



STATUTORY INSTRUMENTS.

S.I. No. 143 of 2016

EUROPEAN UNION (UNDERTAKINGS FOR COLLECTIVE
INVESTMENT IN TRANSFERABLE SECURITIES) (AMENDMENT)
REGULATIONS 2016

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The Minister for Finance, in exercise of the powers conferred on me by section 3 of the European Communities Act 1972 (No. 27 of 1972) and for the purpose of giving effect to Directive 2014/91/EU of 23 July 2014¹, hereby make the following regulations:

Citation

1. These Regulations may be cited as the European Union (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2016.

Interpretation

2. (1) In these Regulations, “Principal Regulations” means the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 (S.I. No. 352 of 2011).

(2) A word or expression that is used in these Regulations and that is also used in the Directive has, unless the context otherwise requires, the same meaning in these Regulations as it has in the Directive.

Amendment of Regulation 3 of Principal Regulations

3. Regulation 3 of the Principal Regulations is amended by—

(a) the insertion of the following after “Directive 2010/44/EU” in the definition of “Directive”:

“and as amended by Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014¹”;

(b) the insertion of the following definitions:

“ ‘financial instrument’ means a financial instrument specified in Section C of Annex I to Directive 2014/65/EU of the European Parliament and of the Council²;

‘management body’ means the body with ultimate decision-making authority in a management company, investment company or depositary, comprising the supervisory and the managerial functions and includes the board of directors of the management company, investment company or depositary;” and

¹OJ No. L. 257, 28.8.2014, p.186.

²OJ No. L. 173, 12.6.2014, p. 349.

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 25th March, 2016.*

(c) the deletion of the definition of “trustee”.

Substitution of “depository” for “trustee” in Principal Regulations

4. The Principal Regulations are amended by the substitution of “depository” for “trustee” in each place where it occurs.

Insertion of new Regulations 24A and 24B in Principal Regulations

5. The Principal Regulations are amended by the insertion of the following new Regulations:

“Remuneration policies

24A. (1) Management companies shall establish and apply remuneration policies and practices that—

- (a) are consistent with and promote sound and effective risk management,
- (b) do not encourage risk taking that is inconsistent with the risk profiles, rules or instruments of incorporation of the UCITS that the management company manages, and
- (c) do not impair compliance with the management company's duty to act in the best interest of the UCITS that it manages.

(2) The remuneration policies and practices referred to in paragraph (1) shall include fixed and variable components of salaries and discretionary pension benefits.

(3) The remuneration policies and practices referred to in paragraph (1) shall apply to those categories of staff (including senior management, risk takers, control functions and any employee receiving total remuneration that falls within the remuneration bracket of senior management and risk takers) whose professional activities have a material impact on the risk profiles of the management companies or of the UCITS that they manage.

Remuneration policies — supplemental provisions

24B. (1) When establishing and applying the remuneration policies referred to in Regulation 24A, management companies shall comply with the following principles in a manner and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:

- (a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk taking that is inconsistent with the risk profiles, rules or instruments of incorporation of the UCITS that the management company manages;
- (b) the remuneration policy is in line with the business strategy, objectives, values and interests of the management company

and the UCITS that it manages and of the investors in such UCITS, and includes measures to avoid conflicts of interest;

- (c) the remuneration policy is adopted by the management body of the management company in its supervisory function, and that body adopts, and reviews at least annually, the general principles of the remuneration policy and is responsible for, and oversees, their implementation, provided that the tasks referred to in this sub-paragraph shall be undertaken only by members of the board who do not perform any executive functions in the management company concerned and who have expertise in risk management and remuneration;
- (d) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;
- (e) staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independently of the performance of the business areas that they control;
- (f) the remuneration of senior officers in the risk management and compliance functions is overseen directly by the remuneration committee, where such a committee has been established under paragraph (3);
- (g) where remuneration is performance-related, the total amount of remuneration is based on an assessment of—
 - (i) the performance of the individual and of the business unit or UCITS concerned,
 - (ii) the risks of the UCITS concerned, and
 - (ii) the overall results of the management company when assessing individual performance, taking into account financial and non-financial criteria;
- (h) the assessment of performance is set in a multi-year framework appropriate to the holding period recommended to the investors of the UCITS managed by the management company in order to ensure that the assessment process is based on the longer term performance of the UCITS and its investment risks and that the payment of performance-based components of remuneration is spread over that period;

