



September 2019

## Contingency Planning for a Hard Brexit

### Background

As outlined in a recent [briefing](#), key measures have been taken by the EU, the Central Bank of Ireland and the FCA in the UK to provide as much stability as possible in the event of a hard Brexit on 31 October next.

Notwithstanding these measures, the possibility of a hard Brexit continues to bring significant uncertainty for many funds and fund management companies.

What follows is an overview of some of the matters which will need to be actioned in the lead up to 31 October in order to minimise the impact of a hard Brexit on the funds and their investors, should it materialise. Boards of funds and fund management companies (“**Boards**”) are advised to ensure that Brexit remains an agenda item for all upcoming board meetings

### Update to fund documentation

Since our most recent briefing, the Central Bank has reminded all management companies<sup>1</sup> that they are responsible for making necessary changes to fund documentation to ensure that each fund under management is appropriately prepared for the impact of a hard Brexit. It has also confirmed the deadlines for receipt of Brexit-related changes to fund documentation, as set out below:

For further information on any of the issues discussed in this article please contact:



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<sup>1</sup> Including self-managed investment companies and internally managed AIF

Type of filing	Deadline
Amendments to UCITS and RIAIF Prospectuses	30 September 2019
Amendments to QIAIF Prospectuses (Not involving change of AIFM/continuing use of UK AIFM)	30 October 2019 at 3pm
Amendments to QIAIF Prospectus (Relating to the change of AIFM/continuing use of UK AIFM)	1 October 2019
COSP filing for change of AIFM	1 October 2019

To the extent that this review has not already been completed, Boards are advised to take the necessary steps to ensure that this review is conducted and any necessary amendments to the fund documentation are approved by the Board and filed with the Central Bank in advance of the deadlines outlined above. While required amendments will vary from fund to fund, such changes may include revising the investment policy to ensure that the fund manager can continue to gain exposure to the UK in the event of a hard Brexit and, where relevant, incorporating specific reference to UK regulated markets in the list of regulated markets disclosed in the prospectuses of UCITS and RIAIF funds. Where the necessary amendments are not made to the prospectus in advance of 31 October, any resulting investment breaches may be recorded by the fund's depositary as an advertent investment breach.

Where an Irish QIAIF intends to continue to use a UK AIFM, a full review of the contract between the Irish QIAIF and the UK AIFM should be carried out in order to assess whether any changes are required to ensure that the UK AIFM complies with applicable Central Bank's requirements or in light of the fact that the UK AIFM will no longer benefit from the marketing passport under AIFMD. The prospectus of the Irish QIAIF should also be reviewed for any inaccuracies arising from the re-designation of the UK AIFM as a non-EU AIFM in the event of a hard Brexit. As well as ensuring that any necessary filings are made with EU competent authorities under their NPPR regimes (where applicable), consideration should also be given to whether investors should be notified of the implications of the QIAIF continuing to use the UK AIFM in such circumstances.

### Operational considerations

In addition to ensuring that any necessary changes are made to fund documentation, Boards and investment managers should also be mindful of certain operational challenges that may materialise in the event of a hard Brexit such as the following:

*(i) Adjustment to investment portfolio to ensure compliance with EU investment restrictions*

As outlined in our previous briefing, a hard Brexit will impact on the ability of certain types of funds to implement their investment strategy. By way of example only, managers of UCITS fund of funds will need to ensure that, taking into account any investment in UK domiciled funds, no more than 30% of net assets are invested in AIF funds. Similarly, in the continued absence of an equivalence decision by the European Commission, EU domiciled money market funds will not be permitted to invest in the deposits of UK funds. Fund managers should therefore be taking necessary steps to ensure that funds under management can continue to comply with EU investment restrictions should a hard Brexit materialise.

*(ii) Liquidity management and valuation tools*

In the lead up to a hard Brexit, fund managers may need to adjust investment portfolios to ensure that funds under management hold sufficiently liquid assets in order to be able to continue to meet redemption requests in the event of reduced liquidity in underlying securities or due to heightened market volatility resulting from the UK leaving the EU on 31 October next without a deal. Given that it is not possible to predict with certainty the impact that a hard Brexit will have on markets, Boards are also advised to assess the liquidity management tools available to them (which will be detailed in the fund prospectus and constitutive document) so that they can react swiftly and appropriately in the event that a fund under management begins to experience liquidity difficulties.

Similarly Boards should be satisfied that existing fund documentation provide them with the power to implement fair value pricing or to adjust the value of a security in order to reflect its market value which may be required if certain securities become more difficult to price in the event of a hard Brexit.

*(iii) Share Trading Obligations*

Where the assets of the Irish fund are managed by an EU regulated MiFID firm or a UK investment firm, consideration will need to be given to the ability of that fund manager to access shares necessary to implement the investment strategy while at the same time continuing to comply with its share trading obligations under MiFIR or the equivalent UK onshoring legislation respectively.

*(iv) EMIR Reporting*

Under Article 9(1) of EMIR, all counterparties are required to report in-scope trades to a trade repository which is registered or recognised by ESMA. In the event of a hard Brexit, UK trade repositories will lose their status as registered trade repositories and in the absence of an equivalence decision, EU counterparties will no longer be able to report executed trades to such trade repositories and will need to begin to report to an EU27 trade repositories. Certain trade repositories such as DTCC have established EU27 trade repositories in order to continue to support EU27 counterparties in the event of a hard Brexit, however clients are advised to engage with their trade repository to implement arrangements to ensure that all trades that to date have been reported to a UK trade repository are reported to an EU27 trade repository if a hard Brexit materialises.

*(v) Transfer of Personal Data to the UK*

In the event of a hard Brexit, any transfer of personal data by Irish domiciled funds and fund service providers must be effected in accordance with one of the safeguards available under Chapter V of the GDPR. Therefore, unless it is possible to rely on one of the other safeguards set down in the GDPR, if an Irish entity does, in fact, transfer personal data to one or more UK based entities, it should be taking steps to put in place EU Commission approved Standard Contractual Clauses with any such UK entities.

*(vi) Temporary Permissions Regime*

Finally, to the extent that an Irish fund or Irish fund management company intends to rely on the temporary permissions regime in the UK (the “TPR”) to ensure continued access to the UK market, regard should be have to relevant deadlines published by the FCA. Further information on filing requirements under the TPR is set out in a [briefing](#) recently published by Dillon Eustace’s Funds Registrations Team.

### How Dillon Eustace can help

We are currently working with many of our clients on their Brexit contingency arrangements including:

- (i) reviewing and revising fund documentation to ensure that they are “Brexit-ready”;
- (ii) advising clients on liquidity management tools and valuation tools which may be required to mitigate any negative consequences of a hard Brexit;
- (iii) putting in place Standard Contractual Clauses between Irish funds and service providers and UK service providers in order to legitimise the transfer of personal data to the UK should a hard Brexit materialise;
- (iv) reviewing existing EMIR delegated reporting arrangements, where relevant; and
- (v) assisting clients with necessary filings with the FCA in order to avail of the TPR.

If you require any further assistance with implementing appropriate contingency arrangements to prepare for a hard Brexit, please contact your usual contact in the Dillon Eustace Asset Management and Investment Funds Team.

**Dillon Eustace**  
**September 2019**

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