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Undertakings for Collective Investment in Transferable Securities (UCITS) Organisation of Management Companies

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Organisation of Management Companies¹

Introduction

1. An application for authorisation as a UCITS management company should be made by submitting:
 - (a) a completed application form signed by two directors of the applicant UCITS management company;
 - (b) completed individual questionnaires (IQ) in respect of;
 - each director and senior manager;
 - each individual who has a direct or indirect holding of shares or other interest in the proposed UCITS management company, which represents 10% or more of the capital or voting rights in the UCITS management company;
 - any other individual who is in a position to exercise a significant influence over the management of the UCITS management company.
 - (c) a detailed business plan which takes account of the requirements of Regulation 18 of the UCITS Regulations. The business plan should accurately reflect current activities and procedures. Generic wording should be avoided.
2. Application forms and IQ are available from the Securities and Markets Supervision Division within the Central Bank and may be obtained from the Central Bank's website www.centralbank.ie. In completing IQ, applicants are directed to the Fit and Proper Requirements which are also available on the website.

¹ The provisions of this guidance will, where appropriate, also apply to the organisation of a UCITS investment company which has not appointed a management company. Section C sets out the specific provisions that will apply in this instance.

3. This note provides guidance on the type of information which should be included in the detailed business plan in support of the application. This guidance is not intended to be exhaustive. Each applicant should bear in mind the nature, size and structure of its proposed business. The Central Bank will advise the applicant of any additional information or clarification required having reviewed the documentation submitted.
4. This guidance is also relevant for a UCITS investment company which does not designate a UCITS management company (a self-managed investment company).
5. Regulation 17(11) of the UCITS Regulations provides that a proposed UCITS management company shall be informed whether or not authorisation has been granted within six months of the date of receipt of a complete application. An application is only considered complete when it includes completed application form, all relevant individual questionnaires/declarations and a comprehensive business plan. In the case of applicant UCITS management companies, full details on qualifying shareholders should be provided in the initial submission. The time scale for considering applications depends greatly upon the quality of the information provided.
6. Regulation 17(14) of the UCITS Regulations, which provides that the Central Bank may revoke an authorisation where a UCITS management company does not make use of its authorisation within 12 months, should be borne in mind when considering whether or not to submit an application for authorisation.
7. A firm may only receive an authorisation under the UCITS Regulations where it has revoked all other authorisations.

Information to be incorporated in a detailed business plan - Incorporation

8. An original or certified copy of the certificate of incorporation or declaration of intention to provide a certificate of incorporation should be submitted. A

certified document is one that is stamped, signed and dated as being a true copy of the original at a particular date in time by a party independent of the firm. The certification stamp should be present on the relevant document.

Information to be incorporated in a detailed business plan - Memorandum and Articles of Association

9. An original or certified copy of the memorandum and articles of association is required. It is the applicant UCITS management company's responsibility to ensure that the scope of the memorandum and articles of association is sufficiently wide to enable it to operate in accordance with the UCITS Regulations, and in accordance with the Central Bank UCITS Regulations.

Information to be incorporated in a detailed business plan – Capital

10. Detailed financial projections covering a period of three years are required.

These should include:

- (a) projected profit and loss accounts;
- (b) projected balance sheets.

11. The projections should be sufficiently detailed to demonstrate:

- (a) compliance with initial capital requirements and ability to meet capital requirements on an ongoing basis; and
- (b) that the applicant UCITS management company has projected adequate resources to cater for projected/pipeline business.

12. Projections should be accompanied by relevant assumptions upon which the data should be based. Applicant UCITS management companies should endeavour to provide projections, which present the applicant's realistic analysis of their business over the reference period. Applicant UCITS

management companies should refer to the specific provisions of the UCITS Regulations and the Central Bank UCITS Regulations in relation to capital.

13. In the case of newly established UCITS management companies, a certified confirmation of capital by the board of directors is required in advance of authorisation. In providing the required confirmation to the Central Bank, the board should stipulate the form and amount of capital and the name of the subscriber. Confirmation should be accompanied by an original bank statement evidencing compliance.
14. In the case of existing companies who are already subject to our supervision, the Central Bank will rely on financial information presented in the latest audited financial statements as a basis for establishing the financial status of the application. Depending on the time frame since the last audited accounts the Central Bank reserves the right to seek more up to date information including latest management accounts.
15. In the case of existing companies not currently supervised by the Central Bank a copy of the audited accounts covering the previous three years are required.

