

CP77 Consultation on UCITS Rulebook

Wednesday 2nd April 2014

Kevin O'Doherty
Compliance Ireland Training
13 Adelaide Road
Dublin 2
Ph +353 1 425 5962

www.complianceireland.com, www.privacy.ie, www.antimoneylaundering.ie

About *Compliance Ireland*



Kevin O'Doherty is a Fellow of the Institute of Chartered Accountants in Ireland with 23 years experience working in mutual funds and related financial services. In addition to 8 years experience as board director of an Irish funds custodian, Kevin has served as MLRO for many Irish authorised funds and managers.

Kevin is a Chartered Director and serves as a non-executive director for a number of firms.

Email: kevin@complianceireland.com

Background - Context



The way it used to be:

- EU Directive Issued
- Statutory Instrument transposes into Irish law
- Central Bank (“CBI”) issues Notices to regulate
- CBI issues Guidance Notes ‘explain and clarify’ in esoteric areas

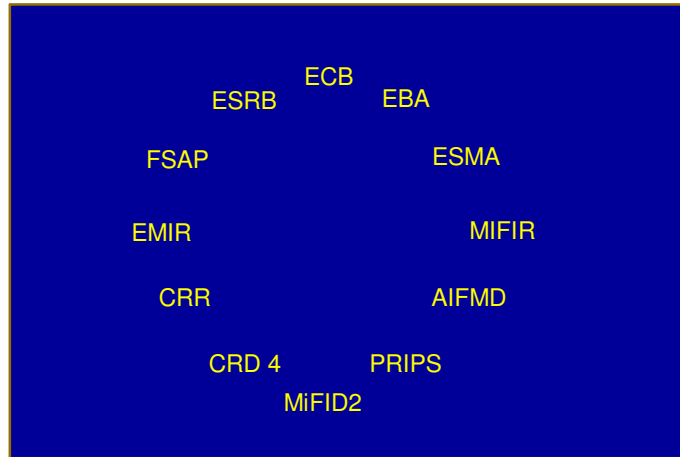
Background - Context



The way it is now:

- Level 1 Framework Directive (& increasingly a Regulation as well)
- Level 2 Implementing Directive or Regulation
- Level 2.5 Implementing Technical Standard or Regulatory Technical Standard
- Level 3 Guidelines or binding Guidelines from ESMA

The European Challenge



CP77



- *“The Central Bank proposes publishing a UCITS Rulebook which will consolidate into one document all of the conditions which the Central Bank imposes on UCITS, their management companies and depositaries.”*
- *“In addition, the question arises as to whether any aspects of the current regulatory regime which are within the discretion of the Central Bank are no longer necessary or appropriate.”*

CP77



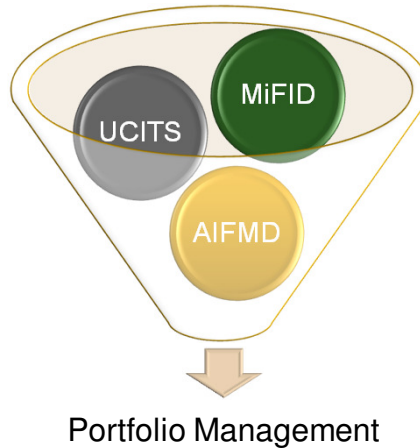
- The format of the UCITS Rulebook takes its lead from the AIF Rulebook
- Proposed UCITS Rulebook broken into chapters:
 - Chapter 1 – Product Requirements
 - Chapter 2 – Management Company Requirements
 - Chapter 3 – Depository Requirements

Context



- Financial regulation generally regulates the producer, not the financial product
- Funds have always been an exception
- There are areas of overlap
 - Collective portfolio management
- There are gaps
 - Exempt Unit Trusts
 - 1907 Limited partnerships
 - Section 110 companies

Context



Objectives



What is the CBI seeking to achieve?

