

Financial Markets Conduct (Irish UCITS) Exemption Notice 2022

This exemption is granted by the Financial Markets Authority under section 556 of the Financial Markets Conduct Act 2013 after being satisfied of the matters set out in section 557 of that Act.

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Notice

1 Title

This notice is the Financial Markets Conduct (Irish UCITS) Exemption Notice 2022.

2 Commencement

This notice comes into force on the close of 29 November 2022.

3 Revocation

This notice is revoked on the close of 28 November 2027.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

in-house asset has the same meaning as in section 176(3) of the Act

relevant regulations mean the Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2019 and the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011

specified investment manager means an investment manager specified in schedule 1 to whom a manager of a restricted scheme has contracted some or all of its functions as a manager

specified manager means a manager of a restricted scheme that has contracted some or all of its functions as a manager to a specified investment manager

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.

- (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

A specified manager, and any specified investment manager, are exempt from section 176 and clause 39 of Schedule 4 of the Act in respect of any in-house 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 specified manager 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 specified 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 17th day of November 2022.



Liam Mason
General Counsel
Financial Markets Authority

Statement of reasons

This notice comes into force on the close of 29 November 2022 and is revoked on the close of 28 November 2027.

The exemptions contained in the notice allow managers of restricted schemes who contract some or all of their functions to specified investment managers, as well as the specified investment managers themselves, to invest in Undertakings for Collective Investments in Transferable Securities funds established in Ireland (**Irish UCITS**) over and above the restrictions imposed by section 176 and clause 39 of Schedule 4 of the Financial Markets Conduct Act 2013 (**Act**). The exemptions are subject to the conditions that the manager of the restricted scheme certifies that the investment in an Irish UCITS fund is 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 fund 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 fund. Finally, the investment in an Irish UCITS fund, or any related party benefit to be given under the investment, must be given on terms that would be reasonable if the parties were connected or related only by the investment.

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 exemptions contained in this notice because—

- Irish UCITS are authorised by the Central Bank of Ireland and have features and protections similar to unregistered schemes structured as trusts. Regulation 106A of the Financial Markets Conduct Regulations 2014 excludes investments in certain unregistered schemes that are trusts from the in-house asset restrictions. But for the fact Irish UCITS are not necessarily structured as trusts, Irish UCITS would usually 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.