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Central Bank of Ireland Guidance on Use of Side Pockets by UCITS

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The Central Bank of Ireland (“**Central Bank**”) has confirmed in a **notice** published on 16 May 2022 that side-pocketing arrangements will be permitted only for Russian, Belarussian or Ukrainian assets that are either directly or indirectly impacted by either Russia’s invasion of Ukraine or the sanctions imposed as a result of the invasion (the “**Affected Securities**”). The Central Bank’s notice was published on the same date that the European Securities and Markets Authority (“**ESMA**”) issued a **public statement** on actions to manage the impact of the Russian invasion of Ukraine on investment fund portfolios. The Central Bank has clarified that side pocketing of UCITS assets is only available in the context of Affected Securities and should not be interpreted as creating a precedent by the Central Bank for any other current or future situations.

The Central Bank notes that, due to the specific and exceptional market conditions brought about by the war in Ukraine, certain asset classes are subject to pronounced devaluation and / or their ability to trade has been wholly impaired.

Process for Implementing Side Pockets

The Central Bank has detailed a streamlined authorisation process for UCITS side-pocketing arrangements, and will process applications within five working days provided all of the conditions (as set out below) have been complied with.

UCITS may implement a side pocket by seeking regulatory approval for the establishment of a “clone fund”, into which illiquid assets held by the fund may be transferred. Shareholders in the newly established clone fund would hold shares pro rata to their stake in the original UCITS. Investors in the original UCITS continue to have a pro-rata holding in the original UCITS. The original UCITS will be wound down over time with any realised value being paid out to shareholders.

The Central Bank states that an original UCITS may establish a side pocket by way of a newly established clone UCITS provided that:

- the proposal is in the best interests of unitholders;
- investors have approved transfer into the newly established clone UCITS side pocket;
- the UCITS has obtained prior written approval of the CBI for the proposal;
- the UCITS provides a clear description to unitholders of the costs and fees associated with establishing the side pocket;
- the UCITS must provide details of the ongoing costs and fees payable in its prospectus;
- the original UCITS is placed in wind-down mode at the same time as the creation of the new clone UCITS;
- the original UCITS has established written policies in relation to management of the Affected Securities (including policies relating to the costs and fees associated with maintenance of the original UCITS); and
- the original UCITS reports to the CBI on an annual basis confirming whether or not the parameters and policies continue to be respected and outlines the prospects and / or plans for the side pocketed assets and liquidation of the original UCITS.

Any application for authorisation / approval of a new clone fund / sub-fund should be made in the normal manner and should be accompanied by:

- confirmation from the fund directors that the new fund / sub-fund is identical to the original UCITS;
- a copy of the resolution which approves the establishment of the new fund/sub-fund; and
- a copy of the investment objective and policy marked up against that of the original UCITS.

The Central Bank is now accepting advance notification of planned applications, which should be made to fundsauthorisation@centralbank.ie and onlineauthorisation@centralbank.ie.

Please get in touch with your usual Asset Management and Investment Funds Department contact or any of the contacts listed in this publication should you require further information in relation to the material referred to in this update.

Full details of the Asset Management and Investment Funds Department, together with further updates, articles and briefing notes written by members of the Asset Management and Investment Funds team, can be accessed at www.matheson.com.



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