Information to be attached to a detailed business plan - Probity and competence of directors and managers

16. A completed IQ for each proposed appointee should be submitted. In relation to completion of the IQ, it should be noted that:
 - (a) all questions should be answered fully and submitted with all the appropriate attachments; and
 - (b) if a question does not apply, it should be marked as "not applicable";

Information to be incorporated in a detailed business plan - Suitability of qualifying shareholders

17. The Central Bank will look through the proposed direct shareholder in the applicant, and each subsequent indirect shareholder to identify both the intermediate and ultimate beneficial shareholders including those who are in a position to control or influence the applicant firm.

18. Proposed complex structures will only be approved where the Central Bank is satisfied that the ultimate beneficial shareholders have been identified and that the structure does not prevent the effective supervision of the firm.

19. To assist in this review, the application should include a chart or graph indicating all direct and indirect shareholdings. The following should be provided for each qualifying shareholder:

(a) Where the proposed qualifying shareholder is an individual:

- i. an IQ in accordance with the guidelines set out at paragraph 16 above;
- ii. regulatory status, if any;
- iii. documentation evidencing the fact that the individual is the registered holder of the shares (for example, a certified copy of the share register);
- iv. confirmation in writing that the individual is the beneficial owner of the shares.

(b) Where the proposed qualifying shareholder is a company:

- i. description of its activities;
- ii. regulatory status, if any;
- iii. most recent audited accounts;
- iv. details of the proposed interaction with the applicant UCITS management company;

- v. documentation evidencing the fact that the company is the registered holder of the shares;
 - vi. confirmation in writing that the company is the beneficial owner of the shares.
- (c) Where the proposed qualifying shareholder is a nominee :
- i. documentation evidencing the fact that the nominee is the registered holder of the shares;
 - ii. ownership of the nominee company;
 - iii. most recent audited accounts;
 - iv. details of the beneficial owners of the shares;
 - v. purpose behind the use of a nominee holding;
 - vi. appropriate declarations in respect of the nominee holding of the shares in trust for the beneficial owners, including formal confirmation from the nominee itself that the relevant declarations of trust remain valid and in force.

The Central Bank may require that all nominee holders (including those which do not have a qualifying holding) be identified to ascertain that those individual holdings when added to other direct or indirect holdings do not amount to a qualifying holding.

- (d) Where the proposed qualifying shareholder is a trust:
- i. documentation evidencing the fact that the trust is the registered holder of the shares;
 - ii. copies of all trust deeds and any other documentation constituting the trust or relating to the trust in some other way including any supplemental or ancillary deeds, agreements or side letters;
 - iii. names and addresses of the settlers of the trust;
 - iv. names and addresses of the beneficiaries of the trust (including details of age for minors) and those of all persons who are within the class of prospective beneficiaries;

- v. financial information in relation to the trust;
- vi. details relating to the trustees;
- vii. purpose behind the use of a trust structure.

It is the policy of the Central Bank to require legal undertakings from various parties related to the trust with a view to ensuring that the requirements of the UCITS Regulations in relation to qualifying shareholders are met on a continuous basis. A legal opinion regarding the validity and efficacy of the undertakings will also be required.

- (e) Where the proposed qualifying shareholder is a partnership:
 - i. description of the LLP, including the names of the general and limited partners and details of their respective roles;
 - ii. description of its activities;
 - iii. regulatory status, if any;
 - iv. most recent audited accounts;
 - v. details of the proposed interaction with the applicant UCITS management company;
 - vi. documentation evidencing the fact that the LLP is the registered holder of the shares;
 - vii. written confirmation that the LLP is the beneficial owner of the shares.

The Central Bank may request a copy of the partnership deed and any relevant agreement between the general and limited partners.

Information to be incorporated in a detailed business plan – Permitted activities

- 20. A UCITS management company could provide investment management, fund administration or marketing services to CIS under delegation arrangements.

21. A UCITS management company may be authorised to provide collective portfolio management and individual portfolio management services. It may not be authorised solely to provide individual portfolio management services. A UCITS management company which is authorised to provide individual portfolio management services may also be authorised to provide investment advice and safekeeping and administration in relation to units of investment funds.

Information to be incorporated in a detailed business plan – Organisation structure

22. Requirements in relation to organisation of UCITS management companies, including the responsibilities of senior management, are set down in the UCITS Regulations and in the Central Bank UCITS Regulations.