- *“Eliminate duplication and texts whose standing is unclear”*
 - What is guidance for industry and what is a regulatory requirement
- Eliminate conditions which *“are no longer necessary or appropriate”*
 - Elimination of promoter regime
- Conformity with AIF Rulebook

Questions for consideration



- Elimination of promoter regime
 - Focus on ManCo and board
 - Aligns with AIFMD approach
- Withdrawal of permitted markets review
 - Withdrawal of GN1/96
 - Conformity with Level 2 Directive 2007/16/EC
- Increased management accounts reporting
 - Report H2 as well as H1 management accounts

Layout: Chp.1 - Product



- Introduction
- Part I – General Rules
- 1. UCITS restrictions
 - vii. Share classes
 - viii. Constitutional documents
 - ix. Dealing
 - x. Valuation
 - xiii. Directed brokerage services and similar arrangements

Layout: Chp.1 - Product



- General Restrictions
- i.1 - Investment Management Agreement to conform with delegation requirements
- ii.5 – Sufficiently Liquid securities holdings to meet foreseeable redemption requests
- ii.8 – Consideration of liquidity when purchasing money market instruments
- ii.14 – OTC FDI restrictions
- ii.15-26 – Index Investment Restrictions

Layout: Chp.1 - Product



- General Restrictions
- iii.7 - When calculating issuer concentration, must establish whether exposure is to an OTC counterparty, a broker or a clearing house.
- vii – share classes
- ix – dealing – subscription and redemption price caps

Layout: Chp.1 - Product



- General Restrictions
- xii – negotiated commission rebates must be paid back into the UCITS (over-ride commission)
- Appendix 1 – Derivative conversion methodologies
- Appendix 2 – Netting and Hedging (FDI)
- Appendix 3 – VaR calculation of Global Exposure

Layout: Chp.1 - Product



- Part I – General Rules
- 2. Supervisory requirements
 - i. General conditions
 - ii. Replacement of depositary
 - iii. Replacement of management company, general partner or third party
 - iv. Monthly and quarterly returns

Layout: Chp.1 - Product



- Part I – General Rules
- 3. Prospectus and Key information document requirements
- 4. General operational requirements
 - Regulated markets and directed brokerage
- 5. Annual and half-yearly reports

Layout: Chp.1 - Product



- Part II – Specific Fund Types
 - 1. ETFs
 - 2. MMFs
 - 3. Guaranteed UCITS
 - 4. Distribution out of and charging fees and expenses to capital
- Part III – Cross-border Notification

Layout: Chp.2 - ManCo



- Introduction
- Part I – General Rules
 - i. Operating conditions
 - ii. Capital requirements
 - iii. Organisation requirements
 - iv. Code of conduct in relation to collective portfolio management
 - v. Directors
 - vi. Recordkeeping requirements

Layout: Chp.2 - ManCo



- Part I – General Rules
 - vii. Resources
 - viii. Relationship with the Central Bank
 - ix. Financial control and management information
 - x. SMICs
 - xi. Management company passport
- Annex I – Minimum Capital

Layout: Chp.2 - ManCo



- Part I – General Rules
- iii.1 – Organisational Requirements:
 - Decision making
 - Compliance monitoring
 - Risk management
 - Monitoring of investment policy, investment strategies and performance
 - Financial control

Layout: Chp.2 - ManCo



- Part I – General Rules
- iii.1 – Organisational Requirements:
 - Capital Monitoring
 - Internal Audit
 - Delegate supervision
 - Complaints handling
 - Accounting policies and procedures
- These are the activities monitored by Designated Persons

Layout: Chp.2 - ManCo



- Part I – General Rules
- iii.1 – Organisational Requirements:
 - Capital Monitoring
 - Internal Audit
 - Delegate supervision
 - Complaints handling
 - Accounting policies and procedures
- These are the activities monitored by Designated Persons

Layout: Chp.3 - Depositary



- Introduction
- i. Eligibility
- ii. Conditions applicable to UCITS Regulation 35(2) (c) depositaries (Guaranteed by a bank and foreign equivalent protection entities)
- iii. Depositary tasks
- iv. Operating conditions
- v. Relationship with the Central Bank

Closing remarks



Any questions or comments?

Compliance Ireland

13 Adelaide Road

Dublin 2

Ph 01 425 5962

email@complianceireland.com

www.complianceireland.com

www.antimoneylaundering.ie

www.privacy.ie

Background - Context



Where the rules are increasingly tightly defined by Europe:

- What is the scope for national rule-making or adjudication by the CBI?
- How does the CBI ensure correct implementation of European rules?
- What will the statutory standing of the UCITS Rulebook be?