UCITS Alternatives

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Contents

UCITS Alternatives

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Introduction

2009 saw a significant increase in the number of UCITS being established which pursue what would typically be considered to be alternative investment strategies. This trend is expected to continue in 2010.

Interest in UCITS alternatives is evident both from asset management firms which have existing regulated funds and are seeking to explore the alternative space within the UCITS framework as well as from alternative asset management firms which have, until now, principally managed what might loosely be described as unregulated funds.

We have prepared this briefing paper to address some of the more pertinent questions being raised by asset managers considering the establishment of UCITS alternative investment funds.

The questions considered in this briefing paper are just some of the high level issues which may come under consideration for an asset manager considering a UCITS alternative investment fund. For a more detailed consideration of the UCITS product, please refer to our publication entitled “A Guide to UCITS in Ireland” or feel free to contact us directly to discuss.

Why should we consider establishing a UCITS alternative investment fund and why now?

We have highlighted below some of the reasons why UCITS alternatives are attracting interest now.

- *Investor demand for regulated fund products*

Investor demand for regulated fund products seems to be one of the key factors why UCITS are now receiving significant interest from the alternative investment community.

Specific instances of fund blow ups have focussed investor concerns on the perceived lack of transparency and lack of investor protections offered by many unregulated funds.

- *UCITS III*

Following implementation of UCITS III, UCITS can facilitate many alternative investment strategies – long/short, absolute return, hedge fund/commodities index products, UCITS, funds of alternative funds (often referred to as "UCITS FoHFs"), etc. - with continuing developments being seen in the interpretation of what can be held in / managed within UCITS. The increased level of understanding of the parameters of UCITS III as well as the broad marketing options available to UCITS are driving the recent increase in the number of these type of funds being established.

- *UCITS brand recognised worldwide*

UCITS is considered to be the European "gold standard" investment fund product and is recognised worldwide as a robust, well-regulated product attracting investment from within and from a wide range of jurisdictions outside the EU. For example, Hong Kong, Japan, Taiwan and many South American jurisdictions, as well as non-EU European jurisdictions such as Switzerland, readily accept UCITS for inward sale.

The continued strength of interest in the product is evident from the latest release from EFAMA (the European Fund and Asset Management Association) of 1 December, 2009, which noted that UCITS enjoyed further significant net inflows in the third quarter of 2009 of €70 billion, with net sales for January to September 2009 of €122 billion.

- *Public offering opportunities and UCITS IV*

UCITS is a pan-European fund product which, once established in Ireland (or in other EU jurisdictions), can be sold cross-border within the EU / EEA under a harmonized legislative framework without any requirement for additional authorisation.

In addition, UCITS' global recognition means that the registration process for UCITS in non-EU jurisdictions is well established and has been greatly simplified over the last number of years. In Hong Kong, for example, the vast majority of international funds registered for public offering are UCITS.

The recently adopted UCITS IV Directive will dramatically simplify the cross-border notification process within the EU / EEA as well as introduce the short form information document for retail investment. UCITS IV is expected to be implemented into Irish law by July, 2011.

Do we need to offer the UCITS to retail investors?

No. Although a UCITS must be promoted to the public or a section of the public in one or more jurisdictions within the EU, the minimum subscription amount (if any) can be set at any level and products can be targeted primarily at the institutional market.

While UCITS rules and restrictions (high diversification levels, liquid assets, restricted borrowing etc.) show that UCITS was designed primarily as an investment product for the retail market, they are also suitable as fund vehicles for the institutional market.

Can we pursue our alternative investment strategies within the parameters of a UCITS?

The introduction of UCITS III paved the way for UCITS to pursue alternative type investment strategies. Following on from UCITS III, CESR clarified the range of eligible assets for UCITS, and domestic regulators, including the Irish Financial Regulator, have recognised the increased investment scope of UCITS. These developments have provided for the introduction of a range of complex, alternative type strategies within UCITS in recent years.

Examples of some of the alternative investment strategies being employed within UCITS are considered briefly on the following pages.

