

## Central Bank of Ireland Publishes Updated UCITS Rules

The Central Bank of Ireland (“**Central Bank**”) has published updated regulations<sup>1</sup> setting out the Central Bank requirements applicable to Irish domiciled UCITS (“**CB UCITS Regulations**”). The latest amendments are in the following four areas:

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

The publication of the updated CB UCITS Regulations follows a consultation issued in March 2018 relating to the proposed changes (CP119) and is accompanied by a feedback statement setting out the Central Bank’s policy determinations. The Central Bank has also updated its [UCITS Q&A](#), including new questions and answers relating to the updated CB UCITS Regulations (see ID 1090, 1092 and 1093).

### *UCITS Share Classes*

In a welcome change to the amendments as originally consulted upon in CP119, the Central Bank has accepted submissions that the wording of the proposed amendments relating to under-hedged positions should be amended to more closely reflect the wording of the ESMA Opinion on UCITS Share Classes. The updated CB UCITS Regulations now provide that under-hedged positions should not fall below 95% of the portion of the net asset value of the share class which is sought to be hedged (the wording originally proposed had referred to 95% of the net asset value of the share class).

The CB UCITS Regulations have also been amended to require that UCITS annual and half-yearly reports list those share classes in issue during the relevant period, rather than the original CP119 proposal which required the listing of both launched and unlaunched share classes.

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<sup>1</sup> *Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2019 (SI 230 of 2019)*

## *UCITS Performance Fees*

The Central Bank has made a minor amendment to the requirement proposed in CP119 to state that performance fees may be paid where a new high net asset value (“NAV”) is achieved over the life of the UCITS. The Central Bank will clarify by way of guidance that this may be on either: (a) achieving a new high NAV per share; or (b) achieving a new high NAV, as adjusted for subscriptions and redemptions. The requirement does not preclude UCITS from providing for payment of a performance fee only where the high water mark is exceeded by a given percentage.

On foot of feedback received on CP119, the Central Bank agrees with respondents that performance fees may crystallise upon an investor redemption. The Central Bank will issue guidance to clarify this point.

The updated CB UCITS Regulations specify that performance fees should not, under normal circumstances, crystallise more frequently than once a year (which aligns the Central Bank’s approach to the International Organisation of Securities Commission’s (“IOSCO”) Good Practices on Fees and Expenses). Existing UCITS that charge performance fees more frequently than once per annum may avail of an 18 month transitional period running from the date of commencement of the updated regulations (providing for a **27 November 2020** deadline).

### **Comment**

The updated CB UCITS Regulations indicate the Central Bank’s careful consideration of the feedback received on CP119 and reflect important and welcome changes to the amendments originally consulted upon in the areas of UCITS share classes, performance fees and transitional periods for compliance.

The updated CB UCITS Regulations apply from 27 May 2019 and are available [here](#). The feedback statement is available [here](#).

Further details regarding the changes introduced are available in our earlier [briefing note](#) relating to CP119.

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*Full details of the Asset Management and Investment Funds Group, 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](http://www.matheson.com).*

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