- (i) guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year of engagement of such staff;
- (j) fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy on variable remuneration components, including the possibility to pay no variable remuneration component;
- (k) payments relating to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;
- (l) the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;
- (m) subject to the legal structure of the UCITS and its fund rules or instruments of incorporation–
 - (i) not less than 50 per cent, or
 - (ii) where the management of UCITS accounts for less than 50 per cent of the total portfolio managed by the management company, a substantial portion,

of any variable remuneration component consists of units of the UCITS concerned, equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments with incentives that are as effective as any of the instruments referred to in this paragraph, and in respect of such a variable remuneration component–

 - (I) the management company shall establish and apply to the instruments a retention policy designed to align incentives with the interests of the management company, of the UCITS that it manages and of the unit-holders of the UCITS, and
 - (II) the Bank may place restrictions on the types and designs of the instruments or ban certain instruments as appropriate;
- (n) a substantial portion, which shall be–
 - (i) not less than 40 per cent, or

- (ii) in the case of a variable remuneration component of a particularly high amount, not less than 60 per cent,

of a variable remuneration component referred to in paragraph (*m*), is deferred and vests no faster than on a pro-rata basis over a period that is—

- (I) appropriate in view of the holding period recommended to the unit-holders of the UCITS concerned,

- (II) correctly aligned with the nature of the risks of the UCITS in question, and

- (III) not less than 3 years;

- (o) a variable remuneration component referred to in paragraph (*m*), including any portion thereof deferred in accordance with paragraph (*n*), is paid or vests only if it is—

- (i) sustainable according to the financial situation of the management company as a whole, and

- (ii) justified according to the performance of the business unit, of the UCITS and of the individual concerned,

and shall be considerably contracted where subdued or negative financial performance of the management company or of the UCITS concerned occurs, taking into account both current compensation and reductions in pay-outs of amounts previously earned, including through malus or clawback arrangements;

- (p) the pension policy is in line with the business strategy, objectives, values and long-term interests of the management company and the UCITS that it manages, and in particular—

- (i) if an employee leaves the management company before retirement, discretionary pension benefits in respect of the employee shall be held by the management company for a period of five years in the form of instruments referred to in paragraph (*m*), and

- (ii) in the case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in paragraph (*m*), subject to a five year retention period;

- (q) staff are required to undertake not to use personal hedging strategies or remuneration- and liability-related insurance to

undermine the risk alignment effects embedded in their remuneration arrangements;

- (r) a variable remuneration component is not paid through vehicles or methods that facilitate the avoidance of the requirements laid down in these Regulations.

(2) The principles set out in paragraph (1) shall apply to any benefit of any type paid by the management company, to any amount paid directly by the UCITS itself, including performance fees, and to any transfer of units or shares of the UCITS, made for the benefit of those categories of staff (including senior management, risk takers, control functions and any employee receiving total remuneration that falls into the remuneration bracket of senior management and risk takers) whose professional activities have a material impact on the risk profile of the management company or the risk profile of the UCITS that they manage.

(3) A management company that is significant in terms of its size or the size of the UCITS that it manages, its internal organisation and the nature, scope and complexity of its activities shall establish a remuneration committee (in accordance, where appropriate, with guidelines issued by the European Securities and Markets Authority under paragraph (4) of Article 14a of the Directive), which shall—

- (i) be constituted in a way that enables the committee to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk,
- (ii) be responsible for the preparation of decisions regarding remuneration, including those that have implications for the risk and risk management of the management company or the UCITS concerned and that are to be taken by the management body in its supervisory function,
- (iii) be chaired by a member of the management body who does not perform any executive functions in the management company concerned,
- (iv) consist of members of the management body who do not perform any executive functions in the management company concerned,
- (iv) where there is employee representation on the management body, include one or more employee representatives, and
- (v) when preparing its decisions, take into account the long-term interest of unit-holders and other stakeholders and the public interest.”.

Insertion of new Regulation 25A in Principal Regulations

6. The Principal Regulations are amended by the insertion of the following new Regulation:

“Procedures for reporting contraventions

25A. Management companies, investment companies and depositaries shall have in place appropriate procedures for their employees to report contraventions of these Regulations internally through a specific, independent and autonomous channel.”.

Amendment of Regulation 30 of Principal Regulations

7. Regulation 30 of the Principal Regulations is amended in paragraph (1)(a) by the substitution of the following clause for clause (i):

“(i) the written contract with the depositary referred to in paragraph (2) of Regulation 33;”.