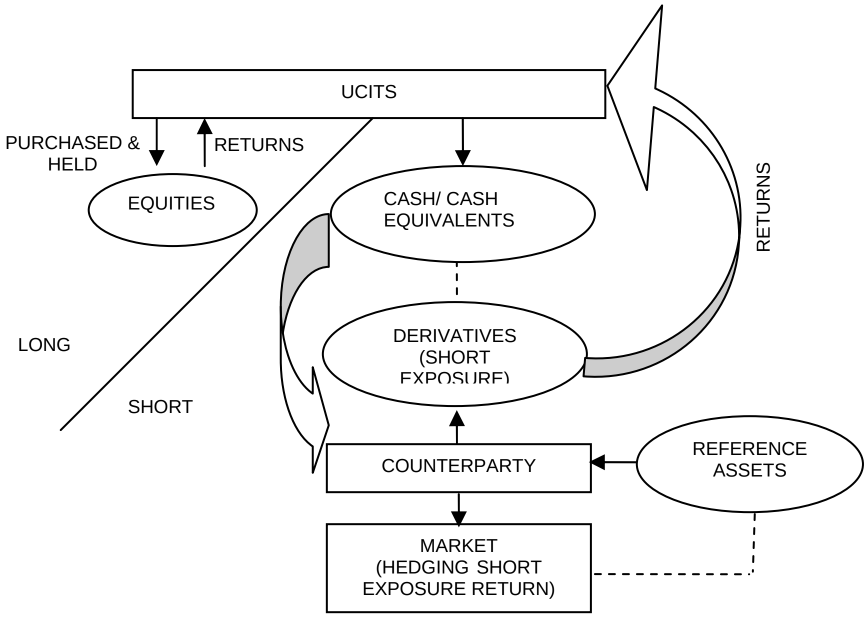
- *Equity Long/Short*

Although not permitted to take direct uncovered short positions, a UCITS can pursue a long/short equity strategy, achieving the short exposure synthetically through the use of derivatives. Global exposure (leverage) and counterparty exposure restrictions apply to the synthetic short positions, as discussed further below.

In this example, the long equity portion of the portfolio comprises direct investments in equities or equity related securities and the short equity portion of the portfolio comprises a combination of cash/liquid instruments and derivative positions referenced to the return of the shorted positions.

The cash/liquid element is used as cover or collateral for the derivative positions, as required for UCITS III risk management purposes. The derivatives themselves provide for the returns linked to the downside performance of specific equities. Swaps, options, stock futures and CFDs are the more typically used derivative instruments for this purpose.

See sample portfolio construction diagram below.



130/30 Funds

130/30 is the term used to describe the strategy that falls between the traditional long only strategy and the long/short strategy where a fund sells short 30% of its equity portfolio and applies the proceeds to purchase an additional 30% of long positions. In the same manner as described in the Equity Long/Short example above, this is achieved synthetically by taking short positions through the use of derivatives. This results in a leveraged equity portfolio with an increased exposure to certain equity positions (enhanced alpha) but with a net market exposure of 100% (beta of 1).

The portfolio could just as easily be weighted 120/20 or 140/40 or even 150/50 but the trend in the market has been towards a 130/30 weighting.

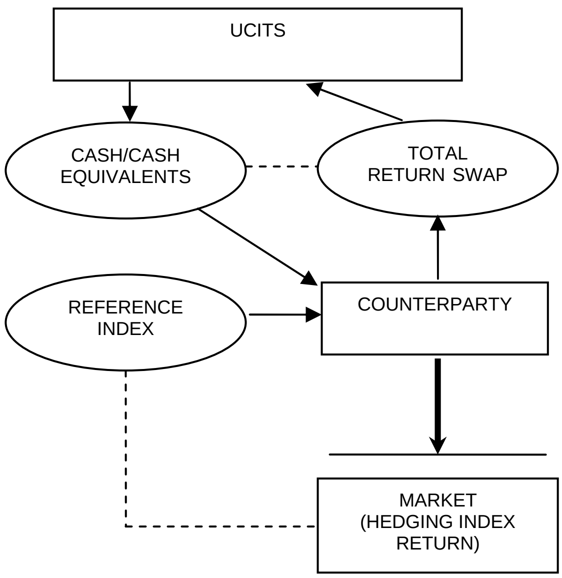
Hedge Fund Index Products

While unregulated hedge funds are not eligible for investment by UCITS, it is possible to gain indirect exposure to the hedge fund universe through investment in derivatives on hedge fund indices.

These products may also be capable of building in an alpha element where the targeted index is an investable hedge fund index (a type of index designed to be capable of replication and therefore with a more managed element).

The index exposure for the UCITS is structured on a synthetic basis, typically through a total return swap or similar derivative. Under a total return swap, the UCITS fund would hold primary investments in cash or cash equivalents (or other eligible assets) and swap the return on these assets with a counterparty for a return based on the reference index.

