph (a).

Charges relating to the redemption or repurchase of units

51. (1) Subject to paragraph (2), a responsible person shall not increase the maximum charge relating to the redemption or repurchase of units without the prior approval of unitholders given on the basis of a simple majority of votes cast in general meeting or with the prior written approval of all unitholders of the relevant UCITS (in accordance with the constitutional document) or such other majority as is specified in the constitutional document of the relevant UCITS.

(2) A responsible person shall -

(a) provide unitholders with reasonable notice of any proposed increase in the charge relating to the redemption or repurchase of units, and

(b) permit a unitholder to redeem any or all of the unitholder's units prior to the implementation of the proposed increase.

(3) In this Regulation, "charge relating to the redemption or repurchase of units" means a charge which may be applied on the redemption or repurchase of units in a UCITS other than a redemption fee within the meaning of Regulation 28A and paragraph 4 of Schedule 5A of the UCITS Regulations.

Replacement of depositary

52. (1) A responsible person shall establish and implement procedures that are to be followed for the purpose of replacing a depositary, which shall be approved by the board of the responsible person.

(2) Where a UCITS replaces its depositary, each of the retiring depositary and the new depositary shall notify the Bank as soon as practicable of whether

that retiring depositary or new depositary (as the case may be) is satisfied or dissatisfied with the transfer of assets.

(3) A responsible person may terminate the appointment of the depositary only -

(a) upon the appointment of a new depositary, or

(b) upon the revocation of the authorisation of the UCITS.

Replacement of management company or third party

53. (1) A responsible person shall establish and implement procedures that are to be followed for the purpose of replacing the management company or administration company.

(2) The procedures for the replacement of a management company or an administration company shall be approved by the board of the responsible person.

Reporting Requirements

54. (1) The responsible person shall submit such periodic returns and supervisory records to the Bank as specified by the Bank from time to time. Those returns and supervisory records shall be in the form, and contain the information, specified by the Bank and published on the Bank's website.

PART 4

PROSPECTUS REQUIREMENTS

General requirements

55. (1) A responsible person shall ensure that it and the UCITS complies with the terms of the UCITS prospectus.

(2) A responsible person shall translate a prospectus of a UCITS into another language only if such translation contains the same information and has the same meaning as in the prospectus that has been submitted to the Bank.

(3) (a) A responsible person shall not make any change to the investment objectives, or any material change to the investment policy, of a UCITS, each as disclosed in the prospectus, unless unitholders have, in advance and on the basis of a simple majority of votes cast in general meeting or with the prior written approval of all unitholders of the relevant UCITS (in accordance with the constitutional document) or such other majority as is specified in the constitutional document of the relevant UCITS, approved the relevant change or changes.

(b) For the purposes of subparagraph (a), a change would be "material" if, were it to be made, it would alter significantly the asset type, credit quality, borrowing limits or risk profile of the relevant UCITS.

(4) (a) A responsible person shall provide all unitholders of the UCITS with reasonable notice of the relevant change or changes in the event that, in accordance with paragraph (3), any change is made in the investment objectives or any material change is made in the investment policy.

(b) Notice given for the purposes of subparagraph (a) must be sufficient to enable a unitholder, acting reasonably, to redeem some or all of the unitholder's units prior to the implementation of the relevant change or changes.

(5) A responsible person shall, in the next-occurring periodic report, notify unitholders of material changes to the content of the prospectus.

(6) A responsible person shall ensure that the prospectus -

(a) lists those stock exchanges, markets and regulated derivatives markets on which assets of the UCITS are listed or traded, and

(b) includes only those stock exchanges, markets and regulated derivatives markets which, at the date of the prospectus, satisfy the regulatory criteria.

Advertising

56. (1) A responsible person shall ensure that the name of a UCITS and its regulatory status is shown clearly in any advertisement relating to that UCITS.

(2) A responsible person shall ensure that an advertisement relating to a UCITS shall not contain information that is false or misleading or presented in a manner that is deceptive.

(3) A responsible person shall ensure that an advertisement relating to a UCITS shall refer to the KIID or the KID (as the case may be) and the prospectus issued by the relevant UCITS.

(4) A responsible person shall ensure that no advertisement relating to a UCITS is inconsistent with any relevant provisions of the KIID or the KID (as the case may be), and the prospectus issued by the relevant UCITS.

(5) Without prejudice to Regulation 96, a responsible person shall comply with the advertising standards set out in Schedule 6 where the relevant UCITS is -

(a) authorised in a Member State other than the State and is marketing its units in the State, or

(b) authorised in the State and is marketing its units in the State or in a state that does not have any statutory regulation of marketing.

Prospectus: general

57. (1) A responsible person shall ensure that the following matters are disclosed in the prospectus of a UCITS:

(a) the identity and, in brief form, details of the financial group or entity that is promoting the UCITS;

(b) details of the persons who accept responsibility for information contained in the prospectus;

(c) details of the principal investment manager of the UCITS;

(d) details of sub-investment managers, if these are paid out of the assets of the UCITS directly and a statement that details of sub-investment managers not paid out of the assets of the UCITS directly, if any, shall be available on request to unitholders;

(e) if the UCITS proposes to create hedged currency share classes, that fact;

(f) the distribution provisions on the termination or winding up of the UCITS, in particular those affecting unitholders;

(g) details of the FDI exposures for the purposes of Regulation 15(4)(b)(iii).

Prospectus: investment policy

58. (1) A responsible person shall ensure that the investment policy of a UCITS, as it is disclosed in the prospectus in accordance with the UCITS Regulations, shall set out -

(a) the types of asset in which the UCITS proposes to invest,

(b) the basis upon which the UCITS will select its investments,

(c) the place or places in which a UCITS will invest, indicating the countries or regions in which such investments will be made, and

(d) whether it is intended to seek exposure to a country or region through investment in companies or instruments that are listed or traded on a stock exchange or market that is located in another jurisdiction.

(2) A responsible person that proposes, on behalf of a UCITS, to take short positions shall, in the prospectus of the UCITS, disclose -

(a) in relation to each of the categories of assets in which it may invest, whether the UCITS will take long positions or short positions or both, and

(b) either -

(i) the percentage, relative to the net asset value, of the anticipated -

(I) maximum value of the long positions, and

(II) maximum of the absolute values of the short positions,

or

(ii) the anticipated maximum of the ratio of the value of the long positions to the absolute value of the short positions.

(3) A responsible person shall ensure that a UCITS that uses FDI includes the following information in its prospectus:

(a) a description of the types of FDI that the UCITS may use and the extent to which the UCITS may be leveraged;

(b) the method used to calculate global exposure.

(4) A responsible person that uses, on behalf of a UCITS, the VaR approach shall, in the prospectus of the UCITS and in accordance with paragraph (5), disclose -

(a) the expected level of leverage of the UCITS,

(b) that there is a possibility of higher leverage levels, and

(c) information on the reference portfolio.

(5) For the purposes of paragraph (4) -

(a) leverage shall be calculated as the sum of the notionals of the derivatives that are used,

(b) the calculation of leverage within subparagraph (a) may be supplemented with leverage calculated on the basis of a commitment approach, and

(c) the creation of leveraged exposure to an index via FDI, or the inclusion of a leverage feature in an index, shall be taken into account in assessing compliance with the prospectus disclosure requirements of paragraph (4).

(6) A responsible person that uses, on behalf of a UCITS, total return swaps, or other FDI with the same characteristics as a total return swap, shall include the following in the prospectus of the UCITS:

(a) information on the underlying strategy or index and composition of the investment portfolio or index;

(b) information on the counterparty to the transactions;

(c) a description of the risk of counterparty default and the effect of any such default on investor returns;

(d) details of the extent to which the counterparty assumes any discretion over the composition or management of the UCITS investment portfolio or over the underlying of the FDI;

(e) whether the approval of the counterparty is required in relation to any UCITS investment portfolio transaction.

(7) If a counterparty has discretion over the composition or management of the UCITS investment portfolio or of the underlying of the FDI then the responsible person shall, in the prospectus of the UCITS, identify the counterparty as an investment manager.

Financial index

59. (1) A responsible person that uses, on behalf of a UCITS, a financial index for investment purposes shall, in the prospectus of the UCITS, provide sufficient disclosure to allow a prospective investor understand the following:

(a) the market that the index is representing;

(b) why the index is being used as part of the investment strategy of the UCITS;

(c) whether the investment will be made directly, through investment in the constituents of the index, or indirectly, through an FDI;

(d) where additional information on the index may be obtained.

(2) A responsible person that intends to make use, on behalf of a UCITS, of the increased diversification limits referred to in Regulation 71 of the UCITS Regulations, shall, in the prospectus of the relevant UCITS -

(a) disclose the intention to make use of the increased diversification limits, and

(b) provide a description of the exceptional market conditions that necessitate this investment.

(3) A responsible person shall, in the prospectus of the relevant UCITS, disclose the rebalancing frequency of the financial index in which it invests and its effects on the costs within the index.

Structured UCITS

60. (1) A responsible person of a structured UCITS shall ensure that the prospectus of the UCITS includes, in clear language that can be understood easily by a retail investor, disclosure of -

(a) its investment policy,

(b) the underlying exposure,

(c) payoff formulas, and

(d) where relevant –

(i) the fee paying arrangement for an annual management fee, and

(ii) a risk warning that such fee is fixed and not subject to the performance of the UCITS.

(2) A responsible person of a structured UCITS shall include in the prospectus of the UCITS a prominent risk warning informing investors who redeem their investment prior to maturity that they do not benefit from the predefined payoff and may suffer significant losses.

Fund of funds

61. A responsible person that is permitted to invest more than 20 per cent of the net assets of the relevant UCITS in other investment funds shall, in the

prospectus of that relevant UCITS and in any promotional literature issued, include a prominent statement to this effect.

Index-tracking funds

62. (1) A responsible person of an index-tracking UCITS shall include the following in the prospectus of the UCITS:

(a) a description of the index including information on the underlying components or details of where the exact composition of the index is published;

(b) information on how the index will be tracked and the implications of the chosen method for unitholders in terms of their exposure to the underlying index and counterparty risk;

(c) information on the anticipated level of tracking error in normal market conditions;

(d) a description of factors that are likely to affect the ability of the UCITS to track the performance of the index, including transaction costs, small illiquid components and dividend reinvestments.

(2) A responsible person of an index-tracking leveraged UCITS shall include the following information in the prospectus of the UCITS:

(a) a description of the leverage policy and how the leverage policy is implemented;

(b) the cost of the leverage (where relevant);

(c) the risks associated with the leverage policy;

(d) a description of the impact of any short exposure;

(e) a description of how the performance of the UCITS may differ significantly from the multiple of the index performance over the medium term to the long term.

Efficient portfolio management

63. (1) A responsible person shall, in the prospectus of the relevant UCITS, include the following:

(a) a description of the techniques and instruments which may be used for the purposes of efficient portfolio management. This should include reference to the techniques and instruments which the UCITS can utilise and a detailed description of the inherent risks, including counterparty risk and potential conflicts of interest, that may arise;

(b) information on the impact of efficient portfolio management techniques and instruments on the performance of the UCITS;

(c) information on the policy regarding direct and indirect operational costs and fees arising in the context of these techniques;

(d) information on the collateral policy of the UCITS arising from (as the case may be) OTC derivatives or efficient portfolio management techniques and instruments or both.

(2) A disclosure for the purposes of paragraph (1) shall include the following:

(a) permitted types of collateral;

(b) the level of collateral required;

(c) the haircut policy;

(d) in the case of cash collateral -

(i) the re-investment policy, and

(ii) the risks arising from the re-investment policy.

Dealing

64. (1) A responsible person shall, in the prospectus of the relevant UCITS, disclose the following information in respect of dealing:

(a) the initial offer period;

(b) the initial offer price;

(c) in bold typeface, prominently at the beginning of the prospectus (or the relevant supplement to the prospectus, where appropriate), the maximum charge relating to the redemption or repurchase of units (as defined in Regulation 51(3));

(d) the time limits within which the equivalent of the net issue price is to be paid into the assets of the UCITS.

Exchange of assets in order to meet a redemption request

65. (1) Where the prospectus of a UCITS provides for the exchange of assets in order to meet a redemption request, the responsible person shall, in the prospectus of the relevant UCITS, provide that asset allocation is subject to the approval of the depositary. This paragraph does not apply to -

(a) a UCITS ETF, or

(b) a redemption in kind for the purposes of Regulation 28A and paragraph 8 of Schedule 5A of the UCITS Regulations.

Remuneration and costs arising

66. (1) A responsible person shall ensure that the prospectus of the relevant UCITS includes -

(a) in the same section of the prospectus and in a form that can be easily understood and analysed by unitholders and prospective investors, information on remuneration, costs and expenses to be borne by the UCITS, and

(b) the policy of the UCITS regarding direct and indirect operational costs and fees arising from efficient portfolio management techniques that may be deducted from the revenue delivered to the UCITS.

(2) A responsible person of an umbrella UCITS shall state clearly in the prospectus the charges (if any) that are applicable to the exchange of units in one sub-fund of the umbrella UCITS for units in another sub-fund of the umbrella UCITS.

Umbrella UCITS

67. (1) A responsible person of an umbrella UCITS investment company shall include the following statement in the prospectus -

“An umbrella fund with segregated liability between sub-funds”.

