



STATUTORY INSTRUMENTS.

S.I. No. 565 of 2023

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013
(SECTION 48(1))(UNDERTAKINGS FOR COLLECTIVE INVESTMENT
IN TRANSFERABLE SECURITIES) (AMENDMENT) REGULATIONS
2023

CENTRAL BANK (SUPERVISION AND ENFORCEMENT) ACT 2013
(SECTION 48(1))(UNDERTAKINGS FOR COLLECTIVE INVESTMENT
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In exercise of the powers conferred on the Central Bank of Ireland (the "Bank") by section 48 of the Central Bank (Supervision and Enforcement) Act 2013 (No. 26 of 2013) (the "Act"), the Bank, having consulted with the Minister for Finance and the Minister for Enterprise, Trade and Employment in accordance with section 49(1) of the Act, hereby makes the following regulations:

1. (1) These Regulations may be cited as the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) (Amendment) Regulations 2023.

(2) These Regulations come into operation on 28 November 2023.

2. The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1))(Undertakings for Collective Investment in Transferable Securities) Regulations 2019 (S.I. No. 230 of 2019) are amended as follows:

(1) in Part 11, Chapter 1, by inserting the following Regulations after Regulation 100(2)(b)(ii):

"Additional capital requirements of management companies providing individual portfolio management services

100A. (1) In this Regulation –

"assets safeguarded and administered" or "ASA" means the value of assets that a management company safeguards and administers for clients, irrespective of whether assets appear on the management company's own balance sheet or are in third-party accounts;

"assets under management" or "AUM" means both the value of assets that a management company manages for its clients under discretionary portfolio management and the value of assets in relation to which such management company provides investment advice of an ongoing nature;

"client" means a natural or legal person, or any other undertaking (including a UCITS), to whom a management company provides individual portfolio management services;

"client money held" or "CMH" means the amount of client money that a management company holds, taking into account the legal arrangements in relation to asset segregation;

"management company" means a management company within the meaning given to that term in Regulation 2(1) and which is authorised to provide individual portfolio management services;

“own funds” means own funds as defined by the UCITS Regulations;
 “small and non-interconnected management company” has the meaning given to that term in Regulation 100A(3).

(2) A management company which is not a small and non-interconnected management company shall hold own funds which, subject to Regulation 20 of the UCITS Regulations, shall never be less than the higher of -

- (a) The total amount of initial capital and own funds which the management company is required to hold pursuant to the UCITS Regulations, or
 - (b) Own funds which amount to the Risk to Client K-factor requirement calculated in accordance with paragraph (4) of this Regulation.
- (3) (a) A management company shall be deemed to be a small and non-interconnected management company for the purposes of this Regulation where it meets all of the following conditions:
- (i) AUM measured in accordance with paragraph (5) is less than €1.2 billion;
 - (ii) ASA measured in accordance with paragraph (7) is zero;
 - (iii) CMH measured in accordance with paragraph (6) is zero;
 - (iv) the on - and off-balance-sheet total of the management company is less than €100 million;
 - (v) the total annual gross revenue from individual portfolio management services is less than €30 million, calculated as an average on the basis of the annual figures from the two-year period immediately preceding the given financial year.
- (b) By way of derogation from the provisions of paragraph (4), (5) and (7), for the purposes of subparagraph (a)(i) and (ii), end-of-day values shall apply.
- (c) For the purposes of subparagraph (a)(iii), and without prejudice to Regulation 23(1)(l) of the MiFID II Regulations and the first paragraph (Safeguarding client financial instruments and funds) and third paragraph (Depositing client funds) of Schedule 3 of those Regulations, intraday values shall apply, except where there has been an error in recordkeeping or in the reconciliation of accounts that incorrectly indicated that a management company breached the zero threshold referred to in subparagraph (a)(iii) and which is resolved before the end of the business day. The management

company shall notify the Bank without delay of the error, the reasons for its occurrence and its correction.