Amendment of Regulation 31 of Principal Regulations

8. Regulation 31 of the Principal Regulations is amended in paragraph (1)(a) by the substitution of the following clause for clause (i):

“(i) the written contract with the depositary referred to in paragraph (2) of Regulation 33;”.

Substitution of Regulation 33 of Principal Regulations

9. The Principal Regulations are amended by the substitution of the following Regulation for Regulation 33:

“33. (1) An investment company and, for each of the funds that it manages, a management company shall ensure that a single depositary is appointed in accordance with this Part.

(2) The appointment of the depositary shall be evidenced by a written contract, which shall include provisions to regulate the flow of information deemed to be necessary to allow the depositary to perform its functions for the UCITS for which it has been appointed as depositary, as laid down in these Regulations and in any other enactment or administrative provisions.”.

Amendment of Regulation 34 of Principal Regulations

10. Regulation 34 of the Principal Regulations is amended—

(a) by the substitution of the following paragraph for paragraph (1):

“(1) The depositary shall:

(a) ensure that the sale, issue, repurchase, redemption and cancellation of units of the UCITS are carried out in accordance with these Regulations and the trust deed, the deed of constitution or the investment company’s articles;

- (b) ensure that the value of the units of the UCITS is calculated in accordance with the these Regulations and the trust deed, the deed of constitution or the investment company's articles;
- (c) carry out the instructions of the management company or an investment company, unless they conflict with the these Regulations, or with the trust deed, the deed of constitution or the investment company's articles;
- (d) ensure that in transactions involving the assets of the UCITS any consideration is remitted to the UCITS within the usual time limits;
- (e) ensure that the income of the UCITS is applied in accordance with the trust deed, the deed of constitution or the investment company's articles.”, and

(b) by the insertion of the following paragraphs after paragraph (2):

“(3) The depositary shall ensure that the cash flows of the UCITS are properly monitored and, in particular, that all payments made by, or on behalf of, unit-holders upon the subscription of units of the UCITS have been received, and that all cash of the UCITS has been booked in cash accounts that are-

- (a) opened in the name of the UCITS, of the management company acting on behalf of the UCITS, or of the depositary acting on behalf of the UCITS,
- (b) opened at an entity referred to in points (a), (b) and (c) of Article 18(1) of Commission Directive 2006/73/EC, and
- (c) maintained in accordance with the principles set out in Article 16 of Commission Directive 2006/73/EC,

and where the cash accounts are opened in the name of the depositary acting on behalf of the UCITS, no cash of the entity referred to in subparagraph (b) and none of the own cash of the depositary shall be booked on such accounts.

(4) The assets of the UCITS shall be entrusted to the depositary for safekeeping as follows:

- (a) for financial instruments that may be held in custody, the depositary shall-
 - (i) hold in custody all financial instruments that may be registered in a financial instruments account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary, and

(ii) ensure that all financial instruments that can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts in accordance with the principles set out in Article 16 of Commission Directive 2006/73/EC, opened in the name of the UCITS or the management company acting on behalf of the UCITS, so that they can be clearly identified as belonging to the UCITS in accordance with the applicable law at all times;

(b) for other assets, the depositary shall-

(i) verify the ownership by the UCITS, or by the management company acting on behalf of the UCITS, of such assets by assessing whether the UCITS or the management company acting on behalf of the UCITS holds the ownership based on information or documents provided by the UCITS or by the management company and, where available, on external evidence, and

(ii) maintain a record of those assets for which it is satisfied that the UCITS or the management company acting on behalf of the UCITS holds the ownership and keep that record up to date.

(5) The depositary shall provide the management company or the investment company, on a regular basis, with a comprehensive inventory of all of the assets of the UCITS.

(6) Subject to paragraph (7), the assets held in custody by the depositary shall not be reused by the depositary, or by any third party to which the custody function has been delegated, for their own account, and for the purposes of this paragraph, reuse means any transaction of assets held in custody including, but not limited to, transferring, pledging, selling and lending.

(7) The assets held in custody by the depositary may be reused where-

(a) the reuse of the assets is executed for the account of the UCITS,

(b) the depositary is carrying out the instructions of the management company on behalf of the UCITS,

(c) the reuse is for the benefit of the UCITS and in the interest of the unit holders, and

- (d) the transaction is covered by high-quality and liquid collateral received by the UCITS under a title transfer arrangement where the market value of the collateral amounts, at all times, to at least the market value of the reused assets plus a premium.”.