(2) Where an umbrella UCITS issues a supplement to the prospectus in relation to the establishment of a new sub-fund, the supplement shall -

(a) state that the UCITS is constituted as an umbrella UCITS, and

(b) name the other existing sub-funds of that umbrella UCITS or ensure that the prospectus is updated to include the names of all existing sub-funds.

(3) Where an umbrella UCITS investment company was authorised by the Bank and commenced trading before 30 June 2005 and does not have segregated liability between sub-funds, the responsible person shall disclose clearly in the relevant prospectus the potential risks to investors arising from the absence of the segregation of liability between sub-funds.

Authorisation status

68. A responsible person shall ensure that the prospectus of the UCITS –

(a) states that the authorisation of the UCITS by the Bank is not an endorsement or guarantee of the UCITS by the Bank,

(b) states that the Bank is not responsible for the contents of the prospectus, and

(c) includes the following statement –

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

Risk disclosures

69. (1) A responsible person shall, in the prospectus of the UCITS, disclose, and describe in a comprehensive manner, the risks that are applicable to investing in that particular UCITS.

(2) A disclosure for the purposes of paragraph (1) shall make reference to at least the following:

(a) the fact that prices of units may fall as well as rise;

(b) that investors are recommended to consult a stockbroker or financial adviser about the contents of the prospectus;

(c) where relevant, the fact that the difference at any one time between the sale and redemption or repurchase price of units in the UCITS arising from any charge relating to the redemption or repurchase of units means that the investment should be viewed as medium term to long term investment.

(3) A responsible person of a UCITS that has investment objectives or an investment policy that involves investing -

(a) more than 20 per cent of the assets of the UCITS in emerging markets,

(b) more than 30 per cent of the assets of the UCITS in bonds or warrants that are below investment grade,

or both, shall insert a risk warning informing investors that an investment in the UCITS should not constitute a substantial proportion of an investment portfolio and may not be appropriate for all investors.

(4) A risk warning notice for the purposes of paragraph (3) -

(a) shall be inserted and highlighted at the beginning of the prospectus (or the relevant supplement to the prospectus, where appropriate), and

(b) must cross-refer to the more detailed disclosure of risk factors which are contained in the body of the prospectus (or supplement).

(5) Where paragraph (3) applies the relevant prospectus (or the relevant supplement to the prospectus, where appropriate) shall contain a full description of the risks that are involved.

UCITS that use financial derivative instruments

70. A responsible person of a UCITS that intends to invest principally in FDIs shall insert a warning of this intention at the beginning of the relevant prospectus (or the relevant supplement to the prospectus, where appropriate) and of any other promotional literature.

Cash and money-market funds

71. A responsible person of a UCITS that has an investment objective or an investment policy that involves investing substantially in deposits or money-

market instruments shall provide a risk warning in the prospectus drawing attention to the difference between the nature of a deposit and the nature of an investment in the UCITS, with particular reference to the risk that the value of the principal invested in the UCITS may fluctuate.

Distributions out of capital

72. (1) A responsible person may only make a distribution out of capital where the prospectus of the relevant UCITS includes each of the following:

(a) an explanation of the rationale underlying the policy to make distributions out of capital;

(b) in accordance with paragraph (2), a risk warning, set out prominently at the front of the prospectus, that describes the effects of making a distribution from capital;

(c) a statement that a distribution out of capital may have different tax implications to a distribution of income so that investors are recommended to seek advice in this regard;

(d) a statement indicating the greater risk of capital erosion that exists and the likelihood that, due to capital erosion, the value of future returns would also be diminished.

(2) A risk warning referred to in paragraph (1)(b) shall highlight that, in the event of the making of a distribution out of capital -

(a) capital will be eroded,

(b) the distribution is achieved by forgoing the potential for future capital growth, and

(c) this cycle may continue until all capital is depleted.

(3) A responsible person shall charge fees and expenses, including management fees, to the capital of a UCITS only if the prospectus of the relevant UCITS includes each of the following:

(a) a statement that fees and expenses, including management fees, or a portion of any such fee or expense, may be charged to capital;

(b) an explanation of the rationale underlying the policy to charge fees and expenses to capital;

(c) a risk warning, set out prominently in bold text at the front of prospectus, which states -

> "Unitholders should note that all or part of fees and expenses, including (if applicable) management fees, may be charged to the capital of the UCITS. This will have the effect of lowering the capital value of your investment";

(d) a description of the effects that the charging of fees and expenses (including management fees) to capital may have, including that capital may be eroded.

(4) Where a UCITS invests more than 20 per cent in fixed-income instruments and the priority of the UCITS is the generation of income rather than capital growth, the responsible person shall ensure that -

(a) this priority is disclosed in the prospectus of the relevant UCITS, and

(b) the prospectus of the relevant UCITS includes a statement that a distribution made during the life of the UCITS must be understood as a type of capital reimbursement.

Conflicts of interest

73. (1) A responsible person shall include in the prospectus of the relevant UCITS a description of the potential conflicts of interest that could arise between the management company, investment manager and the UCITS and, where applicable, details of how such conflicts will be managed.

(2) A responsible person shall include in the prospectus of the relevant UCITS a description of soft commission arrangements that may be entered into by a responsible person or a connected party.

(3) Where it is envisaged that a UCITS and connected parties may enter into transactions with each other, the responsible person shall ensure that the prospectus discloses the fact that such transactions may occur.

(4) In this Regulation “connected party” has the meaning given to the term in Regulation 45.

Directed brokerage services and similar arrangements

74. A responsible person shall, in the prospectus of the UCITS, disclose details of any directed brokerage services or similar arrangements that are operated in relation to the UCITS, including details of the services provided.

Share classes

75. (1) A responsible person that uses FDI at share class level shall include in the UCITS prospectus a clear description of the strategies that the UCITS pursues and the effect that this may have on the relevant share class.

(2) A responsible person shall ensure that the prospectus of the relevant UCITS includes the following:

(a) a description of the general currency hedging strategies of the UCITS and the features of individual currency share classes;

(b) where a UCITS intends to invest in any asset that is denominated in a currency other than the base currency at share class level, a disclosure -

(i) as to whether it is the intention of the UCITS to hedge the resulting currency exposure back into the base currency and, if it is so intended, to what extent, and

(ii) of the general costs and, if relevant, exchange rate risk that is associated with the currency strategy;

(c) where a UCITS has established an unhedged currency share class, a disclosure -

(i) that a currency conversion will take place upon subscriptions, redemptions and distributions at prevailing exchange rates, and

(ii) that the value of the share expressed in the class currency will be subject to exchange rate risk in relation to the base currency;

(d) where a UCITS has established hedged share classes, a disclosure of this fact, in accordance with paragraph (3).

(3) A disclosure for the purposes of paragraph (2)(d) shall state -

(a) that, to the extent that hedging is successful, the performance of the class is likely to move in line with the performance of the underlying asset or assets,

(b) that investors in the hedged class will not benefit if the class currency falls against the base currency or against the currency in which the assets of the UCITS are denominated,

(c) the implications (for unitholders) of the hedging policy, including at least the following:

(i) a statement indicating the extent to which the UCITS intends to hedge against currency fluctuations and noting that, while not the intention, nonetheless over-hedged or under-hedged positions may arise due to factors outside of the control of the UCITS;

(ii) a statement that over-hedged positions shall not exceed 105 per cent of the net asset value of the class and underhedged positions shall not fall below 95 per cent of the net asset value of the class;

(iii) a statement that the hedged positions will be kept under review to ensure that over-hedged positions and underhedged positions do not exceed the permitted level;

(iv) a statement that transactions will be attributable clearly to a specific class;

(v) a statement that currency exposures of different currency classes may not be combined or offset and that currency exposures of assets of the UCITS may not be allocated to separate share classes; and

(vi) a statement that the costs and gains or losses of the hedging transactions will accrue solely to the relevant class.

(4) A review for the purposes of paragraph 3(c)(iii) shall incorporate a procedure to ensure that any position materially in excess of 100 per cent of net assets is not carried forward from month to month.

Performance fees

76. (1) Where a UCITS provides for the payment of performance fees, a responsible person shall, in the prospectus of the relevant UCITS, disclose the following:

(a) that the UCITS provides for the payment of performance fees;

(b) the calculation period for determining the performance fees;

(c) the first calculation period;

(d) how the performance fees are calculated;

(e) the percentage performance fee payable;

(f) the accrual basis of the performance fees and when the performance fees are actually paid; and

(g) a risk warning that performance fees are based on net realised and net unrealised gains and losses as at the end of each calculation period and as a result, performance fees may be paid on unrealised gains which may subsequently never be realised.

Net Asset Value-based fees

77. A responsible person shall ensure that the prospectus includes the details of the maximum fee payable for any recurring fees which are calculated based on the net asset value of the UCITS and deducted from its assets.

PART 5

KEY INVESTOR INFORMATION DOCUMENT / KEY INFORMATION DOCUMENT

General

78. Where a UCITS is required to have a KIID, a responsible person shall ensure that the KIID complies with the following:

(a) the ESMA Guidelines on clear language and layout of the key investor information document (Ref: CESR/10-1320);

(b) the ESMA Guidelines on the methodology for calculation of the ongoing charges figure in the Key Investor Information Document (Ref: CESR/10-674);

(c) the ESMA Guidelines on the methodology for the calculation of the synthetic risk and reward indicator in the Key Investor Information Document (Ref.: CESR/10-673);

(d) the ESMA template for the Key Investor Information Document (Ref.: CESR/10-1321);

(e) the ESMA Guidelines selection and presentation of performance scenarios in the Key Investor Information Document for structured UCITS (Ref.: CESR/10-1318).

Investment objective and policy

79. (1) Where a UCITS is required to have a KIID, a responsible person shall ensure that the following are included in the KIID:

(a) where a UCITS is established as an index-tracking UCITS, the KIID shall include, in summary form, information on how the index will be tracked and the implications of the chosen method for unitholders in terms of their exposure to the underlying index and counterparty risk;

(b) where a UCITS is established as an index-tracking leveraged UCITS, the KIID shall include, in summary form, the following information:

(i) 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;

(ii) a description of the impact of any short exposure;

(iii) 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.

(2) In relation to a structured UCITS, if the pre-determined pay-off is available only to those investors that buy units at a certain point and hold them until a certain date, the responsible person shall ensure that the relevant KIID -

(a) includes a statement to this effect,

(b) details the consequences for an investor of buying and selling units in the UCITS other than in instances in which the predetermined pay- off is available, and

(c) if a guarantee from an independent third party is offered, includes an explanation of such guarantee.

Risk and reward profile

80. (1) Where a UCITS is required to have a KIID, a responsible person shall calculate a synthetic risk and reward indicator in accordance with the methodology prescribed in ESMA Guidelines for the calculation of the synthetic risk and reward indicator in the Key Investor Information Document (Ref: CESR/10-673).

(2) (a) Where a UCITS is required to have a KIID, a responsible person of a UCITS established as a feeder fund shall ensure the following are included in the KIID:

(i) a description of the risk and reward profile of the UCITS;

(ii) where the ancillary assets held by the feeder UCITS impact on the risk and reward profile of the UCITS, a disclosure of this fact;

(b) A description for the purposes of subparagraph (a)(i) shall not be materially different to the risk and reward profile of the corresponding master UCITS.

Filing requirements

81. (1) Where a UCITS is required to have a KIID, a responsible person of an umbrella UCITS shall submit a KIID to the Bank prior to the approval of a new sub-fund.

(2) When filed with the Bank in accordance with paragraph (1), a KIID must be accompanied by written confirmation from the responsible person or the legal adviser to the UCITS that -

(a) the KIID complies with the requirements of the UCITS Regulations, Commission Regulation (EU) No 583/2010 and these Regulations, and

(b) the information in the KIID does not conflict with the content of the prospectus.

(3) Each new KIID and amended KIID shall be submitted by the responsible person to the Bank.

(4) Where a UCITS is required to have a KID, a responsible person of an umbrella UCITS shall submit a KID to the Bank prior to the approval of a new sub-fund.

(5) A KID filed in accordance with paragraph (4) must be accompanied by written confirmation from the responsible person or the legal adviser to the UCITS that-

(a) the KID complies with Regulation (EU) No 1286/2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs);

(b) the KID complies with Commission Delegated Regulation (EU) 2017/653 of 8 March 2017 supplementing Regulation (EU) No 1286/2014 of the European Parliament and of the Council on key information documents for packaged retail and insurance-based investment products (PRIIPs)[6] by laying down regulatory technical standards with regard to the presentation, content, review and revision of key information documents and the conditions for fulfilling the requirement to provide such documents; and

(c) the information in the KID does not conflict with the content of the prospectus.

(6) Each new KID and amended KID shall be submitted by the responsible person to the Bank.

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[6] O.J. l 100, 12.4.2017, p.1

PART 6

GENERAL OPERATIONAL REQUIREMENTS

Regulated markets

82. (1) A responsible person shall, regularly, review the list of stock exchanges and regulated markets that are specified in the prospectus of the relevant UCITS to ensure that those stock exchanges and regulated markets continue to meet with the regulatory criteria.

(2) A responsible person shall consult with the depositary to ensure that adequate custody arrangements are in place before including additional stock exchanges or markets in the prospectus.

Directed brokerage services or similar arrangements

83. A responsible person shall review at least annually, any directed brokerage services or similar arrangements and associated costs to a UCITS, where such services or arrangements are being operated in relation to that UCITS.

