

## Central Bank of Ireland Issues Revised Guidance on the Use of Financial Indices by UCITS

October 2018

The Central Bank of Ireland (“**Central Bank**”) has introduced a new self-certification regime for UCITS using financial indices and will generally no longer require the prior review and approval of such financial indices. Submissions to the Central Bank will now only be required in limited circumstances.

The Central Bank has issued revised guidance (“**Guidance**”) on the use of financial indices by UCITS.

The purpose of the Guidance is to clarify Central Bank requirements where a UCITS intends to use a financial index for investment or efficient portfolio management purposes. The latest revision to the Guidance introduces a new self-certification regime for UCITS management companies or self-managed investment companies (“**SMICs**”) (referred to in the Guidance as the “Responsible Person”) seeking to use financial indices and outlines the process relating to that certification.

### No Prior Review

Prior to revising the Guidance, the Central Bank required UCITS to submit a financial index to the Central Bank for approval where a financial index was comprised of either: (a) eligible assets, but it would not be possible for the UCITS to invest directly in such underlying assets without breaching the UCITS risk diversification rules; or (b) ineligible assets.

The Central Bank has now confirmed that such financial indices will no longer require prior review by the Central Bank, except as detailed below, where they contain a component which represents more than 20% of the index.

### Assessment Criteria

Under the revised Guidance, the Responsible Person must assess each financial index that the UCITS intends to use in order to determine whether the index meets the regulatory requirements for financial indices. The Guidance sets out the assessment criteria that the Responsible Person must apply, so that the financial index must:

- be sufficiently diversified;
- represent an adequate benchmark for the market to which it refers;
- be published in an appropriate manner; and
- be independently managed from the management of the UCITS.

### Investing up to 35% in a Single Issuer

Where an index-tracking UCITS wants the ability to invest more than 20% and up to 35% of net assets in a single issuer, as permitted by the UCITS Regulations, the Responsible Person must, at the time the UCITS seeks authorisation, make a submission to the Central Bank confirming that the UCITS intends to avail of this flexibility and why this is justified by exceptional market conditions.

## Self-certification

Under the new self-certification regime, a director of the Responsible Person must now certify in writing to the Central Bank that the relevant index meets the regulatory requirements when seeking authorisation of the relevant UCITS (or approval of an additional sub-fund in the case of an umbrella UCITS). The form of the certification is set out in the Guidance.

Where an existing UCITS proposes to use a new index, the signed certification should be submitted to by way of a post authorisation submission prior to the UCITS gaining exposure to the relevant index.

The Guidance clarifies that, where a UCITS is using a financial index solely as a performance benchmark, no certification is required to be provided to the Central Bank.

## Quality Assessments

The Guidance states that the Central Bank will periodically conduct quality assessments of randomly selected financial indices used by UCITS to ensure that they comply with relevant regulatory requirements and guidance. Where the Central Bank identifies a financial index for assessment, it will request a written submission, with supporting documentation, from the Responsible Person demonstrating that the financial index meets the relevant regulatory requirements and Guidance. The Central Bank states that this information must be provided immediately upon request. The Guidance sets out the minimum level of information that should be provided in the submission.

## Action Required

Where a UCITS is using or intends to use a financial index, it will need to:

- have procedures in place to ensure that the required certification can be provided to the Central Bank;
- assess the proposed financial index to determine whether it complies with the regulatory requirements; and
- retain sufficient supporting documentation demonstrating that the financial index meets the relevant regulatory requirements and the Guidance and which can be provided to the Central Bank immediately upon request.

A copy of the Guidance can be found [here](#).

Please get in touch with your usual Asset Management and Investment Funds Department contact or any of the contacts listed in this publication should you require further information in relation to the material referred to in this update.

*Full details of the Asset Management and Investment Funds Group, together with further updates, articles and briefing notes written by members of the Asset Management and Investment Funds team can be accessed at [www.matheson.com](http://www.matheson.com).*

**Tara Doyle**  
PARTNER  
D: +353 1 232 2221  
E: tara.doyle@matheson.com

**Michael Jackson**  
MANAGING PARTNER  
D: +353 1 232 2000  
E: michael.jackson@matheson.com

**Dualta Counihan**  
PARTNER  
D: +353 1 232 2451  
E: dualta.counihan@matheson.com

**Anne-Marie Bohan**  
PARTNER  
D: +353 1 232 2212  
E: anne-marie.bohan@matheson.com

**Shay Lydon**  
PARTNER  
D: +353 1 232 2735  
E: shay.lydon@matheson.com

**Liam Collins**  
PARTNER  
D: +353 1 232 2195  
E: liam.collins@matheson.com

**Philip Lovegrove**  
PARTNER  
D: +353 1 232 2538  
E: philip.lovegrove@matheson.com

**Elizabeth Grace**  
PARTNER  
D: +353 1 232 2104  
E: elizabeth.grace@matheson.com

**Oisín McClenaghan**  
PARTNER  
D: +353 1 232 2227  
E: oisín.mcclenaghan@matheson.com

**Michelle Ridge**  
PARTNER  
D: +353 1 232 2758  
E: michelle.ridge@matheson.com

**Barry O'Connor**  
PARTNER  
D: +353 1 232 2488  
E: barry.oconnor@matheson.com

**Donal O'Byrne**  
PARTNER  
D: +353 1 232 2057  
E: donal.o'byrne@matheson.com

**Brónagh Maher**  
PROFESSIONAL SUPPORT LAWYER  
D: +353 1 232 3757  
E: bronagh.maher@matheson.com

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