Insertion of new Regulation 34A in Principal Regulations

11. The Principal Regulations are amended by the insertion of the following new Regulation:

“Depositary delegation

34A. (1) The depositary shall not delegate to a third party a function referred to in paragraphs (1) and (3) of Regulation 34.

(2) The depositary may delegate to a third party a function referred to in paragraph (4) of Regulation 34 provided that—

- (a) the requirements of paragraph (3) are met,
- (b) the delegation is not made with the intention of avoiding the requirements laid down in these Regulations,
- (c) the depositary can demonstrate that there is an objective reason for the delegation, and
- (d) the depositary-
 - (i) exercises all due skill, care and diligence in the selection and appointment of the third party,
 - (ii) carries out periodic reviews and ongoing monitoring of the third party and of the arrangements put in place by the third party in respect of the delegation, and
 - (iii) continues to exercise all due skill, care and diligence in carrying out such review and monitoring.

(3) In respect of a delegation referred to in paragraph (2), the third party shall at all times during the performance of the function or functions delegated to it-

- (a) have structures and expertise that are adequate and proportionate to the nature and complexity of the assets of the UCITS or the management company acting on behalf of the UCITS that have been entrusted to it,
- (b) in respect of custody tasks referred to in subparagraph (a) of Regulation 34(4), be subject to-
 - (i) effective prudential regulation, including minimum capital requirements and supervision in the jurisdiction concerned, and

- (ii) an external periodic audit to ensure that the financial instruments are in its possession,
- (c) segregate the assets of clients of the depositary from its own assets and from the assets of the depositary in such a way that such assets can, at any time, be clearly identified as belonging to clients of a particular depositary,
- (d) take all necessary steps to ensure that in the event that it becomes insolvent, assets of a UCITS held by it in custody are unavailable for distribution among, or realisation for the benefit of, its creditors, and
- (e) comply with the general obligations and prohibitions laid down in paragraph (2) of Regulation 33, paragraphs (4), (6) and (7) of Regulation 34 and paragraphs (1), (1A) and (1B) of Regulation 37.

(4) Notwithstanding clause (i) of subparagraph (3)(b), where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entity satisfies the delegation requirements laid down in that clause, the depositary may delegate its functions to such a local entity to the extent required by the law of the third country and for as long as there is no local entity that satisfies those requirements, provided that-

- (a) the unit-holders of the relevant UCITS are informed, prior to their investment, of the fact that such a delegation is required due to legal constraints in the law of that third country, of the circumstances justifying the delegation and of the risks involved in such a delegation, and
- (b) the investment company, or the management company on behalf of the UCITS, has instructed the depositary to delegate the custody of such financial instruments to such a local entity.

(5) The third party may, in turn, sub-delegate a function referred to in paragraph (4) of Regulation 34, subject to the same requirements and in such a case, paragraphs (2) and (3) shall apply with the necessary modifications to the relevant parties.

(6) For the purposes of this Regulation, the provision of services, as specified by Directive 98/26/EC of the European Parliament and of the Council on settlement finality in payment and securities settlement systems³, by securities settlement systems as designated for the purposes of that Directive, or the provision of similar services by third-country securities settlement systems, shall not be considered to be a delegation or sub-delegation of custody functions.”.

Amendment of Regulation 35 of Principal Regulations

12. Regulation 35 of the Principal Regulations is amended by-

- (a) the substitution of the following paragraph for paragraph (2):

“(2) A depositary shall be-

³O.J. No. L 166, 11.6.98, p. 45.

- (a) a credit institution authorised in the State in accordance with the European Union (Capital Requirements) Regulations 2014 (S.I. No. 158 of 2014),
- (b) a branch, established in the State, of a credit institution authorised in accordance with Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms⁴, or
- (c) a company incorporated in the State that-
 - (i) is wholly owned by, and the liabilities of which are guaranteed by, a credit institution authorised in accordance with Directive 2013/36/EU, provided the depositary is authorised under the Investment Intermediaries Act 1995 and meets the capital requirements set out in paragraph (4),
 - (ii) is wholly owned by, and the liabilities of which are guaranteed by, an institution established in a third country that is deemed by the Bank to be the equivalent of a credit institution authorised in accordance with Directive 2013/36/EU, provided the depositary is authorised under the Investment Intermediaries Act 1995 and meets the capital requirements set out in paragraph (4), or
 - (iii) is wholly owned by, and the liabilities of which are guaranteed by, an institution or company established in another Member State or third country that is deemed by the Bank to provide unit-holders with protection equivalent to that provided by an institution, branch or company that would satisfy the requirements of subparagraph (a), (b) or (c)(i) or (ii), provided the depositary was established before the making of these Regulations, is authorised under the Investment Intermediaries Act 1995 and meets the capital requirements set out in paragraph (4).”

