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Amending CBI UCITS Regulations Consultation
Markets Policy Division
Central Bank of Ireland
Block D, Iveagh Court
Harcourt Road
Dublin 2

25 August 2016

Re: Consultation on amendments to Central Bank UCITS Regulations (the "Consultation Paper" / "CP105")

Dear Sir/Madam,

We welcome the opportunity to comment on this Consultation Paper regarding amendments to 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 Funds Industry Association ("**Irish Funds**") is the representative body of the international investment funds community in Ireland, representing fund managers, custodian banks, administrators, transfer agents, professional advisory firms and other specialist firms involved in the international fund services industry in Ireland.

Ireland is a leading centre for the domiciliation, management and administration of collective investment vehicles, with industry companies providing services to collective investment vehicles with assets totalling in excess of €3.8 trillion. The funds industry is highly regulated and the ability to provide a well-regulated environment for investment funds and investment fund services is a substantial and proven part of Ireland's international financial services offering. Our industry has been a consistent and growing part of the internationally traded financial services landscape in Ireland for over twenty-five years.

General comment – form of regulations; user accessibility to the regulatory framework

At the outset, we would state that we welcome the changes contained in the Consultation Paper insofar as they propose to clarify a number of ambiguities contained in the CBI UCITS Regulations thereby avoiding any unintended interpretation and to reflect changes in legislative or industry practice.

It is noted that the objective of the Central Bank, in moving its UCITS regulatory rules from the UCITS Notices and Guidance Notes to the CBI UCITS Regulations in 2015, was to have its rules issued on a statutory basis.

However, a consequence of this change in form is that the rules are now significantly more difficult for fund sponsors and service providers to read, assess and navigate than under the previous regime.

This is primarily due to the rules being drafted as provisions of a statutory instrument and we acknowledge this is somewhat unavoidable. However, this issue is amplified by making updates to the CBI UCITS Regulations in the form of amending regulations rather than restating the CBI UCITS Regulations in an amended and consolidated form. Having two (or possibly more) sets of amending regulations overlaying terms on the initial CBI UCITS Regulations makes it extremely difficult for fund sponsors and service providers to identify the exact current provisions applicable in a given case.

We note that the facility of the Central Bank to make regulations under section 48(1) of the Central Bank Supervision and Enforcement Act 2013 is for the *proper and effective regulation* of regulated financial service providers. In this context, consideration should be given to the wide remit and international scope of fund sponsors and service providers operating Irish UCITS and dealing with these rules on a day-to-day basis. For such rules to be proper and effective, we think it is prudent to consider the accessibility of these rules and strive to develop a regulatory framework that is as user friendly as possible.

We therefore believe there is strong merit in the Central Bank producing an official, annotated version of the CBI UCITS Regulations capturing a consolidation of the initial CBI UCITS Regulations and all amending regulations in a single set of regulations. It would also be appropriate to:

(i) seek to minimise circumstances where integral elements of the rules are not in the CBI UCITS Regulations and are covered in guidance elsewhere; and

(ii) where supplemental guidance remains necessary/appropriate, place footnotes in the CBI UCITS Regulations cross-referring to the relevant UCITS Q&A provisions or other published Central Bank guidance.

Consultation responses

We have set out in Appendix I hereto our responses to the questions contained in the Consultation Paper.

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

Yours faithfully,

Pat Lardner
Chief Executive

Appendix I

Section I – Amendments consequential on the implementation of UCITS V

Question 1:

Stakeholders are requested to indicate whether they agree with the changes as currently proposed and to provide observations. In addition, stakeholders are requested to indicate whether further amendments may be required as a result of the implementation of UCITS V.

Response:

1. **The UCITS V Level 2 Regulation introduces requirements in relation to the holding of cash accounts by UCITS for operational purposes. These requirements are now reflected in amendments to Regulation 11.**

   We would query the proposal (in Regulation 6 of the No.2 Amendment Regulations) to replacing the references to "deposits" in Regulation 11(1) with references to "cash booked in accounts".

