

Central Bank UCITS Regulations Consultation
Markets Policy Division
Central Bank of Ireland
PO Box 559
Dublin 1

fundspolicy@centralbank.ie

Re: Consultation on amendments to (and consolidation of) the Central Bank UCITS Regulations (the "Consultation Paper" / "CP119")

Dear Sir/Madam,

We welcome the opportunity to comment on this Consultation Paper regarding amendments to (and consolidation of) the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015, as amended (the "**CBI UCITS Regulations**").

The Irish Association of Investment Managers (IAIM) represents the major investment managers operating in Ireland. Our members manage assets of approximately €320bn on behalf of Irish and international clients. The services our members provide are critical to individual and institutional savers and investors alike, allowing them to achieve their financial goals and meet their responsibilities. Individually and as an association, we are committed to ensuring proper and responsible management of assets for the benefit of all clients.

We have specifically concentrated our response on Section 111 which introduces new obligations (formerly Central Bank guidance) relating to UCITS which charge performance related fees.

We hope you find these comments constructive and we remain at your disposal to discuss the issues raised in this response further.

Yours sincerely

Regina Breheny
CEO IAIM

Section III: UCITS Performance Fees

Question 3:

Stakeholders are invited to provide comments and observations on the performance fee provisions being included in the Central Bank UCITS Regulations.

1. On a general note, a core area of concern relates to the fact that the Central Bank is front-running legislative requirements on this issue. Given that this is an area that impacts business domiciled domestically which is marketed both locally and on a cross-border basis across Europe, we believe that the matter is best dealt with at a European level by ESMA so that there is a harmonised approach across the single market. We believe this to be a critical consideration given the numbers of funds domiciled in different jurisdictions with different performance fee methodologies in situ and significant variability in the rules pertaining to acceptable methodologies in each of those markets.
2. There are many different potential features to a performance fee methodology and which features are chosen and how they interact with one another will determine whether a particular methodology is fully aligned with good consumer outcomes. In looking at the options being considered in CP 119, we believe that this interaction between the various features should be considered more explicitly in formulating the final guidance/regulations (as distinct to implementing strict rules for individual elements in isolation).
3. We also consider that account must be taken of what seems to be reasonably significant variation as between the different performance fee methodologies existing in the Irish marketplace today. Recent research carried out by Fitz Partners suggests that there is considerable variation in the approaches adopted by different firms in the Irish market. That would suggest that it might be better to create some flexibility within the legislation to allow for more than a one-size-fits-all approach, either by adopting a principles-based, rather than a rigid rules-based, approach or by allowing for alternative approaches agreed in advance with the Central Bank.
4. We note that the Central Bank has followed the recommendations in IOSCO's paper "Good Practice for Fees and Expenses of Collective Investment Schemes" (the "IOSCO Paper")¹ regarding performance fees crystallising no more frequently than once per year. However, whether a minimum annual calculation period ensures, in all cases, more equitable treatment for investors is not clearly accepted either academically or across industry. A carefully constructed methodology, having regard to the interaction of all variables, may utilise a shorter performance fee period and crystallisation frequency and result in more equitable treatment of all cohorts of investors in the fund.
5. While guidance and the promotion of best practices in this area is welcome, it is submitted that it is not appropriate at this point to codify a minimum annual calculation period into Irish UCITS legislation. As noted earlier, we believe that a principles-based approach would be a more appropriate way to accommodate different approaches in the industry and to also ensure good consumer outcomes.

¹ <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD543.pdf>

6. Regarding the transitional requirements in Regulation 130(2), does the Central Bank anticipate UCITS should seek investor approval if making changes to their performance fee model assuming the changes are restricted to compliance with the Regulations ? Guidance in this respect would be helpful for affected UCITS.
7. Alternatively, we would suggest that the Central Bank should consider the transition period because of the operational complexity in organising the necessary EGMs in potentially multiple markets and ensuring that changes are implemented in an organised and controlled manner.