PART 7

ANNUAL AND HALF-YEARLY REPORTS OF A UCITS

Publication of annual and half-yearly reports

84. (1) The responsible person shall submit to the Bank annual and half yearly reports of a UCITS to coincide with publication in accordance with Regulation 88 of the UCITS Regulations.

(2) The responsible person shall ensure that -

(a) the first annual or half-yearly report be prepared within 9 months of the launch of the UCITS and shall be published and submitted to the Bank within 2 months for half-yearly reports or 4 months for annual reports, and

(b) the first annual report with audited accounting information-

(i) is prepared within 18 months of the incorporation or establishment of the UCITS,

(ii) includes all sub-funds of the UCITS launched within the period to which that report relates, and

(iii) is published and submitted to the Bank within 4 months of the preparation of the report and in any event not later than 4 months after the expiration of the 18 month period referred to in paragraph 2(b)(i).

(3) Where an umbrella UCITS produces separate periodic reports for individual sub-funds, the responsible person shall, in the report for each sub-fund, name the other sub-funds and state that the reports of such sub-funds are available free of charge on request from the management company.

(4) Each annual and half-yearly report shall state whether the board of directors of the responsible person is satisfied that -

(a) there are in place arrangements, evidenced by written procedures, to ensure that the obligations that are prescribed by Regulation 46(1) are applied to all transactions with a connected party, and

(b) all transactions with a connected party that were entered into during the period to which the report relates complied with the obligations that are prescribed by Regulation 46(1).

Additional information to be included in the annual report

85. (1) The responsible person shall in the annual report of the UCITS -

(a) in addition to the requirements of the UCITS Regulations, include the information that is prescribed in Schedule 7, and

(b) document all material changes that have occurred in the disposition of the assets of the UCITS.

(2) For the purposes of paragraph (1)(b) -

(a) a material change is defined as aggregate purchases of a security exceeding 1 per cent of the total value of purchases for the period or aggregate disposals greater than 1 per cent of the total value of sales,

(b) if there were fewer than 20 purchases that met the material changes definition, the UCITS shall disclose those purchases and the next largest purchases so that at least 20 purchases are disclosed, and

(c) if there were fewer than 20 sales that met the material changes definition, the UCITS shall disclose those sales and the next largest sales so that at least 20 sales are disclosed.

(3) If a sub-fund within an umbrella investment company invests in the units of another sub-fund within that umbrella, the responsible person shall, in its annual report -

(a) disclose the fact of that investment, and

(b) explain the policies that have been adopted by the umbrella investment company to disclose cross-investments between sub-funds within that umbrella investment company.

Additional information to be included in the half-yearly report

86. (1) A responsible person shall (on behalf of the UCITS), in its half-yearly report -

(a) in addition to the requirements of the UCITS Regulations, include the information that is prescribed in Schedule 8, and

(b) document all material changes that have occurred in the disposition of the assets of the UCITS.

(2) For the purposes of paragraph (1)(b) the criteria specified in Regulation 85(2) shall apply.

(3) If a sub-fund within an umbrella investment company invests in the units of another sub-fund within that umbrella, the responsible person shall, in its half-yearly report -

(a) disclose the fact of that investment, and

(b) explain, in a note to the half-yearly report, the policies that have been adopted by the umbrella investment company to disclose cross-investments between sub-funds within that umbrella investment company.

PART 8

REQUIREMENTS IN RESPECT OF SPECIFIC TYPES OF UCITS

Stress Testing - Money Market UCITS

87. (1) For a UCITS that is a short term MMF or a standard MMF as defined in Article 2(14) and 2(15) respectively of the Money Market Funds Regulation, a responsible person shall ensure that the UCITS complies at all times with the requirements on stress testing in accordance with Article 28 of the Money Market Funds Regulation.

(2) In conducting the stress testing detailed in paragraph (1) above, the UCITS shall adhere to the guidelines establishing common reference parameters of the stress test scenarios that are issued and updated periodically by the ESMA.

Exchange-traded UCITS

88. (1) A responsible person of a UCITS ETF shall ensure that, in its name and in each of the types of document set out in paragraph (2), the relevant UCITS ETF uses the identifier "UCITS ETF" to identify it as an exchange-traded fund. The responsible person may use the “UCITS ETF” identifier at the level of the sub-fund or the listed share class. Where a UCITS has both listed and unlisted share classes, the responsible person shall ensure that listed and unlisted share classes are clearly identified so that investors can distinguish between them.

(2) The types of document to which paragraph (1) refers are -

(a) the constitutional document,

(b) the prospectus,

(c) the KIID or KID, and

(d) marketing communications.

(3) A responsible person of a UCITS ETF shall, in -

(a) the prospectus,

(b) the KIID or KID, and

(c) the marketing communications of the UCITS ETF, disclose the policy of the UCITS ETF regarding portfolio transparency and where information on the portfolio may be obtained, including where the indicative net asset value, if applicable, is published.

(4) A responsible person of a UCITS ETF, that calculates the indicative net asset value, shall, in its prospectus, disclose -

(a) how the indicative net asset value is calculated, and

(b) the frequency of that calculation.

(5) A responsible person of a UCITS which is not a UCITS ETF shall not use the identifier UCITS ETF, ETF or exchange-traded fund in any type of document, including those specified in paragraph (2).

Actively managed UCITS ETFs

89. A responsible person of a UCITS that is an actively managed UCITS ETF shall, in -

(a) the prospectus,

(b) the KIID or KID, and

(c) the marketing communications of the actively managed UCITS ETF, disclose -

(i) that the UCITS ETF is an actively managed UCITS ETF, and

(ii) how the UCITS ETF will meet the stated investment policy including, where applicable, its intention to outperform an index.

Treatment of secondary market investors of a UCITS ETF

90. (1) In circumstances in which units of a UCITS ETF purchased on a secondary market may not be redeemable from the UCITS, the responsible person shall include the following wording in the prospectus and in the marketing communications of the relevant UCITS ETF:

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

(2) Where the stock exchange value of the units of a UCITS ETF varies significantly from its net asset value, the responsible person shall ensure that an investor who has acquired -

(a) a unit, or

(b) where applicable, any right to acquire a unit that was granted by way of distributing a respective unit, on the secondary market, may sell the unit back to the UCITS ETF directly.

(3) Where paragraph (2) applies, the responsible person of the relevant UCITS ETF shall communicate to the relevant regulated market that the UCITS ETF accepts direct redemptions at the level of the UCITS ETF.

(4) Where paragraph (2) applies -

(a) a responsible person of a UCITS ETF shall, in its prospectus, disclose -

(i) the process that is to be followed by an investor who has purchased a unit on the secondary market, and

(ii) the potential costs involved in redeeming directly from the UCITS ETF, and

(b) the responsible person shall ensure that the costs for redeeming directly from the UCITS are not excessive.

European Central Bank reporting requirements

91. (1) The responsible person of a UCITS that meets the definition in Article 2(5) of Regulation (EU) 2021/379 of the European Central Bank of 22 January 2021 on the balance sheet items of credit institutions and of the monetary financial institutions sector (recast) (ECB/2021/2)[7] and domiciled within a euro area Member State shall submit such periodic returns to the Bank as specified by the Bank from time to time. Those returns shall be in the form, and contain the information, specified by the Bank and published on the Bank's website.

PART 9

GUARANTEED UCITS

General

92. A responsible person shall not use the word "guaranteed" in the name of a UCITS unless there is in place, in accordance with Regulation 93, a specific legally enforceable guarantee between the UCITS and a legally independent third party of substance, for the benefit of the unitholders.

Legal agreement

93. (1) For the purposes of Regulation 92 -

(a) the guarantee shall be evidenced in a contract that is legally enforceable under Irish law before the courts of Ireland, unless it can be demonstrated that the law of another jurisdiction or the existence of a non-exclusive foreign jurisdiction clause is best market practice,

[7] O.J. L 73 3.3.2021, p.16

(b) the responsible person shall satisfy itself, and retain records to demonstrate the basis for that satisfaction, that it is within the legal capacity of the guarantor to enter the guarantee, and

(c) the guarantee shall not contain any onerous provision in respect of the UCITS that would permit the guarantor to invalidate the guarantee.

(2) A responsible person shall, in advance of using the word "guaranteed" in the name of a UCITS, provide to the Bank written confirmation from the legal adviser to the UCITS that the guarantee satisfies the conditions set out in paragraph (1).

(3) The responsible person shall not act as a guarantor for the purposes of this Part.

(4) For the purposes of Regulation 92, the guarantor must be -

(a) an entity of substance and good standing, and

(b) a credit institution with paid-up share capital in excess of €100 million which is of a type that is mentioned in Regulation 7.

Disclosure

94. The responsible person of that UCITS shall, in a prominent position in its prospectus, disclose the following provisions of the guarantee:

(a) the legal name and any business or trading name of the guarantor;

(b) the obligations of the UCITS under the guarantee, including detail on the cost of the guarantee;

(c) the nature, timing and terms of the guarantee;

(d) a warning to the effect that any performance of the guarantee is dependent on the solvency of the guarantor at the relevant time;

(e) a clear description of the upside limitation as well as the downside protection, sufficient for an investor to make an informed judgement about the practical and economic value of the guarantee;

(f) where relevant, the impact on an investor who sells their units prior to the maturity of the guarantee.

PART 10

CROSS-BORDER NOTIFICATION OF UCITS

Outward marketing: UCITS authorised under the UCITS Regulations

95. (1) A responsible person shall notify the Bank promptly upon that responsible person receiving approval to market the units of a UCITS in a jurisdiction other than a Member State of the EEA.

(2) A responsible person that markets units of a UCITS in a Member State of the EEA or is approved to market the units of a UCITS in a jurisdiction other

than a Member State of the EEA shall notify the Bank in the event that the UCITS ceases to market units in that Member State or jurisdiction.

Inward marketing: UCITS authorised in another Member State

96. (1) A responsible person of a UCITS that is authorised in another Member State and which proposes to market its units in the State shall provide to the Bank written confirmation from the relevant facilities agent that the facilities agent has agreed to act for the UCITS.

(2) The responsible person of a UCITS that is authorised in another Member State and which markets its units in the State, shall ensure that the prospectus of the relevant UCITS provides the following information for Irish investors:

(a) details of the facilities agent and of the facilities that are being maintained;

(b) relevant provisions of Irish tax laws.

(3) Where -

(a) a UCITS that is authorised in another Member State and which markets its units in the State ceases such marketing to investors in the State, or

(b) an umbrella UCITS ceases marketing any sub-fund to investors in the State,

the responsible person of the relevant UCITS or umbrella UCITS shall, in writing, inform the Bank promptly of that fact.

PART 11

MANAGEMENT COMPANIES

Chapter 1

General Requirements

Operating conditions

97. (1) A management company shall ensure that it has adequate resources to manage and monitor the services that are provided to every UCITS that is under its management.

(2) A management company shall, in accordance with paragraphs (3) and (4), prepare and submit to the Bank financial accounts of the management company.

(3) A management company shall –

(a) submit to the Bank -

(i) annual audited accounts of the management company prepared in accordance with any applicable legislative requirements, and

(ii) such further information as the Bank may prescribe from time to time, and

(b) submit the information required in paragraph (a) to the Bank within four months of the year-end.

(4) A management company shall -

(a) prepare accounts of the management company twice in every financial year to cover, respectively -

(i) the first six months of the financial year of the relevant management company, and

(ii) the full twelve months of the relevant financial year, and

(b) in each case to which subparagraph (a) applies -

(i) submit the accounts for the first six months of the financial year to the Bank within two months of the end of the relevant period, and

(ii) submit the accounts for the full twelve months of the relevant financial year to the Bank within one month of the end of the relevant period, and

(c) prepare the accounts in subparagraph (a) in the format prescribed by the Bank from time to time.

(5) Every set of financial accounts specified in paragraphs (3) and (4)(a)(i) shall be accompanied by a minimum capital requirement report.

(6) A minimum capital requirement report of a management company shall be -

(a) prepared in the format prescribed by the Bank from time to time, and

(b) completed by the relevant management company.

(7) A management company shall maintain an up to date business plan.

(8) Where, by virtue of an investment in the units of another investment fund, a management company or the delegate of a management company (as the case may be) receives a commission (including a rebated commission) -

(a) the commission is the property of the investment fund on behalf of which the investment has been made, and

(b) the management company treats the commission as such property.

Remuneration policies

98. A management company shall ensure that its remuneration policies and practices as required in Regulation 24A of the UCITS Regulations are consistent with the ESMA Guidelines on sound remuneration policies under the UCITS Directive and AIFMD (Ref: ESMA/2016/411).

Capital

99. (1)(a) (i) A management company shall hold its expenditure requirement as specified in Regulation 17(6) of the UCITS Regulations in the form of eligible assets as defined in paragraph 4 of Schedule 9,

(ii) For the purpose of clause (i) a reference to a depositary in paragraph 4 of Schedule 9 means a UCITS management company.

(b) For the purpose of subparagraph (a) the expenditure requirement is calculated as one quarter of a management company's total expenditure taken from the most recent annual accounts.