   We consider it is appropriate to retain the reference to "deposits" and clarify that this relates to deposits made by the UCITS as investments, pursuant to the UCITS' investment objective and policy, in accordance with Regulation 68(1)(f) of the UCITS Regulations. Deposits, for these purposes, should be treated as distinct from any other cash held by the UCITS representing as yet uninvested subscriptions, redemption proceeds or dividend payments held at bank under the fund asset model.

2. **Unlike the position under AIFMD, the UCITS V Level 2 Regulation does not apply safe-keeping obligations in relation to assets held through subsidiary[1] vehicles. This gap is addressed through a new Regulation. In addition, the requirements which are currently applied by the Central Bank as part of the UCITS authorisation process in respect of the establishing of subsidiaries by UCITS are set out in a new Regulation.**

   - As a general comment, it would be helpful if the Central Bank could issue guidance on the circumstances in which it permits the use of subsidiary vehicles by a UCITS, including when it expects a UCITS to consult with it prior to establishing a subsidiary vehicle (as required under Regulation 103(1)(b) of the CBI UCITS Regulations).

   - The conditions proposed in Regulation 9A(2) regarding the subsidiary are overly prescriptive and do not reflect, for example, non-corporate subsidiaries where the executive function is not necessarily conducted by a board of directors. We propose the alternative condition (see highlighted text) that the UCITS otherwise demonstrates, to the satisfaction of the Central Bank, that it can exercise full executive control over the subsidiary:

[1] The term 'subsidiary' is generally understood to relate to the relationship existing between two companies, however, it is not unusual for a 'subsidiary' used for the purposes contemplated in the Regulation to be a vehicle other than a company. The term "subsidiary" would not reflect examples where the UCITS is not a corporate and thereafter does not have a 'subsidiary'.

"*(2) A responsible person shall ensure that a subsidiary of a UCITS established in accordance with paragraph (1) complies with the following conditions–*
(a) the subsidiary is wholly owned and controlled by the UCITS,
(b) the board of directors of the subsidiary is comprised of a majority of directors of the board of directors of the UCITS or management company, ***or***
(c) as an alternative to (a) and (b), if these conditions are not appropriate to the legal structure of the subsidiary vehicle, the UCITS otherwise demonstrates to the satisfaction of the Central Bank that it can exercise full executive control over the subsidiary vehicle."

- Similarly, Regulation 9A(2)(f) should be adjusted per the highlighted text below:

  "(f) the constitution of the subsidiary provides that ***(where the below conditions are appropriate to the legal structure of the subsidiary vehicle)*** *–*
  (i) it may not act outside of the control of the UCITS,
  (ii) the UCITS shall be the sole shareholder of the subsidiary,
  (iii) the sole object of the subsidiary shall reflect exactly the investment objective and investment policy of the UCITS as disclosed in in its prospectus,
  (iv) the assets of the subsidiary shall be held by the depositary,
  (v) the assets of the subsidiary shall be valued in accordance with the valuation policy of the UCITS, and
  (vi) the subsidiary may not appoint any third parties or enter into any contractual arrangements with third parties unless the UCITS is a party to such appointments or contractual arrangements."

- Regarding Regulation 9A(2)(d), it is not practical or efficient for the name of each subsidiary to be disclosed in the prospectus, noting that subsidiaries may be established in specific circumstances that can often be time sensitive. It should be adequate to reflect that the prospectus must provide for the facility to establish subsidiaries in accordance with the Central Bank's requirements and also disclose that the names of any subsidiaries will be contained in the annual/semi-annual reports of the UCITS.

3. Regulation 114(1), Regulation 114(7)(a), Regulation 114(8), Regulation 115, Regulation 116(2), Regulation 116(3), Regulation 118(2), Regulation 118(3) are deleted. The requirements which had been applied by these Regulations will be superseded by requirements set out in the UCITS V Level 2 Regulation.

