Ireland

FUND LEGISLATION

- UCITS: European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 2011
- Non-UCITS investment companies: Part XIII of the Companies Act, 1990
- Non-UCITS unit trust: Unit Trusts Act, 1990
- Investment Limited Partnerships (non-UCITS): Investment Limited Partnerships Act, 1994
- Non-UCITS common contractual funds: Investment Funds, Companies and Miscellaneous Provisions Act, 2005

NUMBER OF FUNDS

- 5,077 Irish regulated funds as of April 30, 2012 (including sub-funds) (source: Central Bank of Ireland)
- 7,248 non-Irish funds administered in Ireland as of March 31, 2012 (source: Irish Funds Industry Association)

NUMBER OF FUNDS BY CATEGORY

All data as of 30 April 2012 and includes sub-funds (source: Central Bank)

UCITS.....3,101
Non-UCITS..... 1,976
Retail Non-UCITS.....380
Professional Investor Non-UCITS..... 181
Qualifying Investor Non-UCITS.....1,412

Domiciled and administered fund assets total:

The latest available data is as of March 31, 2012 shows that there were €908 billion in total net assets in non-Irish domiciled funds administered in Ireland (source; Irish Funds Industry Association) and €1,116 billion in total net assets in funds domiciled in Ireland. The figure for Irish domiciled funds was made up of €871 billion of UCITS net assets and €245 billion of non-UCITS net assets (source: Central Bank of Ireland).

Domiciled and administered fund assets by category:

All data as of 31 December 2011 (source: Central Bank of Ireland)

Money Market: ..... €345 billion
Bonds:.....€169 billion
Equities:..... €265 billion
Hedge: .....€58 billion
Other: ..... €116 billion

The numbers of Irish registered funds by regulatory category are provided above. The variation between the Central Bank of Ireland aggregate total assets figure and the total net asset value figure of the Central Bank as stated above is due to rounding and other factors.

There are no up-to-date official statistics available on the categories of non-Irish funds administered in Ireland as such.

REGULATOR

The Central Bank of Ireland (commonly known as the "Central Bank").

Address: Funds Authorisation and Supervision Divisions, Central Bank of Ireland, Block D Iveagh Court, Harcourt Road, Dublin 2, Ireland

SERVICE PROVIDERS

There are a large number of law-firms which provide legal services to the alternative investment funds industry here, both the leading commercial firms and smaller niche practices.

All of the main accountancy firms have large operations in Ireland.

There are approximately 50 fund administrators active in Ireland, many of which have affiliated custodian operations in Ireland, the majority of which would have alternative investment fund servicing capabilities.

There are no available statistics on Irish corporate service providers as generally these entities are required to be regulated in Ireland. Generally, fund administrators or specialised transfer agency companies would provide those services normally provided by corporate services provides, excluding company secretarial services which are also provided by corporate secretarial affiliates of the law-firms and certain independent firms.

Investment banks involved in prime brokerage do not typically provide this service out of Ireland. Over 431 fund promoters have Irish domiciled funds as part of their distribution strategy (source Lipper Ireland Funds Encyclopaedia June 2011).

There are no official statistics on the number of placement agents in Ireland.

Local stock exchange: The Irish Stock Exchange Limited

Local fund industry body: Irish Funds Industry Association

Promotion agency for funds/financial sector: Industrial Development Agency and Irish Funds Industry Association

DOUBLE TAXATION TREATIES

Ireland has signed comprehensive double taxation treaties with 66 countries, of which 59 are currently in effect. The double taxation agreements which are currently in effect and having force of law cover the

following countries: Albania, Australia, Austria, Bahrain, Belarus, Belgium, Bulgaria, Canada, Chile, China, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Hong Kong, Hungary, Iceland, India, Israel, Italy, Japan, Republic of Korea, Latvia, Lithuania, Luxembourg, Macedonia, Malaysia, Malta, Mexico, Moldova, Montenegro, Netherlands, New Zealand, Norway, Pakistan, Poland, Portugal, Romania, Russia, Serbia, Singapore, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Republic of Turkey, United Arab Emirates, United Kingdom, United States, Vietnam and Zambia.

Ireland has also signed double taxation treaties with the following countries and the legal procedures to give these agreements force of law are at various stages: Armenia, Bosnia & Herzegovina, Egypt, Kuwait, Morocco, Panama and Saudi Arabia.

Negotiations for new agreements with Qatar, Thailand, Ukraine and Uzbekistan have been concluded and are expected to be signed shortly. In addition negotiations for new agreements with the following countries are at various stages: Argentina, Azerbaijan, and Tunisia. It is also planned to initiate negotiations for new agreements with other countries in the course of 2012.

TAX INFORMATION EXCHANGE AGREEMENTS

Ireland has concluded Tax Information Exchange Agreements (TIEAs) and Agreements for affording relief from double taxation with respect to certain income of individuals and establishing mutual agreement procedures in connection with the adjustment of profits of associated enterprises with Guernsey, the Isle of Man and Jersey.

Ireland has also concluded Tax Information Exchange Agreements (TIEAs) with Anguilla, Antigua and Barbuda, Belize, Bermuda, the British Virgin Islands, the Cayman Islands, the Cook Islands, Gibraltar, Grenada, Liechtenstein, the Marshall Islands, Samoa, St Lucia, St. Vincent & the Grenadines and, the Turks & Caicos Islands and Vanuatu.