(c) For the purpose of subparagraph (b) total expenditure includes all expenditure incurred by a management company less the following items which may be deducted:

(i) profit shares;

(ii) bonuses;

(iii) net losses arising in the translation of foreign currency balances;

(iv) shared commissions and fees payable which are directly related to commission;

(v) fees, brokerages and other charges which are paid to clearing houses, exchanges and brokers;

(vi) fees to tied agents;

(vii) interest paid on client money;

(viii) any other non-recurring expenses from non-ordinary activity.

(2) (a) A management company must be in a position to demonstrate its ongoing compliance with the capital requirements of these Regulations and of the UCITS Regulations.

(b) Where the financial position of a management company changes materially at any time between reporting dates, which would impact on its compliance with its regulatory capital requirements, that management company must -

(i) notify the Bank immediately, and

(ii) take any necessary steps to rectify its position.

Additional capital requirements of management companies providing individual portfolio management services

100. (1) In this Regulation –

"assets safeguarded and administered" or "ASA" means the value of assets that a management company safeguards and administers for clients, irrespective of whether assets appear on the management company's own balance sheet or are in third-party accounts;

"assets under management" or "AUM" means both the value of assets that a management company manages for its clients under discretionary portfolio management and the value of assets in relation to which such management company provides investment advice of an ongoing nature;

"client" means a natural or legal person, or any other undertaking (including a UCITS), to whom a management company provides individual portfolio management services;

"client money held" or "CMH" means the amount of client money that a management company holds, taking into account the legal arrangements in relation to asset segregation;

"management company" means a management company within the meaning given to that term in Regulation 2(1) and which is authorised to provide individual portfolio management services;

"own funds" means own funds as defined by the UCITS Regulations;

"small and non-interconnected management company" has the meaning given to that term in Regulation 100(3).

(2) A management company which is not a small and non-interconnected management company shall hold own funds which, subject to Regulation 20 of the UCITS Regulations, shall never be less than the higher of -

(a) The total amount of initial capital and own funds which the management company is required to hold pursuant to the UCITS Regulations, or

(b) Own funds which amount to the Risk to Client K-factor requirement calculated in accordance with paragraph (4) of this Regulation.

(3) (a) A management company shall be deemed to be a small and non-interconnected management company for the purposes of this Regulation where it meets all of the following conditions:

(i) AUM measured in accordance with paragraph (5) is less than €1.2 billion;

(ii) ASA measured in accordance with paragraph (7) is zero;

(iii) CMH measured in accordance with paragraph (6) is zero;

(iv) the on - and off-balance-sheet total of the management company is less than €100 million;

(v) the total annual gross revenue from individual portfolio management services is less than €30 million, calculated as an average on the basis of the annual figures from the two-year period immediately preceding the given financial year.

(b) By way of derogation from the provisions of paragraph (4), (5) and (7), for the purposes of subparagraph (a)(i) and (ii), end-of-day values shall apply.

(c) For the purposes of subparagraph (a)(iii), and without prejudice to Regulation 23(1)(l) of the MIFID II Regulations and the first paragraph (Safeguarding client financial instruments and funds) and third paragraph (Depositing client funds) of Schedule 3 of those Regulations, intraday values shall apply, except where there has been an error in recordkeeping or in the reconciliation of accounts that incorrectly indicated that a management company breached the zero threshold referred to in subparagraph (a)(iii) and which is resolved before the end of the business day. The management company shall notify the Bank without delay of the error, the reasons for its occurrence and its correction.

(d) For the purposes of subparagraph (a)(iv) and (v), the levels at the end of the last financial year for which annual audited accounts have been finalised and approved by the management body shall apply.

(e) A management company shall measure the value under subparagraph (a)(i) by using the method specified under paragraph (5), with the exception that the measurement shall be done for a continuous period of no less than 12 consecutive months, without the exclusion of the three most recent monthly values.

(f) The conditions set out in subparagraph (a)(i), (iv) and (v) shall apply on a combined basis for all management companies that are group undertakings included in the same group. For the purpose of measuring the total annual gross revenue referred to in subparagraph (a)(v), those management companies may exclude any double counting that may arise in respect of gross revenues generated within the group of which they are group undertakings.

(g) The conditions set out in subparagraph (a)(ii) and (iii) shall apply to each management company on an individual basis.

(h) Where a management company no longer meets all the conditions set out in subparagraphs (a) to (e), it shall cease to be considered to be a small and non-interconnected management company, with immediate effect.

(i) By way of derogation from subparagraph (h), where a management company no longer meets the conditions set out in subparagraph (a)(i), (iv) and (v) but continues to meet the conditions set out in subparagraph (a)(ii) and (iii), it shall cease to be considered to be a small and non-interconnected management company after a period of three months, calculated from the date on which the threshold was exceeded. The management company shall notify the Bank without undue delay of any breach of a threshold.

(j) Where a management company which has not met all of the conditions set out in subparagraphs (a) to (e) subsequently meets them, it shall be considered to be a small and non-interconnected management company only after a period of six months from the date on which those conditions are met, provided that no breach of a threshold has occurred during that period and the management company has notified the Bank accordingly without delay.

(4) (a) For the purposes of paragraph 2(b), a management company shall calculate its Risk to Client K-factor requirement by using the following formula:

K-AUM + K-CMH + K-ASA

where:

K-AUM is equal to AUM measured in accordance with paragraph (5), multiplied by the corresponding coefficient in the below table;

K-CMH is equal to CMH measured in accordance with paragraph (6), multiplied by the corresponding coefficient in the below table;

K-ASA is equal to ASA measured in accordance with paragraph (7), multiplied by the corresponding coefficient in the below table.

	K-factors	Co-efficient
Assets under management	K-AUM	0.02%
Client money held	K-CMH (on segregated accounts)	0.4%
	K-CMH (on non-segregated accounts)	0.5%
Assets safeguarded and administered	K-ASA	0.04%

(b) A management company shall only use information related to its individual portfolio management services in complying with the measurement of the K-factors referred to in subparagraph (a).

(c) A management company shall monitor the value of its K-factors referred to in subparagraph (a) for any trends that could leave it with a materially different Risk to Client K-factor requirement value for the following reporting period applicable to the reporting of such information to the Bank and shall notify the Bank of that materially different Risk to Client K-factor requirement value.

(d) Where the Bank notifies a management company that there has been a material change in the business activities of the management company that impacts the amount of a relevant K-factor referred to in paragraph (4)(a), the management company shall adjust the amount of additional capital held by the management company in accordance with the Bank's notification.

(5) (a) A management company shall comply with the following in calculating the K-AUM for the purposes of paragraph (4)(a):

(i) AUM shall be the rolling average of the value of the total monthly assets under management, measured on the last business day of each of the previous 15 months converted into the entities' functional currency at that time, excluding the three most recent monthly values;

(ii) AUM shall be the arithmetic mean of the remaining 12 monthly values;

(iii) K-AUM shall be calculated on the first business day of each month.

(b) Where the management company has formally delegated the management of assets under individual portfolio management services to another financial entity, those assets shall be included in the total amount of AUM measured in accordance with subparagraph (a).

(c) Where another financial entity has formally delegated the management of assets under individual portfolio management services to the management company, those assets shall be excluded from the total amount of assets under management measured in accordance with subparagraph (a).

(d) Where a management company has been managing assets for less than 15 months, or where it has done so for a longer period as a small and non-interconnected management company and it now exceeds the threshold for AUM, it shall use historical data for AUM for the period specified under subparagraph (a) as soon as such data becomes available to calculate K-AUM.

(e) For the purposes of subparagraph (d), the Bank may replace missing historical data points by regulatory determinations based on the business projections of the management company submitted in support of the management company's application for authorisation to provide individual portfolio management services.

(6) (a) A management company shall comply with the following in calculating K-CMH for the purposes of paragraph (4)(a):

(i) CMH shall be the rolling average of the value of total daily client money held, measured at the end of each business day for the previous nine months, excluding the three most recent months;

(ii) CMH shall be the arithmetic mean of the daily values from the remaining six months;

(iii) K-CMH shall be calculated on the first business day of each month.

(b) Where a management company has been holding client money for less than nine months, it shall use historical data for CMH for the period specified under subparagraph (a)(i) as soon as such data becomes available to calculate K-CMH.

(c) For the purposes of subparagraph (b), the Bank may replace missing historical data points by regulatory determinations based on the business projections of the management company submitted in support of the management company's application for authorisation to provide individual portfolio management services.

(7) (a) A management company shall comply with the following in calculating K-ASA for the purposes of paragraph (4)(a):

(i) ASA shall be the rolling average of the value of the total daily assets safeguarded and administered, measured at the end of each business day for the previous nine months, excluding the three most recent months;

(ii) ASA shall be the arithmetic mean of the daily values from the remaining six months;

(iii) K-ASA shall be calculated on the first business day of each month.

(b) Where a management company has formally delegated the tasks of safeguarding and administration of assets to another financial entity, or where another financial entity has formally delegated such tasks to the management company, those assets shall be included in the total amount of ASA which is measured in accordance with subparagraph (a).

(c) Where a management company has been safeguarding and administering assets for less than six months, it shall use historical data for ASA for the period specified under subparagraph (a) as soon as such data becomes available to calculate K-ASA.

(d) For the purposes of subparagraph (c), the Bank may replace missing historical data points by regulatory determinations based on the business projections of the management company submitted in support of the management company's application for authorisation to provide individual portfolio management services.

(8) (a) For the purposes of paragraph (5), the measurement of total monthly AUM shall be made in accordance with all of the following:

(i) the calculation shall include the value of financial instruments calculated at fair value in accordance with the applicable accounting standards;

(ii) financial instruments with a negative fair value shall be included in absolute value;

(iii) the calculation shall include cash except any amounts covered under CMH in accordance with subparagraph (b).

(b) For the purposes of paragraph (6), the measurement of CMH shall be based on the following:

(i) balances that the management company uses for its internal reconciliations;

(ii) the values contained in the management company's accounting records.

(c) For the purposes of paragraph (7), the measurement of total daily ASA shall include the value of all client financial instruments safeguarded and administered, calculated at fair value in accordance with the applicable accounting standards. It shall exclude CMH referred to in subparagraph (b).

(9) (a) Subject to subparagraph (b), the amount of own funds required to be held by a management company resulting from the calculation referred to in paragraph (2)(b) shall not be required to exceed the sum of twice the amount required in accordance with Regulation 17(6) of the UCITS Regulations until the end of the five year period referred to in Article 57(3) of Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019[8].

(b) Where the amount of own funds referred to in subparagraph (a) is less than the total amount of initial capital and own funds which the management company is required to hold pursuant to the UCITS Regulations, the management company shall comply with the requirements of the UCITS Regulations until the end of the period referred to in subparagraph (a).

Internal Capital Adequacy Assessment

101. (1) A management company authorised to provide individual portfolio management services shall have in place sound, effective and comprehensive arrangements, strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that the management company considers adequate to cover the nature and level of risks which the management company may pose to others and to which the management company itself is, or might be, exposed.

(2) The arrangements, strategies and processes referred to in paragraph (1) shall be -

(a) appropriate and proportionate to the nature, scale and complexity of the activities of the management company, and

(b) subject to regular internal review.

(3) A management company authorised to provide individual portfolio management services shall complete and submit an ICAAP questionnaire to the Bank on an annual basis in the format published on the Bank's website.

(4) For the purposes of paragraph (3), "ICAAP" means internal capital adequacy assessment process.

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[8] O.J. L 314, 5.12.2019, pp. 1

Organisational requirements: general

102. (1) The board of a management company shall -

(a) be responsible for the managerial functions of the management company specified in Schedule 10,

(b) be responsible for making all material decisions that affect the operation and conduct of the business of the management company, and

(c) have the competence to make all material decisions that affect the operation and conduct of the business of the management company.

(2) The board of a management company shall put in place, and ensure adherence to, the following:

(a) procedures that are designed to ensure compliance by the management company with every legal and regulatory requirement to which the management company and every investment fund that is under its management are subject;

(b) procedures that are designed to ensure that every relevant risk pertaining to the management company and to every investment fund that is under its management can and is being identified, monitored and managed;

(c) procedures to -

(i) ensure and verify that the investment policy and strategies of every investment fund that is under the management of the management company are complied with, and

(ii) ensure the availability to the board of the management company of up-to-date information on portfolio performance;

(d) procedures to ensure that every relevant accounting record (including the annual and half-yearly financial statements) of the management company and of every investment fund that is under the management of the UCITS management fund is maintained properly and is readily available;

(e) procedures to ensure compliance with regulatory capital requirements of the management company;

(f) procedures for the effective internal audit of the management company and of every investment fund that is under its management;

(g) proper accounting policies and procedures in respect of the management company and every investment fund that is under its management;

(h) procedures to ensure that clear structures are in place for the ongoing monitoring of any work that is delegated to a third party;

(i) procedures to ensure that any complaint from a unitholder is addressed promptly and effectively.

Organisational requirements: delegation

103. (1) Where a management company delegates activities, it shall designate a specific director of the management company or other individual (in this Regulation referred to as the “designated person”), who shall -

(a) be identified in the business plan of the management company, and

(b) on a day-to-day basis, monitor and control each of the individual activities of the management company identified in Regulation 102(2) and Schedule 10.

(2) (a) A management company shall put in place a procedure, which must be set out in its business plan, that specifies how the designated person shall monitor and control the managerial function(s) for which he or she has been designated.

(b) A procedure for the purposes of paragraph (a) shall include a provision for the receipt of reports from delegates for the purpose of monitoring and controlling the managerial function(s) for which he or she has been designated.