- The proposed Regulation 114A(1)(a) makes clear that the depositary must comply with Regulation 34(4)(b) of the UCITS Regulations which relates to verification of ownership and recordkeeping obligations in respect of "other assets" held by a subsidiary of a UCITS.

  However the proposed Regulation 114A(1)(b) does not contain any cross-reference to Article 14 of Commission Delegated Regulation No 438/2016 (which provides further details relating to safekeeping duties regarding ownership verification and record keeping).

If a depositary is subject to asset verification and recordkeeping obligations in respect of "other assets" of a subsidiary of a UCITS, should Regulation 114A(1)(b) not also cross refer to Article 14 of Commission Delegated Regulation No 438/2016?

Accordingly, we suggest some clarification to the proposed regulation 114A(1):

"13. The Principal Regulations are amended by inserting the following new regulation:

"114A(1) Subject to paragraph (2), where a depositary holds the assets of a subsidiary of a UCITS it shall apply its safe-keeping duties ***as they apply to those particular assets*** *as set out in:*

*a) Regulation 34(4)(a) and****/or*** *(b) of the UCITS Regulations, and*

b) Articles 13, ***[14]*** *and 15 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 the obligations of depositaries [Note: OJ L 78, 24.3.2016, p.11] to those* ***particular*** *assets."*

- In addition to Regulation 118(2) and Regulation 118(3), we consider it is appropriate to also delete Regulation 118(1). The depositary's duties regarding valuations are now captured in Article 5 of UCITS V Level 2.

- We note that it is proposed to delete Regulation 120(3) of the CBI UCITS Regulations. However an explanation for this deletion is not provided in the Consultation Paper.

Section II - Technical amendments including correction of typographical errors

Question 2:
Stakeholders are requested to indicate whether they agree with the changes as currently proposed and to provide observations. In addition, stakeholders are requested to indicate whether further amendments may be required as a result of the foregoing proposals.

Response:

Below we have addressed and provide comment on each of the technical amendments summarised in Section II of the Consultation Paper. In addition, below we have set out some additional comments on the CBI UCITS Regulations for the Central Bank to consider as part of this process.

1. **An amendment to Regulation 2(1) and Schedule 9 aligns the definition of "own funds" with the requirements in CRD IV.**

   No comment.

2. **Proposed amendments to Regulation 23 and 61 correct inconsistencies in the current text with the ESMA Guidelines on ETFs and other UCITS Issues (ref ESMA 2014/937).**

   While we agree with the proposed deletion of the term "instruments" from Regulation 23(2) of the CBI UCITS Regulations, we would question whether the reference to "instruments"

should also be deleted from Regulation 23(1) of the CBI UCITS Regulations. Such an amendment would appear to be inconsistent with paragraph 25 of ESMA's "*Guidelines on ETFs and other UCITS issues*" paper (the "**ESMA Guidelines**").

3. **The proposed amendment to Regulation 36 reflects the fact that valuation of a particular asset type of a UCITS may be mandated by legislative requirements other than those in the CBI UCITS Regulations (e.g. valuation of derivatives in accordance with Regulation (EU) No 648/2012 (EMIR).**

   The proposed amendment to Schedule 5 of the CBI UCITS Regulations (proposed Regulation 19) provides that OTC derivatives must be valued in accordance with Article 11 of EMIR.

   However, Article 11 of EMIR sets down valuation rules with respect to OTC derivatives which are not cleared by a central counterparty only. It does not provide that all OTC derivative contracts must be valued in this manner.

   Therefore we suggest that Schedule 5 of the CBI UCITS Regulations be revised in a manner that is consistent with the provisions of Article 11 by only obligating a UCITS to value OTC derivatives which are not cleared by a central counterparty on a mark-to-market basis.

