Investment by UCITS in other collective investment schemes (“CIS”) is a matter that has recently received attention both domestically and from Europe.

On 5 July 2018, the Central Bank of Ireland (the “Central Bank”) issued a new version of its UCITS Q&A document with a revised Q&A ID1002 on Irish UCITS investment in non-UCITS funds.

Irish UCITS investment in CIS is governed by requirements set out in the Irish UCITS Regulations and the Central Bank UCITS Regulations. The requirements are supported by applicable Q&A issued by the Central Bank. The update to the requirements for UCITS investing in non-UCITS funds was issued via the revised Central Bank Q&A which clarified that “where a UCITS invests in a non-UCITS fund, the constitutional document of the non-UCITS must include a prohibition on investing more than 10% in other investment funds; and that the non-UCITS must be subject to requirements in its jurisdiction of domicile which are equivalent to certain UCITS investor protections. If this is not the case the non-UCITS fund must have requirements of the same effect in its constitutional document or offering document.” “A statement of the intended investment approach does not constitute a rule for this purpose.”

The Central Bank’s UCITS eligible investment rules did not previously explicitly require a non-UCITS fund, which was not subject to a regime providing UCITS equivalent investor protections, to include UCITS equivalent requirements in its constitutional document or offering document. This update applies to both current and future investments by UCITS in non-UCITS funds. Accordingly, Irish UCITS funds are having to review their current investment(s) in non-UCITS funds and take any necessary action to ensure their compliance with these requirements. The Central Bank has confirmed that UCITS should be in compliance with the requirements as soon as possible, taking into account the best interests of the investors, and, in any event, no later than 5 October 2018.

This move by the Central Bank follows a similar recent policy update implemented by the Luxembourg regulator, the Commission de Surveillance du Secteur Financier (CSSF), and as such could be seen as part of the broader European Securities and Markets Authority’s (“ESMA”) push for supervisory convergence of regulators’ practices in the application of EU legislation, as detailed in ESMA’s work plan for this year.

Following this, on 23 July 2018, ESMA updated its UCITS Q&A document to include a number of new Q&As including one on UCITS investing in other UCITS with different investment policies. This Q&A clarified that a UCITS is permitted to invest in UCITS and other CIS with different investment strategies and restrictions to the UCITS but that the possibility of this should be disclosed in the prospectus of the UCITS. The Q&A further provides that a UCITS whose constitutional or offering document “expressly rule out certain types of assets or derivative use without any reservation”, investment in CIS should not result in a circumvention of the UCITS investment strategies or restrictions set out in its documentation and UCITS should carry out proportionate due diligence to ensure this is the case.
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