(3) The board of a management company shall, by resolution, adopt a statement of responsibility in relation to the managerial functions and the procedures that will apply in respect of each managerial function.

(4) Where a management company delegates activities, the management company shall ensure that its business plan provides for the following requirements in relation to the reports that the designated person is to receive and the required action that the designated person is to take in response:

(a) a list of the types of report that the designated person is to receive from parties who have an involvement, by delegation or otherwise, in the performance of activities relevant to that managerial function and the identity of those parties;

(b) details concerning the frequency of the reports. These provisions must include procedures for immediate reporting to the designated person of all material issues that arise;

(c) a policy regarding the circumstances in which action by a designated person is required;

(d) procedures that the designated person is to follow in the event that he or she is required, by the policy that is referred to in subparagraph (c), to take action, including escalation to the board of the management company.

(5) A management company shall not designate the same person to perform the investment management managerial function and either the fund risk management managerial function or the operational risk management managerial function.

(6) A responsibility that is set out in paragraph 40 of Schedule 5 to the UCITS Regulations -

(a) may not be delegated by the relevant management company, and

(b) shall be carried out by senior management of the management company.

Code of conduct in relation to collective portfolio management

104. (1) A management company shall have in place, and ensure adherence to, procedures -

(a) to prevent late trading,

(b) to take into account the risks associated with market timing, and

(c) for the effective consideration and proper handling of complaints.

(2) A management company shall ensure that any complainant is notified of his, her or its right to refer the relevant complaint to the Financial Services and Pensions Ombudsman.

Directors

105. (1) A management company shall upon the resignation or removal of a director of the management company from the office of director, or other termination of such a director's service as such, notify the Bank without delay in writing of that resignation, removal or other termination of service and, to the fullest extent known to the management company, the reason for it.

(2) No person may act both as a director of a management company and of the depositary where both entities provide services to the same investment fund.

(3) Subject to paragraph (5), a management company shall have a minimum of 2 directors resident in the State.

(4) A management company shall conduct a preponderance of its management in the EEA or such other country as the Bank may, taking into account criteria regarding effective supervision, determine and advise by notice published on the website of the Bank. Such determination may be changed, including if circumstances change.

(5) A management company shall have at least -

(a) 2 directors resident in the State,

(b) half of its directors resident in the EEA or such other country as determined in accordance with paragraph (4), and

(c) half of its managerial functions performed by at least 2 designated persons resident in the EEA or such other country as determined in accordance with paragraph (4).

(6) A management company shall obtain from every proposed appointee to the board of directors details of all concurrent directorships that are held by those persons.

(7) The board of a management company shall appoint a chairperson on a permanent basis.

(8) A management company shall ensure that an organisation effectiveness role:

(a) shall be performed by an independent Chairman or an independent board member, and

(b) shall not be performed by a person with responsibility in relation to any of the managerial functions specified in Schedule 10.

(9) In the case of investment companies that have designated a management company, the following shall apply to the investment company and the management company:

(a) paragraphs (1) to (2) and (6); and

(b) the requirement to have a minimum of 2 directors resident in the State.

(10) Paragraph (5) is without prejudice to the Bank's power to impose additional residency requirements pursuant to conditions imposed under the UCITS Regulations.

Record-keeping

106. (1) A management company shall retain, in a readily accessible form and for a period of at least six years, a written record of each of the following types of records, including, so far as possible, relevant original documentation:

(a) a complete record of every transaction into which the management company enters (whether on its own behalf or on behalf of any investment fund that is under its management);

(b) records that are sufficient to demonstrate compliance with the provisions of the UCITS Regulations, including any conditions that the Bank may, from time to time, impose on the management company or on any investment fund that is under its management and these Regulations.

(2) Where any record of a management company is not retained by the management company in legible form, the management company shall ensure that such record is capable of being reproduced in a legible form.

(3) If the Bank terminates the authorisation of a management company, that management company shall retain each of the records of the types referred to in paragraph (1) for the outstanding term of the six year period referred to in that paragraph.

(4) (a) A management company shall put in place and ensure adherence to procedures for the maintenance, security, privacy and preservation of records and working papers of the management

company and of every investment fund that is under its management.

(b) A management company shall ensure that all records and working papers to which paragraph (a) applies are, to the greatest extent reasonably possible, safeguarded against loss, unauthorised access, alteration and destruction.

Management resources

107. A management company shall ensure that, at all times, it has adequate management resources to conduct its activities effectively and ensure compliance with the UCITS Regulations and these Regulations.

Relationship with the Bank

108. (1) Without prejudice to its obligation to comply with the UCITS Regulations, a management company shall consult with the Bank prior to -

(a) engaging in any significant new activity,

(b) establishing any branch, office or subsidiary, or

(c) introducing material changes to the management company's operating model.

(2) A management company shall notify the Bank in writing without delay that the management company becomes aware of any of the following:

(a) any breach of the UCITS Regulations or of the Bank's requirements that are applicable to the relevant UCITS or to the management company (including these Regulations);

(b) any breach of other Irish legislation which breach may be of prudential concern to the Bank or which may be likely to impact on the reputation or good standing of the relevant UCITS or of the management company;

(c) the bringing of any legal proceedings by or against the relevant UCITS or the management company;

(d) the initiation of any criminal prosecution against the relevant UCITS or the management company or against any officer or employee of the management company;

(e) any situations or events which impact, or potentially impact, to a significant extent on the relevant UCITS or on the management company;

(f) the imposition of any fine, administrative sanction or other penalty on the relevant UCITS or on the management company by any other entity, in the State or in any other jurisdiction, that performs a prudential or regulatory function in respect of financial services entities;

(g) a visit to the relevant UCITS or to the management company by any entity other than the Bank, in the State or in any other jurisdiction, that performs a prudential or regulatory function in respect of financial services entities.

(3) A management company shall obtain the prior approval of the Bank to any proposed change to the name of the relevant management company.

(4) A management company shall inform the Bank in writing promptly of any change to the registered office, postal address, telephone number or email address of the management company.

(5) (a) A management company shall, on its headed paper, state that it is regulated by the Bank.

(b) A management company shall not include in any material or documents issued by it or on its behalf or by any delegate, any reference to the role of the Bank in relation to the supervision of the management company's activities that is misleading or inaccurate.

(6) Where a management company provides management services to an investment fund that is not authorised by the Bank, the management company shall ensure that the prospectus issued by the relevant investment fund does not, in any way, imply that the investment fund is regulated by the Bank.

(7) Without prejudice to Regulation 54, where a management company provides fund administration services to an investment fund that is not authorised by the Bank, the management company shall submit to the Bank a quarterly return containing the following aggregate information for each such investment fund that the management company manages, within each base currency category:

(a) the domicile of each relevant investment fund;

(b) the number of investment funds;

(c) the number of unitholders in each investment fund;

(d) the total net asset value of all investment funds that the management company manages.

Financial control and management information

109. (1) A management company shall ensure that its records contain at least each of the types of material set out in Schedule 11 and, where applicable, with the level and nature of content that is described for that type of material in the said Schedule.

(2) A management company shall notify the Bank in advance of any proposed or anticipated change of auditor of the management company and of the reasons for the proposed change.

Internally-managed investment companies

110. An internally-managed investment company shall comply with the following provisions:

(a) Regulation 97(6) and (7);

(b) Regulation 102;

(c) Regulation 103;

(d) Regulation 104;

(e) Regulation 105 (1) — (9);

(f) Regulation 106;

(g) Regulations 108(3) and (4);

(h) Regulations 109;

(i) Schedule 4 of the UCITS Regulations;

(j) paragraphs 30-32, 34-40 (excluding 40(c)), 41-43, 54-61 and 64 of Schedule 5 to the UCITS Regulations.

Chapter 2

Management Company Passport

Notifications

111. (1) Without prejudice to the UCITS Regulations, where a management company proposes to -

(a) establish a branch in another Member State in accordance with Regulation 27 of the UCITS Regulations, or

(b) under the freedom to provide services, engage in an activity in another Member State in accordance with Regulation 28 of the UCITS Regulations,

the management company shall include, in the programme of operations that is submitted to the Bank, the information that is set out in paragraph (2).

(2) The information to which paragraph (1) refers is -

(a) a description of the activities that it is proposed will be undertaken,

(b) a description of the risk management process which the management company has put in place,

(c) a description of the procedures and arrangements for the handling of complaints from, and making information available to, investors, and

(d) in the case of a proposal to establish a branch in accordance with Regulation 27 of the UCITS Regulations, details of the address of the proposed branch and the names of those who will be responsible for the branch.

Assessment: general requirements

112. (1) Where a management company proposes to-

(a) establish a branch in another Member State in accordance with Regulations 27 of the UCITS Regulations, or

(b) under the freedom to provide services, engage in an activity in another Member State in accordance with Regulation 28 of the UCITS Regulations,

the management company shall review its assessment of -

(i) the nature, scale and complexity of its business, and

(ii) the nature and range of services and activities that are undertaken in the course of that business,

in order to determine the impact that establishing a branch or pursuing an activity under the freedom to provide services in accordance with the UCITS Regulations would have on the nature, scale and complexity of its business, and in particular on its organisational structure and resources.

(2) For the purposes of the assessment required by paragraph (1), a management company shall consider the impact which the establishment of a branch or the provision of activities under the freedom of services in another Member State would have on -

(a) the corporate governance of the management company,

(b) the administration function of the management company, and

(c) the interaction of the management company with the relevant trustee or depositary in the other state or states.

(3) Where a management company proposes to establish a branch or, under the freedom to provide services, engage in an activity in another Member State, the management company shall specify in the programme of operations that it submits to the Bank -

(a) how the management company will address any increased strain on its corporate governance due to the increase in the workload and responsibilities of its board of directors, and

(b) where relevant, the steps that the management company will take to ensure that the delegation of its administration activities to an entity that is not authorised or supervised by the Bank will not interfere with the effective supervision of the management company by the Bank.

Assessment: governance issues

113. (1) A management company that is managing a UCITS that is authorised in another Member State shall have in place, and utilise, resources to ensure that it complies with the UCITS authorisation process and ongoing supervision applied by the competent authority of the home state where the UCITS is authorised or approved.

(2) A management company that is managing a UCITS that is authorised in another Member State shall include in the programme of operations that it submits to the Bank -

(a) the identity of the employee of the management company, or designated persons, who has expertise concerning the regulatory requirements applicable in the home state of the relevant UCITS,

(b) a description of how the management company will monitor compliance with regulatory requirements that are applicable in the home state of the relevant UCITS on a day-to-day basis,

(c) where a UCITS is an investment company, the resources that the management company is putting in place to address the need to have a representative available to travel to the home state of the relevant UCITS to attend and report at board meetings of the relevant UCITS, and

(d) an analysis of the impact that managing a UCITS that is authorised in another Member State is likely to have on the management company's minimum capital requirement and how this impact will be addressed.

(3) A management company shall ensure that it has in place, and utilises, sufficient resources to supervise the services that are provided to every UCITS that is under its management.

(4) A management company that is managing a UCITS authorised in another Member State shall notify the Bank without delay when it becomes aware that the competent authorities of the UCITS home Member State exercise powers pursuant to Article 84 paragraph 2(b) of the UCITS Directive. The management company shall take all necessary steps to keep the Bank informed of relevant information with respect to the management of the UCITS that is the subject of the exercised powers.

(5) Where the Bank has exercised powers pursuant to Regulation 104(2)(b) of the UCITS Regulations, the management company shall take all necessary steps to keep the Bank informed of relevant information with respect to the management of the UCITS that is the subject of the exercised powers.

Assessment: administrator issues

114. (1) Where a management company engages an administrator that is established under the laws of and located in a state other than the State, the

management company shall include in the delegation agreement with that administrator provisions that have the following effects:

(a) ensuring that the Bank has effective access to data related to the delegated functions of the management company;

(b) ensuring that the Bank has effective access to the business premises of the administrator, where not prohibited by the laws of the jurisdiction in which the administrator is established;

(c) requiring that the administrator co-operates with the Bank in respect of the functions that the management company delegates to the administrator from time-to-time.

(2) Where an administrator is located in another Member State, a management company shall, in the programme of operations that it submits to the Bank specify, and adhere to, any additional record-keeping procedures that the management company establishes to address the fact that the records of the administrator are not located in the State.

(3) A management company shall ensure that the programme of operations that it submits to the Bank addresses how the management company will ensure that, at all times, a person with the requisite detailed knowledge of the day-to-day operation of the UCITS will be available to the Bank.

(4) A management company shall undertake an annual due diligence assessment of any administrator that the management company engages and which is located in another Member State to ensure a high standard of oversight by the management company over such administrators.

Assessment: depositary issues

115. (1) A management company shall ensure that the agreement between it and a depositary that is located outside the State permits the Bank to gain access to relevant documents and information of the management company, evidencing any and all matters which are potentially relevant to the arrangements and organisational decisions described in Regulation 29(1) of the UCITS Regulations. This paragraph applies to -

(a) agreements entered into after the date of the commencement of these Regulations, and

(b) existing agreements that are renewed after the date of commencement of these Regulations.

(2) A management company shall, in the programme of operations that it submits to the Bank, specify the steps that it will take to ensure compliance with this Regulation.