See sample portfolio construction diagram below.



The index itself will be subject to strict criteria applied by the Irish Financial Regulator on the basis of CESR guidance. Eligible financial indices will need to meet specific requirements under each of the following headings:

- *Sufficient diversification* - each individual constituent of an index may not have a weighting greater than 20%. On a case-by-case basis, and where adequate written explanation is provided to the Irish Financial Regulator, one constituent of an index may have an individual weighting of up to 35%;

- *Representative of an adequate benchmark for the market to which it refers* - the index must measure the performance of the group of assets it is purporting to represent;

- *Publication in an appropriate manner* - the index information should be published and accessible, for example, via the internet. Specific information on the composition of the index should be freely and continually available;

- *Independently managed from the management of the UCITS* - the index must be independently managed from the management of the UCITS. This does not prevent the index sponsor being from within the same group as the manager of the UCITS. However, any such relationship would need to be disclosed and independence assured.

In addition, the following criteria will apply to hedge fund indices:

- the index must apply a selection and re-balancing methodology based on pre-determined rules and objective criteria. Such criteria should adequately outline weightings guidelines and classification criteria and address procedure for treatment of defunct components;

- the index must not receive payment from hedge funds for their inclusion as index components;

- backfilling is not permitted; and

- the investing UCITS must carry out appropriate due diligence on the index and maintain a record of such assessment. Such due diligence should include consideration of whether the index is subject to an independent audit (for compliance with methodology guidelines and accurate calculation).

Commodities Index Products

UCITS may invest in derivatives that are referenced to eligible “financial indices”. Similar to hedge fund index products discussed in the example above, in the context of commodities the tracking of a financial index is a way for a UCITS fund to gain exposure to an otherwise ineligible asset class.

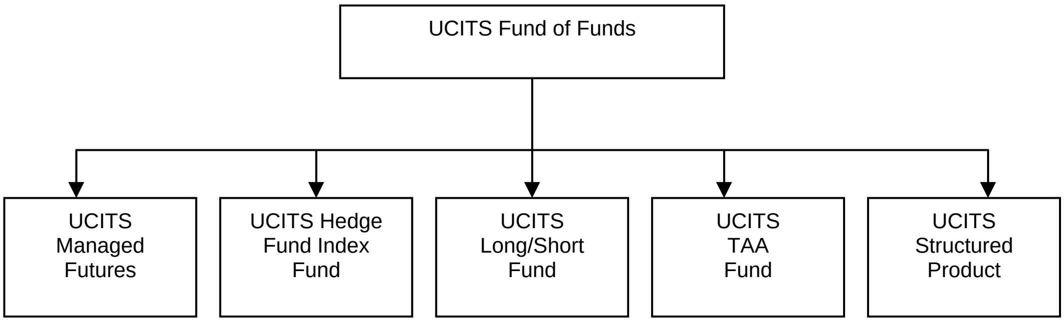
For example, a fund could gain exposure to a commodities index by entering into a swap transaction whereby the fund would receive the price appreciation (or depreciation) of the index from the swap counterparty in exchange for paying the counterparty an agreed fee.

As is the case with hedge fund indices, commodities indices are subject to strict criteria applied by the Irish Financial Regulator on the basis of CESR guidance.

Funds of Funds/UCITS FoHFs

UCITS funds of funds have been available for quite some time but the most interesting recent development has been the increasing number of new UCITS alternatives being launched which can be used as the building blocks for a UCITS fund of UCITS alternatives, now being referred to in some quarters as UCITS FoHFs.

See sample portfolio construction diagram below.



Note: each of the building blocks can be managed by the same entity.

There are four main investment restrictions which apply to UCITS investing in other eligible funds:

- the maximum exposure to any one fund may not exceed 20% of the net asset value of the UCITS (each fund of an underlying umbrella scheme being regarded as a separate fund for the purpose of applying this limit);

- the maximum aggregate investment in non-UCITS funds may not exceed 30% of the net asset value of the UCITS;

- investment in a fund which can itself invest more than 10% of net assets in other funds is not permitted; and

- investment by a UCITS in a fund must not result in the acquisition of more than 25% of the units of any single fund (or sub-fund of an umbrella fund).

Where a UCITS intends to invest more than 20% of its net assets in other funds, its prospectus must disclose the maximum level of management fees that may be charged to the UCITS itself and to the underlying fund. In other words, the aggregate management fees at both levels have to be disclosed. In addition, actual aggregate management fees at both levels have to be disclosed in the UCITS annual report.