   We also note the requirement in Regulation 68(1)(g)(iii) of the UCITS Regulations that "the OTC derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the UCITS' initiative" and also the requirements of section 25 of Schedule 9 of the UCITS Regulations. Given these provisions are the direct, primary legislative requirements applicable in this regard, we therefore suggest these provisions are captured or cross-referenced in Schedule 5 so as to avoid any potential for these requirements to be overlooked and to avoid any perception that other requirements may prevail. To the extent that there is any conflict between the provisions of EMIR and the UCITS Regulations, absent any legislative clarification, we assume the Central Bank accords with the view that the requirements of the UCITS Regulations prevail. We note this is also addressed in the ESMA UCITS Q&A (19 July 2016 | ESMA/2016/1135).

4. **The proposed amendment to Regulation 53(2)(b) permits a responsible person which proposes, on behalf of a UCITS, to take short positions, to provide for disclosure of long and short positions on the basis of a ratio.**

   The flexibility that will be brought about by the proposed change to Regulation 53(2)(b) is most welcome. However, the feedback we have received is that this disclosure is extremely problematic to adhere to in the current prescribed terms and this will remain the case even with the proposed change (albeit slightly less so).

   We appreciate the Central Bank wishes to require a disclosure is made as to the extent of short exposure anticipated in a UCITS that takes short positions. It is submitted this can be achieved in a range of ways and that, provided the net effect is that investors will know if the fund can take short positions and to what extent this might be, the Central Bank should not

need to prescribe the precise form of this disclosure in the Regulations. Accordingly, we would propose that the current Regulation 53(2)(b) is removed entirely and replaced with the following:

> **"*a description of the extent to which the UCITS anticipates taking such short positions, relative to the overall value of the Fund*."**

5. The proposed amendment to Regulation 78(1) clarifies timing for submission of UCITS periodic reports.

No comment.

ADDITIONAL COMMENTS ON THE CBI UCITS REGULATIONS:

	Regulation Reference	Comment	Suggested amendment
1.	Interpretation, Regulation 2(1) *"actively managed UCITS ETF"*	Replace the definition of "*actively-managed UCITS ETF*" to mirror the definition in the ESMA Guidelines – for consistency and the avoidance of confusion:	**"**actively managed UCITS ETF" means a UCITS ETF, ~~in respect of which~~ the ~~responsible person~~ manager of which has discretion over the composition of its portfolio ~~and which~~, subject to the stated investment objectives and policies (as opposed to a UCITS ETF which tracks an index and does not have such discretion)~~.~~. An actively-managed UCITS ETF generally tries to ~~may have the objective of~~ outperform~~ing~~ an index;"
2.	Interpretation, Regulation 2(1), *"anti-dilution levy"*	Amend definition of "*anti-dilution levy*" for consistency with the description in Regulation 38(a).	"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;
3.	Part 2, Restrictions on UCITS, Chapter 1,	Add highlighted text to this section to make consistent with the ESMA Guidelines and to clarify the scope of this requirement.	Where a UCITS uses total return swaps or other FDI with the same characteristics and the counterparty to such FDI

	General, General Restrictions, Regulation 3		has discretion over the composition or management of a UCITS investment portfolio or of the underlying of the FDI, the arrangement between the relevant UCITS and the counterparty shall be an investment management delegation arrangement and the responsible person shall comply with the requirements on delegation in the UCITS Regulation.
4.	Regulation 7	Under UCITS V, UCITS may have cash bank accounts with central banks, EU authorised banks or third country banks. However, Level 2 Article 10(1) (a) mandates that any third country banks must be assessed by the UCITS' competent authority as having EU equivalent prudential supervisory and regulatory requirements. Separately, Regulation 7 of the Central Bank UCITS Regulations provides that UCITS may invest assets of the UCITS in deposits made with a credit institution which is within at least one of the following categories: (a) a credit institution authorised in the EEA; (b) a credit institution authorised within a signatory state, other than a Member State of the EEA, to the Basle Capital Convergence Agreement of July 1988; or (c) a credit institution authorised in Jersey, Guernsey, the Isle of Man, Australia or New Zealand. We note the test in the context of deposits is if the third country bank is "subject to prudential rules considered by the Bank as equivalent to those laid down in Community law." This would appear to be effectively the equivalent	