(b) the insertion of the following paragraph:

“(2A) A company referred to in subparagraph (c) of paragraph (2) shall be subject to prudential regulation and ongoing supervision and shall satisfy the following minimum requirements:

- (a) it shall have the infrastructure necessary to keep in custody financial instruments that can be registered in a financial instruments account opened in the company’s books,

⁴O.J. No. L 176, 27.6.2013, p. 338.

- (b) it shall establish policies and procedures that are adequate to ensure compliance of the company, including its managers and employees, with its obligations under these Regulations,
- (c) it shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment and effective control and safeguard arrangements for information processing systems,
- (d) it shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest,
- (e) it shall arrange for records to be kept of all services, activities and transactions that it undertakes, which shall be sufficient to enable the Bank to fulfil its supervisory tasks and to perform the enforcement actions provided for in these Regulations,
- (f) it shall take reasonable steps to ensure continuity and regularity in the performance of its functions as depositary by employing appropriate and proportionate systems, resources and procedures including to perform its depositary activities,
- (g) all members of its management body and senior management shall, at all times, be of sufficiently good repute and possess sufficient knowledge, skills and experience,
- (h) its management body shall possess adequate collective knowledge, skills and experience to be able to understand the depositary's activities, including the main risks, and
- (i) each member of its management body and senior management shall act with honesty and integrity.”,

(c) the insertion of the following paragraph:

“(2B) Where an investment company or management company has, before the making of these Regulations, appointed as a depositary an institution that does not meet the requirements laid down in paragraphs (2) and (2A), the investment company or management company shall, before 18 March 2018, appoint as a depositary an institution that does meet those requirements.”,

(d) the substitution of the following paragraph for paragraph (4):

“(4) A company referred to in paragraph (2)(c) shall at all times hold own funds that are not less than the greater of the following:

- (a) the amount of initial capital required under Article 28(2) Directive 2013/36/EU;

- (b) the own funds requirement for operational risk, calculated in accordance with-
- (i) the Basic Indicator Approach set out in Articles 315 and 316 of Regulation (EU) No. 575/2013 of the European Parliament and of the Council⁵ and any regulatory technical standards published in accordance with paragraph (3) of Article 316 of that Regulation, or
 - (ii) where the criteria set out in Article 320 of Regulation (EU) No. 575/2013 are met, the Standardised Approach set out in Articles 317 and 318 of that Regulation and any implementing technical standards published in accordance with paragraph (3) of Article 318 of that Regulation.”, and
- (e) the substitution of the following for paragraph (5):

“(5) The depositary shall make available to the Bank, on request, all information that the depositary has obtained while performing its duties and that may be necessary for the Bank or for the competent authorities of the UCITS or of the management company.”.

Substitution of Regulation 36 of the Principal Regulations

13. The Principal Regulations are amended by the substitution of the following for Regulation 36:

“36. (1) A depositary shall be liable to the UCITS and to the unit-holders in the UCITS for the loss of a financial instrument held in custody by the depositary or a third party to whom the custody of financial instruments held in custody in accordance with paragraph (4)(a) of Regulation 34 has been delegated.

(2) Where a financial instrument held in custody is lost, the depositary shall return a financial instrument of an identical type or the corresponding amount to the UCITS or the management company acting on behalf of the UCITS without undue delay.

(3) The depositary shall not be liable for a loss under paragraph (1) if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary.

(4) The depositary shall be liable to the UCITS and the unit-holders of the UCITS, for all other losses suffered by them as a result of the depositary’s negligent or intentional failure to properly fulfil its obligations under these Regulations.

⁵O.J. No. L 176, 27.6.2013, p. 1.

(5) The liability of a depositary under paragraph (1) or paragraph (4) shall not be affected by any delegation in accordance with Regulation 34A.