23. Regulation 17(3) of the UCITS Regulations provides that “the conduct of a UCITS management company’s business shall be decided by at least 2 persons” “of sufficiently good repute and are sufficiently experienced in relation to the type of UCITS to be managed by the management”.² The organisation of a UCITS management company should be structured such that no one person can decide on the direction of the UCITS management company without the endorsement of another.

24. In accordance with the UCITS Regulations, UCITS management companies should take into account the nature, scale and complexity of their business and the nature and range of services and activities undertaken in the course of that business when applying certain requirements of the UCITS Regulations. The business plan submitted by an applicant UCITS management company in accordance with paragraph 1(c) above should outline at the outset the range of activities to be undertaken together with the number, type and size of the investment funds to which services will be provided. It should indicate how the relevant requirements have been addressed through the employment of

² Regulation 42 (4)(a)(iii) of the UCITS Regulations imposes a similar requirement in relation to self-managed investment companies.

appropriate resources and taking into account the extent to which the UCITS management company will delegate activities.

25. In assessing the nature scale and complexity of its business the following should, at least, be taken into account:

- (a) the number of investment funds, including sub-funds of umbrella investment funds, under management;
- (b) the size of investment funds, including sub-funds of umbrella investment funds, under management;
- (c) the regulatory status and jurisdiction of the investment funds under management;
- (d) investment strategies of the investment funds, including the extent to which the investment funds will employ leverage;
- (e) types of investments and investment location; and
- (f) distribution model and investor base.

26. Where the UCITS management company provides services to third party investment fund where it is not the designated UCITS management company, these activities should also be considered in accordance with the above criteria when assessing the nature, scale and complexity of the business of the applicant UCITS management company.

27. The following should be submitted to the Central Bank:

- (a) Proposed organisational chart to include:
 - reporting lines, in particular between directors/senior management and delegates;
 - functions distinguishing between functions retained by the UCITS management company and those delegated to /third parties; and
 - proposed staffing – key personnel (with titles) should be identified.

The Central Bank will also consider proposals under which individuals, including individuals from Irish service providers to the applicant will, on a secondment basis, carry out some or all of the management functions. These individuals must be located in Ireland and be sufficiently qualified to undertake the relevant functions. Secondees should complete an IQ to enable the Central Bank be satisfied in this regard. Information will be required in relation to the contract of employment between the applicant and the service provider/seconded(s). The contract should identify potential conflicts of interest and how these will be addressed.

(b) The Central Bank considers that in order for a UCITS management company to discharge its responsibilities under the UCITS Regulations, the UCITS management company must exercise care and diligence in choosing and appointing third parties, so as to ensure that the third party has and maintains the expertise, competence and standing appropriate to discharge the responsibilities concerned. The UCITS management company must maintain an appropriate level of supervision over the third parties and make appropriate inquiries from time to time to confirm that the obligations of the third party continue to be competently discharged. This does not purport to be a legal interpretation of the UCITS Regulations and the corresponding provisions of Directive 2009/65/EC.

(c) A UCITS management company should not, in any written communication or agreement, save as permitted by applicable legislation, seek to exclude or restrict any legal liability or duty of care which it has under the UCITS Regulations or the Central Bank UCITS Regulations to an investment fund under management.

In particular, unless it is reasonable to do so in the circumstances, a UCITS management company should not, in any written communication or agreement, seek to exclude or restrict:

- (i) any duty to act with skill, care and diligence which is owed to the investment funds under management; or
- (ii) any liability owed to investment funds under management, for failure to exercise the degree of skill, care and diligence which may reasonably be expected of it in the provision of collective portfolio management.

A UCITS management company should not try, unreasonably, to rely on any provision seeking to exclude or restrict any such duty or liability.