- (d) For the purposes of subparagraph (a)(iv) and (v), the levels at the end of the last financial year for which annual audited accounts have been finalised and approved by the management body shall apply.
- (e) A management company shall measure the value under subparagraph (a)(i) by using the method specified under paragraph (5), with the exception that the measurement shall be done for a continuous period of no less than 12 consecutive months, without the exclusion of the three most recent monthly values.
- (f) The conditions set out in subparagraph (a)(i), (iv) and (v) shall apply on a combined basis for all management companies that are group undertakings included in the same group. For the purpose of measuring the total annual gross revenue referred to in subparagraph (a)(v), those management companies may exclude any double counting that may arise in respect of gross revenues generated within the group of which they are group undertakings.
- (g) The conditions set out in subparagraph (a)(ii) and (iii) shall apply to each management company on an individual basis.
- (h) Where a management company no longer meets all the conditions set out in subparagraphs (a) to (e), it shall cease to be considered to be a small and non-interconnected management company, with immediate effect.
- (i) By way of derogation from subparagraph (h), where a management company no longer meets the conditions set out in subparagraph (a)(i), (iv) and (v) but continues to meet the conditions set out in subparagraph (a)(ii) and (iii), it shall cease to be considered to be a small and non-interconnected management company after a period of three months, calculated from the date on which the threshold was exceeded. The management company shall notify the Bank without undue delay of any breach of a threshold.
- (j) Where a management company which has not met all of the conditions set out in subparagraphs (a) to (e) subsequently meets them, it shall be considered to be a small and non-interconnected management company only after a period of six months from the date on which those conditions are met, provided that no breach of a threshold has occurred during that period and the management company has notified the Bank accordingly without delay.

- (4) (a) For the purposes of paragraph 2(b), a management company shall calculate its Risk to Client K-factor requirement by using the following formula:

$$\text{K-AUM} + \text{K-CMH} + \text{K-ASA}$$

where:

K-AUM is equal to AUM measured in accordance with paragraph (5), multiplied by the corresponding coefficient in the below table;

K-CMH is equal to CMH measured in accordance with paragraph (6), multiplied by the corresponding coefficient in the below table;

K-ASA is equal to ASA measured in accordance with paragraph (7), multiplied by the corresponding coefficient in the below table.

K-factors		Co-efficient
Assets under management	K-AUM	0.02%
Client money held	K-CMH (on segregated accounts)	0.4%
	K-CMH (on non-segregated accounts)	0.5%
Assets safeguarded and administered	K-ASA	0.04%

- (b) A management company shall only use information related to its individual portfolio management services in complying with the measurement of the K-factors referred to in subparagraph (a).
- (c) A management company shall monitor the value of its K-factors referred to in subparagraph (a) for any trends that could leave it with a materially different Risk to Client K-factor requirement value for the following reporting period applicable to the reporting of such information to the Bank and shall notify the Bank of that materially different Risk to Client K-factor requirement value.
- (d) Where the Bank notifies a management company that there has been a material change in the business activities of the management company that impacts the amount of a

relevant K-factor referred to in paragraph (4)(a), the management company shall adjust the amount of additional capital held by the management company in accordance with the Bank's notification.

- (5) (a) A management company shall comply with the following in calculating the K-AUM for the purposes of paragraph (4)(a):
 - (i) AUM shall be the rolling average of the value of the total monthly assets under management, measured on the last business day of each of the previous 15 months converted into the entities' functional currency at that time, excluding the three most recent monthly values;
 - (ii) AUM shall be the arithmetic mean of the remaining 12 monthly values;
 - (iii) K-AUM shall be calculated on the first business day of each month.
 - (b) Where the management company has formally delegated the management of assets under individual portfolio management services to another financial entity, those assets shall be included in the total amount of AUM measured in accordance with subparagraph (a).
 - (c) Where another financial entity has formally delegated the management of assets under individual portfolio management services to the management company, those assets shall be excluded from the total amount of assets under management measured in accordance with subparagraph (a).
 - (d) Where a management company has been managing assets for less than 15 months, or where it has done so for a longer period as a small and non-interconnected management company and it now exceeds the threshold for AUM, it shall use historical data for AUM for the period specified under subparagraph (a) as soon as such data becomes available to calculate K-AUM.
 - (e) For the purposes of subparagraph (d), the Bank may replace missing historical data points by regulatory determinations based on the business projections of the management company submitted in support of the management company's application for authorisation to provide individual portfolio management services.
- (6) (a) A management company shall comply with the following in calculating K-CMH for the purposes of paragraph (4)(a):
 - (i) CMH shall be the rolling average of the value of total daily client money held, measured at the end of

