



December 2012

Update on Filing of UCITS IV Business Plans

■ In Summary

On 30 November 2012 the Central Bank announced that it will begin accepting submissions of the revised Directive 2009/65/EC (“UCITS IV”) compliant business plans for self-managed investment companies (“SMICs”) in three separate tranches in 2013. The Central Bank will not be reviewing every business plan submitted but will be carrying out spot checks to assess compliance. The deadline for adherence by existing SMICs with UCITS IV requirements and documenting compliance in their business plans remains 1 July 2013.

■ Background

Unlike UCITS management companies which were required to revise their business plans to adhere in full to the requirements of the UCITS IV by 1 July 2011, UCITS SMICs were only obliged to make certain revisions (“Level 1 UCITS IV requirements”) in advance of that deadline with the remainder of the obligations in terms of their organisation, governance and compliance (“Level 2 UCITS IV requirements”) to be adhered to and documented by 1 July 2013. In early 2012, the Central Bank issued a timetable whereby SMICs, depending on their date of authorisation, would be required to file their revised UCITS IV compliant business plans for review. This was to be in four stages namely by end April 2012, end July 2012, end October 2012 and end January 2013.

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

Andrew Bates

DD: + 353 (0)1 673 1704

andrew.bates@dilloneustace.ie

Cillian Bredin

DD: + 353 (0)1 673 1889

cillian.bredin@dilloneustace.ie

Due to certain concerns in the industry as to what exactly was required to be set out in the revised SMIC business plans in order to comply with Level 2 UCITS IV requirements, the Central Bank notified the industry earlier this year that it would not be accepting submissions of revised SMIC business plans until these matters were resolved and that the previous timetable was to be disregarded.

■ UCITS IV Requirements for SMICs

In terms of what SMICs can be expected to have to comply with under UCITS IV and document accordingly in their business plans, the Central Bank has previously clarified in a letter to the industry on 10 August 2012 the Level 2 UCITS IV Requirements applicable to SMICs and has now reiterated that both UCITS management companies and SMICs should be subject to the same basic regime under UCITS IV bearing in mind the 'nature, scale and complexity' of the SMIC.

At a high level, we can take from this that while all of the requirements of UCITS IV should apply to SMICs, on the basis that most are less complex than UCITS management companies, the implementation of the full requirements should be considered in light of the 'nature, scale and complexity' of the SMICs and any decision not to implement any of the requirements must be capable of justification on that basis.

It is now expected that a new UCITS Notice 2 ("Supervisory and reporting requirements and conditions for UCITS management companies, UCITS self-managed investment companies and administration companies authorised by the Central Bank of Ireland") and Guidance Note 4/07 ("UCITS-Organisation of Management Companies") reflecting the requirements of UCITS IV for SMICs will issue shortly. The Central Bank has also confirmed that a revised version of the UCITS management company application form (which also applies to SMIC authorisations) containing these updated requirements will be issued by 1 January 2013.

■ Timing

The revised timetable issued by the Central Bank envisages the following three stages of filings of revised business plans for existing SMICs: end January 2013, end March 2013 and end May 2013. The Central Bank has asked the law firms acting for the SMICs to split their SMIC client list in three between the proposed tranches with the objective being the avoidance of a situation whereby the vast majority of the SMIC applications will not be received until the third stage. All new SMIC applications from 1 January 2013 will be required to comply in full with the UCITS IV requirements.

■ Filing Process

The submitted business plans will not be reviewed by the Central Bank other than by spot checks and no individual confirmation of receipt will be issued by the Central Bank once the revised business plans, along with the ancillary documentation such as Statement of Responsibility and Confirmation of Compliance by the Board, are submitted.

A list will be issued to the law firm at the end of each tranche noting the revised business plans that have been received. Provided no correspondence has been received by the SMIC (for example with comments arising as a result of a spot check) the Central Bank has stated that the SMIC can assume that their business plans and ancillary documents are in order.

6 December 2012

Cillian Bredin

Dillon Eustace

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.

Hong Kong

604 6/F Printing House, 6 Duddell Street, Central, Hong Kong. Tel: +852 352 10352.

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.

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