

## Central Bank Fines UCITS ManCo for Regulatory Breaches

The Central Bank of Ireland (the “CBI”) reprimanded and fined a UCITS Management Company, Mercer Global Investments Management Limited (“MGIM”), €117,600 pursuant to its Administrative Sanctions Procedure for six breaches of UCITS investment fund regulations (the “UCITS Regulations”) on 14th November 2022. This is the latest enforcement action against a firm operating in the asset management field in Ireland and reflects a growing trend of active enforcement by the CBI.

### Background

UCITS Management Companies are the “responsible person” subject to obligations pertaining to the UCITS funds they are appointed to. Among these is a requirement to issue the prospectus and relevant key investor information documents (“KIIDs”) in compliance with the UCITS Regulations. These require the inclusion of certain information in the prospectus and KIIDs, which must be kept up to date.

### Central Bank Investigation

In 2016, the European Securities and Markets Authority (“ESMA”) published its research on the practice of “closet indexing” in the EU funds sector. This is a practice where funds are represented by the fund manager as being “actively” managed when in reality they are “passively” managed by following a benchmark or an index. Following this, the Central Bank conducted a review of all Irish authorised UCITS funds, classified as actively managed as at March 2018, to identify potential closet indexing. During this review, the Central Bank identified issues around the effectiveness of investor disclosure. In particular, they noted that UCITS Management Companies were not always including sufficient or accurate information about the fund’s investment strategy in their prospectuses and KIIDs. As a result of this finding, the Central Bank commenced an enforcement investigation in respect of six suspected contraventions of the UCITS Regulations by MGIM. This investigation identified five sub-funds in respect of which the investment strategy was to follow or track an index. The relevant prospectuses and KIIDs failed to disclose that the sub-funds relied upon an index-tracking strategy or provide the details of the index being

tracked. The Central Bank’s investigation identified six breaches of the UCITS Regulations.

### Penalty imposed by the CBI

The Central Bank has determined the appropriate fine to be €168,000, which was reduced by 30% to €117,600 in accordance with the settlement discount scheme provided for in the Central Bank’s Administrative Sanctions Procedure. When making this decision, the Central Bank considered the ASP Sanctions Guidance and noted the following factors in particular:-

- The duration of the contraventions, which occurred for varying periods between July 2011 and December 2018;
- The seriousness of the breach;
- MGIM’s financial position and the need to propose a proportionate level of penalty;
- The lack of previous enforcement action by the Central Bank against MGIM; and
- MGIM’s cooperation with the investigation.

The Central Bank has confirmed that it is satisfied that MGIM has remediated the failings identified by the enforcement investigation.

### Conclusions

The enforcement division of the CBI has shown that it is prepared to take proceedings against authorised firms where breaches are noted in the wake of general reviews. With ESMA now instigating Common Supervisory Actions across the EU on an annual basis this underlines the importance of both general compliance and also taking particular note of issues flagged for such investigations. It is interesting to note the imposition of this fine to a management company, as CBI guidance provides that “*The board of the externally-managed investment company retains responsibility for issuing the prospectus*”.



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