- (d) Where a UCITS management company intends to delegate its functions the business plan should contain the following details in relation to each of the managerial functions identified in Schedule 10 of the Central Bank UCITS Regulations, (excluding decision taking which is dealt with separately below):
 - i. identity of the designated director/employee/seconded individual (hereafter “designated person”) responsible for that function to include a description of the role which will be carried out by that designated person and a copy of the existing or proposed procedures that will apply to the function;
 - ii. role of the relevant service providers in relation to that function; and
 - iii. details of the reports that the designated person will receive from the service providers and other parties (see paragraph 29).
- (e) In relation to each of the specific management functions, the Central Bank expects to be provided with the following information:
 - i. **Monitoring compliance:** confirmation as to whether the designated person will be advised of all compliance issues or

only those that are considered material, indicating what criteria will determine materiality;

1. the Central Bank acknowledges that while the monitoring of compliance with respect to investment restrictions may be carried out by a related third party outside the State, there should be sufficient evidence that this process is controlled by the firm.
 2. Monitoring of compliance includes the maintenance of logs in respect of investment breaches, pricing errors, complaints and compensation payments, all of which should be available for inspection by the Central Bank.
 3. Compliance procedures should be included within the business plan. A compliance officer should be appointed and should be responsible for the compliance function and for any reporting on a frequent basis, and at least annually, to the senior management on matters of compliance indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies.
- ii. **Risk management:** The UCITS Regulations and the Central Bank UCITS Regulations contain detailed requirements in relation to a risk management function and risk management policy. These requirements should be reflected in the business plan. In addition to the risk management process required by Regulation 69(1) of the UCITS Regulations, in the context of the use of financial derivatives instruments by UCITS, details should also be provided in relation to more general risks that will be regularly monitored (e.g. static security prices, stock reconciliation, failed trades, etc) and all operational risks pertinent to the applicant firm.

With regard to collateral management, the business plan should, if relevant, provide for the systems, operational capabilities and legal expertise which will be employed to address risks attached to this activity.

Confirmation is required as to whether the designated person will become aware of all risk management issues or only those that are considered material or exceed a certain timeframe/tolerance.

- iii. **Monitoring of investment policy, investment strategies and performance:** Reports should be sufficient to enable the designated person ensure and verify that the investment strategies and policies of each investment fund under management are complied with and to measure the performance of the investment fund (e.g. total return on monthly, quarterly and year-to-year basis, performance versus benchmark, yield calculations, etc.) “Investment strategies” refer to a set of general indications concerning the strategic asset allocation of the investment fund and the investment techniques which are needed to adequately and effectively implement the investment policy.

- iv. **Financial Control :** The following information should be provided:
 - 1. procedures for the production, and submission to the Central Bank, of annual and semi-annual financial statements of the applicant firm;
 - 2. the role of the board of directors in the approval of such accounts;
 - 3. confirmation as to whether the auditors of the applicant firm will attend the board meetings, at which the annual financial statements are considered, to report on the

- audit process and to answer any questions which may arise in connection with the audit;
4. the authorised signatory list of the firm and details of payments process; and
 5. description of the other areas that will be kept under review in relation to the financial control function e.g. preparation of profit and loss account for the applicant firm showing realised and unrealised gains, breakdown of expenses, cash and stock positions, expenses accrued etc.
- v. **Monitoring of Capital:** the business plan should nominate a designated person with responsibility for monitoring compliance on an on-going basis and include provision for circumstances where capital falls below the required amount and what action will be taken to restore compliance.
- vi. **Internal audit:** the identity of the internal auditor and frequency of internal audit visits should be provided. Depending on circumstances, reliance may be placed on internal audit functions of service providers provided they are of a level which the board of directors can be satisfied will give an appropriate level of assurance relative to the service providers' role and involvement in the operational functions of the UCITS management company. In this event, the business plan should identify the relevant service providers.
- vii. **Supervision of delegates:** the business plan should include details of the procedures in place to provide for periodic review of the services being provided by delegates. This review, at least annually, should include an assessment of the overall impact of issues raised and considered during the period.

- viii. **Complaints handling:** the business plan should include details of the procedures in place to ensure that all complaints are escalated to the board of the applicant firm.
- ix. **Accounting policies and procedures:** the business plan should nominate a designated person with responsibility for monitoring compliance with accounting requirements in respect of the accounts prepared in respect of the UCITS management company and all investment funds under management. Irish accounting requirements apply to the accounts of the applicant firm. In the case of UCITS accounting policies of the home Member State apply.
- x. The Central Bank UCITS Regulations permit UCITS to engage in transactions with connected parties, subject to the rules set out in Regulation 41 of those Central Bank UCITS Regulations. The business plan should provide for the procedures that will be applied to:
- ensure compliance with those requirements when transactions are envisaged; and
 - ensure compliance with the required disclosure and reporting of transactions entered into.

