



5 April 2023

Central Bank clarifies rules on ability of Irish funds to gain exposure to digital assets

On 4 April 2023, the Central Bank of Ireland (**Central Bank**) published a revised edition of its [Q&A on AIFMD](#) and its [Q&A on UCITS](#) in which it set out its revised position on the ability of Irish domiciled funds to gain exposure to “digital assets”, often referred to as “crypto assets”.

It is worth noting at the outset that the Central Bank has made clear that for the purposes of its guidance, “digital assets” refers to digital assets which are based on an “intangible or non-traditional underlying” and does not include investments which are tokenised traditional assets whose value is linked to an underlying traditional asset or pool of assets. Digital assets falling within the scope of the Central Bank rules will therefore for example include investments in crypto currencies or NFTs¹.

The table below sets out the Central Bank’s revised rules on investment in digital assets.

| Type of Fund | Type of Exposure to Digital Assets | Central Bank Position | Requirements imposed by the Central Bank |
|-----------------|------------------------------------|--|---|
| All QIAIF Funds | Direct exposure | Not permitted until it is satisfied depositary safe-keeping rules can be satisfied | Pre-submission required which includes details from the proposed depositary demonstrating how it is satisfied that it can safekeep the digital assets in accordance with the safe-keeping rules set down in the Irish AIFM Regulations. |

¹ Since July 2022, the Central Bank had permitted Irish QIAIFs to invest up to 10% of net assets in cash-settled Bitcoin futures traded on the Chicago Mercantile Exchange without any requirement to make a pre-submission to the Central Bank. However, the revised Q&A on AIFMD published on 4 April 2023 provides for the potential to invest in a much broader range of digital assets subject to the conditions imposed by the Central Bank being satisfied.

| Type of Fund | Type of Exposure to Digital Assets | Central Bank Position | Requirements imposed by the Central Bank |
|--|------------------------------------|--|---|
| Open-ended QIAIF | Indirect exposure | Permitted subject to applicable conditions being met | <ul style="list-style-type: none"> • Effective risk management arrangements addressing all risks relevant to investment in digital assets which at a minimum should include liquidity, credit, market, custody, operational, exchange risk, money laundering, legal, reputational and cyber risk. • Appropriate stress testing based on “extreme yet plausible” scenarios. • Effective liquidity management arrangements. • Transparent prospectus disclosure containing a “clear articulation” of relevant risks. • Alignment between redemption profile, level of investment in digital assets and likelihood of illiquidity in such assets. • An open-ended QIAIF can gain indirect exposure to digital assets of up to 20% of NAV without being required to make any pre-submission to the Central Bank. • Pre-submission to the Central Bank is required if proposed exposure is in excess of 20% of NAV. |
| Closed Ended QIAIF/Open Ended QIAIF with Limited Liquidity | Indirect exposure | Permitted subject to applicable conditions being met | <ul style="list-style-type: none"> • Effective risk management arrangements addressing all risks relevant to investment in digital assets which at a minimum should include liquidity, credit, market, custody, operational, exchange risk, money laundering, legal, reputational and cyber risk. • Appropriate stress testing based on “extreme yet plausible” scenarios. • Effective liquidity management arrangements. • Transparent prospectus disclosure containing a “clear articulation” of relevant risks. • Alignment between redemption profile, level of investment in digital assets and likelihood of illiquidity in such assets. |

| Type of Fund | Type of Exposure to Digital Assets | Central Bank Position | Requirements imposed by the Central Bank |
|--------------|------------------------------------|--|--|
| | | | <ul style="list-style-type: none">A closed-ended fund or an open-ended fund with limited liquidity can gain indirect exposure to digital assets of up to 50% of NAV without being required to make any pre-submission to the Central Bank.Pre-submission to the Central Bank is required if proposed exposure is in excess of 50% of NAV. |
| UCITS Funds | Direct exposure/Indirect exposure | Exposure to digital assets not currently permitted | N/A |
| RIAIF Funds | Direct exposure/indirect exposure | Exposure to digital assets not currently permitted | N/A |

In a separate development relating to investment in tokenised traditional assets, under [amendments](#) made to the Irish MiFID Regulations² which became effective on 23 March 2023, the definition of a “financial instrument” now includes any “financial instrument” listed in Schedule 1 to the Irish MiFID Regulations which is issued by means of distributed ledger technology. This paves the way for Irish funds to now potentially invest in tokenised financial instruments subject to applicable product rules.

If you have any questions in relation to the above, please contact any of the members of our Digital Assets team listed below or your usual contact in Dillon Eustace.

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² European Union (Markets in Financial Instruments) (Amendment) (No.4) Regulations



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