PART 12

UCITS DEPOSITARIES

Organisational requirements

116. (1) A depositary shall have and maintain -

(a) sound and effective administrative and internal control mechanisms,

(b) complete and accurate records,

(c) adequate arrangements for ensuring that the employees of the depositary are trained and supervised suitably, adequately and properly, and

(d) defined procedures to ensure compliance with all applicable laws.

(2) A depositary which falls within Regulation 35(2)(c) of the UCITS Regulations shall -

(a) hold its minimum capital requirement in the form of eligible assets pursuant to Schedule 9, and

(b) be in a position to demonstrate its compliance with the minimum capital requirement throughout the relevant reporting period.

(3) For the purpose of paragraph (2), “minimum capital requirement” means the capital requirement set out in Regulation 35(4) of the UCITS Regulations.

Governance

117. (1) A depositary which falls within Regulation 35(2)(c) of the UCITS Regulations shall notify the Bank immediately if, for any reason, a person that is performing a pre-approval controlled function ceases to do so.

(2) A depositary which falls within Regulation 35(2)(c) of the UCITS Regulations shall have at least two directors that are resident in the State.

Operating conditions

118. (1) A depositary which falls within Regulation 35(2)(c) of the UCITS Regulations shall, in accordance with paragraphs (2) and (3), prepare and submit to the Bank financial accounts of the depositary.

(2) A depositary shall –

(a) submit to the Bank -

(i) annual audited accounts of the depositary prepared in accordance with any applicable legislative requirements, and

(ii) such further information as the Bank may prescribe from time to time,

(b) submit the information required in paragraph (a) to the Bank within four months of the year-end, and

(c) ensure that, when submitted to the Bank in accordance with subparagraph (b), the annual accounts of the depositary are accompanied by the annual audited accounts of every corporate shareholder of the depositary.

(3) A depositary shall -

(a) prepare accounts of the depositary twice in every financial year to cover, respectively -

(i) the first six months of the financial year of the relevant depositary, and

(ii) the full twelve months of the relevant financial year,

(b) in each case to which paragraph (a) applies:

(i) submit the accounts for the first six months of the financial year to the Bank within two months of the end of the relevant period, and

(ii) submit the accounts for the full twelve months of the relevant financial year to the Bank within one month of the end of the relevant period, and

(c) prepare the accounts in subparagraph (a) in the format prescribed by the Bank from time to time.

(4) Every set of financial accounts specified in paragraphs (2) and (3)(a)(i) shall be accompanied by a minimum capital requirement report.

(5) A minimum capital requirement report of a depositary shall be -

(a) prepared in accordance with Schedule 9, and

(b) completed by the relevant depositary.

Depositary obligations and restrictions

119. (1) A depositary shall not delegate to a third party the duties imposed upon a depositary by subparagraphs (a) and (b) and such duties shall be carried out in the State:

(a) paragraph (2) (c) and paragraph (3);

(b) Regulation 34 of the UCITS Regulations.

(2) A depositary shall establish and implement written procedures for the purpose of dealing with any breach by the relevant UCITS or by the depositary of any of the following:

(a) the UCITS Regulations;

(b) any requirement that the Bank imposes on the relevant UCITS or on the depositary, including these Regulations;

(c) any provision of the prospectus of the relevant UCITS.

(3) A depositary shall notify the Bank promptly of any material breach by the UCITS or by the depositary of any requirement, obligation or document to which paragraph (2) relates.

(4) A depositary shall notify the Bank promptly of any non-material breach by the UCITS or by the depositary of any requirement, obligation or document to which paragraph (2) relates, if the relevant breach is not resolved within four weeks of the depositary becoming aware of that breach.

(5) (a) A depositary shall maintain a written record of every breach by the UCITS or by the depositary to which paragraph (2) relates and of the steps taken to resolve such breaches.

(b) A depositary shall retain for at least six years every record that it creates or maintains in accordance with subparagraph (a).

(6) Where a UCITS proposes to invest in another investment fund, the depositary shall -

(a) ensure that the UCITS has, and implements, adequate procedures for the purpose of ensuring that every underlying investment fund meets the requirements of the UCITS Regulations and of the Bank, including these Regulations, and

(b) ensure that it reviews the decisions of the management company regularly for the purpose of ensuring that the procedures to which subparagraph (a) refers to have been adopted by the UCITS and are being adhered to.

Depositary subsidiary

120. (1) Where a UCITS establishes a subsidiary, the depositary shall hold the assets of that subsidiary in accordance with the following:

(a) in compliance with the depositaries safe-keeping duties as specified in -

(i) Regulation 34(4)(a) and (b) of the UCITS Regulations, and

(ii) Articles 13 and 14 of Commission Delegated Regulation No 438/2016 of 17 December 2015 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to obligations of depositaries[9];

(b) in compliance with its cash monitoring obligations as specified in –

(i) Regulation 34(3) of the UCITS Regulations, and

(ii) Articles 9 and 10 of Commission Delegated Regulation No 438/2016 of 17 December 2015 supplementing Directive 2009/65/EC of the European Parliament and of the Council with regard to obligations of depositaries to those assets.

Operating conditions

121. (1) A depositary shall not have a director who is also a director of -

(a) the relevant management company,

(b) the relevant administration company, or

(c) the relevant UCITS investment company.

[9] OJ No. L 78, 24.3.2016, p.11

(2) The termination of the appointment of a depositary shall only be permitted -

(a) upon the revocation of the authorisation of a UCITS, or

(b) upon the appointment of a replacement depositary.

Depositary agreement

122. A UCITS and a depositary shall enter into a depositary agreement.

Permitted markets

123. (1)(a) A depositary shall review the list of stock exchanges and markets that are listed in the UCITS prospectus to ascertain if the depositary can provide, at the date of the prospectus, for the safe-keeping of the assets of a UCITS which may be traded on these exchanges or markets, by or under the UCITS Regulations.

(b) If a depositary cannot provide custody in accordance with paragraph (a), the depositary must consult with the UCITS to ensure that the relevant exchanges or markets are removed from the list in the UCITS prospectus.

(2) A depositary shall ensure that a UCITS for which the depositary acts as depositary keeps the list of permitted stock exchanges and markets in the prospectus under review to ensure that the markets meet with all applicable regulatory criteria on an ongoing basis.

Valuation of a UCITS

124. Where a UCITS values a security that is listed or traded on a regulated market taking into account the level of premium or discount at the date of the valuation, the depositary shall ensure that valuing a security on this basis is justifiable in the context of establishing the probable realisation value of that security.

Dealing in specie

125. (1) A responsible person shall only accept subscriptions for units of a UCITS on an in specie basis where the depositary is satisfied that the terms of any exchange are not such as are likely to result in any material prejudice to the existing unitholders of the relevant UCITS.

(2) A responsible person shall only accept redemption for units of a UCITS on an in specie basis where the depositary approves the asset allocation.

Relationship with the Bank

126. (1) A depositary may provide services to an investment fund that is not authorised by the Bank only if the depositary is satisfied that the prospectus

issued by the investment fund does not imply, in any way, that the investment fund is regulated by the Bank.

(2) Where a depositary provides depositary services to an investment fund that is not authorised by the Bank, the depositary shall submit to the Bank, every three months, a return that sets out the following aggregate information for every investment fund that is not authorised by the Bank and to which the depositary provides services, within each base currency category:

(a) the domicile of each relevant investment fund;

(b) the number of investment funds;

(c) the number of unitholders in each investment fund;

(d) the total net asset value of each investment fund / of all investment funds to which the depositary provides services.

PART 13

MISCELLANEOUS PROVISIONS

Reporting requirements

127. Accounts, reports and returns required by these Regulations to be submitted or otherwise provided to the Bank shall be made using the Bank's Online Reporting System and in accordance with these Regulations.

Service of notice or other document by the Bank

128. The Bank may, in addition to the methods specified in section 61G of the Central Bank Act 1942, give or serve a notice or other document under these Regulations to a natural person, a partnership or body corporate, electronically, that is to say by electronic mail to an email address, or by facsimile number, furnished for that purpose by the person, partnership or body corporate as the case may be, to the Bank.

Records and Compliance

129. (1) A responsible person shall maintain up-to-date records containing all information and documents prepared in compliance with these Regulations.

(2) A responsible person shall, upon being required by the Bank to do so, provide, to the Bank, records evidencing compliance with these Regulations for a period specified by the Bank (up to a maximum period of six years).

(3) A management company shall keep all of its records in a way that makes them immediately retrievable in or from the State.

Disapplication of certain provisions

130. Regulations 23 to 25 do not apply to a UCITS that is authorised as an MMF under the Money Market Funds Regulation.

PART 14

REVOCATIONS AND SAVER

Revocations

131. The following Regulations are revoked:

(a) The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2019 [S.I. 230 of 2019]; and

(b) Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2023 [S.I. No. 565 of 2023]

Saver

132. The revocation of any enactment, or part of enactment, by these Regulations -

(a) does not affect any direction given by the Bank, or any investigation undertaken, or disciplinary or enforcement action undertaken by the Bank or any other person, in respect of any matter in existence at, or before, the time of the revocation, and

(b) does not preclude the taking of any legal proceedings, or the undertaking of any investigation, or disciplinary or enforcement action by the Bank or any other person, in respect of any contravention of an enactment (including anything repealed or revoked by these Regulations) or any misconduct which may have been committed before the time of repeal or revocation.

SCHEDULE 1

Regulation 2(1)

Regulatory Criteria

In respect of a relevant market, the regulatory criteria to which the responsible person shall have regard include the following:

1. a general overview of the market, having regard to issues which would be relevant to the operation of the market and investments therein;

2. whether the relevant market displays any or each of the following characteristics:

(a) Regulated

The market must be regulated. Such a market is subject to supervision by an authority or authorities, duly appointed or recognised by the state in which it is located. The authority(ies) should generally have the power to impose capital adequacy rules, to supervise directly members of the market, to impose listing standards, to ensure transparency in dealings and to impose penalties where breaches of rules or standards occur. The clearance and settlement system for transactions should also be regulated and should have acceptable settlement periods;

(b) Recognised

The market must be recognised or registered by an authority or authorities, duly appointed or recognised by the state in which it is located. Investment in the market by locally based retail investment funds should be permitted by the relevant authorities;

(c) Operating Regularly

Trading must take place with reasonable frequency and the market should have regular trading hours. The assessment must have regard to liquidity in the market, including the number of members/participants, and the ability of the market to provide fair prices on an on-going basis. Custody arrangements should also be satisfactory, i.e. a depositary must be satisfied that it can provide for the safe-keeping of the assets of an authorised UCITS in accordance with the conditions set down in the UCITS Regulations;

(d) Open to the Public

The market must be open to the public. The public should have direct or indirect access to the securities traded on the market. The degree to which overseas investors are permitted to invest and any rules which may impede the repatriation of capital or profits must be taken into account;

SCHEDULE 2

Regulation 17

Netting and Hedging

Netting

1. A responsible person shall only net positions -

(i) Between FDI, if the FDI refer to the same underlying asset, including where the maturity date of the FDI is different, and

(ii) Between an FDI which has an underlying asset that is a transferable security, money market instrument or a collective investment undertaking and that same corresponding underlying asset.

Hedging

2. The responsible person may only take hedging arrangements into account when calculating global exposure where the hedging arrangements offset the risks linked to any assets and if the hedging arrangements comply with all of the following:

(i) They do not aim to generate a return;

(ii) They result in a verifiable reduction of risk at the UCITS level;

(iii) They offset risk linked to FDI;

(iv) They relate to the same asset class;

(v) They are efficient in stressed market conditions.

SCHEDULE 3

Regulation 24(1)

Conditions for Collateral Received by a UCITS

The conditions for the receipt of collateral by a UCITS, to which Regulation 24 refers, are the following:

1. 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 its pre-sale valuation. Collateral that is received should also comply with the provisions of Regulation 74 of the UCITS Regulations;

2. Valuation

   Collateral that is 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;

3. Issuer Credit Quality

   Collateral received should be of high quality. The responsible person shall ensure that -

   (i) where the issuer was subject to a credit rating by an agency registered and supervised by ESMA that rating shall be taken into account by the responsible person in the credit assessment process, and

   (ii) where an issuer is downgraded below the two highest short-term credit ratings by the credit rating agency referred to in (i) this shall result in a new credit assessment being conducted of the issuer by the responsible person without delay;

4. Correlation

   Collateral received should be issued by an entity that is independent from the counterparty. There should be reasonable grounds for the responsible person to expect that the collateral would not display a high correlation with the performance of the counterparty;

5. Diversification (Asset Concentration)

   (i) Subject to subparagraph (ii) collateral should be sufficiently diversified in terms of country, markets and issuers with a maximum exposure to a given issuer of 20 per cent of the net asset value of the UCITS. When a UCITS is exposed to different counterparties, the different baskets of collateral should be aggregated to calculate the 20 per cent limit of exposure to a single issuer.

   (ii) A UCITS may be fully collateralised in different transferable securities and money market instruments issued or guaranteed by a Member State, one or more of its local authorities, a third country, or a public international body to which one or more Member States belong. Such a UCITS should receive securities from at least 6 different issues, but securities from any single issue should not account for more than 30 per cent of the UCITS' net value. UCITS that intend to be fully collateralised in securities issued or guaranteed by a Member State should disclose this fact in the prospectus of the UCITS. UCITS should also identify the Member States, local authorities, or public international bodies or guaranteeing securities which they are able to accept as collateral for more than 20 per cent of their net asset value.