In addition, where a UCITS invests in a linked fund (where both the UCITS and underlying investor fund are managed, directly or indirectly by delegation by the same management company or where the management company of both the UCITS and underlying investor fund are linked by common management or control or by a substantial direct or indirect holding), the manager of the underlying fund is not permitted to charge subscription or redemption fees by account of the UCITS investment in it.

It is also possible for a sub-fund within a UCITS umbrella to invest in another sub-fund of that umbrella. For example, a UCITS TAA sub-fund may invest in a UCITS long/short equity sub-fund within the same umbrella. Management fees/investment management fees may not be charged in respect of the proportion of the assets of a sub-fund which are invested in other sub-funds of the same umbrella, preventing “double-dipping”. In addition, no subscription or redemption fees may be charged on the cross-investing sub-fund’s investment. Investment may not be made by a sub-fund in a sub-fund which itself cross-invests within the umbrella.

There are restrictions on the types of non-UCITS funds that a UCITS can invest in. The following categories of non-UCITS funds are acceptable:

- schemes established in Guernsey and authorised as Class A schemes;
- schemes established in Jersey as Recognised Funds;
- schemes established in the Isle of Man as Authorised Schemes.
- non-UCITS Retail funds authorised by the Irish Financial Regulator provided any such fund comply in all material respects with the provisions of the UCITS Notices:
- non-UCITS funds authorised in a Member State of the EEA, the United States, Jersey, Guernsey or the Isle of Man and which comply, in "all material respects" with the provisions of the UCITS Notices.

For more detail on other fund types which may be acceptable for investment by a UCITS and as to the Irish Financial Regulator's consideration of "all material respects", please see our "Guide to UCITS in Ireland".

It should also be noted that under UCITS IV new provisions have been introduced to allow for master-feeder structures and accordingly, UCITS will be able to invest (by way of derogation from the above 20% limit) up to 85% of its assets in an underlying UCITS, subject to certain conditions.

UCITS Managed Futures/CTA Products

CTA/managed futures UCITS funds have also seen significant recent growth. While the term CTA fund (commodity trading advisor fund) traditionally related to funds trading commodities futures, it is now considered interchangeable with managed futures funds and not necessarily restricted only to commodities futures products.

A fund principally trading in futures can be established as a UCITS. Any such strategy will need to be managed in compliance with borrowing, leverage and global exposure restrictions applicable to UCITS, as considered in more detail below. Also, some reference assets (such as commodities) may be ineligible for UCITS investment and so exposure to such assets through futures may not be permitted (although through index futures will be). As discussed further under Investment Manager Approval below, CTA managers in the United States registered with the National Futures Association and, consequently, automatically subject to regulation by the Commodity Futures Trading Commission, can manage Irish UCITS.

- *UCITS Absolute Return Funds*

A large number of UCITS have been set up with the objective of achieving "absolute returns", generally over the medium or long term.

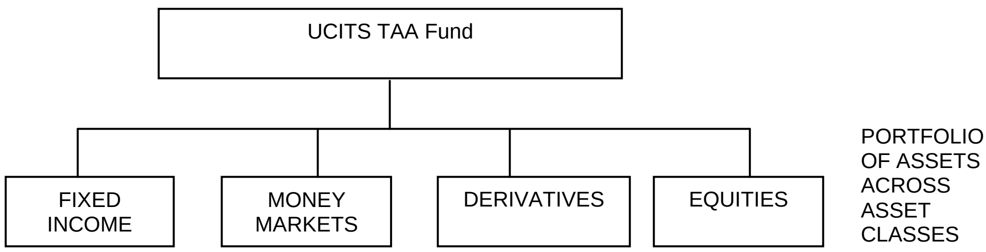
In order to achieve such absolute returns, these UCITS typically have an ability to take short as well as long positions in targeted asset classes. As discussed under the Equity Long/Short example above, short positions are permitted in UCITS through the use of derivatives. Such derivatives must be managed so as to ensure compliance with restrictions on leverage and counterparty exposure. The portfolio will generally be managed in line with a pre-determined risk limit (generally expressed in terms of volatility or VaR measures).

Portfolio construction will generally be on a similar basis to that described in Equity Long/Short example above, although asset classes may vary.