(f) **Decision taking:** The following details should be provided:

- i. A distinction between the types of decisions falling within the remit of the designated person and those falling within the remit of the board of the applicant firm. Generally speaking, it is expected that key/strategic decisions relating to the applicant firm should be considered by the board, including, but not limited to:

- creation/termination of new investment funds (including new sub-funds and classes of shares);
 - changes in investment objectives, policies and restrictions;
 - temporary suspension in the calculation of net asset value;
 - approval of dividends, fees and expenses of the applicant firm;
 - approval of financial statements of the applicant firm; and
 - any other decisions of a strategic nature.
- ii. The frequency of board meetings and the identity of parties required to attend such meetings. As a general rule, the board should meet **at least quarterly** and it would be expected that **at least** these four meetings be held in the State. Additional board meetings **may** be held outside the State if circumstances justify.
- (g) Regulation 98(3) of the Central Bank UCITS Regulations requires *inter alia* that where a UCITS management company delegates activities the business plan should formally adopt a statement of responsibility in relation to the management functions and the procedures which will apply in each case. A standard statement of responsibility is attached in Annex 1.
- (h) Information provided by the applicant should be sufficient to show that the "mind and management" of the UCITS management company takes place in Ireland where the management functions can be subject to supervision by the Central Bank.
- (i) An applicant who proposes to engage in individual portfolio management services should also provide the information included in Annex 2.

Information to be incorporated in a detailed business plan – Provision of information on an on-going basis

28. Regulation 18(2) of the UCITS Regulations requires *inter alia* that the Central Bank must be satisfied that the applicant UCITS management company will have and will follow established procedures. Applicant UCITS management companies should provide, where relevant:

- proposed staffing numbers at authorisation stage and projected staff numbers for first three years of operation;
- details of systems being utilised by the firm;
- operating procedures appropriate to the activities being performed including internal controls, business continuity plans, staff training and recruitment procedures;
- compliance procedures including those related to anti-money laundering.

Information to be incorporated in a detailed business plan – Reports

29. Regulation 98(4) of the Central Bank UCITS Regulations requires that where a UCITS management company delegates activities, the business plan should include procedures pursuant to which designated persons will receive and review reports specific to the managerial functions. The following provides additional guidance regarding the Central Bank's requirements in relation to the reports to be received in the context of each function and the required action in each case.

- (a) ***Types of reports received*** - The information contained in each report should be comprehensive to allow for effective monitoring.
- (b) ***Frequency of the reports*** - Typically reports should be received at least monthly but may be more frequently in some cases (depending on dealing frequency, for example).

(c) **Action carried out** - In the case of each managerial function, the business plan should provide examples of the circumstances where action by the designated person would be required following receipt of the report, for example, a breach by the applicant firm of its capital requirement, investment restrictions or reporting requirements.

Exceptional Reporting – The business plan should also provide for the following:

- delegates are required to submit exceptional reports to the designated person in relation to the activities of the UCITS management company in accordance with thresholds / trigger events which the board will from time to time determine, details of which are provided to the Central Bank;
- the business plan should set out details of thresholds/trigger events and procedures which should be adopted on receipt of exceptional reports;
- reports should be maintained where they can be subject to inspection by the Central Bank.

Information to be incorporated in a detailed business plan – Organisational requirements

30. Paragraph 1(d) of Schedule 4 of the UCITS Regulations requires effective internal reporting and communication of information. The business plan should at a minimum include a description of the applicant UCITS management company's internal reporting procedures. Where functions are delegated, the business plan should provide that the board will consider the internal processes of delegates and be satisfied with the procedures in place.

31. Paragraph 1(e) of Schedule 4 of the UCITS Regulations requires maintenance of adequate and orderly records. The business plan should include detail of the specific records which will be maintained and where they will be maintained.

32. Paragraph 3 of Schedule 4 of the UCITS Regulations requires the establishment, implementation and maintenance of adequate systems and procedures. The business plan should set out how these systems and procedures will be established and applied and who has responsibility in this regard. Where functions are delegated the systems and procedures include those of the delegate. The business plan should provide that the board will review and be satisfied with the systems and procedures in place.

33. Paragraph 4 of Schedule 4 of the UCITS Regulations requires the establishment, implementation and maintenance of an adequate business continuity policy. The business plan should set out the procedures which apply in this regard. Where functions are delegated the agreement entered into with the delegate should include requirements in relation to implementing and maintaining an adequate business continuity policy including:

- provision for reporting by delegates on their business continuity policy including an annual presentation from delegates on business continuity procedures;
- a requirement to maintain a log of business continuity events; and
- a requirement to report material business continuity events to the UCITS management company as and when they arise.

