

Investment Funds
Listing on the
Irish Stock Exchange

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▣ IRELAND AS A LOCATION FOR FUND LISTING

The Irish Stock Exchange (“ISE”) is the leading international exchange for the listing of investment funds. It has developed a specific investment funds listing regime tailored to provide a streamlined and progressive listing process for a wide variety of international fund structures including limited companies, unit trusts and segregated portfolio companies from a variety of domiciles.

Combining a comprehensive set of listing rules, a commitment to aggressive timings on processing listing applications and a flexible and proactive listing process, the listing regime is highly transparent and user friendly, contributing to and supporting the funds industry both domestically and internationally.

The ISE consistently delivers on its commitment to turnaround times of a maximum of 5 working days on the initial draft followed by a 2 day turnaround on subsequent drafts. The ISE has an experienced team which handles the particular requirements of the funds market. This, combined with its aggressive turnaround times has and will continue to enhance the ISE’s international reputation.

“As a stock exchange, our challenge is to ensure sufficient flexibility of approach to embrace new product types, while maintaining the integrity of listing on a regulated European stock market”.

Source: Irish Stock Exchange www.ise.ie

▣ REASONS FOR LISTING

A listing on the ISE offers a number of advantages as it:

- ▣ increases a funds distribution capacity by accessing a wider investor base. It allows promoters to market the fund (i) to institutional investors who may require a listing on a recognised stock exchange in order to invest and (ii) in countries where the relevant authorities require or provide exemptions for investment in listed securities. For example:
 - (i) An ISE listing reduces a fund’s compliance load if it wants to be an eligible fund for French fund of fund purposes.
 - (ii) ISE listed open ended investment companies are eligible for inclusion in UK Self Invested Pensions Plans (“SIPPs”).
 - (iii) Japanese tax rules provide more favorable tax treatment to Japanese individuals investing in listed investment funds.
 - (iv) The stocks or investment funds in which a Chinese Qualified Domestic Institutional Investor invest must be listed on a stock exchange such as the ISE or regulated by a financial regulator that has signed a Memorandum of Understanding with the China Securities Regulation Commission and China Banking Regulatory Commission;

- ▣ provides a “stamp of regulation” for funds which may be domiciled in unregulated jurisdictions. The level of scrutiny imposed by the ISE on an initial and ongoing basis provides the market with a significant level of transparency and investor protection;
- ▣ carries with it a significant element of prestige and visibility, particularly as Ireland is a member of both the OECD and the EU;
- ▣ enables the security to be marked to market, i.e. to allow investors to refer to a quoted market price for their securities. All NAVs and announcements made by listed funds are reported through the Irish Stock Exchange information dissemination system.

LISTING APPLICATION PROCEDURES

There are two main aspects to the listing application process:

1. Drafting and approval of the listing particulars

The ISE requires the preparation of a listing particulars document (“Listing Particulars”) with the disclosure requirements of the ISE being addressed therein. The Fund’s offering document normally serves as the basis for these Listing Particulars. The Listing Particulars can be drafted by Dillon Eustace.

Dillon Eustace will ensure that the draft Listing Particulars comply with ISE listing requirements and will advise on the Fund’s suitability to list in the first instance, and more specifically will advise on specific issues and disclosures that will be required by the ISE. The document is then amended to reflect the requirements of the ISE.

The ISE will review and comment on various drafts of the Listing Particulars until all of its comments have been addressed or cleared through discussion with Dillon Eustace and the various involved parties have no further amendments to make. The document is then finalised, dated and approved.

2. Collation and filing of the 48 hour documents

The ISE requires that a number of application forms and letters of comfort and responsibility be filed with it prior to the listing becoming effective. These documents include, inter alia,

-  a sponsor application form;
-  a client application form;
-  responsibility letters signed by each Director;
-  powers of attorney;
-  a copy of the final Prospectus/Listing Particulars signed by or on behalf of each Director;
-  copies of each executed material contract;
-  details of all directorships and partnerships held by each Director in the past five years;
-  the certificate of incorporation, and
-  memorandum and articles of association for the Fund.