- *UCITS Tactical Asset Allocation Funds*

UCITS have the facility to invest in a broad range of asset classes including equities, fixed income securities, money market instruments, cash and derivatives. UCITS can be designed with sufficient flexibility to enable an investment manager to determine the asset allocation across the asset classes dependent on any relevant factors considered appropriate, subject to adequate disclosure of the strategy in the fund's prospectus.

See sample portfolio construction diagram below.



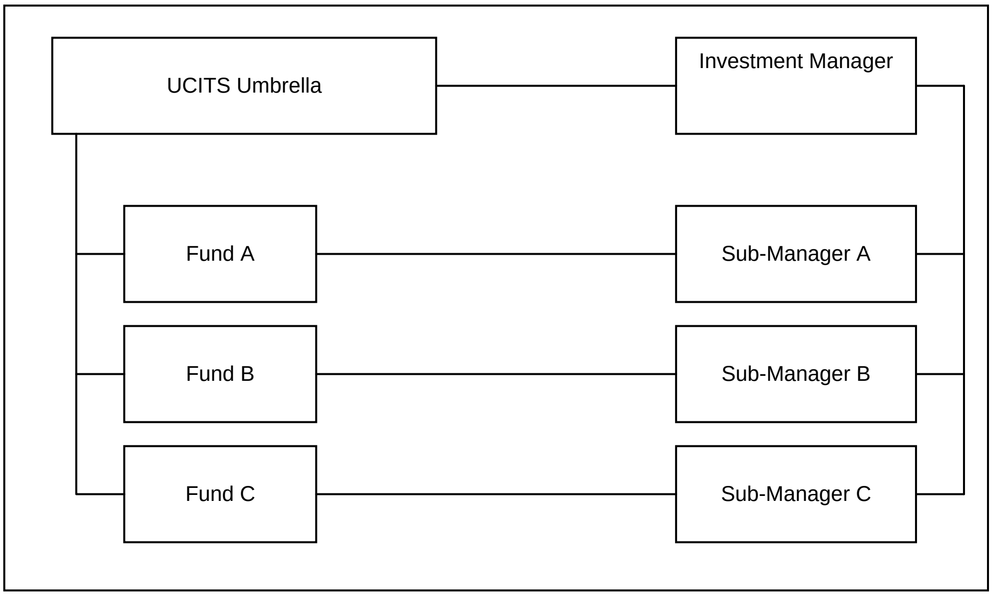
Multi-Manager Platforms

Another increasingly popular UCITS product is the multi-manager umbrella platform often constructed as a range of sub-funds, each with segregated liability, and each managed independently as a separate portfolio by a separate investment manager, often with hedge-like strategies, within the UCITS parameters.

While there are multiple managers on the platform, unlike a multi-manager fund, each sub-fund is managed exclusively by a single manager. The fund has an overall sponsor or promoter which selects managers to run the respective sub-funds on its behalf and for its selected clients.

The specific aspects of each sub-fund (investment objective and policy, fee levels, frequency of dealing etc.) can be tailored by the promoter and agreed with the relevant manager. This gives the product range the flexibility to meet specific investor needs, much in the way managed account platforms operate.

See sample portfolio construction diagram below:



More traditional multi-manager funds (i.e. single portfolio with multiple managers) can of course be accommodated within UCITS. See our “Guide to Multi-Manager Funds in Ireland” for more detailed information.

Can we engage in borrowing/leverage?

UCITS are not intended to be used for highly leveraged products although they do offer significant leverage opportunities as explained below.

- *Borrowing*

UCITS are restricted to borrowing for temporary purposes only (for liquidity) and subject to a maximum of 10% of net assets. Borrowing may not be made for investment purposes.

- *Leverage*

The general UCITS position is that leverage through derivatives is permissible but that a UCITS "global exposure" through the use of derivatives should not exceed 100% of NAV. The key issue therefore is how to calculate global exposure, with differing approaches taken depending on whether the UCITS is a sophisticated or non-sophisticated user of derivatives.

- *Sophisticated vs. Non-sophisticated UCITS*

The rules for measuring global exposure and leverage differ depending on whether a UCITS is characterised as 'sophisticated' or 'non-sophisticated'.

Factors that may cause a UCITS to be considered 'sophisticated' include the following:

- where the use of derivatives forms a fundamental part of the UCITS' investment objective and would be expected to be used in all market conditions;
- where the performance of the derivative is non-linear in relation to the underlying assets or the performance is based on a reasonably complex mathematical formula;
- where the use of cover for the derivative position is different from the underlying of the derivative.

