



ADVISORY
Industry Information

Central Bank thematic review findings trigger requirement for UCITS self-review of performance fee structures

September 2018

Yesterday, 4 September 2018, the Central Bank of Ireland (the "Central Bank") published a [letter](#) to industry setting out its findings of a thematic review undertaken on the payment of performance fees by UCITS.

The Central Bank's decision to undertake a thematic review of UCITS' payment of performance fees can be seen as in line with the focus, both internationally and at a European level, on the broader area of fees and expenses applied to investment funds. In August 2016, the International Organisation of Securities Commission published its 'Good Practice for Fees and Expenses of Collective Investment Schemes' which sought to identify common international examples of good practice to be applied to the charging of fees and expenses. In October 2017, the European Securities and Markets Authority ("ESMA"), along with the two other European Supervisory Authorities, was mandated by the European Commission to issue recurring reports on the cost and past performance of products, including UCITS, in response to which ESMA is currently analysing the impact of costs on returns to investors. In addition to this work, ESMA also indicated its intention, as part of its 2018 work programme, to look closely at the performance fee structures operated by fund management companies with a view to eliminating diverging practices across Member States and promoting greater supervisory convergence in this area.

In yesterday's industry letter, the Central Bank notes that, having reviewed approximately 105 UCITS which accrued performance fees in 2017, it "*identified a number of good practices across the majority of UCITS*", however, approximately 10% of those reviewed exhibited "*non-compliance*" with its 'UCITS Performance Fees Guidance' (the "Guidance"), which Guidance is soon to be placed on a legislative footing as part of the Central Bank's recently closed UCITS Consultation (CP119). In response to the non-compliance identified, the Central Bank is directing all UCITS management companies, which manage UCITS that charge performance fees, to now carry out a review of their existing methodologies in order to be satisfied that performance fees being charged comply with the Guidance.

The Central Bank has set a deadline of 30 November 2018 for completion of this review, by which date UCITS management companies are required to provide written confirmation to the Central Bank of whether any of the following have been identified: (i) required changes to existing methodologies; (ii) required changes to prospectus disclosure; (iii) instances of improper payment of performance fees; and (iv) confirm actions are being taken to remedy matters identified under (i) – (iii) including any adverse impact on UCITS and their investors.

In addition to reviewing compliance with the Guidance, the Central Bank stipulates that UCITS management companies must be "*cognisant of, and take appropriate action to address*" any items of non-compliance as highlighted by the thematic review and set out in yesterday's letter. Such items include; the use of benchmarks which are not relevant to the policy of the UCITS, fee payments based on the gross as opposed to net asset value of the UCITS, failure to use the initial offer price as the starting price for calculations by UCITS using a high water mark approach, payments of fees on uplift resulting from market movements rather than performance and limited claw-back of underperformance. UCITS management companies must also review the practices of appointed administrators and depositaries in respect of the payment of performance fees by UCITS.



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