CLERKIN LYNCH LLP

Legal Update

New Q&A's issued on the Central Bank AIFMD Rulebook

The Central Bank of Ireland ("CBI") published the 45th Edition of the Central Bank Alternative Investment Funds Managers Directive ("AIFMD") Q&A on October 5th, 2022, which includes two new Q&As, ID 1154 and 1155 relating to the calculation of net assets for the purpose of the limits applied to fund of funds and loan organisation funds respectively.

Background

The "AIF Rulebook" has been prepared by the CBI and specifies the conditions that will be applied to an AIF, AIFM, or other relevant entities when an authorization is granted. It was published to limit ambiguity. The AIF Rulebook evolves over time as matters that require additional work are identified. The Central Bank maintains constant dialogue with industry and monitors market dynamics to ensure that its rules are adequate. Updates to the AIF Rulebook are announced in the 'Markets Update' and appear in updated editions on the Central Bank website.

Existing Requirements

Two new Q&As added to the Rulebook concerns the raising of capital by a Qualifying Investor Alternative Investment Funds ("QIAIF"), from investors under a formally agreed commitment basis and the definition of "net asset value" in relation to committed capital.

Investing more than 50% in another Fund

A QIAIF may invest up to 100% of its net assets in other investment funds, with a maximum of 50% of its net assets in any one unregulated investment fund. A QIAIF must not make investments that violate this restriction, such as investing more than 50% of net assets in two or more unregulated investment funds with identical investment strategies. This prevents QIAIFs being used as feeders to Cayman Funds.

In the case of "Category 2", funds as defined, a QIAIF shall not invest more than 50% of its net assets in any other investment fund unless the Central Bank has confirmed in writing that it has no objections.

Leverage Calculation of a Loan Originating QIAIF

In its prospectus, each loan originating QIAIF must outline a risk diversification strategy that will result in a diversified loan portfolio and limit exposure to any one issuer or group to 25% of net assets within a specified timeframe.

New Q&A's

The new questions which focus on the foregoing are as follows:

ID 1154

Where a QIAIF which raises capital from investors on the basis of a formally agreed-upon commitment. Can the reference to "net assets" be understood to refer to committed capital for the purposes of calculating the investment limit of a QIAIF that invests more than 50% of net assets in another investment fund in by Chapter 2, Part II, Section 2 of the AIF Rulebook?

ID 1155

Where a QIAIF that raises capital from investors on a formally agreed-upon commitment basis. Can the reference to "net asset value" be understood to refer to committed capital for the purposes of the leverage calculation of a loan originating QIAIF in paragraph vii of Chapter 2, Part II, Section 4 of the AIF Rulebook?

The answer below applies in both instances:

Yes, as long as the QIAIF does not offer redemption options during the capital commitment period and Investors must be informed of the start and end dates of this period. Furthermore, this calculation methodology is only valid for six months following the end of the capital commitment period.

Mark Browne
Partner
Email: markbrowne@clerkinlynch.com
Phone: 01 611 4400

Megan Giblin