		test in UCITS V Level 2: i.e. that "the prudential supervisory and regulatory requirements applied to credit institutions in that third country are considered by the competent authority of the UCITS home Member State as at least equivalent to those applied in the Union." Can it be inferred that the Central Bank's endorsement of categories (b) and (c) for deposit investments can carry to cover Level 2 Article 10? Or will a further, separate assessment of relevant banks/jurisdictions be required?	
5.	Regulation 8(6)(b)(iii)	Should paragraph (1)(c) of Regulation 24 be added to the requirements listed in Regulation 8(6)(b)(iii)?	"a responsible person may take account of collateral received by the UCITS in order to reduce the exposure to the counterparty, provided that the collateral meets with the requirements specified in paragraphs (1)(c), (3), (4), (5), (6), (7), (8), (9) and (10) of Regulation 24."
6.	Regulation 9(6)(a)	Regulation 9(6)(a) should be supplemented with the highlighted text herein, consistent with the full terms paragraph 54 of the ESMA Guidelines (rather than one section thereof only).	"that rebalances on an intraday or daily basis, or the rebalancing frequency of which prevents investors from being able to replicate the financial index. Technical adjustments made to financial indices (such as leveraged indices or volatility target indices) according to publicly available criteria should not be considered as rebalancing in the context of this paragraph;"
7.	Regulation 10(3)	Add highlighted text to Regulation 10(3) to provide for exceptional cases, for example, where a cross-investing sub-fund wishes to utilise another sub-fund that operates as a short term money market fund when otherwise the sub-fund would incur additional costs in	"the investment shall not be made in a sub-fund which itself holds units in any other sub-fund within the umbrella UCITS unless otherwise permitted by the Central Bank in circumstances where such

		allocating to a third party short term money market fund.	cross-investment does not prejudice the interests of investors."
8.	Regulation 17(b)	Can guidance be provided on which methodologies ESMA has previously published guidelines on?	
9.	Chapter 4, Efficient Portfolio Management	Is it intended to revise this chapter to reflect the requirements of SFTR which we understand impacts in this area now?	
10.	Regulation 24(4)	Regulation 24(4) states that "*a responsible person shall not sell, pledge, or re-invest the non-cash collateral received by the UCITS*". This would appear to conflict with Regulation 34(7) of the UCITS Regulations which provides that assets held in custody can be "*reused*". This re-use facility would only appear to be relevant to non-cash collateral held by the UCITS and it would appear to be contradictory to retain a prohibition on re-use when UCITS V now sets out conditions that apply to such activity.	
11.	Regulation 26(1)(d)	Change suggested to reflect position of EU legislators under Article 22(1) of Commission Directive 2010/43 (which is transposed into Irish law by Schedule 5 of the UCITS Regulations 2011, as amended) and corresponding position for AIFMs under Article 23 of Commission Regulation 231/2013. The current provision would appear to prohibit a UCITS from distinguishing between shareholders in the same share class even in circumstances where there are objective reasons for treating such shareholders differently and where doing so is, in the opinion of the directors, acting in the best interests of the UCITS as a whole. By way of example, a UCITS may decide, when	"unit-holders in a share class must be treated ~~equally and~~ fairly, or where there is more than one share class all unit-holders in the different share classes must be treated fairly."

