

Central Bank More Accepting of Limited Crypto-Exposure for Funds

The Central Bank of Ireland (the “Central Bank”) has recently updated its requirements in relation to new fund submissions and the related changes indicate a greater willingness to accept an element of crypto exposure for Qualifying Investor Alternative Investment Funds (“QIAIFs”).

Background

The Central Bank periodically issues guidance to the financial industry in the form of Q&As relating to queries likely to arise under existing legislation. These are published in order to assist in limiting uncertainty but are subject to the Central Bank’s right to revise its related approach at any time. As reported in our Legal Update “Crypto Funds in Ireland” in July 2021 the Central Bank published updates to its Q&As on both UCITS and the AIFMD (“Guidance”) to address the potential for authorised funds falling under these categories to invest directly or indirectly in crypto assets. These are Q&As ID1100 and ID1145 respectively. In summary these provided that the Central Bank was “highly unlikely” to approve a UCITS or RIAIF directly or indirectly investing in crypto-assets but it was more willing to consider the specifics of any proposal relating to a QIAIF.

QIAIFs

QIAIFs are a highly flexible and versatile form of authorised fund which can take advantage of the pan European passport provided for under the AIFMD. The Central Bank operates a “fast track” approval process whereby a new QIAIF or a sub-fund of an established entity can be approved within 24 hours. However, it had determined to exclude QIAIFs investing in certain asset classes from being eligible to take advantage of this fast-track process. The relevant asset classes in this regard (“Relevant Assets”) included funds obtaining crypto exposure, as defined pursuant to Question ID1145. Other assets falling within this included property funds, loan origination funds and life settlement funds.

Pre-submission

In the case of QIAIFs investing in Relevant Assets they are not be able to avail of the 24-hour fast track approval process. However, AIFMs can make a pre-submission to the Central Bank outlining how the risks associated with such exposures would be managed effectively and if the Central Bank approves a submission may proceed. In the case of crypto funds, the pre-submission must include the following information:

- Details of how the crypto-assets are capable of being appropriately risk managed, in accordance with Question ID1145; and
- In the case of direct investment in crypto-assets, details from the proposed depositary demonstrating how it is satisfied that it can provide for the safe-keeping of the assets of the QIAIF in accordance with the conditions set down in applicable law including the AIFM Regulations.

New Exception

The Central Bank has now provided for a limited exception to the above rules in relation to QIAIFs seeking crypto exposure (as well as removing non-Irish property, loan origination and life settlements from list of Relevant Assets). The exception is that where a QIAIF proposes to include a limit of investing up to 10% of its NAV in cash-settled Bitcoin futures traded on the Chicago Mercantile Exchange, no pre-submission is required. However, the submission must include a cover letter noting the inclusion of crypto exposure and confirmation of shareholder approval where the application relates to a post authorisation amendment.



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