(6) The liability of a depositary under paragraph (1) or paragraph (4) shall not be excluded or limited by agreement and any provision of such agreement that purports to exclude or limit such liability shall be void.

(7) Liability to unit-holders may be invoked either directly or indirectly through the management company or the investment company provided that this does not lead to a duplication of redress or to unequal treatment of the unit-holders.”.

Amendment of Regulation 37 of Principal Regulations

14. Regulation 37 of the Principal Regulations is amended by the substitution of the following paragraphs for paragraph (1):

“(1) No single company shall-

- (a) act as both management company and depositary in respect of the same UCITS, or
- (b) act as both investment company and depositary.

(1A) In carrying out their respective functions-

- (a) the management company and the depositary shall act honestly, fairly, professionally, independently and solely in the interest of the UCITS and the unit-holders of the UCITS, and
- (b) the investment company and the depositary shall act honestly, fairly, professionally, independently and solely in the interest of the unit-holders of the UCITS.

(1B) A depositary shall not carry out activities with regard to the UCITS or the management company on behalf of the UCITS that may create conflicts of interest between the UCITS, the investors in the UCITS, the management company and itself, unless-

- (a) the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and
- (b) the potential conflicts of interest are properly identified, managed, monitored and disclosed to the unit-holders of the UCITS.”.

Substitution of Regulation 38 of Principal Regulations

15. The Principal Regulations are amended by the substitution of the following Regulation for Regulation 38:

“38. (1) In relation to unit trusts, the trust deed and, in relation to common contractual funds, the deed of constitution, shall lay down the conditions for the replacement of the management company and of the depositary and rules to ensure the protection of unit-holders in the event of such replacement.

(2) In relation to investment companies, the articles of the investment company shall lay down the conditions for the replacement of the management company and of the depositary and rules to ensure the protection of unit-holders in the event of such replacement.”.

Amendment of Regulation 43 of Principal Regulations

16. Regulation 43 of the Principal Regulations is amended by the substitution of “, 24, 24A and 24B” for “and 24” in each place where it occurs.

Deletion of Chapter 3 of Part 6 of Principal Regulations

17. The Principal Regulations are amended by the deletion of Chapter 3 of Part 6.

Amendment of Regulation 89 of Principal Regulations

18. The Principal Regulations are amended-

(a) in paragraph (1) by the insertion of the following subparagraph:

“(c) The prospectus shall include either-

(i) the details of the up-to-date remuneration policy, including but not limited to-

(I) a description of how remuneration and benefits are calculated,

(II) the identities of persons responsible for awarding the remuneration and benefits, and

(III) the composition of the remuneration committee where such a committee exists, or

(ii) a summary of the remuneration policy and a statement to the effect that the details referred to in subparagraph (i) are available by means of a website (the address of which shall be included in the statement) and that a paper copy of the policy will be made available free of charge upon request.”, and

(b) by the insertion of the following paragraph:

“(3A) The annual report shall include-

(a) the total amount of remuneration for the financial year, split into fixed and variable remuneration paid by the management company and by the investment company to its staff,

and the number of beneficiaries, and where relevant, any amount paid directly by the UCITS itself, including any performance fee,

- (b) the aggregate amount of remuneration broken down by categories of employees or other members of staff as referred to in paragraph (3) of Regulation 24A,
- (c) a description of how the remuneration and the benefits have been calculated,
- (d) the outcome of the reviews referred to in subparagraphs (c) and (d) of paragraph (1) of Regulation 24B including any irregularities that have occurred, and
- (e) a description of material changes made to the adopted remuneration policy.”.

Amendment of Regulation 98 of Principal Regulations

19. Regulation 98 of the Principal Regulations is amended—

- (a) in paragraph (3) by the substitution of the following for clause (i) of subparagraph (a):

“(i) identification of the UCITS and of the Bank as the competent authority of the UCITS;”, and

- (b) by the insertion of the following paragraph after paragraph (4):

“(4A) Key investor information shall include a statement to the effect that the details of the up-to-date remuneration policy, including but not limited to—

- (a) a description of how remuneration and benefits are calculated,
- (b) the identities of persons responsible for awarding the remuneration and benefits, and
 - (III) the composition of the remuneration committee where such a committee exists,

are available by means of a website (the address of which shall be included in the statement) and that a paper copy of the policy will be made available free of charge upon request.”.