These documents are filed with the ISE following approval of the Listing Particulars. The ISE takes two business days to review these ancillary documents following which listing is effected on receipt of a confirmation that the relevant shares have been issued.

Conditions for Listing

Fund Domicile	No restriction
	No minimum subscription for funds regulated in EU member states, Hong Kong, Jersey, Guernsey, the Isle of Man or Bermuda
	Funds domiciled in other jurisdictions subject to a minimum subscription of US\$100,000
Directors	No minimum number of directors
	Minimum of two independent directors for non-Irish funds
	Directors must be non-executive
Investment Manager	Must have adequate and appropriate expertise and experience in the management of investments.
	Must satisfy one of the following suitability tests:
	Minimum \$100 million in third party funds under management
	Regulated in the conduct of investment business in the EU, Australia, Canada, Hong Kong, Japan, Singapore, Switzerland and/or the US
	Minimum subscription of at least \$1 million
	Each investor is a "Professional Investor"
	A major international securities or investment house promotes the fund under its own name
	There is a slight variation in the rules for Super Sophisticated Investor Funds:
	The Investment Manager must be regulated or registered with a suitable authority. This can be any regulatory authority in the EEA, Australia, Canada, Hong Kong, Japan, Singapore, Switzerland and/or the US. Registration with Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC) is also acceptable.
	The ISE is willing to consider derogations from this requirement on a case by case basis.
Custodian	Must have adequate and appropriate expertise and experience
	Sub-custodians permitted, subject to Custodian exercising due skill care and diligence in their selection and maintaining an appropriate level of ongoing supervision
	Hedge funds may hold certain derivative securities outside of the normal custody network. In such cases the directors have additional responsibilities of oversight in relation to the manner in which such securities are held, valued and reconciled
Investment Restrictions	Maximum 20% in a single issuer, which may be increased to 100% for EU/OECD government issuers
	Maximum 20% exposed to a single counterparty, which may be increased to 100% for certain approved counterparties
	Maximum 10% in physical commodities or real property (except property funds)
	Prohibition on taking legal or management control of investee companies
	Maximum 40% in any other fund (except feeder funds)
	Maximum 20% in other funds of funds
	Underlying funds of feeder funds subject to the same limitations
	Most diversification requirements disapplied for Irish domiciled funds
	Many investment restrictions are disapplied for Super Sophisticated Investor Funds.

Feeder Funds	Must control the underlying fund by entering a written control agreement with the underlying fund, which must undertake to comply with the listing requirements for so long as the fund is listed
	The underlying fund must also comply with many of the suitability, operational requirements and investment restrictions referred to herein, as if that underlying fund were itself applying to list
Dividend Policy	Dividends may only be paid to the extent that they are covered by income and the net of realised and unrealised capital gains and losses
	Conditions in relation to dividends do not apply to Super Sophisticated Investor Funds.
Transferability	Shares/units must be freely transferable
	Restrictions on transfer only permitted where the transfer would result in legal, regulatory, taxation, fiscal, pecuniary or material administrative disadvantage to the fund or its shareholders as a whole. This restriction does not apply to Super Sophisticated Investor Funds.
Financial Information	Newly incorporated funds – a statement that the fund has not commenced to trade
	Funds trading where no audited statements are yet available – unaudited portfolio and per share information as at a date within one month of the document date
	Funds trading after publication of audited financial statements – audited accounts and unaudited portfolio and per share information as at a date within one month of the document date
NAV Calculation	At least quarterly
Hedge Funds	Permitted subject to investors being “Professional Investors” or “Super Sophisticated Investors”, and prime brokers/counterparties meeting specified suitability criteria
Professional Investors	<p>Minimum subscription \$100,000</p> <p>Investor warrants</p> <p>(a) its ordinary business or professional activity includes the buying or selling of investments, whether as principal or agent; or</p> <p>(b) in the case of a natural person, their individual net worth, or joint net worth with their spouse, exceeds \$1 million; or</p> <p>(c) it is an institution with a minimum amount of assets under discretionary management of \$5 million; and that they</p> <p>(i) have the knowledge, expertise and experience in financial matters to evaluate the risks of investing in the fund;</p> <p>(ii) are aware of the risks inherent in investing in the securities and the method by which the assets of the fund are held and/or traded; and</p> <p>(iii) can bear the risk of loss of their entire investment</p>