- each business day for the previous nine months, excluding the three most recent months;
- (ii) CMH shall be the arithmetic mean of the daily values from the remaining six months;
 - (iii) K-CMH shall be calculated on the first business day of each month.
- (b) Where a management company has been holding client money for less than nine months, it shall use historical data for CMH for the period specified under subparagraph (a)(i) as soon as such data becomes available to calculate K-CMH.
- (c) For the purposes of subparagraph (b), the Bank may replace missing historical data points by regulatory determinations based on the business projections of the management company submitted in support of the management company's application for authorisation to provide individual portfolio management services.
- (7) (a) A management company shall comply with the following in calculating K-ASA for the purposes of paragraph (4)(a):
- (i) ASA shall be the rolling average of the value of the total daily assets safeguarded and administered, measured at the end of each business day for the previous nine months, excluding the three most recent months;
 - (ii) ASA shall be the arithmetic mean of the daily values from the remaining six months;
 - (iii) K-ASA shall be calculated on the first business day of each month.
- (b) Where a management company has formally delegated the tasks of safeguarding and administration of assets to another financial entity, or where another financial entity has formally delegated such tasks to the management company, those assets shall be included in the total amount of ASA which is measured in accordance with subparagraph (a).
- (c) Where a management company has been safeguarding and administering assets for less than six months, it shall use historical data for ASA for the period specified under subparagraph (a) as soon as such data becomes available to calculate K-ASA.
- (d) For the purposes of subparagraph (c), the Bank may replace missing historical data points by regulatory determinations based on the business projections of the management company submitted in support of the

management company's application for authorisation to provide individual portfolio management services.

- (8) (a) For the purposes of paragraph (5), the measurement of total monthly AUM shall be made in accordance with all of the following:
 - (i) the calculation shall include the value of financial instruments calculated at fair value in accordance with the applicable accounting standards;
 - (ii) financial instruments with a negative fair value shall be included in absolute value;
 - (iii) the calculation shall include cash except any amounts covered under CMH in accordance with subparagraph (b).
 - (b) For the purposes of paragraph (6), the measurement of CMH shall be based on the following:
 - (i) balances that the management company uses for its internal reconciliations;
 - (ii) the values contained in the management company's accounting records.
 - (c) For the purposes of paragraph (7), the measurement of total daily ASA shall include the value of all client financial instruments safeguarded and administered, calculated at fair value in accordance with the applicable accounting standards. It shall exclude CMH referred to in subparagraph (b).
- (9) (a) Subject to subparagraph (b), the amount of own funds required to be held by a management company resulting from the calculation referred to in paragraph (2)(b) shall not be required to exceed the sum of twice the amount required in accordance with Regulation 17(6) of the UCITS Regulations until the end of the five year period referred to in Article 57(3) of Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019¹.
 - (b) Where the amount of own funds referred to in subparagraph (a) is less than the total amount of initial capital and own funds which the management company is required to hold pursuant to the UCITS Regulations, the management company shall comply with the requirements of the UCITS Regulations until the end of the period referred to in subparagraph (a).

¹ OJ L 314, 5.12.2019, p.1

Internal Capital Adequacy Assessment

100B. (1) A management company authorised to provide individual portfolio management services shall have in place sound, effective and comprehensive arrangements, strategies and processes to assess and maintain on an ongoing basis the amounts, types and distribution of internal capital that the management company considers adequate to cover the nature and level of risks which the management company may pose to others and to which the management company itself is, or might be, exposed.

(2) The arrangements, strategies and processes referred to in paragraph (1) shall be -

- (a) appropriate and proportionate to the nature, scale and complexity of the activities of the management company, and
- (b) subject to regular internal review.

(3) A management company authorised to provide individual portfolio management services shall complete and submit an ICAAP questionnaire to the Bank on an annual basis in the format published on the Bank's website.

(4) For the purposes of paragraph (3), "ICAAP" means internal capital adequacy assessment process.

Transitional measures for existing management companies

100C. A management company authorised by the Bank to provide individual portfolio management services before or on 27 November 2023 shall, on and from 27 May 2024, comply with Regulations 100A and 100B of these Regulations."

Signed for and on behalf of the CENTRAL BANK OF IRELAND

21 November 2023

GABRIEL MAKHLOUF,
Governor of the Central Bank of Ireland.

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation.)

These Regulations set out additional requirements in respect of the calculation of own funds, and the assessment of internal capital, by UCITS management companies authorised to provide individual portfolio management services.

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