		establishing a share class, to impose a subsequent subscription amount. However the directors may wish to have the flexibility to waive or vary this subsequent subscription amount in the case of shareholders who have already invested over a specified amount in the UCITS. Provided that there is pre-determined criteria set down by the directors detailing circumstances in which the subsequent subscription amount may be varied or waived (thereby ensuring equal treatment of all shareholders in the same position in the same share class), there should be no reason for them to be obliged to impose such a requirements on all shareholders in the same class simply to ensure that all shareholders are treated equally in accordance with Regulation 26 of the CBI UCITS Regulations.	
12.	Regulation 26(2)	Add highlighted text to Regulation 26(2) to reflect facility for exceptions, for example, the provision for different cut-off times for in specie and cash subscriptions in an ETF context.	"Save where the specific permission of the Central Bank has been obtained, a responsible person shall ensure that all share classes within the UCITS or sub-funds thereof have the same dealing procedures and frequencies."
13.	Regulation 26(3)(c)	Regulation 26(3)(c) provides inter alia that over-hedged positions should be included in calculations of global exposure. Can you please clarify whether over-hedged positions need to be included in the calculations of leverage when using the sum of notionals (for funds that are using VaR to calculate global exposure). Also, it would be good to clarify whether over-hedged positions should also be included in calculations of counterparty risk and issuer concentration exposures.	
14.	Regulation 31(2)(a)	Remove reference to "*ETF*" in Regulation 31(2)(a). We see no	"This paragraph does not apply to a UCITS ~~ETF~~ the original

		objective to restrict the facilities provided for in this section to ETFs.	subscription to which was made in specie".
15.	Regulation 33(2)	Add highlighted text to Regulation 33(2) to reflect cases where this may not be practicable, for example, where the investor has not complied with AML requirements. This change is consistent with use of the term "*normally*" in section 2.14.15 of the Central Bank's UCITS application form.	"A responsible person shall normally pay the redemption proceeds to a redeeming unit-holder within ten business days of the relevant dealing deadline."
16.	Regulation 36	Adjust Regulation 36 to reflect the terms of subsequent guidance issued on this (ID1055 of the Central Bank's UCITS Q&A).	
17.	Regulation 40	Unclear if a SMIC or its delegates (i.e. the investment manager) are caught by the definition of "connected person". Suggest amending for consistency with section 2.12 of the UCITS Section 2 form and previous position.	"In this Chapter, "connected person" means the management company, the investment company itself where internally-managed or depositary to a UCITS; and the delegates or sub-delegates of such a management company, internally-managed investment company or depositary (excluding any non-group company sub-custodians appointed by a depositary); and any associated or group company of such a management company, depositary, delegate or sub-delegate."
18.	Regulation 46(1) and Regulation 47(1).	Propose guidance is provided by the Central Bank clarifying if such procedures must be in place at all times or whether they should be put in place in the event that it is proposed to replace the relevant entity.	
19.	Regulation 47(1)	Adjust for sense in circumstances when it is proposed to replace the management company. The UCITS and not the responsible person (i.e. the management company itself in relevant cases) should assume this obligation.	

20.	Regulation 57(2)	Please provide guidance on the reference to "reverse leverage".	
21.	Regulation 64(3)	Propose amending wording on the basis that provided all relevant risks associated with investing in the UCITS have been disclosed to the investor, it is for each investor to determine the portion of its portfolio which should be invested in the relevant UCITS. Furthermore, clarity would be welcomed whether there is an ongoing obligation to monitor these limits over the life of the fund.	"A responsible person of a UCITS that has investment objectives or an investment policy that involves investing: (a) more than 20 per cent of the assets of the UCITS in emerging markets, (b) more than 30 per cent of the assets of the UCITS in bonds or warrants that are below investment grade, or both, shall insert a risk warning informing investors that an investment in the UCITS ~~should not constitute a substantial proportion of an investment portfolio~~ ~~and~~ may not be appropriate for all investors."
22.	Regulation 103(2)(a)	Add a materiality threshold to this requirement as we understand applies in practice and consistent with the approach for AIFMs.	"(2) A management company shall notify the Bank in writing immediately *[AIF Rulebook: "promptly"]* that the management company becomes aware of: (a) any material breach of the UCITS Regulations or of the Bank's requirements that are applicable to the relevant UCITS or to the management company (including these Regulations);"
23.	Regulation 103(2)(c)	Add highlighted text to Regulation 103(2)(c) to reflect that UCITS management companies should notify the Central Bank of all *significant* legal proceedings involving the UCITS management company or UCITS under its management – consistent with this provision as previously contained in paragraph 85 of UCITS Notice 2.	"the bringing of any significant legal proceedings by or against the relevant UCITS or the management company;"

