

Actions for UCITS following Central Bank's review of UCITS performance fees - Deadline 30 November 2018

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ASSET MANAGEMENT & INVESTMENT FUNDS

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On 4 September 2018, the Central Bank of Ireland (the "Central Bank") published the **findings** of a thematic review it has undertaken of UCITS performance fees. The review was carried out on a sample set of UCITS funds to determine whether the methods used to calculate and pay performance fees in UCITS ensure that investors' interests are safeguarded at all times. The Central Bank reviewed the methodologies and parameters selected and applied in the calculation of UCITS performance fees, and assessed whether these were in line with the Central Bank's **UCITS Performance Fees Guidance** (the "Guidance").

Following the review, a number of good practices were identified. However, the Central Bank has highlighted identified instances of non-compliance with its Guidance. These include:

- Instances where performance fees were not calculated in accordance with the Guidance.
- Inadequate disclosure informing investors that where performance fees are paid on the basis of the "high water mark" approach, fees may be accrued as a result of market movements rather than due to the performance of the investment manager.
- Where performance fees are based on the outperformance of an index, it was unclear which version of the index was being used in some cases.
- Poor practices were observed at depositaries in the verification of the calculation of performance fees.
- Poor practices were observed at fund administrators in certain areas of the calculation of performance fees.

The Central Bank has expressed concern that the Guidance is being inconsistently applied and its findings also include actions to address the issues identified in its review. Although the Central Bank will be engaging directly with those UCITS (together with their depositaries and administrators) where specific issues were identified, all UCITS management companies (including self-managed investment companies) whose UCITS charge performance fees must:

- Review their existing performance fee methodologies and be satisfied that these are in compliance with the Guidance; and
- Provide written confirmation by **30 November 2018** to the Central Bank that this review has been conducted.

The written confirmation referred to above must be provided by the Chairman of the board of the management company (or self-managed investment company) to the Central Bank via email to: themedinspections@centralbank.ie. This confirmation must specifically address whether the UCITS:

- Identified any necessary changes to the existing performance fee methodologies;
- Identified any required changes to prospectus disclosures;
- Identified any instances of improper payments of performance fees; and
- Has taken action to remedy the above.

If you would like to discuss the foregoing, or require any assistance in scoping or carrying out the review, please feel free to contact a member of the team.

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