The use of OTC derivatives might indicate the UCITS is more sophisticated but the complexity of the transaction should also be considered.

A 'non-sophisticated' UCITS will generally only use a limited number of simple derivative instruments for non-complex hedging or investment strategies.

Measurement of Global Exposure and Leverage – Non-Sophisticated UCITS

The global exposure and leverage of a non-sophisticated UCITS should be measured using the *commitment* approach. As a UCITS' global exposure may not exceed its net asset value, this means that a leverage limit of 100% applies (leverage being global exposure divided by net asset value).

The commitment approach takes into account the following in seeking to ensure that risk is monitored in terms of any future commitments to which the UCITS may be obligated:

- the current value of the underlying assets the derivatives are based on (delta-adjusted in the case of options and warrants);
- counterparty risk;
- future market movements; and
- the time available to liquidate the position.

Measurement of Global Exposure and Leverage – Sophisticated UCITS

A sophisticated UCITS is required to use an advanced risk measurement methodology to measure global exposure. The Irish Financial Regulator recommends the use of the *Value-at-Risk* (VaR) method and requires that the VaR model employed by the UCITS meets certain quantitative and qualitative criteria and be calculated using an acceptable proprietary or commercially available model.

Absolute VaR or Relative VaR may be applied. *Absolute VaR* is the VaR of the UCITS capped as a percentage of net asset value. The Irish Financial Regulator imposes a limit on Absolute VaR of 20% of net asset value.

Relative VaR is the VaR of the UCITS divided by the VaR of a benchmark or a comparable, derivatives-free portfolio. Under Relative VaR, VaR is limited to twice the VaR on the benchmark or comparable, derivatives-free portfolio.

The VaR model used must adhere to the following requirements:

- the confidence level should be 99%;
- maximum holding period of 20 days;
- minimum historical observation period of one year (less if justified, for example on the grounds of recent significant changes in price volatility);
- stress tests carried out at least quarterly (to assess the likely impact of potential movements in interest rates, currencies and credit quality);

- back testing of the VaR model (a formal statistical process to compare actual portfolio returns to the VaR predicted).

Where the VaR model applies a confidence level or holding period other than as set out above, a scaling process must be applied and detailed workings of such process must be provided in the risk management process. Details should also be disclosed of the following:

- software used;
- internal controls and internal audit of procedures;
- additional risk measurement methods employed; and
- profile and expertise of staff monitoring risk.

- *Netting/Hedging*

Hedging positions may be offset and netting applied before calculating global exposure, counterparty exposure, position and cover requirements.

A more detailed consideration of “global exposure” and leverage is found in our “Guide to UCITS in Ireland”.

Can we appoint a prime broker?

UCITS cannot appoint prime brokers in the traditional sense (i.e. as lender (cash financing and short sales coverage), custodian and clearing and settlement agent).

However, it is possible to for a UCITS to engage one or more derivative counterparties provided each counterparty meets certain qualitative criteria and subject to adherence with counterparty exposure restrictions. Most of the major prime brokers now offer synthetic prime brokerage products and services which have been tailored to comply with Irish UCITS Regulations.

Counterparty exposure is the exposure a UCITS fund has to a counterparty as a result of its OTC derivative transactions with that counterparty and is intended to measure the maximum amount the fund could lose as a result of a counterparty defaulting under each contract from the point of the calculation until maturity (under prescribed guidelines).

The term “exposure” is measured as the positive mark-to-market value of the derivative, plus an add-on calculation for future credit exposure. (It is expected that the calculation of counterparty exposure will soon be harmonised across the EU based on the positive mark-to-market value of the derivative only, following recent CESR guidance on the issue). If the

OTC derivative contract has netting provisions, then positive and negative obligations in respect of a counterparty may be netted before the calculation is done. Counterparty exposure may also be offset by the provision by such a counterparty of eligible collateral to the fund.

The maximum exposure is 5%/10% of the fund's net asset value, depending on the classification of the counterparty. In practice, the 5/10% limit can be effectively managed through the use of collateral and by monitoring the settlement value of open OTC positions so that they are rolled over/closed out before limits are exceeded.

What about liquidity requirements and asset diversification?

- *Liquidity*

Many UCITS deal daily or weekly. As a regulatory minimum, UCITS must offer redemption facilities at least every 2 weeks.

- *Diversification*

The general "5/10/40" rule requires that no more than 10% of the net assets of a UCITS may be invested in transferable securities or money market instruments issued by the same body, with a further aggregate limitation of 40% of net assets on exposures of greater than 5% to single issuers.

