April 2018

Central Bank Consultation on CBI UCITS Regulations

Earlier this month, the Central Bank published a consultation paper ("**CP119**") in which it seeks responses from interested stakeholders to proposed amendments to the Central Bank UCITS Regulations[1]

The proposed amendments to the CBI UCITS Regulations include the following:

UCITS Performance Fees

Under CP119, the Central Bank has proposed converting its current guidance on performance fee calculation methodology into regulation.

In addition, the Central Bank proposes introducing a new requirement whereby a performance fee may not crystallise, nor be paid, more frequently than annually. This represents a significant change from its existing regime, under which it has previously permitted performance fees which crystallised and were paid as frequently as quarterly. The Central Bank has said that this is in order to align its practices with IOSCO Good Practice for Fees & Expenses of CIS.

If implemented by the Central Bank as currently proposed, fund managers will need to assess their existing performance fee model and make any necessary adaptations to ensure that performance fees crystallise and are paid no more frequently than annually. While the Central Bank has confirmed that a transitional period will apply for existing UCITS, the draft legislation does not yet stipulate what that transitional period will be.

For further information on any of the issues discussed in this article please contact:

Brian Kelliher
DD: + 353 (0)1 673 1721
brian.kelliher@dilloneustace.ie

Áine McCarthy
DD: + 353 (0)1 673 1861
aine.mccarthy@dilloneustace.ie

[1] Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015, as amended

Management Fees of Structured UCITS

Separately, the draft legislation confirms that structured UCITS may charge an annual management fee based on the initial offer price of the relevant share class subject to certain conditions being met.

Hedged Classes

The revised legislation will incorporate the Central Bank's guidance on hedging at share class level which implements ESMA's Opinion on UCITS Share Classes published in January 2017.

MMFR

CP119 proposes to revise the CBI UCITS Regulations in order to make necessary amendments to disapply any regulations which overlap with the Money Market Fund Regulation ("MMFR") and to revise certain terminology in order to align with MMFR.

Suspension of Redemptions

Under proposed new rules, the Central Bank must be notified when a temporary suspension of redemptions has been lifted. UCITS management companies must also update the Central Bank within 21 days of a suspension being imposed if it has not been lifted by that point.

Periodic reports of UCITS Management Companies and Depositaries

In December 2016, the Central Bank advised UCITS management companies via letter that the second set of unaudited accounts for a UCITS management company should cover the full 12 month period rather than covering the second six months of the relevant financial year. It is proposed that the Central Bank UCITS Regulations be revised to reflect this. In addition, the Central Bank proposes shortening the filing deadline so that same will need to be filed with the Central Bank within one month of the period end. This change in filing requirements will also be imposed on depositaries.

Consolidated Legislation

In response to calls from industry, CP 119 proposes to consolidate the Central Bank UCITS Regulations and two amending sets of regulations.

Conclusion

The closing date for responses to CP119 is 29 June 2018. If you would like to contribute to Dillon Eustace's submission to the Central Bank or if you have any questions in relation to CP119, please contact your usual Dillon Eustace contact.

DILLON EUSTACE

Dublin
33 Sir John Rogerson's Quay, Dublin 2, Ireland. Tel: +353 1 667 0022 Fax: +353 1 667 0042.

Cayman Islands
Landmark Square, West Bay Road, PO Box 775, Grand Cayman KY1-9006, Cayman Islands. Tel: +1 345 949 0022 Fax: +1 345 945 0042.

New York
245 Park Avenue, 39th Floor, New York, NY 10167, U.S.A. Tel: +1 212 792 4166 Fax: +1 212 792 4167.

Tokyo
12th Floor, Yurakucho Itocia Building, 2-7-1 Yurakucho, Chiyoda-ku, Tokyo 100-0006, Japan. Tel: +813 6860 4885 Fax: +813 6860 4501.