6. 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.

SCHEDULE 4

Regulation 19

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

1. The responsible person shall calculate global exposure under the relative VaR approach, as follows:

   (a) calculate the VaR of the UCITS current portfolio, including derivatives;

   (b) calculate the VaR of a reference portfolio;

   (c) verify that the VaR of the UCITS portfolio is not greater than twice the VaR of the reference portfolio in order to ensure a limitation of the global leverage ratio of the UCITS to 2. This limit shall be presented as follows:

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

2. The UCITS responsible person shall ensure that the reference portfolio and the related processes comply with the following criteria:

   (a) The reference portfolio should be unleveraged and should, in particular, not contain any FDI or embedded FDI, except that -

      (i) a UCITS engaging in a long/short strategy may select a reference portfolio which uses FDI to gain the short exposure, and

      (ii) a UCITS which intends to have a currency hedged portfolio may select a hedged index as a reference portfolio;

   (b) The risk profile of the reference portfolio should be consistent with the investment objectives, policies and limits of the UCITS portfolio;

   (c) If the risk/return profile of a UCITS changes frequently or if the definition of a reference portfolio is not possible, then the relative VaR approach should not be used;

   (d) The process relating to the determination and the ongoing maintenance of the reference portfolio should be integrated in the risk management process and be supported by adequate procedures. Guidelines governing the composition of the reference portfolio should be developed. In addition, the actual composition of the reference portfolio and any changes should be clearly documented.

Absolute VaR approach

3. The responsible person shall only use the absolute VAR approach subject to the requirements set out in Part 2 of these Regulations.

VaR approach: Quantitative requirements

4. The absolute VaR of a UCITS shall not be greater than 20 per cent of its net asset value.

5. The calculation of the absolute and relative VaR shall be carried out in accordance with the following parameters:

   (a) one-tailed confidence interval of 99 per cent;

   (b) holding period equivalent to 1 month (20 business days);

   (c) effective observation period (history) of risk factors of at least 1 year (250 business days) unless a shorter observation period is justified by a significant increase in price volatility (for instance extreme market conditions);

   (d) quarterly data set updates, or more frequent when market prices are subject to material changes;

   (e) at least daily calculation.

6. A confidence interval and/or a holding period differing from the default parameters above may be used by the responsible person provided the confidence interval is not below 95 per cent and the holding period does not exceed 1 month (20 business days).

7. For UCITS referring to an absolute VaR approach, the use of other calculation parameters goes together with a rescaling of the 20 per cent limit to the particular holding period and/or confidence interval. The rescaling can only be done under the assumption of a normal distribution with an identical and independent distribution of the risk factor returns by referring to the quantiles of the normal distribution and the square root of time rule.

VaR approach: Qualitative requirements

8. The UCITS Regulations provide that the risk management function is responsible inter alia for ensuring compliance with the UCITS risk limit system, including statutory limits concerning global exposure. The responsible person shall ensure that its risk management function is responsible for the following:

   (a) sourcing, testing, maintaining and using the VaR approach on a day-to- day basis;

   (b) supervising the process relating to the determination of the reference portfolio where the UCITS reverts to a relative VaR approach;

   (c) ensuring on a continuous basis that the model is adapted to the UCITS portfolio;

   (d) performing continuous validation of the model;

   (e) validating and implementing a documented system of VaR limits consistent with the risk profile of the UCITS. The risk profile of the UCITS shall be approved by senior management and the board of directors;

   (f) monitoring and controlling the VaR limits;

(g) monitoring on a regular basis the level of leverage generated by the UCITS;

(h) producing on a regular basis reports relating to the current level of the VaR measure (including back testing and stress testing) for senior management.

9. The responsible person shall ensure that the VaR approach and the related outputs represent an integral part of the daily risk management work. The responsible person shall ensure that the VaR approach and its related outputs are integrated into the investment process lead by the investment managers as part of the risk management programme of the UCITS to keep the UCITS risk profile under control and consistent with its investment strategy.

10. The responsible person shall ensure that its VaR approach is validated as conceptually 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, the responsible person 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 responsible person to change certain aspects of the model in a significant way.

11. In accordance with paragraph 8(d), the risk management function shall perform ongoing validation of the VaR model (this includes, but is not limited to back testing) in order to ensure the accuracy of the model's calibration. The review shall be documented. Where necessary, the model shall be adjusted.

Documentation and procedures

12. The responsible person shall document its VaR approach and related processes and techniques in accordance with the documentation requirements referred to in paragraph 1(a) of Schedule 9 of the UCITS Regulations and shall include, inter alia, the following:

(a) the risks covered by the model;

(b) the model's methodology;

(c) the mathematical assumptions and foundations;

(d) the data used;

(e) the accuracy and completeness of the risk assessment;

(f) the methods used to validate the model;

(g) the back testing process;

(h) the stress testing process;

(i) the validity range of the model;

(j) the operational implementation.

SCHEDULE 5

Regulation 40(1)

Methods of Valuation

The valuation methodology for the purposes of Regulation 40(1) is as follows:

1. Securities that are listed or traded on a regulated market

   Valuation shall be the closing or last known market price.

   Where a security is listed on more than one exchange, the relevant market shall be -

   (a) the exchange that constitutes the main market, or

   (b) the exchange that the responsible person determines provides the fairest criteria in a value for the security.

2. Unlisted securities and securities that are listed or traded on a regulated market where the market price is unrepresentative or not available

   The value of the security is its probable realisation value which shall be estimated with care and in good faith.

   The security shall be either -

   (a) valued by the responsible person,

   (b) valued by a competent person appointed by the responsible person and approved for the purpose by the depositary, or

   (c) valued by any other means, provided that the value is approved by the depositary.

3. Investment Funds

   Valuation shall be based on the latest bid price or latest net asset value, as published by the investment fund.

   Valuation based on a mid-price or offer price is acceptable if consistent with the valuation policy. A responsible person may, in accordance with paragraph 1 of this Schedule, undertake a valuation based on market prices where the investment fund in which the investment is made is listed on a regulated market.

4. Cash (in Hand or on Deposit)

   Value is the nominal or face value plus accrued interest.

5. Exchange-Traded Futures and Options Contracts (including Index Futures)

   Valuation is based on the settlement price as determined by the market where the exchange-traded future or option contract is traded.

   If a settlement price is not available the exchange-traded future contract or option contract may be valued in accordance with paragraph 2 of this Schedule.

6. Amortised cost

Where it is not the intention or objective of a responsible person to apply amortised cost valuation to the portfolio of a UCITS as a whole, a money-market instrument within such a portfolio shall only be valued on an amortised basis if the money-market instrument has a residual maturity of less than three months and does not have any specific sensitivity to market parameters, including credit risk.

SCHEDULE 6

Regulation 56(5)

Advertising Standards for Certain UCITS

The advertising standards for the purposes of Regulation 56(5) are the following:

1. The design and presentation of an advertisement must be -
   (a) clear, fair, accurate and not misleading, and
   (b) such that the advertisement can be understood easily and clearly;
2. Where footnotes are used in an advertisement they should be of sufficient size and prominence to be legible easily; where appropriate they should be linked to the relevant part of the main copy;
3. It must be clear from the design and presentation of an advertisement that it is an advertisement such that any person who looks at it can see immediately that it is an advertisement;
4. No statement made or risk warning given in an advertisement may be obscured or disguised in any way, nor may the effect of any risk warning be diminished, by the content, design or format of the advertisement;
5. An advertisement must not, whether by inaccuracy, ambiguity, exaggeration, omission or otherwise, mislead investors about any matter that is likely to influence an investor's attitude to the investment;
6. (a) Every advertisement must be prepared with care and with the aim of ensuring that a potential investor understands fully the nature of any commitment into which the investor would enter if the investor were to acquire a unit in the relevant UCITS;
   (b) In preparing an advertisement a UCITS shall take into account the fact that the complexities of finance may be beyond the understanding of some people to whom the opportunity being offered will appeal and therefore no advertisement may take advantage of inexperience or credulity;
7. When an advertisement contains a forecast or projection, such as a specific growth rate or a specific return or rate of return, it must make clear the basis upon which that forecast or projection is made, explaining, where relevant -
   (a) whether reinvestment of income is assumed,
   (b) whether account has been taken of the incidence of any taxes or duties and, if it has, how such account has been taken, and
   (c) whether the forecast or projected rate of return will be subject to any deductions other than upon premature realisation or otherwise.
8. Advertisements leading to the employment of money in anything the value of which is not guaranteed must include a warning that the value of the investment can reduce as well as increase and, therefore, that the return on the investment necessarily will be variable;

9. An advertisement must not describe an investment as being guaranteed or partially guaranteed (or by words that convey such a meaning or impression) unless there is in place a legally enforceable agreement with a third party that undertakes -

   (a) in the case of a full guarantee, to meet, in full, an investor's claim under the guarantee, or

   (b) in the case of a partial guarantee, to meet, to whatever extent is stated in the advertisement, the investor's claim under the partial guarantee;

   Where values are guaranteed, sufficient detail must be included in the advertisement to give the reader a fair view of the nature of the guarantee;

10. An advertisement making claims, whether specific or not, as to anticipated growth in value or rate of return must include a prominent statement to the effect, as appropriate, that neither past experience nor the current situation are necessarily accurate guides to the future growth in value or rate of return;

11. An advertisement that contains information on past performance must also contain the following warning, presented in the advertisement no less prominently than the information on past performance -

   "Past performance may not be a reliable guide to future performance";

12. An advertisement that quotes past experience in support of a forecast or projected growth in the value or rate of return -

   (a) must not be misleading in relation to present prospects of an investment, and

   (b) must indicate the circumstances in which, and the period over which, such experience has been gained, in a way that is fair and representative;

13. An advertisement relating to offers to facilitate the planned withdrawal from capital as an income equivalent, such as by cashing in units of the UCITS, must contain a statement explaining clearly the effect that any such withdrawal would have on the investment;

14. When claims to investment skill in an advertisement are based upon an asserted increase in the value of particular items purchased or recommended for purchase by the advertiser in the past, that person must be in a position to substantiate that-

   (a) the purchase or recommendation upon which the assertion is based was made at the time claimed, and

   (b) the present value asserted for the investment corresponds to the price actually obtained for identical items when sold in the open market in the period immediately preceding the advertisement;

   No claim to an increase in the value of investments or collectibles should be based upon the performance within a given market of selected items only unless that claim can be substantiated in accordance with paragraphs (a) and (b);

15. The terms “tax-free” and “tax-paid”, and words, terms or phrases creating a similar impression, may be used in an advertisement only if -

    (a) it is made clear in the advertisement which particular tax or taxes or duty or duties are involved, and

    (b) the advertiser states clearly what liability may arise and by whom it will be paid if it does arise.

16. When the achievement or maintenance of a return that is claimed or offered in an advertisement for a given investment is in any way dependent upon the assumed effects of tax or duty -

    (a) this fact must be explained clearly, and

    (b) the advertisement must make it clear that no undertaking is or can be given that the fiscal system may not be revised with consequent effects upon the return that is offered;

17. Where an advertisement relates to a high volatility UCITS, it must state that the investment may be subject to sudden and large falls in value, and, if it is the case, that the investor could lose the total value of the initial investment;

18. Where a UCITS is described as being likely to yield income or as being suitable for an investor that is seeking income from the investment, and where the income from the UCITS can fluctuate, the advertisement must contain the following warning:

    “Income may fluctuate in accordance with market conditions and taxation arrangements”;

19. Where a UCITS is denominated in a currency other than that of the country in which the advertisement is issued, the advertisement must contain the following warning:

    “Changes in exchange rates may have an adverse effect on the value price or income of the product”;

20. An advertisement shall, where relevant -

    (a) state that the difference at any one time between the sale and repurchase price of a unit in the UCITS means that the investment should be viewed as medium term to long term, and

    (b) refer to the impact of a redemption charge.

SCHEDULE 7

Regulation 84(1)

Additional Information to be Included in the Annual Report

The information to which Regulation 84(1) refers is the following:

1. A statement of the assets and liabilities or the balance sheet of the UCITS showing, separately, the following:
   - (a) money-market instruments;
   - (b) investment funds;
   - (c) deposits with credit institutions;
   - (d) FDI.
2. An analysis, in accordance with the criteria set out in Schedule 12 of the UCITS Regulations, of the portfolio of the UCITS which distinguishes between -
   - (a) UCITS and AIFs,
   - (b) Deposits,
   - (c) FDI dealt in on a regulated market, and
   - (d) OTC derivatives;
3. A general description of the use of FDI and of the efficient portfolio management techniques and instruments that have been employed during the reporting period and the resulting amount of commitments, identifying -
   - (a) the types of FDI concerned, including-
     - (i) OTC derivatives,
     - (ii) the underlying exposures, and
     - (iii) where relevant, the type and amount of collateral received to reduce counterparty exposure;
   - (b) the purposes underlying the use of the various instruments, together with the attendant risks, for the purpose of enabling a unitholder to assess the nature of those instruments;
4. (a) Open financial derivative positions at the reporting date shall be marked to market and identified specifically in the portfolio statement required by paragraph 4 of Schedule 12 to the UCITS Regulations;
   - (b) For the purposes of subparagraph (a), information on open option positions shall include -
     - (i) the strike price,
     - (ii) the final exercise date, and

(iii) an indication of whether or not such positions are covered;

(c) Counterparties to OTC derivatives shall be identified in the annual report, in the same section in which open financial derivative positions are identified;

5. In the case of open financial derivative positions, a full portfolio statement with disclosure for all open positions shall be provided;

Alternatively, where the volume of positions is high, the portfolio statement can be prepared on a condensed basis listing individual open financial derivative positions representing 5% or more of net assets individually and any other open financial derivative positions that individually represent less than 5% of net assets on an aggregated basis analysed by the following groupings:

(a) each derivative type;

(b) each derivative type by currency and maturity;

(c) each derivative type by industry sector;

(d) each derivative type by geographic region.