There are exceptions to this rule for investments issued or guaranteed by governments, local authorities or certain public international or supra-national bodies and also further flexibility for index replicator funds.

Can we charge a performance fee?

Yes. Performance fees are permitted. Whilst there are certain requirements in relation to calculation methods, generally the Irish Financial Regulator's requirements can be accommodated for most standard performance fee models.

The calculation of the performance fee is carried out by the administrator and must be verified by the independent custodian.

Does UCITS regulation mean more compliance and corporate governance?

Yes. Certainly in comparison to the level of compliance and corporate governance required for most unregulated funds, UCITS compliance and corporate governance requirements are more extensive. The independent custodian, independent administrator and investment manager are all required to produce regular reports to the board of directors or management company of the UCITS and the UCITS is required to delegate officers of the board or management company to regularly review these reports and take necessary actions, where appropriate.

Board meetings must be held at least quarterly (in Ireland) where relevant reports are presented and reviewed and a UCITS must have a Business Plan in place covering 8 key management functions. Monthly, semi-annual and annual reports are also provided to the Irish Financial Regulator.

It is worth noting that this increased reporting and board oversight can operate very efficiently and should not give rise to any undue administrative burden that adversely affects the operation of the UCITS. Indeed, the presence of these functions can be considered positive from an investor standpoint.

Also, a formal risk management procedure in relation to processes employed in managing the risks associated with derivatives usage must be put in place and adhered to by the investment manager.

The requirement to appoint an independent custodian is also seen as an important investor protection measure both in terms of separate safekeeping of assets and “trustee” oversight.

Are there any regulatory requirements relating to us as the promoter/investment manager of the fund?

- *Promoter approval*

The Irish Financial Regulator imposes what is in effect a market entry or initial quality control process in order to ensure that an entity which seeks to establish Irish domiciled schemes has an appropriate level of financial resources, with appropriate expertise and experience, and suitable shareholders and principals.

The Irish Financial Regulator will generally only accept promoters of investment funds which are regulated entities with financial resources (shareholders funds) of at least €635,000 and with demonstrable experience in investment fund products.

- *Investment manager approval*

Often the promoter and investment manager are the same entity but, in any case, the investment manager must be authorised/registered in its home jurisdiction for the purposes of asset management and must be subject to prudential supervision. ‘Prudential supervision’ is viewed by the Irish Financial Regulator as constituting a discernible level of monitoring/regulating of the entity. In the case of most of the main non-EU jurisdictions for asset managers (for example the US, Japan, Hong Kong, Singapore, Canada), the Irish Financial Regulator should be satisfied that any entity regulated for the purposes of asset management by the national regulator will be subject to prudential supervision.

In the case of US managers, in addition to those registered with the SEC, the Irish Financial Regulator will accept applications from CTA managers registered with the National Futures Association and, consequently, automatically subject to regulation by the Commodity Futures Trading Commission.

MiFID firms qualify virtually automatically.

Are Irish UCITS liable to Irish tax?

An Irish UCITS will not be subject to any Irish taxation on income or gains and there is no withholding tax on dividend or redemption payments to non-Irish investors.

Can we convert our existing alternative investment fund to a UCITS?

Until recently, the manner in which a non-Irish fund would “redomicile” to Ireland would require the establishment of an Irish fund into which the non-Irish fund could be amalgamated or invest its assets on a feeder basis. However, new legislation now allows for a more efficient system for re-domiciling non-Irish domiciled corporate funds into Ireland. This new legislation, the Companies (Miscellaneous Provisions) Act, 2009, is now in effect.

The three options available are briefly considered, as follows:

- *Redomiciliation of non-Irish fund to Ireland*

The option that, in many cases, will be the most straightforward, is a redomiciliation or corporate migration of the existing non-Irish fund to Ireland.

The new system enables corporate funds established and registered in certain jurisdictions to move to Ireland and continue operations as a company incorporated under Irish law. The redomiciled fund would need to obtain authorisation by the Irish Financial Regulator as a UCITS and would need to ensure that, at the time of the redomciliation/Irish Financial Regulator authorisation, its portfolio was UCITS compliant.

Non-corporate funds may also redomicile to Ireland by amendment of their existing constitutional document (e.g. trust deed, partnership agreement) and material contracts in order to comply with Irish funds laws and regulations.

For more details on this recent development, please refer to our briefing paper entitled, “Re-Domiciling an Investment Fund to Ireland”.

