



STATUTORY INSTRUMENTS.

S.I. No. 344 of 2017

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013
(SECTION 48(1)) (UNDERTAKINGS FOR COLLECTIVE INVESTMENT
IN TRANSFERABLE SECURITIES) (AMENDMENT)
REGULATIONS 2017

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013
(SECTION 48(1)) (UNDERTAKINGS FOR COLLECTIVE INVESTMENT
IN TRANSFERABLE SECURITIES) (AMENDMENT)
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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, Jobs and Innovation in accordance with section 49(1) of the Act, hereby makes the following regulations:

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) (Amendment) Regulations 2017.

2. In these Regulations “Principal Regulations” means the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015 (S.I. No. 420 of 2015) as amended by the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2016 (S.I. No. 307 of 2016).

3. Regulation 2(1) of the Principal Regulations is amended—

(a) by deleting the definition of “financial resources”,

(b) by inserting the following definition:

“‘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 2013¹ on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;”, and

(c) by substituting for the definition of “anti-dilution levy” the following definition:

“‘anti-dilution levy’ means a charge imposed on subscriptions or on redemptions as relevant, to offset the dealing costs of buying or selling assets of the UCITS and to preserve the net asset value per share of the UCITS, as a result of net subscriptions or of net redemptions on a dealing day;”.

4. Regulation 8 of the Principal Regulations is amended—

¹OJ No. L176, 27.6.2013, p.1

*Notice of the making of this Statutory Instrument was published in
“Iris Oifigiúil” of 1st August, 2017.*

(a) in paragraph (3), by substituting for subparagraph (c) the following subparagraph:

“(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.”, and

(b) in paragraph (6)(b)(iii), by inserting “(1)(c),” after “paragraphs”.

5. The Principal Regulations are amended by inserting after Regulation 9 the following Regulation:

“Investment through subsidiaries

9A. (1) 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, and
 - (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.”.

6. The Principal Regulations are amended by substituting for Regulation 11 the following Regulation:

“Ancillary liquidity

11. (1) Cash booked in accounts and held as ancillary liquidity shall not exceed—

(a) 10 per cent of net assets of the UCITS, or

(b) where the cash is booked in an account with the depositary, 20 per cent of net assets of the UCITS.

(2) For the purposes of paragraph (1), credit institutions which are group companies shall be regarded as a single credit institution for the purpose of calculating the limits contained in this Regulation.”.

7. Regulation 23(2) of the Principal Regulations is amended by deleting “and instruments”.

8. Regulation 30(3)(a) of the Principal Regulations is amended by substituting “Regulation 68(1)(b)” for “Regulation 68(1)(d)”.

9. Regulation 44(1)(c) of the Principal Regulation is amended by inserting “, unless disclosed in the annual report,” after “UCITS shall”.

10. The Principal Regulations are amended by substituting for Regulation 47 the following Regulation:

“Replacement of management company or third party

47. (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.”

11. Regulation 53(2) of the Principal Regulations is amended by substituting for subparagraph (b) the following subparagraph:

“(b) either—

(i) the percentage, relative to the NAV, 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.”.

12. Regulation 61(1)(b) of the Principal Regulations is amended by deleting “and instruments”.

13. Regulation 73(1)(b) of the Principal Regulations is amended by substituting for clause (ii) the following clause:

“(ii) a description of the impact of any reverse leverage;”.

14. Regulation 78(1) of the Principal Regulations is amended by—

(a) deleting “prepare and”, and

(b) inserting “to coincide with publication” after “a UCITS”.

15. Regulation 100 of the Principal Regulations is amended by substituting for paragraph (4) the following paragraphs:

“(4) Subject to paragraph (4B), a management company shall have a minimum of 2 directors resident in the State.

(4A) 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.

(4B) Where a management company has a PRISM impact rating of—

- (a) Medium Low or above, the management company shall have at least—
 - (i) 3 directors resident in the State or, at least, 2 directors resident in the State and one designated person resident in State,
 - (ii) half of its directors resident in the EEA or such other country as determined in accordance with paragraph (4A), and
 - (iii) half of its managerial functions performed by at least 2 designated persons resident in the EEA or such other country as determined in accordance paragraph (4A), or
- (b) Low, the management company shall have at least—
 - (i) 2 directors resident in the State,
 - (ii) half of its directors resident in the EEA or such other country as determined in accordance with paragraph (4A), and
 - (iii) 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 (4A).”.

16. Regulation 105 of the Principal Regulations is amended by deleting “of these Regulations”.

17. Regulation 111 of the Principal Regulations is amended by substituting for paragraph (3) the following paragraph:

“(3) 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.”.

18. Regulation 114 of the Principal Regulations is amended—

- (a) in paragraph (1), by substituting “subparagraphs (a) and (b)” for “subparagraphs (a)-(c)”, and
- (b) by deleting paragraphs (7) and (8).

19. The Principal Regulations are amended by inserting after Regulation 114 the following Regulation:

“114A. (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 depositaries²;

(b) its cash monitoring obligations as specified in—

(i) Regulations 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.”.

20. Regulation 115 of the Principal Regulations is amended by deleting paragraph (2).

21. Regulation 116 of the Principal Regulations is amended by deleting paragraphs (2) and (3).

22. Regulation 118 of the Principal Regulations is amended by deleting paragraphs (2) and (3).

23. Regulation 120 of the Principal Regulations is amended by deleting paragraph (3).

24. Regulation 123 of the Principal Regulations is amended by inserting after paragraph (2) the following paragraph:

“(3) A management company shall keep all of its records in a way that makes them immediately retrievable in or from the State.”

25. Regulation 124 of the Principal Regulations is amended by substituting for paragraph (3) the following paragraph:

²OJ L 78, 24.3.2016, p.11

“(3) A management company shall comply with Regulations 97(1)(a), 100(4A) and (4B), 100(7) and 123(3) by 1 July 2018, or such later date that the Bank may specify in writing in Iris Oifigiúil.”.

26. Paragraph 5 of Schedule 3 to the Principal Regulations is amended by substituting “(ii) collateral,” for “(2ii collateral”.

27. Paragraph (5)(e) of Schedule 4 to the Principal Regulations is amended by substituting “at least” for “t least”.

28. Schedule 7 to the Principal Regulations is amended by inserting after paragraph 4 the following paragraph:

“4A. 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.”.

29. Schedule 8 of the Principal Regulations is amended by inserting after paragraph 5 the following paragraph:

“5A. 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.”.

30. Schedule 9 to the Principal Regulations is amended—

- (a) by deleting paragraph 3,
- (b) in paragraphs 4(a), by substituting “own funds” for “financial resources”,
- (c) in paragraph 5(a), by substituting “own funds” for “a financial resource” and “financial resources”, and
- (d) by substituting for paragraphs 6(d) (x) and (xi) the following:

- “(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.”.

Signed for and on behalf of the CENTRAL BANK OF IRELAND,
27 July 2017.

BERNARD SHERIDAN,
Deputy Governor (Financial Regulation).

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

The purpose of these Regulations is to amend the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferrable Securities) Regulations 2015.

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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.

€3.05



Wt. (B32882). 287. 7/17. Essentra. Gr 30-15.