24.	Regulation 105		"An internally-managed investment company shall comply with the following provisions of Part 1 of Chapter 11 of these Regulations […]"
25.	Schedule 3, Section 3	Heading should be changes to "*Collateral Credit Quality*" and section (i) amended to reflect that the rating of the collateral (as opposed to the issuer) is the relevant metric to be assessed.	~~**Issuer**~~ **Collateral Credit Quality** "(i) where the ~~issuer~~ collateral was subject to a credit rating by an agency registered and supervised by ESMA that rating shall be taken into account by the responsible person in the credit assessment process; and (ii) where an ~~issuer~~ collateral is downgraded below the 2 highest short-term credit ratings by the credit rating agency referred to in (i) this shall result in a new credit assessment being conducted of the ~~issuer~~ collateral by the responsible person without delay."
26.	Schedule 3, Section 3	Section on "Collateral Credit Quality" should be supplemented by a new section specifically addressing how this can be satisfied for equity collateral as the existing rating criteria is only appropriate for fixed income securities collateral. Note "*short period*" is a term already used in the Regulations (Regulation 6(2)(vi)).	"(iii) in the case of equity collateral shall not apply the criteria in (i) and (ii) above but shall instead require such equities are listed or traded on a recognised exchange and can be realised by the UCITS within a short period at the price, or approximately at the price, at which they are valued by the UCITS."
27.	No reference - Whether central counterparties should be treated as being outside the custody network	In circumstances where a UCITS invests in an FDI that involves the posting of margin to a "central counterparty" (as referred to in Regulation 8(5) of the Central Bank UCITS Regulations), will the assets held with the central counterparty be considered within the scope of the depositary's safekeeping/asset	

		verification duties? If so, will it be necessary for the depositary to engage the central counterparty as a delegate (pursuant to the terms of Regulation 34A of the UCITS Regulations) or will the handling of assets by such a central counterparty not be considered to be a delegation of custody functions, akin to the provisions relating to securities settlement systems in Regulation 34A(6) of the UCITS Regulations?	

Question 3:
The Central Bank is considering whether the requirements in relation to disclosure of open derivative positions in annual and half-yearly reports might be amended, particularly in circumstances where the disclosure can be lengthy and technical in nature. The Central Bank would welcome proposals from stakeholders for an alternative approach for disclosure which is both proportionate and which achieves sufficient, meaningful disclosure.

Response:

We agree that the current requirement in relation to disclosure of open financial derivative positions for a UCITS with a highly diversified portfolio leads to annual and half-yearly reports to be excessively long diluting the relevance of such information for investors and making it more difficult to understand the UCITS exposures. Excessively long annual and half yearly reports also result in additional unnecessary costs to the UCITS where such reports are printed and posted to all investors.

We would recommend that UCITS are given the option to present either a full portfolio statement listing each open financial derivative position or a condensed portfolio statement listing open financial derivative positions representing 1% or more of net assets, distinguishing between the different types of financial derivatives positions and analysed in accordance with the most appropriate underlying exposure type in light of the investment objective of the UCITS (e.g. financial indices, equities, interest rates, foreign exchange rates or currencies). Open financial derivative positions representing less than 1% of net assets would 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, it is also suggested that the UCITS must then make the full portfolio statement available to investors on demand free of charge.