

Central Bank Update on UCITS Costs and Fees

The Central Bank of Ireland (the “Central Bank”) has issued a “Dear CEO” Letter dated 24th March 2023 (the “Letter”) following its review of issues around the costs and fees charged to UCITS. This letter highlights the main findings of the inspection, sets out the Central Bank’s related expectations and identifies specific actions to be undertaken. The Letter was addressed to the management companies of UCITS as they have the primary obligation to ensure related compliance, however it is also stated to be relevant for AIFMs and AIFs.

Background

In 2021 ESMA launched a common supervisory action “CSA” on the issue of costs and charges to seek to prevent “undue costs” from being charged to unitholders. In each EU country the relevant National Competent Authority was required to examine the issues and ensure that regulated firms were in fact complying with related legislative obligations in practice. The Central Bank is the relevant authority in Ireland and its review entailed examining a sample of 59 firms and then interacting with 40% of firms through virtual inspection calls before issuing the letter.

Findings

The Letter clarifies that various deficiencies were identified by the Central Bank in their review of the relevant firms. The key findings identified include:

- A lack of policies and procedures on costs and fees;
- Failure to ensure periodic reviews of costs and fees;
- No oversight of fee policy and overreliance on inputs from investment managers;
- Inappropriate or lack of policies around costs for Efficient Portfolio Management (“EPM”);
- Inappropriate or unclear fixed cost operating models;
- Excessive charges for investment advisors.

The Central Bank has clarified that written pricing policies are expected, and these should entail at

least an annual review of fees incurred and their basis. These policies should include design, oversight, and review elements to ensure they are operating effectively and in the best interests of investors. Certain areas, such as charges relating to EPM, fixed cost operating models and charges imposed by non-discretionary “advisors” require additional oversight and consideration due to the concerns raised by related practices.

Next Steps

The Letter states that oversight and (re)calibration of costs and fees should be a priority for UCITS and that its contents should be discussed and considered by fund boards without delay. All firms managing UCITS are obliged to conduct a gap analysis relating to the findings of the Letter and where appropriate put a plan in place by the end of Q3 2023 to address any gaps identified. Fund boards should expect to be fully briefed on related matters in upcoming board meetings.

How Clerkin Lynch can Assist

Clerkin Lynch assists regulated firms with the drafting of policies and procedures including those pertaining to costs. Clerkin Lynch is ideally placed to act as an independent adviser to assist in the review process where existing service providers have been appointed at the request of the investment manager and/or its counsel. Noting that legal costs for funds were specifically cited as an area of concern by ESMA, the commercial policies of Clerkin Lynch are specifically tailored to ensure compliance by client firms with the rules on costs and expenses. Contact us to find out more.



Mark Browne
Partner
Email: markbrowne@clerkinlynch.com
Phone: 01 611 4400



Sean Harrison