Information to be incorporated in a detailed business plan – Resources

34. Paragraph 31 of Schedule 5 of the UCITS Regulations requires a UCITS management company to retain the necessary resources and expertise to effectively monitor the activities of delegates. The business plan should require service level agreements, particularly in the case of delegation of functions relating to administration and investment management. The investment management service level agreement should document and specify, at least, the information which the UCITS management company will receive to assist it in fulfilling its responsibility for the implementation of the general investment policy. It should also provide for:

- KPI (Key Performance Indicator) reporting;
- detailed annual review of each delegate;
- reporting of material issues with subsequent review to ensure controls in place prevent reoccurrence; and
- requirements to attend board meetings of the UCITS management company where material issues arise.

Information to be incorporated in a detailed business plan – Accounting procedures

35. Paragraph 38 of Schedule 5 to the UCITS Regulations requires a UCITS management company to establish appropriate procedures to ensure the proper and accurate valuation of the assets and liabilities of a UCITS. Paragraph 3 of Schedule 5 of the UCITS Regulations requires a UCITS management company to ensure that fair, correct and transparent pricing models and valuations systems are used for investment fund under management. Valuation procedures should, in particular, address issues relating to the valuation of instruments valued using amortised cost, OTC derivatives and unlisted securities. Valuation procedures should be reviewed before a UCITS management company takes on the management of new investment fund or new sub-funds of umbrella funds to ensure it complies with the regulatory requirements.

Information to be incorporated in a detailed business plan – Conflicts of interest

36. Paragraphs 65 to 73 of Schedule 5 of the UCITS Regulations set down requirements in relation to conflicts of interest. A conflicts of interest policy which provides for these requirements should be included in the business plan, including the criteria for identifying the types of conflicts of interest which may arise.

Information to be incorporated in a detailed business plan – Strategies for the exercise of voting rights

37. The business plan should include the policy in relation to voting rights. The policy should indicate if voting rights will be exercised or not, or provide for the circumstances where a determination will be made to exercise voting rights. Voting policies devised by a UCITS management company should be adopted for the exclusive benefit of the CIS under management.

Information to be incorporated in a detailed business plan – Ability to supervise firm

38. The following information should be provided:

- (a) a complete group structure showing the name of each undertaking within the group, the country in which each such undertaking is incorporated and the country in which its head office is located. (All associated and related undertakings should be identified);
- (b) a brief description of the activities of all undertakings in the group;
- (c) details of the extent of any proposed interaction between group companies and the applicant UCITS management company; and
- (d) details of the regulatory status, if any, of undertakings within the group. In this context note that Regulation 18(8) of the UCITS Regulations requires that the Central Bank shall consult the competent authorities of other Member States in certain cases.

39. Where an applicant UCITS management company is part of a large international group, the information required above can be limited to direct, significant indirect and ultimate parents.

Information to be incorporated in a detailed business plan – Other

40. Having examined the material provided, any additional information required to enable the Central Bank to make a decision under this sub-heading will be notified to the applicant UCITS management company. In general the business plan should be sufficiently detailed to make it clear that the applicant UCITS management company has sufficient resources to effectively conduct its business within the requirements of the supervisory regime. Details of any situations or events of which the applicant UCITS management company is aware which impact, or may potentially impact on the applicant UCITS management company in any way should be included in the application.

Submission of parent company's accounts

41. The Central Bank may request that a UCITS management company submits the annual audited accounts of the direct parents of the UCITS management company together with the accounts of any company within the group specified by the Central Bank.

Capital requirement

42. The capital requirement of a UCITS management company is set out in Regulation 17 of the UCITS Regulations. However, the Central Bank reserves the right to increase this amount should it be deemed not to reasonably reflect the current position of the UCITS management company.

Investment companies that have not designated a UCITS management company ("self-managed investment company")

43. Regulation 42(4)(a)(i) of the UCITS Regulations requires a self-managed investment company to have initial capital of €300,000. In the case of newly established investment companies, the board of directors of the investment

company should confirm compliance with this requirement and provide an original bank statement to the Central Bank as evidence of such compliance.

44. The initial capital requirement may be provided to an investment company by the promoter/investment manager and may be withdrawn upon receipt of subscriptions into the company to the value of €300,000 provided that the company maintains a minimum of €300,000.
45. With regard to paragraph 16 above, a director of the promoter company may endorse the IQ of a proposed director of the investment company.