Super Sophisticated Investors	Minimum Subscription \$500,000
	Investor warrants (a) at the time of making the investment that: <ul style="list-style-type: none"> (i) its ordinary business or professional activity includes the buying and selling of investments, whether as principal or agent; or (ii) in the case of a natural person, their individual net worth, or joint net worth with that person's spouse, exceeds US\$2.5 million; or (iii) it is an institution with a minimum amount of assets under discretionary management of US\$5 million; and (b) that they: <ul style="list-style-type: none"> (i) have the knowledge, expertise and experience in financial matters to evaluate the risks of investing in the fund; (ii) are aware of the risks inherent in investing in the securities and the method by which the assets of the fund are held/or traded, and (iii) can bear the risk of loss of their entire investment.
	Many of the conditions for listing are removed for Super Sophisticated Investor Funds, which allows for greater flexibility to list innovative and more sophisticated products..
Prime Broker/Approved Counterparties	A prime broker , or significant counterparty, must have a specified credit rating, meet a financial resources requirement and must itself be regulated as a broker by a recognized regulatory authority. The specified credit rating is 'A2' or A for long-term debt and 'P-1', 'A-1' or F1 for short-term debt as rated by Moody's or Standard & Poor's.
	Financial resources of \$200 million or has all of its obligations to the fund irrevocably and unconditionally guaranteed by, or is an unlimited liability subsidiary of, an entity that has \$200 million in financial resources
	Recognised regulatory authority is the regulatory authority that is charged with the regulation and supervision of financial services in an EU member state, Australia, Canada, Hong Kong, Japan, Singapore, Switzerland, US, and any other jurisdiction specified by the ISE
Borrowing/Leverage Restrictions	None
Auditor Requirements	Must be internationally reputable firm
Application Timing	Three to six weeks
Subject to EU listing, market abuse and tax harmonization directives	Yes
OECD Membership	Yes
International Recognition	US: Designated offshore securities market
	UK: Designated investment exchange
	Japan: Designated offshore exchange
	Taiwan: Recognised exchange

IRISH REGULATED FUNDS

Due to the close working relationship between the ISE and the Financial Regulator, the ISE automatically accepts the suitability of the service providers to a fund authorised by the Financial Regulator. Likewise the dividend policy is deemed to be acceptable. The ISE will disapply the control requirement for feeder funds that are authorised by the Financial Regulator. Funds that have been authorised as Qualifying Investor Funds may derogate from all ISE investment restrictions, save for legal and management control and limits on investment in commodities and real property.

The main difference in approach taken by the Financial Regulator and the ISE is apparent in the lack of uniformity in their position on financial information and free transferability. This is explained by the ISE remit for investor protection, which considers that once a fund has commenced to trade, financial information becomes a material element of the decision to invest, and that a listed security must provide opportunity for investors to transfer their shares.

CLOSED ENDED FUNDS

Closed ended funds intending making a public offer of securities in the EU or having the securities admitted to trading on a recognised market within the EU are also required to comply with the requirements of the Prospectus Directive (the “PD”).

A closed ended fund is defined as “A collective investment undertaking which does not permit the redemption of its units at the holders request. Action taken by a collective investment undertaking to ensure that the stock exchange value of its units does not significantly vary from its net asset value shall be regarded as equivalent to such redemption”.

Recent changes to the ISE Guidelines for closed ended funds have resulted in the removal of the requirements for quantitative investment restrictions and replaced them with conditions requiring the fund to demonstrate that it has a spread of investment and counterparty risk. The ISE has also removed the conditions in relation to dividend policy and qualified accounts for initial listings. The ISE believes that the strong disclosure requirements of the Prospective Directive allow investors to make informed investment decisions.