Amendment of Regulation 123 of Principal Regulations

20. Regulation 123 of the Principal Regulations is amended in paragraph (2) by the substitution of the following subparagraph for subparagraph (d):

- “(d) require the following:

- (i) in so far as permitted by the law of the State, existing data traffic records held by a telecommunications operator, where-
 - (I) there is a reasonable suspicion of an infringement of these Regulations, and
 - (II) such records may be relevant to an investigation into the infringement;
- (ii) existing recordings of telephone conversations or electronic communications or other data traffic records held by UCITS, management companies, investment companies, depositaries or any other entities that are subject to these Regulations.”.

Insertion of new Regulation 132A in Principal Regulations

21. The Principal Regulations are amended by the insertion of the following new Regulation:

“Penalties for purposes of section 33AQ of Central Bank Act 1942

132A. (1) For the purposes of paragraph (b) of subsection (4) of section 33AQ of the Central Bank Act 1942, the amount prescribed in accordance with paragraph (c) of that subsection is €5,000,000.

(2) For the purposes of paragraph (a) of subsection (6) of section 33AQ of the Central Bank Act 1942, the amount prescribed in accordance with paragraph (b) of that subsection is €5,000,000.

(3) Where, in accordance with subsection (3) of section 33AQ of the Central Bank Act 1942, the Bank makes a finding that a regulated financial service provider is committing or has committed a prescribed contravention (within the meaning of that Act) that consists of a contravention of any provision of these Regulations, it may, as an alternative to the monetary penalty provided for in paragraph (c) of that subsection, and notwithstanding that the monetary penalty so imposed would exceed the prescribed amount for the purposes of that paragraph, direct a UCITS to pay a monetary penalty equivalent to twice the amount of the benefit derived from the contravention.

(4) Where, in accordance with subsection (5) of section 33AQ of the Central Bank Act 1942, the Bank makes a finding that a person concerned in the management of a regulated financial service provider is participating or has participated in the commission by the financial service provider of a prescribed contravention (within the meaning of that Act) that consists of a contravention of any provision of these Regulations, it may, as an alternative to the monetary penalty provided for in paragraph (b) of that subsection, and notwithstanding that the monetary penalty so imposed would exceed the prescribed amount for the purposes of that paragraph, direct the person to pay a monetary penalty equivalent to twice the amount of the benefit derived from the contravention.”.

Insertion of new Regulation 132B in Principal Regulations

22. The Principal Regulations are amended by the insertion of the following new Regulation:

“Effective application of sanctions and exercise of powers to impose sanctions

132B. (1) When determining the type of penalties or measures and the level of penalties to be imposed in respect of a contravention of these Regulations, the Bank shall ensure that they are effective, proportionate and dissuasive and take into account all relevant circumstances, including, where appropriate-

- (a) the gravity and the duration of the contravention,
- (b) the degree of responsibility of the person responsible for the contravention,
- (c) the financial strength of the person responsible for the contravention as indicated, for example, by its total turnover in the case of a legal person or the annual income in the case of a natural person,
- (d) the importance of the profits gained or losses avoided by the person responsible for the contravention, the damage to other persons and, where applicable, the damage to the functioning of markets or the wider economy, in so far as they can be determined,
- (e) the level of cooperation with the Bank of the person responsible for the contravention,
- (f) previous breaches by the person responsible for the contravention, and
- (g) measures taken after the contravention by the person responsible for the contravention to prevent its repetition.”.

Insertion of new Regulation 132C in Principal Regulations

23. The Principal Regulations are amended by the insertion of the following new Regulation:

“Bank to report to European Securities and Markets Authority

132C. (1) The Bank shall annually provide the European Securities and Markets Authority with aggregated information regarding all penalties and measures imposed by it in respect of contraventions of these Regulations.

(2) Where the Bank has disclosed penalties or sanctions to the public in respect of contraventions of these Regulations, it shall simultaneously report those penalties or sanctions to the European Securities and Markets Authority.”.

Insertion of new Regulation 132D in Principal Regulations

24. The Principal Regulations are amended by the insertion of the following new Regulation:

“Publication by Bank of decisions

132D. (1) The Bank shall publish on its official website any decision against which there is no appeal imposing a sanction or measure for contravention of these Regulations, without undue delay after the person on whom the sanction was imposed has been informed of that decision.

(2) The publication shall, other than in the case of decisions imposing measures that are of an investigatory nature, include at least information on the type and nature of the contravention and, subject to paragraph (3), the identity of the persons responsible.