For each derivative type within the respective groupings the leverage generated by those derivatives must be provided. The overall leverage for each grouping should be consistent.

The leverage approach used for this purpose is to be consistent with the approach used by the UCITS per paragraph 12 of Schedule 9 to the UCITS Regulations and in accordance with that outlined in the UCITS Risk Management Process (i.e. Sum-of-the-Notionals or Commitment approach).

Open financial derivative positions representing less than 5% of net assets should be aggregated in so far as open derivatives in an asset and liability position are not offset and in the case of OTC derivatives they are held with the same counterparty.

Where a condensed portfolio statement is presented, the UCITS must make the full portfolio statement available to investors on demand free of charge;

6. In the case of a UCITS that engages in financial derivative transactions or in efficient portfolio management techniques and instruments (or in both), an explanation of the treatment of realised and unrealised gains or losses arising from financial derivative transactions and from the use of such efficient portfolio management techniques and instruments;

7. In the case of a UCITS that engages in efficient portfolio management techniques and instruments, information on the following:

(a) the exposure obtained through efficient portfolio management techniques and instruments;

(b) the identity of the counterparty to the relevant efficient portfolio management techniques and instruments;

(c) the type and amount of collateral received by the UCITS to reduce counterparty exposure;

(d) the revenues arising from efficient portfolio management techniques and instruments for the entire reporting period, together with the direct and indirect operational costs and fees incurred;

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

9. Where a UCITS uses a VaR approach, the following information must be included:

   (a) information regarding the level of leverage employed during the relevant period;

   (b) For the purposes of paragraph (a) -

      (i) leverage is to be calculated as the sum of the notionals of the derivatives used, and

      (ii) the calculation in subparagraph (i) may be supplemented with leverage calculated on the basis of a commitment approach;

10. Information regarding the VaR measure, including at least the lowest, the highest and the average utilization of the VaR limit calculated during the financial year;

11. Information on the model and inputs used for calculating the VaR limit to which paragraph (8) refers;

12. In the case of an index-tracking UCITS -

    (a) information on the size of the tracking error at the end of the period under review and an explanation of any divergence between the anticipated and realised tracking error for the relevant period,

    (b) information on the annual tracking difference between the performance of the UCITS and the performance of the index tracked, and

    (c) an explanation for the annual tracking difference;

13. A report from the depositary of the UCITS;

14. A description of soft commission arrangements affecting the UCITS during the period;

15. Details of the amounts paid under any directed brokerage services or similar arrangements;

16. Details of any distributions out of capital;

17. A description of any material changes in the prospectus during the reporting period;

18. A list of exchange rates used in the annual report;

19. A report from the board of directors, in accordance with Regulation 84(4);

20. Details of all sub-investment managers engaged by the investment manager to act in relation to the UCITS;

21. The identity of the issuer where collateral received from the issuer has exceeded 20 per cent of the net asset value of the UCITS and indicate whether the UCITS has been fully collaterised in securities issued or guaranteed by a Member State;

22. An up-to-date list of all share classes of the UCITS in issue during the reporting period and identifying whether the relevant share class is hedged.

SCHEDULE 8

Regulation 86(1)

Additional Information to be Included in the Half-Yearly Report

The information to which Regulation 86(1) refers is the following:

1. A statement of the assets and liabilities or the balance sheet of the UCITS showing, separately, the following:
   (a) money-market instruments;
   (b) investment funds;
   (c) deposits with credit institutions; and
   (d) FDI;
2. An analysis, in accordance with the criteria set out in Schedule 12 of the UCITS Regulations, of the portfolio of the UCITS which distinguishes between -
   (a) UCITS and AIFs,
   (b) deposits,
   (c) FDI dealt in on a regulated market, and
   (d) OTC derivatives;
3. A description of soft commission arrangements affecting the UCITS during the reference period;
4. A general description of the use of FDI and of the efficient portfolio management techniques and instruments that have been employed during the reporting period and the resulting amount of commitments -
   (a) Identifying -
      (i) the types of FDI concerned, including OTC derivatives,
      (ii) the underlying exposures, and
      (iii) where relevant, the type and amount of collateral received to reduce counterparty exposure, and
   (b) indicating the purposes underlying the use of the various instruments, together with the attendant risks, for the purpose of enabling a unitholder to assess the nature of those instruments;
5. (a) Open financial derivative positions at the reporting date of the half-yearly report shall be marked to market and identified specifically in the portfolio statement required by paragraph 4 of Schedule 12 to the UCITS Regulations;
   (b) For the purposes of subparagraph (a), information on open option positions shall include -
      (i) the strike price,
      (ii) the final exercise date, and

(iii) an indication of whether or not such positions are covered;

(c) Counterparties to OTC derivatives shall be identified in the half-yearly report, in the same section in which open financial derivative positions are identified;

6. In the case of open financial derivative positions, a full portfolio statement with disclosure for all open positions shall be provided.

Alternatively, where the volume of positions is high, the portfolio statement can be prepared on a condensed basis listing individual open financial derivative positions representing 5% or more of net assets individually and any other open financial derivative positions that individually represent less than 5% of net assets on an aggregated basis analysed by the following groupings:

(a) each derivative type;

(b) each derivative type by currency and maturity;

(c) each derivative type by industry sector;

(d) each derivative type by geographic region.

For each derivative type within the respective groupings the leverage generated by those derivatives must be provided. The overall leverage for each grouping should be consistent.

The leverage approach used for this purpose is to be consistent with the approach used by the UCITS per paragraph (12) of Schedule 9 to the UCITS Regulations and in accordance with that outlined in the UCITS Risk Management Process (ie Sum-of-the-Notionals or Commitment approach).

Open financial derivative positions representing less than 5% of net assets should be aggregated in so far as open derivatives in an asset and liability position are not offset and in the case of OTC derivatives they are held with the same counterparty.

Where a condensed portfolio statement is presented, the UCITS must make the full portfolio statement available to investors on demand free of charge;

7. In the case of a UCITS that engages in financial derivative transactions or in efficient portfolio management techniques and instruments (or in both), an explanation of the treatment of realised and unrealised gains or losses arising from such financial derivative transactions and from the use of such efficient portfolio management techniques and instruments;

8. In the case of a UCITS that engages in efficient portfolio management techniques and instruments, information on -

(a) the exposure obtained through efficient portfolio management techniques and instruments,

(b) the identity of the counterparty to the relevant efficient portfolio management techniques and instruments,

(c) the type and amount of collateral received by the UCITS to reduce counterparty exposure, and

(d) the revenues arising from efficient portfolio management techniques and instruments for the entire reporting period, together with the direct and indirect operational costs and fees incurred;

9. In the case of an index-tracking UCITS, information on the size of the tracking error at the end of the period under review;

10. Details of any distribution out of capital;

11. A description of any material changes in the prospectus during the reporting period;

12. A list of exchange rates used in the half-yearly report;

13. A report from the board of directors in accordance with Regulation 84(4);

14. Details of all sub-investment managers engaged by the investment manager to act in relation to the UCITS;

15. An up-to-date list of all share classes of the UCITS in issue during the reporting period and identifying whether the relevant share class is hedged.

SCHEDULE 9

Regulation 116

Minimum Capital Requirement Report

The requirements for the preparation of a minimum capital requirement report are the following:

1. Interpretation

   In this Schedule, unless the context otherwise requires, “minimum capital requirement” means the capital requirement set out in Regulation 35(4) of the UCITS Regulations.

2. Eligible Capital Contributions and Subordinated Loan Capital (both Perpetual and Redeemable)

   The following conditions apply to eligible capital contributions and to subordinated loan capital (both perpetual and redeemable):

   (a) the prior approval of the Bank must be obtained in respect of the inclusion of the eligible capital contribution or subordinated loan capital in the own funds for capital adequacy purposes;

   (b) subordinated loan capital may not be incorporated in the calculation of the initial capital requirement;

   (c) the Bank must be provided with documentation, including a copy of the original bank statement showing receipt of the relevant funds, that the depositary has received the eligible capital contribution or subordinated loan capital or both (as the case may be);

   (d) the Bank may require the auditor of the depositary to confirm the receipt of additional capital;

   (e) the depositary must use (as the case may be) the template capital contribution agreement, perpetual loan subordination agreement or loan subordination agreement (for redeemable subordinated loan capital), each without amendment, that the Bank may specify and make available, including on the Bank’s website, from time to time;

3. Redeemable Subordinated Loan Capital

   Without prejudice to paragraph 4 of this Schedule, the following conditions also apply to redeemable subordinated loan capital:

   (a) the extent to which redeemable subordinated loan capital ranks as own funds, for the purposes of calculating own funds, will be reduced on a straight-line basis over the five years immediately preceding the repayment date;

(b) the qualifying amount of redeemable subordinated debt is calculated as follows:

Remaining term to maturity __________

Gross Amount __________

Less Amortisations __________

= Qualifying Amount __________

4. Eligible Assets

(a) An eligible asset must be -

(i) accessible easily,

(ii) free from any lien or charge, and

(iii) maintained outside the depositary's group.

(b) The eligible assets shall be held in an account that is separate to the account that is, or the accounts that are, used by a depositary for the day-to-day running of its business.

(c) The Bank must be provided with a recent written statement, from a source independent of the depositary, evidencing the location of every eligible asset.

(d) Eligible assets are calculated as the value of total assets of the depositary less the aggregate value of the items of the depositary that are set out in clauses (i) to (xii) -

(i) fixed assets,

(ii) intangible assets,

(iii) cash or cash equivalents held with group companies,

(iv) debtors,

(v) bad debt provisions,

(vi) prepayments,

(vii) intercompany amounts (gross),

(viii) loans issued,

(ix) investment funds that are not daily dealing,

(x) investments in any investment fund that is promoted by a group company of the depositary or to which a group company of the depositary provides services,

(xi) any other asset that is not accessible easily and which is not included in clauses (i) to (x), and

(xii) accounts used by the depositary for the day to day running of its business,

where "total assets" are non-current assets plus current assets.

SCHEDULE 10

Regulation 102

Managerial functions of the Management company

The board of a management company shall be responsible for the following managerial functions:

(a) *Regulatory 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. The board shall have arrangements in place to ensure that complaints from unitholders regarding matters other than distribution are addressed promptly and effectively;

(b) *Fund risk management:* The board shall put in place, and ensure adherence to, procedures designed to ensure that all applicable risks pertaining to the investment funds under management can be identified, monitored and managed at all times;

(c) *Operational risk management:* The board shall put in place, and ensure adherence to, procedures designed to ensure that all applicable risks pertaining to the management company can be identified, monitored and managed at all times;

(d) *Investment management:* The board shall put in place, and shall ensure adherence to, procedures to -

   (i) ensure and verify that the investment approach of each investment fund is complied with, and

   (ii) ensure availability of up to date information on portfolio performance;

(e) *Capital and financial management:* The board shall put in place, and ensure adherence to, procedures to ensure compliance with regulatory capital requirements of the management company. 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. 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;

(f) *Distribution:* The board shall put in place, and shall ensure adherence to, procedures to ensure and verify that the distribution strategy of each investment fund is complied with. The board shall have arrangements in place to ensure that complaints from unitholders regarding distribution matters are addressed promptly and effectively.

SCHEDULE 11

Regulation 109

Records of a Management company

The types of material and level and nature of content for the purposes of Regulation 109 are:

1. Financial Materials:

   (a) details of all money received and expended by the management company whether on its own behalf or on behalf of any investment fund that is under its management, together with details of how such receipts and payments arose;

   (b) a record of all income and expenditure of the management company explaining its nature;

   (c) a record of all assets and liabilities of the management company, long and short positions and off-balance sheet items, including any commitments or contingent liabilities;

   (d) details of all purchases and sales of investment instruments by the management company distinguishing those that have been made by the management company on its own account and those that have been made on behalf of any investment fund that is under its management;

   (e) any working papers that are necessary to show the preparation of any return that has been submitted to the Bank.

2. Management Information

   Management information records maintained in a manner such that they disclose, or are capable of disclosing, in a prompt and appropriate manner, the financial and business information that will enable the management company to -

   (a) identify, quantify, control and manage the management company's risk exposures,

   (b) make timely and informed decisions,

   (c) monitor the performance of all aspects of the management company's business on an up-to-date basis, and

   (d) monitor the quality of the management company's assets.

Signed for and on behalf of the CENTRAL BANK OF IRELAND
on this the 7th day of July 2026

MARY-ELIZABETH MCMUNN,
Deputy Governor, Financial Regulation.

EXPLANATORY NOTE

(*This note is not part of the instrument and does not purport to be a legal interpretation.*)

These Regulations set out requirements for UCITS, UCITS management companies and depositaries of UCITS.

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