The revised guidelines bring the ISE into line with recent changes made by other regulators and the ISE is now one of the most attractive exchanges for closed ended fund listings, offering a combination of Prospective Directive approval for funds with a fast, competitive listing process and specific expertise and experience in the listing of funds.

The ISE reviews the Prospectus for compliance with the PD, but the Financial Regulator retains final sign off and approval for the purpose of the PD. This Prospectus will also serve as listing particulars for the purpose of listing the fund. The ISE adheres to its standard review timetable for closed ended funds.

An approved Prospectus may be used for public offers throughout the EU with the Fund being eligible for admission to trading on any regulated market within the EU.

In order to comply with EU requirements, a listed closed ended fund must appoint a paying agent in Ireland and 25% of the shares must be held by the public.

Closed ended funds listed on the ISE are also subject to the requirements of the Transparency and Takeover Directives.

The Transparency Directive applies additional reporting requirements on listed issuers, including:

- ▣ Increased disclosure in annual and interim reports;
- ▣ Reduced publication filing deadlines for annual and interim reports to four and two months respectively;
- ▣ Requirement to publish two additional interim management statements in each financial year;

- ▣ Requirement on Shareholders to notify the Fund and the ISE/Financial Regulator of shareholdings controlling specified thresholds of voting rights – 5%, 10%, 15%, 20%, 30%, 50% and 75%;
- ▣ Requirement on the Fund to notify changes affecting total percentages of voting rights in issue; and
- ▣ Requirement on the Fund to notify any acquisition or disposal of its own shares.

The Takeover Directive imposes specific Takeover Rules on listed closed ended funds which require, among other things, that

- ▣ any Shareholder acquires 30% or more of the voting rights of the Fund; or
- ▣ any Shareholder with a holding of 30% or more of the voting rights increases by more than 0.05% within any 12 months bids for the remainder of the Fund.

This is clearly an onerous requirement and submissions may be made to the Takeover Panel on a case by case basis if this provision would cause significant difficulties for a particular Fund. There are of course, no guarantees that any application for an exemption of these requirements would be successful.

IRISH STOCK EXCHANGE LISTING FEES

The ISE listing fees are as follows:

Open Ended Funds

		EU Funds	Non-EU Funds
Application fee		€1,900	€1,980
Administration fee		€250	€250
Annual fee*	<u>Single Fund</u>	€1,900	€1,980
	<u>Umbrella</u>		
	Subfunds 1-5	€1,900	€1,980
	Subfunds 6-10	€1,150	€1,200
	Subfunds 10+	€760	€800
Formal Notice fee		€629.20 (€520 Plus VAT**)	€520

*annual fee is payable on listing and on each anniversary thereof

** VAT of 21.5% effective 1 December 2008.

Closed Ended Funds

		EU Funds	Non-EU Funds
Prospectus review fee		€1,000	€1,980
Administration fee		€250	€250
Listing application fee		€1,000	€1,980
Annual listing fee*	<u>Single Fund</u>	€1,900	€1,980
	<u>Umbrella</u>		
	Subfunds 1-5	€1,900	€1,980
	Subfunds 6-10	€1,150	€1,200
	Subfunds 10+	€760	€800
Formal Notice fee		€629.20 (€520 Plus VAT**)	€520

*annual fee is payable on listing and on each anniversary thereof

** VAT of 21.5% effective 1 December 2008.

CONTINUING OBLIGATIONS

The ISE listing rules and various EU Directives impose a substantial number of ongoing reporting obligations on listed funds. The obligations are imposed in order to maintain an orderly and transparent market in the units of listed funds, to ensure the ongoing suitability of the funds for listing, to protect shareholders interests and to ensure that all relevant information is disseminated without delay.

Financial Reports

The following reports must be filed with the ISE and sent to shareholders:

-  audited annual report within six months from the financial year end
-  unaudited interim report within four months of the interim accounting date
-  closed ended funds only - two unaudited management statements each year.

