Legal Update

Central Bank clarifies position on Crypto-UCITS

The Central Bank of Ireland (the "Central Bank") has on April 4th, 2023, updated the guidance contained in its UCITS Q&A document in relation to UCITS obtaining exposure to crypto or digital assets. The update is stated to reflect a change in terminology usage only and reaffirms the Central Bank's position on UCITS gaining exposure to digital assets.

Background

The Central Bank has previously issued guidance on its view of Irish authorised funds containing exposure to digital assets. Digital Assets for these purposes are essentially defined to be private assets that depend primarily on cryptography and distributed ledger or similar technology and which are based on an intangible or non-traditional underlying. The prior guidance from the Central Bank has been the subject of prior Legal Updates available on our website but essentially provides that such exposure, either direct or indirect, will generally be viewed as inappropriate for UCITS or RIAIFs but may be considered acceptable for QIAIFs subject to certain limits of indirect exposure or if a submission is made that satisfactorily addresses key related regulatory concerns.

Updated Guidance

The updated guidance issued by the Central Bank on 4 April 2023 was released through an updated edition of its UCITS Q&A document. The new edition is 39th Edition of this document. The Central Bank publishes Q&A documents on a variety of topics to address queries likely to arise in practice to assist practitioners and ensure clarity among market participants. The UCITS Q&A is accordingly one of a series of such Q&As. The UCITS Q&A amends Q&A ID 1100 which relates to UCITS obtaining direct or indirect exposure to digital assets.

Current Requirement

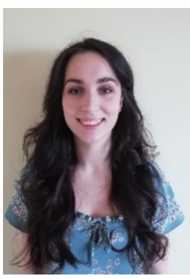
The Central Bank notes that it must be satisfied that assets in which a UCITS invests are capable of meeting the eligible asset criteria for UCITS and that indirect exposure to the assets is capable of being appropriately risk managed. However, the Central Bank states that it has not seen information which would satisfy it that digital assets are capable of meeting the eligible asset criteria for UCITS or that indirect exposure to digital assets is capable of being appropriately risk managed. This wording does indicate that the Central Bank would be open to entertain submissions on this point.

The Central Bank notes that digital assets can present significant risks, including liquidity risk; credit risk; market risk; operational risk (including fraud and cyber risks); money laundering / terrorist financing risk; and legal and reputation risks. Accordingly in light of these specific risks pertaining to digital assets and the difficulties these pose for retail investors in particular, the Central Bank has again stated that it would be highly unlikely to approve a UCITS proposing any exposure (either direct or indirect) to digital assets.

How can Clerkin Lynch Assist?

The Central Bank has stated that its approach in relation to digital assets will be kept under review and may change in the future. It is likely to evolve as European regulatory discussions develop on the topic and any new information or developments emerge in the future. Clerkin Lynch will continue to monitor related developments and are pleased to assist clients with regulatory compliance as well as in regard to all aspects of fund applications. Please contact us for a no-obligation discussion to find out more about our team and services.

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



Niamh Trant