(3) Where the publication of the identity of the legal persons or of the personal data of the natural persons is considered by the Bank to be disproportionate following a case-by-case assessment conducted on the proportionality of the publication of such data, or where publication jeopardises the stability of financial markets or an ongoing investigation, the Bank shall-

- (a) defer the publication of the decision to impose the sanction or measure until the reasons for non- publication cease to exist,
- (b) publish the decision to impose the sanction or measure on an anonymous basis in a manner which complies with national law, if such anonymous publication ensures an effective protection of the personal data concerned, and in this case the publication of the relevant data may be postponed for a reasonable period of time if it is envisaged that within that period the reasons for anonymous publication shall cease to exist;
- (c) not publish the decision to impose a sanction or measure at all in the event that the options set out in subparagraphs (a) and (b) are considered to be insufficient to ensure-
 - (i) that the stability of financial markets would not be put in jeopardy, and
 - (ii) the proportionality of the publication of such decisions with regard to measures which are deemed to be of a minor nature.

(4) The Bank shall inform the European Securities and Markets Authority of all sanctions imposed but not published in accordance with subparagraph (c) of paragraph (3) including any appeal in relation thereto and the outcome thereof.

(5) A UCITS shall notify the Bank in writing immediately it becomes aware of the initiation of any criminal prosecution on indictment for an offence under these Regulations against the relevant UCITS or the management company of the relevant UCITS or against any officer or employee of the UCITS.

(6) Where the Bank receives information and the final judgment in relation to any criminal sanction imposed, it shall submit such information to the European Securities and Markets Authority.

(7) Where the decision to impose a sanction or measure is subject to appeal before the relevant judicial or other authorities, the Bank shall also publish, immediately, on its official website such information, any subsequent information on the outcome of such appeal, and any decision annulling a previous decision to impose a sanction or a measure.

(8) The Bank shall ensure that any publication in accordance with this Regulation shall remain on its official website for a period of at least 5 years after its publication, provided that personal data contained in the publication shall only be kept on the official website of the Bank for the period that is necessary in accordance with the Data Protection Acts 1998 and 2003.”.

Amendment of Regulation 133 of Principal Regulations

25. Regulation 133 of the Principal Regulations is amended-

(a) in paragraph (1) by the insertion of the following subparagraph:

“(c) The Bank may cooperate with competent authorities of other Member States with respect to facilitating the recovery of pecuniary sanctions.”, and

(b) in paragraph (6) by the substitution of the following subparagraphs for subparagraph (a):

“(a) communication of relevant information might adversely affect the security of the Member State addressed, in particular the fight against terrorism and other serious crimes,

(aa) compliance with the request is likely to affect adversely its own investigation, enforcement activities or, where applicable, a criminal investigation.”.

Amendment of Regulation 136 of Principal Regulations

26. Regulation 136 is amended by the insertion of the following paragraph:

“(5) Where the Bank is the competent authority of the depositary but not of the UCITS or the management company of the UCITS, it shall without delay share any information received from the depositary in accordance with paragraph (5) of Regulation 35 with the competent authority of the UCITS and the competent authority of the management company of the UCITS.”.

Amendment of Schedule 11 to Principal Regulations

27. The Principal Regulations are amended by the substitution of the following for point 2 of Schedule 11:

“2. Information concerning the depositary:

2.1. The identity of the depositary of the UCITS and a description of its duties and of conflicts of interest that may arise;

2.2. A description of any safe-keeping functions delegated by the depositary, the list of delegates and sub-delegates and any conflicts of interest that may arise from such delegation;

2.3. A statement that up to date information regarding points 2.1 and 2.2 will be made available to investors on request.”.



GIVEN under the Official Seal of the Minister for Finance
21 March 2016.

AIDAN CARRIGAN,
A Person Authorised Under Section 15 of the Ministers and
Secretaries Act 1924 to Authenticate the Seal of the Minister
for Finance.

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nó trí aon díoltóir leabhar.

DUBLIN
PUBLISHED BY THE STATIONERY OFFICE
To be purchased from
GOVERNMENT PUBLICATIONS,
52 ST. STEPHEN'S GREEN, DUBLIN 2.
(Tel: 01 - 6476834 or 1890 213434; Fax: 01 - 6476843)
or through any bookseller.

€4.57



Wt. (B31976). 285. 3/16. Essentra. Gr 30-15.