

Central Bank Updates Marketing Rules for Funds

On 27 February 2023, the Central Bank of Ireland (the “Central Bank”) published revised website guidance (the “Guidance”) on the provisions governing marketing requirements for both UCITS and AIFs in Ireland. This revised guidance also contains updated information on the format and content of marketing materials for funds as well as details of their approach to marketing communications. This reflects the growing focus on marketing activity by regulators in Europe and the impact of relevant new legislation such as the cross-border distribution framework. The Guidance includes a helpful summary of the marketing requirements in each case as well as details of all the relevant regulatory requirements.

Marketing requirements for UCITS

The UCITS Directive has been implemented into Irish law by the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 2011 [S.I. No 352 of 2011] (as amended), (the “UCITS Regulations”), which designate the Central Bank as the competent authority with responsibility for the authorisation and supervision of UCITS. The summary in the Guidance of the marketing requirements for UCITS notes that (without prejudice to Article 93 of the UCITS Directive), the Central Bank does not require notification or prior approval of marketing communications for UCITS. However, UCITS must ensure compliance with Regulation 116 of the UCITS Regulations, Regulation 54 and 97 of the Central Bank UCITS Regulations and the advertising standards set out in Schedule 6 of the Central Bank UCITS Regulations. Marketing material must also be compliant with the ESMA Guidelines on marketing communications under the Regulation on cross-border distribution of funds (ESMA34-45-1272) (the “ESMA Guidelines”), which establish common principles for EU regulators on matters pertaining to marketing communications.

The Central Bank has issued related Q&As (IDs, 1102 and 1103), available on its website. When marketing units in Ireland, UCITS must also comply with the Consumer Protection Code. The Guidance includes details of the key granular level obligations of this legislative framework related to the contents, format, and manner of presentation of marketing communications, including

compulsory warnings and restrictions on the use of certain words or phrases. Finally, when a UCITS ceases to market to investors in Ireland, it must comply with the denotification requirements.

Marketing requirements for AIFs

AIFs in Ireland are governed by the AIFMD (Directive 2011/61/EU) as implemented into Irish law by the European Union (Alternative Investment Fund Managers) Regulations 2013 [S.I. No 257 of 2013] (as amended) (the “AIFM Regulations”) and the Central Bank rulebook (the “AIF Rulebook”) which sets out its requirements for AIFs. The rules applicable depend in large part on whether the AIF is a retail or professional investor product, with significantly stricter rules including an obligation for prior approval, applying for the former.

The Central Bank does not require the notification and prior approval of marketing communications of AIFs but any such marketing communications must be compliant with the ESMA Guidelines, as well as the AIF Rulebook and related Central Bank Q&A, ID 1148 and any other obligations. For example, there are additional requirements for certain categories of AIFs, including private equity or real estate AIFs. The Central Bank may also impose such additional requirements as it considers appropriate from time to time, so it is important to keep up to date in this regard. The Guidance also contains granular level details on the disclosure and reporting requirements applicable to AIFs.



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