



May 2013

Open for Business – Ireland is now accepting applications for AIFMs

Late yesterday, May 15, the Central Bank of Ireland (the “**Central Bank**”) published its new AIF Rulebook, AIFMD Q&A Document and Application Forms for AIFMs and AIFs.

Although there may be some adjustments to the AIF Rulebook over the next number of months, no material changes are expected. The Rulebook needs to be considered alongside the AIFMD itself, the Level 2 Regulations and the awaited Irish domestic implementation, the AIFMD Regulations. The Rulebook does not restate the legislative requirements.

The Q&A Document, now and as it evolves over time, should prove a useful guide for industry participants in understanding the Central Bank’s approach and give clarity in a number of areas where there has been considerable uncertainty. Matters of guidance which were contained in the draft AIF Handbook (the precursor to the Rulebook) are intended to “continue to inform” participants of the Central Bank’s approach. In time, further guidance will appear in the Central Bank’s “Markets Update”.

Of immediate practical significance, the Central Bank has issued its Application Forms for AIFMs and AIFs and, although these are still draft, it has made it clear that it is willing to accept applications NOW.

Although we have to wait for the legislation underpinning the Irish AIFMD regime to be enacted, it will be in place in time for authorisations to be issued from July 23, onwards and the fact that fund managers can submit applications now, and that those

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applications will be processed by the Central Bank, is a clear demonstration that Ireland is open for business.

The link to the Central Bank's Q&A document is as set out below :

<http://www.centralbank.ie/regulation/industry-sectors/funds/Documents/QandA%20AIFMD%2015%20MAY%202013%20FINAL.pdf>

A number of points from the Q&A document are worth highlighting as follows :

- The Central Bank will continue to apply its 24 hour turn around for Qualifying Investors AIFS (QIAIFS). Although not giving a guaranteed timeline for other entities, such as an AIFM, the Central Bank has indicated that it will *"prioritise the most urgent applications, in so far as practical. The amount of time that it will take to process the application will depend on the complexity and nature of the proposal as well as the number of other applications which are received"*.
- Managers can continue to seek authorisation for QIFs under the existing, pre AIFMD regime, up to 3 pm on July 20, 2013.
- An existing QIF umbrella scheme can continue to launch new sub-funds post July 2013 under the current regime until the AIFM obtains authorisation under the new regime. Pending authorisation of either the umbrella scheme itself (if internally managed) or its manager as an AIFM under the new regime, such new sub-funds will be subject to the old NU Series of Central Bank Notices.
- A MIFiD firm contemplating conversion to AIFM status must bear in mind that, under AIFMD, an AIFM does not benefit from the capacity to passport discretionary portfolio management services cross-border other than in respect of AIFs. The exception to this is that where an AIFM also manages UCITS and is in a position to obtain an authorisation under the UCITS Directive, it can do so – using the UCITS passport.

This is a big issue for MIFiD firms and a somewhat bizarre result of European legislation.

- The Central Bank will authorise QIAIFs managed by Non-EU AIFM from July, 2013. The fact that the QIAIF has a Non-EU AIFM will not be an obstacle to its application for authorisation from July, 2013.
- In the area of delegation of portfolio risk management functions, the Central Bank has said that it will permit an AIFM to delegate portfolio or risk management functions in part but not *"either of the functions, in its entirety..... Specifically, it can never include the tasks, as set out in the AIF Rulebook, which must be exercised directly by the board or its designated persons. Rather, certain portfolio and risk management tasks may be delegated. The proposed extent of delegation must be set out clearly for the Central Bank which will review each such proposed arrangement"*.

- An existing Irish AIFM may establish a new AIF during the transitional period in which case, the AIF Rulebook will apply to the AIF. The AIFM must comply on a best effort basis. The depositary will, pending authorisation of the AIFM, be permitted to comply with the depositary regime applicable to start-up AIFMs as set out in the Rulebook.
- The obligation on depositaries is to provide depositary services which meet the conditions imposed on the AIF and AIFM to which they provide services. A depositary must comply with the AIFMD Regulations in relation to each AIF from the date of authorisation of that AIF or from the end of the relevant transition period at the latest.
- A Non-EU AIFM does not have to fulfil all the obligations imposed on AIFMs immediately. The Central Bank will allow a transition benefit to non-EU AIFMs. Any QIAIF which was authorised prior to 22 July, 2013 and which designates a non-EU entity as its AIFM will only be obliged to ensure that it has an AIFM capable of carrying out all the tasks of an authorised AIFM by 22 July, 2015. This is without prejudice to any Member State applying Article 42(i)(a) to any non-EU AIFM marketing an Irish QIF/QIAIF to professional investors domiciled in, or with a registered office in, that Member State.

Any QIAIF which is authorised on or after 22 July, 2013 on the basis of designating a Non-EU AIFM must only ensure that the Non-EU AIFM is capable of carrying out all the tasks of an authorised AIFM within two years from the QIAIF date of launch, (i.e. the date when the initial offer period closes or, where there are multiple closings, the date of first closing).

The Central Bank states that it will keep the extent of this transition under review with a view to extending the transition period to align with the coming into effect of Article 37 of the AIFMD, unless there are strong reasons not to do so in the light of intervening experience in relation to the regulation of AIFs which have Non-EU AIFM.

- The recently issued ESMA guidelines on remuneration do apply equally to AIFMs and self-managed AIFs.

We will keep you posted on further developments as they occur over the coming months.

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