Irish regulated funds and closed ended funds must publish the annual and interim reports within four and two months respectively. The requirement to publish interim reports is disapplied for Irish open ended Qualifying Investor Funds established as investment companies or investment limited partnerships.

Reporting Requirements

Any material changes to the operations of a listed fund will require an announcement, and in some cases, may also require prior ISE or shareholder approval.

Prior ISE Approval

ISE approval is required in advance of any of the following proposed changes being implemented:

-  a variation in class rights;
-  a change in the general character or nature of the fund;
-  a material change in the investment objective or policies of the fund within three years of commencement to trade;
-  a proposal to terminate, renew or extend the life of the fund;
-  a change in the minimum subscription to below USD100,000 for an unregulated fund;
-  a change in the investment manager or custodian;
-  a related party transaction;
-  a reverse take-over or other substantial transaction;
-  a material amendment to the constitutive documents; or
-  a change from open or closed status (except where provided for in the listing particulars).

Prior Shareholder Approval

Prior shareholder and ISE approval is required for any circular relating to:

- ▣ a material change in the investment objective and policies within three years of commencement to trade;
- ▣ a reverse transaction;
- ▣ a related party transaction;
- ▣ a change from open to closed ended status (except where provided for in the listing particulars).
- ▣ a change which is relevant to the continuation of the listing, or may materially affect the interests of shareholders; or
- ▣ a proposal to issue units at less than net asset value (except where such offer is first made on a pro-rata basis to shareholders).

Circulars must be circulated to shareholders at least 15 days in advance of the voting date.

Announcement of Changes Without Prior Approval

The following announcements may be made by a fund without prior approval:

- ▣ changes in share capital;
- ▣ details of any shareholding by the Directors, their connected persons or any person with managerial responsibility;
- ▣ the identity of any controlling shareholder (30% or more of the voting rights);
- ▣ for closed ended funds – details of any direct or indirect holdings meeting, exceeding or falling below the following percentages of the voting rights – 5%, 10%, 15%, 20%, 30%, 50%, 75% (TR-1 forms);
- ▣ for closed ended funds – details of the percentage of total voting rights in issue;
- ▣ a change or proposed change in investment, borrowing or leverage restrictions;
- ▣ any material change in the tax status of the fund;
- ▣ any suspension of dealings, redemptions, transfers or valuations;
- ▣ any significant change in investment strategy;
- ▣ any change in Administrator, Registrar or Transfer Agent or Sponsor;
- ▣ any change in directors or material change in any directors function;
- ▣ any change in dividend or valuation policy;
- ▣ the net asset value per unit upon calculation and any change in the frequency of its calculation;

- ▣ any dividend paid, including details of the record date, the period covered, the payment date and the amount of the dividend;
- ▣ notice of any AGM or EGM;
- ▣ any change in the financial year end; and
- ▣ any material change to the fees paid by the fund, or material change in its material contracts.

Market Abuse Directive

The Market Abuse Directive has imposed requirements to ensure that:

- ▣ Interested Persons (Directors, persons closely associated with them, persons with managerial responsibility) are precluded from dealing at a time when they are in possession of inside information;
- ▣ the fund adopts by board resolution, rules governing inside dealings and market manipulation;
- ▣ any transactions by Interested Persons are promptly reported to the ISE (Schedule 11 forms); and
- ▣ lists of any persons who may have access to inside information either at the fund or at any of its service providers are maintained.

CONTACT US

The Funds Listing team forms part of the Dillon Eustace Financial Services Group which has the largest dedicated group of financial services lawyers in Ireland.

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Or any of your usual Dillon Eustace contacts at our offices listed above.

For further information on Super Sophisticated Investor Funds, The Transparency Directive, The Market Abuse Directive, Closed Ended Funds or Derivative Funds please contact any member of our team and we will provide you with a detailed memorandum regarding same.

DISCLAIMER:

This article is for general information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

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