

Financial Markets Conduct (Irish UCITS) Exemption Notice 2017

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority being satisfied of the matters set out in section 557 of that Act, gives the following notice.

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Notice

1 Title

This notice is the Financial Markets Conduct (Irish UCITS) Exemption Notice 2017.

2 Commencement

This notice comes into force on 30 November 2017.

3 Revocation

This notice is revoked on the close of 29 November 2022.

4 Interpretation

(1) In this notice unless the context otherwise requires,—

Act means the Financial Markets Conduct Act 2013

relevant regulations mean the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investments in Transferable Securities) Regulations 2015 and the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011

specified UCITS fund means an Undertaking for Collective Investments in Transferable Securities fund, including segregated sub-funds, established in Ireland and authorised by Central Bank of Ireland in accordance with the relevant regulations

specified investment manager means an investment manager specified in schedule 1.

(2) Any term or expression that is defined in the Act and used, but not defined, in this notice has the same meaning as in the Act.

5 Exemptions

The manager of a restricted scheme, and any specified investment manager to whom the manager of the restricted scheme has contracted some or all of its functions as a manager, are exempt from section 176 and clause 39 of Schedule 4 of the Act in respect of any scheme asset that is a specified UCITS fund and in respect of any acquisition of a specified UCITS fund.

6 Conditions

The exemptions in clause 5 are subject to the conditions that—

- (a) the manager of the restricted scheme certifies that the investment in a specified UCITS fund is in the best interests of the scheme participants; and
- (b) the licensed independent trustee has consented to the manager's certification that the investment in a specified UCITS fund is in the best interests of the scheme participants; and
- (c) the manager of the specified UCITS fund has in place ongoing arrangements that can reasonably be expected to ensure that, in exercising any powers or performing any duties as a manager of the specified UCITS fund, it exercises the care, diligence, and skill that a prudent person engaged in the business of managing a registered scheme would exercise in the same circumstances; and
- (d) an investment in a specified UCITS fund or all related party benefits to be given under the investment is given on terms that would be reasonable in the circumstances if the parties were connected or related only by the investment in question, each acting independently, and each acting in its own best interests.

Schedule 1

Specified investment manager

PIMCO Australia Pty Limited
Russell Investment Group Limited

Dated at Wellington this 29th day of November 2017.



Liam Mason
Director of Regulation
Financial Markets Authority

Statement of reasons

This notice comes into force on 30 November 2017 and is revoked on 29 November 2022.

The exemptions contained in the notice allow a specified investment manager to invest, on behalf of managers of restricted schemes, in Undertakings for Collective Investments in Transferable Securities funds established in Ireland (**Irish UCITS**) over and above the restrictions imposed by section 176 of the Act. The exemptions are subject to the conditions that the manager of the

restricted scheme certifies that the investments in Irish UCITS are in the best interests of scheme participants and the licensed independent trustee consents to the manager's certification. In addition, the manager of the Irish UCITS must have in place ongoing arrangements that ensure that it exercises care, diligence, and skill when performing any duties as manager of the Irish UCITS.

The Financial Markets Authority, after satisfying itself as to the matters set out in section 557 of the Act, considers it appropriate to grant the exemption because—

- Irish UCITS are authorised by the Central Bank of Ireland and have features and protections similar to unregistered scheme trusts. Unregistered scheme trusts are used to facilitate investments and reporting for restricted schemes and are exempt from in-house asset restrictions. But for the fact Irish UCITS are not structured as trusts, Irish UCITS would also be exempt from in-house asset restrictions:
- investments in Irish UCITS are not investments back into a restricted scheme's employer-sponsors' assets. Investors are therefore not overexposed to employer-related risk. Investors are also not exposed to excessive related party concentration given the nature, type, and location of investments made by Irish UCITS. Investments in the Irish UCITS ensure broader diversification of investments than would otherwise be available to restricted schemes:
- each specified investment manager has the capacity, expertise, and experience to properly perform the role of investment manager on behalf of managers of restricted schemes:
- the exemptions and conditions allow a specified investment manager to invest into Irish UCITS offered or managed by their related bodies corporate and affiliates for the purposes of streamlining investment and reporting whilst preserving the purposes of the in-house asset rule. In doing so, the exemptions and conditions ensure managers of restricted schemes are not penalised for appointing professional investment managers who invest into non-trust structures that are, in substance, equivalent to trust structures:
- without the exemptions the specified investment managers would be required to sell down restricted scheme investments in Irish UCITS and reinvest in potentially less diversified assets:
- the exemptions, and conditions to the exemptions, promote the purposes of the Act to facilitate flexibility and efficiency in the financial markets:
- the exemptions are no broader than reasonably necessary to address the matters giving rise to the exemptions because conditions to the exemptions maintain appropriate protections for investors in relation to related-party investments, including certification of investments and the undertaking of investments on arm's-length terms.