Central Bank of Ireland Consults on Changes to Central Bank UCITS Regulations

On 29 March 2018, the Central Bank of Ireland ("**Central Bank**") published a consultation paper (CP119 or the "**Consultation**") on amendments to and the consolidation of the Central Bank Undertakings for Collective Investment in Transferable Securities Regulations ("**CB UCITS Regulations**").[1] The Consultation proposes a number of amendments to the CB UCITS Regulations including:

- changes to reflect the European Securities and Markets Authority ("**ESMA**") Opinion on UCITS Share Classes (issued in January 2017);
- updates to reflect the application of the EU Money Market Fund Regulation ("**MMFR**");
- new obligations in relation to UCITS performance fees provisions, the majority of which were previously contained in Central Bank guidance; and
- further amendments arising from the Central Bank's annual review of the CB UCITS Regulations.

The Consultation also proposes consolidating the CB UCITS Regulations and the draft amending and consolidating regulations are set out in the appendix to the Consultation. Responses to the Consultation are sought by **29 June 2018.**

Summary of Proposed Amendments

UCITS Share Classes

The Consultation proposes amendments and new provisions to reflect ESMA's Opinion on UCITS Share Classes, including requirements that:

- under-hedged positions should not fall below 95% of the net asset value of the share class (notably, the ESMA Opinion refers to 95% of the amount of the exposure being hedged, rather than 95% of the net asset value of the share class; we are seeking clarification as to whether this deviation from the ESMA Opinion was intended);
- stress-testing at share class level be conducted in accordance with the CB UCITS Regulations and that the results of such stress tests are provided to the Central Bank;

1. The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015 came into effect on 1 November 2015, replacing the Central Bank UCITS Notices. Two sets of amending regulations have been published since that date.

- administrative costs for the establishment of a share class are to be borne solely by the relevant share class;
- any risk or administrative costs arising from the use of derivative overlay to hedge the currency risk in a share class is borne solely by the relevant share class;
- the coverage available to the share class is sufficient to meet all future obligations of that share class;
- the notional of the derivative transaction should not lead to a payment or delivery value exceeding that of the hedged share class; and
- counterparty exposure is to be assessed at the level of the hedged share class.

The Consultation also proposes that UCITS' semi-annual and annual accounts list each share class in the UCITS and indicate which share classes are hedged.

UCITS Performance Fees

The Central Bank proposes setting out obligations regarding charging performance fees that are currently set out in Central Bank website guidance in the CB UCITS Regulations, on the basis of the importance of the issue of performance fees and the ongoing supervisory work in this area.[2] The Consultation also proposes new regulations setting out the disclosure obligations in relation to performance fees and a requirement relating to the minimum frequency for crystallisation of performance fees in order to align the Central Bank's approach to the International Organisation of Securities Commission's ("**IOSCO**") Good Practices on Fees and Expenses.[3] The amended CB UCITS Regulations would specify that the minimum period for performance fee crystallisation is once per annum. Existing UCITS that charge performance fees more frequently than once per annum would be able to avail of a transition period (as yet unspecified) to comply with the new requirement.

Money Market Funds

The MMFR applies to new money market funds ("**MMFs**") established, managed or marketed in the EU from 20 July 2018. Existing MMFs can avail of a transition period up to 21 January 2019. The Consultation sets out updates to the CB UCITS Regulations to comply with the MMFR. The Central Bank has identified a number of provisions that will be disapplied from 20 July 2018 or 21 January 2019, as appropriate, in order to remove any overlap with the MMFR.

Further Amendments

The Consultation sets out further amendments arising from the Central Bank's review of the CB UCITS Regulations. Some of the notable amendments proposed in the Consultation are set out below.

- **Fund Management Company Effectiveness (CP86):** The amended CB UCITS Regulations would codify the requirements to establish and monitor daily an email address for regulatory correspondence and to keep records that are immediately retrievable in or from Ireland.

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2. Draft regulation 41.

3. Draft regulation 75.

- **Management company / depositary second set of annual accounts:** It is proposed that management companies and depositaries would be required to file a full twelve month set of unaudited financials, instead of a second set of half-yearly accounts. These unaudited accounts would be required to be filed within one month of the relevant period (rather than two months as is currently required).

- **Temporary suspension notifications:** The Consultation proposes new requirements to provide an update to the Central Bank within 21 working days of applying a temporary suspension and to notify the Central Bank immediately when a temporary suspension is lifted.

Comment

The publication of this Consultation is a welcome example of the Central Bank's ongoing engagement with industry. We are currently analysing the merits of the proposed amendments. It is evident that the Central Bank has carefully considered the proposed amendments set out in the Consultation. However, there are some issues that we believe may warrant further consideration:

- the proposal for UCITS' semi-annual and annual accounts to list each share class in the UCITS and indicate which are hedged may be impractical for UCITS with large numbers of share classes; and

- the proposal on crystallisation of performance fees lacks some of the nuances contained in the IOSCO report on which this proposal is based, meaning that some of the options that the IOSCO report provides may not be offered to UCITS in future.

Matheson intends to respond to the Consultation and we would welcome any feedback which you would like to provide for inclusion in this response. We encourage you to respond to the Central Bank (either directly or as part of our response), as we believe that the Consultation presents an excellent opportunity to contribute to the Central Bank's future thinking on UCITS in a positive way.

The Consultation may be accessed here.

Please get in touch with your usual Asset Management and Investment Funds Department contact or any of the contacts listed in this publication should you require further information in relation to the material referred to in this update.

Full details of the Asset Management and Investment Funds Department, together with further updates, articles and briefing notes written by members of the Asset Management and Investment Funds team, can be accessed at www.matheson.com.

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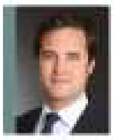

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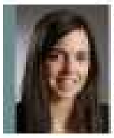

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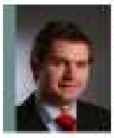

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