- *Amalgamation*

This involves an asset for share swap whereby the existing non-Irish fund moves its assets to the new Irish fund in return for shares that are issued directly to the non-Irish fund’s shareholders.

- *Non-Irish fund maintained as a feeder*

This involves the existing non-Irish fund converting to a feeder fund. Its assets would still move to the new Irish fund in return for shares but these would be issued to the non-Irish fund which would continue existing. Thereafter any new investors could invest directly in the Irish fund.

In the case of an amalgamation or creation of a master/feeder arrangement, the transferring assets of the non-Irish fund would need to be eligible for investment by the new Irish fund. Also, both of these options would need to be analysed from a tax perspective, to determine the tax implications in any given circumstances.

Why Choose Ireland?

Ireland is seen by many as the preferred choice for the location of alternative type funds in the EU (both UCITS and non-UCITS), having been at the forefront of European alternative and hedge fund developments for over 20 years.

Key factors in choosing Ireland as the location for a UCITS alternative investment fund include:

- Large number of fund service providers (administrators, custodians, lawyers, auditors, listing brokers) with many year's experience servicing alternative investment funds based in Ireland, the Cayman Islands, Bermuda, BVI etc. Approximately 30% of alternative funds globally currently use Irish based administrators and other advisors;

- Ireland has a straightforward promoter and investment manager approval regime;

- Irish UCITS are not subject to taxation in Ireland on any income or gains they may realise from their investments and there are no Irish withholding taxes in respect of distributions, redemptions or transfers of units (Irish taxes will apply to certain Irish investors only). No stamp duty is payable in Ireland on the issue, transfer, repurchase or redemption of units in a UCITS;

- Unlike certain other EU jurisdictions, there are no subscription taxes levied by the Irish tax authorities on the assets of a UCITS;

- UCITS management companies enjoy one of the lowest rates of corporation tax in Europe at 12.5% and consequently positions Ireland well in relation to UCITS IV pan-European management companies;

- Ireland is considered by the OECD as a jurisdiction which has substantially implemented the internationally agreed tax standard;

- There are wide ranging VAT exemptions with regard to the provision of services to UCITS (e.g. administration, transfer agency, investment management, custodial, etc) and to the extent that the UCITS suffers Irish VAT on certain services it receives (e.g. audit and legal fees) the fund may recover this VAT based on its recovery rate;

- The timeframe for authorisation of UCITS funds in Ireland is short - approximately 6 - 10 weeks;

- Ireland is a common law system and the laws, regulations and legal principles as well as many tax codes are largely aligned with those of the UK (where the majority of EU based alternative managers are established) and the Cayman Islands (which is currently the world's largest domicile for alternative investment funds).

If UCITS does not fit for us, are there any non-UCITS fund options in Ireland we could consider?

In addition to UCITS, Ireland has an internationally recognised framework of domestic fund legislation governing the set-up, operation and authorisation of Irish hedge funds and fund of hedge funds. Irish non-UCITS funds are authorised by the Irish Financial Regulator (an EU recognised supervisory authority and a member of the Committee of European Securities Regulators). Such funds do not have the benefit of the cross border EU passport and so are primarily for promotion on a private placement basis (although non-UCITS Irish retail funds can be registered for public sale on a jurisdiction by jurisdiction basis). While such funds will not be able to leverage off the UCITS brand, as funds regulated within the EU they still carry significant marketing appeal and are subject to the same Irish tax treatment as UCITS.

With investors keen to avail of the protections afforded by investing in regulated funds, Ireland is seeing a significant increase in interest in non-UCITS funds as well as UCITS.

For funds targeting sophisticated investors, the Irish Qualifying Investor Fund, which is authorised on a post-filing basis, with no prior review of documentation by the Irish Financial Regulator, represents a popular option for promoters of hedge funds and funds of hedge funds. For more information on Irish non-UCITS hedge funds and funds of hedge funds, please refer to our publication entitled "A Guide to Hedge Funds in Ireland" which considers those structures in detail.

Should you require any additional information on the content of this briefing paper, please contact any of the partners from the Dillon Eustace Asset Management and Investment Funds team. Additional, detailed information on all of the Irish fund structures is available on our website, including:

- A Guide to UCITS in Ireland
- A Guide to Hedge Funds in Ireland
- A Guide to Multi-Manager Funds in Ireland
- ETFs and the UCITS Framework

and many more fund related brochures and briefings.

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