

CP152: New Prudential Rules Proposed for UCITS ManCos and AIFMs with MiFID Permissions

On 1 December 2022, the Central Bank of Ireland ("Central Bank") published a consultation paper¹ ("CP152") on own funds requirements for UCITS management companies ("UCITS ManCos") and Alternative Investment Fund Managers ("AIFMs") authorised with a MiFID top-up to provide discretionary portfolio management services.

Background

Existing own funds requirements for UCITS ManCos and AIFMs are set out in Regulation 17 of the UCITS Regulations² and Regulation 10 of the AIFM Regulations³ respectively. Under these regulations the level of own funds required to be held is directly proportional to the value of the funds managed under the respective firms' collective portfolio management permission. These regulations do not take into account the value of funds in individual portfolios managed by these firms.

In order to address the risk to the firm and clients when providing these additional services, the Central Bank currently requires, as a

condition of authorisation, that such UCITS ManCos and AIFMs comply with the own funds requirements in Regulation 18(2) of the European Communities (Capital Adequacy of Investment Firms) Regulation 2006. Any additional capital required is included in the Internal Capital Adequacy Assessment Process ("ICAAP"), which must be updated at least annually.

Investment firms authorised under the MiFID Regulations⁴ are now subject to the own funds requirements under Regulation (EU) 2019/2033 on the Prudential Requirements for Investment Firms ("IFR").

In the Central Bank's view, this leaves an uneven playing field between MiFID investment firms, and UCITS ManCos and AIFMs, performing similar services.

Therefore, it proposes to introduce domestic requirements to prescribe the own funds requirements to apply to UCITS ManCos and AIFMs authorised with a MiFID top-up to provide discretionary portfolio management services.

Proposal

CP152 proposes applying own funds requirements to the discretionary management aspect of a UCITS ManCo / AIFM's business that are calculated in a similar manner to the own

¹ https://www.centralbank.ie/docs/default-source/publications/consultation-papers/cp152/cp152-own-funds-requirements-ucits-mancos-aifms-providing-discretionary-portfolio-management-services.pdf?sfvrsn=ebe29b1d_8

² S.I. No. 352/2011 - European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011

³ S.I. No. 257/2013 - European Union (Alternative Investment Fund Managers) Regulations 2013

⁴ S.I. No. 375/2017 - European Union (Markets in Financial Instruments) Regulations 2017

funds requirements for investment firms under IFR, i.e. by reference to Risk to Client K-Factors.

UCITS ManCos and AIFMs providing discretionary portfolio management services will be required to have minimum own funds equal to the higher of the:

- a) Total amount of initial capital and own funds which the UCITS ManCo or AIFM is required to hold under the UCITS Regulations or the AIFM Regulations, as applicable; or
- b) New Risk to Client K-Factor requirement.

The Risk to Client K-Factor is the sum of the following K-Factors adjusted by the relevant co-efficient:

- K-AUM ("Assets Under Management");
- K-CMH ("Client Money Held");
- K-ASA ("Assets Safeguarded and Administered"); and
- K-COH ("Client Orders Handled").⁵

CP152 contains guidance on how and when the relevant calculations should be made.

UCITS ManCos or AIFMs classified as a 'small and non-interconnected firm' will not be required to calculate the Risk to Client K-Factor when determining the own funds requirement.

Firms will have to put in place sound, effective and comprehensive arrangements, strategies and processes to assess and maintain an adequate level of internal capital on an ongoing basis and to submit an ICAAP questionnaire annually to the Central Bank.

CP152 proposes amending the Central Bank UCITS Regulations⁶ and the AIF Rulebook to formalise these requirements.

⁵ K-COH only applicable to AIFMs.

⁶ S.I. No. 230/2019 - Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2019

Implementation Timeframe

Responses to CP152 must be submitted by 23 February 2023.

It does not state when the Central Bank UCITS Regulations and AIF Rulebook will be amended.

It is proposed that UCITS ManCos and AIFMs will be permitted to limit the increase in their own funds requirement arising from the introduction of a K-Factor requirement to twice their fixed overheads requirement for the period up to the end of June 2026.

Further Information

Further information on our Irish Financial Services Regulatory Group and the services we provide is available on our website⁷ and in our brochure⁸.

For further details, please liaise with your usual Maples Group contact or any of the persons listed below:

Financial Services Regulatory

Stephen Carty

+353 1 619 2023

stephen.carty@maples.com

Lorna Smith

+353 1 619 2125

lorna.smith@maples.com

Philip Keegan

+353 1 619 2122

philip.keegan@maples.com

Alison Gibney

+353 1 619 2158

alison.gibney@maples.com

⁷ <https://maples.com/en/services/specialty-services/irish-financial-services-regulatory>

⁸ <https://maples.com/-/media/files/pdfs/articles-and-chapters/financial-services-regulatory-group---core-services.pdf>

Funds & Investment Management

Dublin

Adam Donoghue

+353 1 619 2041

adam.donoghue@maples.com

Eimear O'Dwyer

+353 1 619 2065

eimear.odwyer@maples.com

Caitriona Carty

+353 1 619 2157

caitriona.carty@maples.com

Ian Conlon

+353 1 619 2714

ian.conlon@maples.com

Ronan Cremin

+353 1 619 2756

ronan.cremin@maples.com

John Gallagher

+353 1 619 2073

john.gallagher@maples.com

Deirdre McIlvenna

+353 1 619 2064

deirdre.mcilvenna@maples.com

Aaron Mulcahy

+353 1 619 2104

aaron.mulcahy@maples.com

Niamh O'Shea

+353 1 619 2722

niamh.oshea@maples.com

Emma Conaty

+353 1 619 2708

emma.conaty@maples.com

London

Fearghal De Feu

+44 207 466 1714

fearghal.defeu@maples.com

Cayman Islands

Pádraig Brosnan

+1 345 814 5441

padraig.brosnan@maples.com

Hong Kong

Ann Ng

+852 3690 7475

ann.ng@maples.com

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