



FINANCIAL SERVICES

New Central Bank UCITS Regulations

by **David Williams**

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On 5 October 2015, the Central Bank of Ireland (Central Bank) published regulations that consolidate into one location all of the requirements that it imposes on UCITS, UCITS management companies and depositaries of UCITS.

The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015 (CB UCITS Regulations) will come into force on 1 November 2015 and will replace the Central Bank's UCITS Notices and UCITS Guidance Notes.

Prior Consultation

The Central Bank held a public consultation on the proposed policy changes and on the rules which it imposes on UCITS, UCITS management companies and depositaries of UCITS in CP77 – Consultation on publication of UCITS Rulebook.

A public consultation was also undertaken on proposed revisions to UCITS collateral diversification requirements in CP84 – Consultation on adoption of ESMA's revised guidelines on ETFs and other UCITS issues.

The CB UCITS Regulations reflect the responses that were received to both of these consultations.

What has changed?

For the most part, the rules in the CB UCITS Regulations are the same as the conditions set out in the Central Bank's UCITS Notices, but a small number of policy changes are included in the CB UCITS Regulations and these are outlined in the feedback statement on CP77.

Some of the key changes are outlined as follows:

Removal of Promoter Approval

The Central Bank is dispensing with the promoter regime for UCITS. Instead of the promoter regime, the Central Bank will place reliance on the regulatory regime for UCITS management companies and has elaborated on the obligations of directors when a UCITS gets into difficulties. This follows the approach adopted by the Central Bank in implementing the Alternative Investment Fund Managers Directive (AIFMD) and removes a potential burden in establishing a UCITS in Ireland.

Derogations

If a UCITS has previously received a derogation from the Central Bank and such derogation has not been included in the CB UCITS Regulations, then, in such a case, the relevant UCITS will need to re-apply to the Central Bank to receive the derogation.

Removal of Priority Gates

The Central Bank has clarified in its feedback statement on CP77 that applying priority to redemption requests which have been subject to a gate may materially prejudice investors, particularly small investors. Therefore, where a UCITS applies a redemption gate, unsatisfied redemption requests held over from the previous dealing day will not receive priority. The implications of this are that, on the dealing day following the application of the gate, all redemption requests will be dealt with on a pro rata basis should the gate continue to apply.

Financial Reporting Requirements

Currently UCITS management companies and depositaries are required to submit half yearly management accounts covering the first six months of the financial year and also audited annual accounts. The CB UCITS Regulations now require UCITS management companies and depositaries to also produce a set of unaudited financial statements for the second six months of the year. The Central Bank have stated in its feedback statement on CP77 that the submission of half-yearly management accounts covering both six month periods is an important and necessary supervisory tool which will provide the Central Bank with more complete and timely information and will allow the Central Bank to compare and analyse reports from the first six months of the year with the second six months.

Guidance on Regulated Markets

The feedback statement on CP77 clarifies that the Central Bank is withdrawing Guidance Note 1/96. The Central Bank will no longer review submissions on proposed regulated markets and will no longer publish a list of permitted markets for UCITS. The UCITS management company or self-managed UCITS must ensure that the UCITS complies with the relevant requirements which are set out in Regulation 68(1) of the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 and Schedule 1 to the CB UCITS Regulations.

Prospectus Requirements

The CB UCITS Regulations consolidate into one instrument all of the rules relating to the prospectus of a UCITS. A notable new requirement introduced in the CB UCITS Regulations is that a UCITS must disclose in its prospectus, in relation to each of the categories of assets in which it may invest, whether it will take long or short positions or both. It shall also disclose the percentage of its assets which it anticipates will be invested in long positions and in short positions. The feedback statement on CP77 states that where a UCITS enters into short positions as part of its investment policy, this should be disclosed in the Prospectus the next time it is being updated.

Reporting of non-material breaches by the Depositary

The CB UCITS Regulations state that a depositary shall notify the Central Bank promptly of any non-material breach by the UCITS or by the depositary, if the relevant breach is not resolved within four weeks of the depositary becoming aware of that breach. The feedback statement on CP77 states that the Central Bank will keep the operation of this rule under review to ensure that it is workable and proportionate and will consider revising the rule if this proves not to be the case. In this context, a breach means a breach of (i) any applicable UCITS legislation, (ii) any provision in the prospectus of the UCITS or (iii) any requirement imposed on the UCITS by the Central Bank.

Collateral Rules

The CB UCITS Regulations set out the requirements for the receipt of collateral by a UCITS. In doing so, the CB UCITS Regulations address the concerns raised by the Central Bank in CP84 by imposing rules regarding the determination of "high quality" collateral, which are set out in Schedule 3 of the CB UCITS Regulations. The CB UCITS Regulations provide that 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.

Legislative Basis

The introduction of the CB UCITS Regulations means that the regulatory rules governing the operation of Irish UCITS will be in the form of legally binding legislation from 1 November 2015. The implications of this are that a breach of the CB UCITS Regulations will fall within the scope of the Central Bank's regulatory sanctions and enforcement powers. The CB UCITS Regulations also introduce the term "responsible person" and many of the obligations in the CB UCITS Regulations are placed on the responsible person. For

self-managed UCITS, the UCITS itself shall be the responsible person. For UCITS that use management companies, the management company shall be the responsible person.

It should be noted that the CB UCITS Regulations are supplemental to, and do not alter the existing UCITS legislation, the European Communities (Undertaking for Collective Investment in Transferable Securities) Regulations 2011 which implement the UCITS Directive into Irish law.

Timing

The CB UCITS Regulations will come into effect on 1 November 2015 and will replace the UCITS Notices from that date. As outlined above, the Central Bank has also restructured its UCITS guidance to reflect the publication of the CB UCITS Regulations. The restructured UCITS guidance is available on the Central Bank's website and will also come into effect on 1 November 2015. The current UCITS guidance will remain on the Central Bank's website until that date and will then be removed. There are transitional provisions in respect of certain requirements dealing with redemption gates and therefore those requirements will not apply until 1 November 2016.

For more information, please contact David Williams at dwilliams@lkshields.ie or Trevor Dolan at tdolan@lkshields.ie.

About the Authors



David Williams
Consultant

David advises on all aspects of financial services law and regulation.

T: +353 1 637 1542 E: dwilliams@lkshields.ie