Relationship with the Central Bank

46. A UCITS management company should be open and co-operative in its dealings with the Central Bank and with all other relevant supervisory authorities.
47. A UCITS management company should participate in such meetings as the Central Bank considers necessary to review its operations and its business developments. The UCITS management company should, for the purposes of such meetings supply any additional material as may be specified by the Central Bank, including internal auditors' reports, operating procedures and management letters issued by the UCITS management company's auditors and/or by the auditors of CIS under management. In addition, the Central Bank may conduct inspections of the operations of a UCITS management company if these are deemed necessary or appropriate.
48. A UCITS management company should respond to correspondence and to any requests for information from the Central Bank in a timely and thorough manner and within any period of time that may be specified by the Central Bank.

49. The Central Bank may request information on investment funds not authorised by the Central Bank in its role as supervisor of Irish service providers. Such requests do not imply any regulatory or supervisory role for the Central Bank in respect of such investment funds.

UCITS management company passport - General

50. A UCITS management company authorised by the Central Bank may carry on activities for which it has been authorised under the UCITS Regulations in another Member State either by the establishment of a branch or under the freedom to provide services. This is commonly known as the ‘UCITS management company passport’. Regulations 27 and 28 of the UCITS Regulations set out the procedures which a UCITS management company authorised by the Central Bank should follow if it wishes to avail of the UCITS management company passport. The purpose of this part of the guidance is to provide guidance to assist these UCITS management companies.

51. UCITS management companies authorised in other Member States which wish to carry on within the State activities for which they have been authorised should refer to Regulations 26, 31 and 32 of the UCITS Regulations.

52. Prior to transmitting the UCITS management company passport proposal, the Central Bank intends to engage with the competent authority in the UCITS management company’s proposed host Member State. The purpose of this engagement is to identify whether there are any significant local requirements which:

- are imposed on UCITS established in that jurisdiction;
- the UCITS management company would be required to discharge; and
- would impact on the complexity of providing services in that specific jurisdiction.

UCITS management company passport - Managing non-Irish UCITS

53. Generally, the Central Bank would expect a greater level of resources where a UCITS management company proposes to act as manager to non-Irish UCITS given the additional scale and more complex nature of the business involved. The Central Bank will review each UCITS management company passport proposal on a case-by-case basis to determine whether the UCITS management company is sufficiently resourced.

Corporate governance issues

54. A UCITS management company managing non-Irish UCITS should have sufficient knowledge of the local regulatory regime in Member States into which it passports. For example, the UCITS management company would need to know what types of breaches need to be reported to the UCITS competent authority and the timeframe for this reporting. The UCITS management company should also have some appreciation of the marketplace and any particular issues of concern or topical issues in the UCITS home Member State

55. Regulation 108(2)(b) of the Central Bank UCITS Regulations requires a UCITS management company to describe in its programme of operations how it will monitor compliance with regulatory requirements that are applicable in the home state of the relevant UCITS on a day-to-day basis. This may involve creating an additional managerial function. Alternatively, this could fall within the remit of one of the existing managerial functions (e.g. monitoring compliance) provided the incumbent member of staff/designated person has or can quickly develop the requisite expertise.

56. The UCITS management company may need to have representatives available to travel to the UCITS home Member State to attend and report at board meetings of the UCITS where the UCITS is an investment company. This will increase the number of meetings which UCITS management company representatives should attend – they will attend the quarterly board meetings of

the UCITS management company itself and the board meetings of each of the UCITS under management. The UCITS management company may also need to have representatives available to travel to deal with service provider issues as and when they arise.

57. Increasing the number of UCITS under management adds to the scale of UCITS management company supervisory work.

58. Regulation 108(2)(d) of the Central Bank UCITS Regulations requires a UCITS management company to include in its programme of operations an analysis of the impact that managing a UCITS that is authorised in another Member State is likely to have on its minimum capital requirement. This will assist the Central Bank in determining whether it has reason to doubt the financial situation of the UCITS management company in accordance with Regulation 27(2)(a) of the UCITS Regulations.

Administrator issues

59. The administrator will have staff who work on the UCITS on a day-to-day basis and who may have a more intimate knowledge of the day-to-day operation of the UCITS than the non-executive directors of a UCITS management company. Where an Irish administrator is engaged, the Central Bank can have direct access to these staff by virtue of its role as regulator of that entity. However where a non-Irish administrator is appointed, these staff may not be directly available to the Central Bank. Accordingly, Regulation 109(3) of the Central Bank UCITS Regulations requires that the programme of operations addresses how the UCITS management company will ensure that its staff/designated persons with the requisite detailed knowledge of the day-to-day operation of the UCITS will be available to the Central Bank.

UCITS management company passport - Notifications

60. A key component of the notification made by a UCITS management company pursuant to Regulation 27(1) or 28(1) of the UCITS Regulations will be the programme of operations.
61. It is not envisaged that the programme of operations will be the existing business plan of the UCITS management company. While relevant extracts from the business plan may be appropriate, the Central Bank expects that the programme of operations will be a concise yet comprehensive outline of the UCITS management company's proposal to passport, setting out all the required elements under the UCITS Regulations and including details of the types of funds to be managed, resources to be applied, delegation arrangements to be put in place and details of how the UCITS management company proposes to monitor such delegates, including access to records of the delegates as appropriate.
62. The Central Bank considers that a completed notification has been received when all of the information and documentation required by the UCITS Regulations has been received and all of the queries raised by the Central Bank have been adequately addressed.

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Annex 1

Statement of Responsibility

The Statement of Responsibility should take the form of a formal letter, addressed to the Central Bank, on the company's headed paper, signed by the Chairman of the company and incorporating the following wording.

As at³ the Board of Directors of the Company hereby accept collective responsibility for managing the affairs of the Company in accordance with the Company's Memorandum and Articles of Association and the European Communities (UCITS) Regulations 2011, ("the UCITS Regulations").

In accordance with Regulation 98 of the Central Bank UCITS Regulations, the following "designated persons" of the Company accept responsibility for the day-to-day monitoring and control of the management functions (as detailed below) and associated procedures.

***Management Functions
person***

Director/Designated

- *Regulatory Compliance:*
- *Fund Risk Management:*
- *Operational Risk Management:*
- *Investment Management:*
- *Capital and Financial Management:*
- *Distribution:*

It is confirmed that the Company will notify the Central Bank or seek its approval, as appropriate, in respect of any changes to this statement involving, inter alia, the appointment/resignation of Directors and/or reallocation of responsibility of the designated persons.

Yours faithfully

Chairman

For on and on behalf of

Company Name

³ Initially this date will refer to the date of authorisation of the Company by the Central Bank and thereafter to the date of any changes in the composition of the Board and/or to the allocation of responsibilities of the designated persons.

Annex 2

Additional information required in relation to UCITS management companies that provide individual portfolio management services

UCITS management companies who propose to provide individual portfolio management services should supply the Central Bank with the following additional information.

1. An additional section to the business plan referred to in paragraph 1(c) of this guidance to include the following:
 - a. a full description of the services to be provided;
 - b. details of the resources which the UCITS management company proposes to put in place to support this business, namely:
 - i. staff;
 - ii. systems; and
 - iii. procedures.

The information provided should outline the organisational structure of the UCITS management company, specifying the reporting lines and functions. It should identify the officers responsible for each of the compliance, financial control, internal audit, risk management and money laundering reporting functions, where relevant, and provide a detailed description of their respective roles within the company. Brief details of the procedures to be adopted by the UCITS management company are required, together with confirmation that the full procedures are available to the Central Bank upon request;

- c. transaction order flows for the individual portfolio management service showing the relationship between the UCITS management company, clients, counterparties, clearing agents, custodians, brokers and relevant markets, as appropriate;

- d. any client agreement forms or other client documentation, including risk disclosure statements, discretionary agreements, contract notes and terms of business;
- e. financial projections for the first three years in accordance with paragraph 10 of this guidance;
- f. details of how the UCITS management company proposes to identify, monitor and manage risks relating to individual portfolio management activities;
- g. procedures in relation to the holding of client assets. The procedures should be accompanied by Appendix 3 to the Central Bank's application form for MiFID firms, duly completed.

T +353 1 224 6000 F +353 1 671 6561 www.centralbank.ie FASDpolicy@centralbank.ie



Banc Ceannais na hÉireann
Central Bank of Ireland

Eurosystem

**Bosca OP 559, Sráid an Dáma, Baile Átha Cliath 2, Éire
PO. Box No 559, Dame Street, Dublin 2, Ireland**