In addition, Ireland has been designated by the Cayman Islands as a country that may make requests for tax information under Part IV of the Tax Information Authority Law. This allows the Revenue Commissioners to request information relevant to a tax investigation (including bank and entity ownership information) from the Cayman Islands authorities without the necessity of a bilateral TIEA. This applies for taxable periods beginning on or after 1 May 2009.

EUROPEAN UNION – TAXATION OF SAVINGS INCOME DIRECTIVE

Under the European Savings Directive, all European Member States and a number of associated and dependant territories are required to exchange certain information and/or impose a withholding tax on particular types of payments made to certain individuals. Andorra, Liechtenstein, Monaco, San Marino and Switzerland are not participating in automatic exchange of information but are exchanging information on a request basis. Their participation is confined to imposing a withholding tax. The other associated or dependant territories that are participating are Anguilla, Aruba, British Virgin Islands, Cayman Island, Guernsey, Isle of Man, Jersey, Montserrat, Netherlands Antilles and Turks and Caicos Islands.

TYPES OF ALTERNATIVE FUND VEHICLE

- Open-ended, hybrid or closed-ended investment company with fixed or variable capital
- Open-ended, hybrid or closed-ended unit trust
- Open-ended, hybrid or closed-ended common contractual funds
- Open-ended, hybrid or closed-ended investment limited partnerships

Each of the above may be established as single or multi-portfolio funds and with one or multiple classes of shares. Investment companies and common contractual fund sub-funds have statutory ring-fencing of their assets and liabilities.

Available types of corporate vehicle

- Single portfolio company
- Segregated portfolio (umbrella) company
- Variable or fixed capital company

TYPES OF REGULATORY FUND CATEGORY

- UCITS (no minimum initial subscription requirement);
- Retail Non-UCITS (no minimum initial subscription requirement except for private equity funds, in respect of which it is €12,500);
- Professional Investor Non-UCITS (minimum initial subscription of €100,000);
- Qualifying Investor Non-UCITS (minimum initial subscription of €100,000, investor wealth tests and risk acknowledgement).

There are certain other categories which are not widely used. For example, non-designated collective investor funds (which are available to life assurance companies, pension funds and other collective investors; tax exempt, do not have to be sold publicly) are not widely used due to their narrow investor requirements.

AUDIT REQUIREMENT

Yes, annual, local.

FINANCIAL STATEMENT REQUIREMENTS

Yes, all semi-annual unaudited and annual audited. Corporate Qualifying Investor Funds do not have to prepare semi-annual unaudited accounts.

COST OF REGULATORY FEES

€2,025 per year for each fund plus €475 per sub-fund up to a maximum of €4,400 (source: Central Bank of Ireland: A Guide to Industry Funding Regulations, 2011). This is reviewed on an annual basis by the Central Bank of Ireland.

OVERALL COST OF FUND ESTABLISHMENT

Legal costs will vary from law-firm to law-firm and depending on the type of fund and other factors. There is no up-front regulatory fee. There is a small government levy for incorporating corporate funds and other initial statutory filings.

REGULATORY APPROVAL TIME

Qualifying Investor Funds: 24 hours following filing of prospectus, constitutive document, principal service agreements, application request, completed regulatory application forms including a fund summary, and various confirmations assuming promoter, investment manager,

administrator, custodian and directors have already been approved by the Central Bank and the application is within normal prescribed parameters and any required derogations have been obtained in advance.

Professional Investor Non-UCITS: If promoter approval is required, this must be obtained generally before the fund application is submitted to the Central Bank. The promoter approval will generally take approximately two weeks. Once promoter approval is obtained, and the fund application is submitted, the Central Bank endeavours to respond to the initial application within two weeks and subsequent responses from the fund each time within approximately one week. Normally, two to three sets of comments can be expected, depending on the nature of the fund, resulting in the application spending approximately four to five weeks in total with the Central Bank. The total time taken to have the fund authorised then depends on the speed at which the promoter responds to the Central Bank's comments.

Retail Non-UCITS: Similar to Professional Investor Fund above.

UCITS: Similar to Retail Non-UCITS, however, the policies and procedures regarding the overall management and governance of the UCITS (whether by the Board of the UCITS or a separate Irish management company (in the case of common contractual funds and unit trusts a management company is compulsory) must be pre-approved by the Central Bank prior to the submission of the UCITS application for authorisation. This pre-approval process can generally take two to four weeks.

OVERALL ESTABLISHMENT TIME

In each case from a standing start (i.e. fund promoter, investment manager and directors have not been previously approved by the Central Bank, but fund service providers have been chosen) to fund authorisation:

UCITS.....tends to take approximately 3 months

Non-UCITS

Retail .....approximately 2 months

Professional Investor Funds .....approximately 2 months

Qualifying Investor Fund.....approximately 1 month

Ireland

By Dillon Eustace

1. What if any are the investor restrictions

Irish Funds are not required to have a minimum number of investors, however, certain Irish regulated funds must, depending on the category of fund, and the specific wording of the legislation, invest capital raised from "the public" (UCITS), raise capital by providing facilities for "direct or indirect participation by the public" (Non-UCITS investment companies) or must constitute an arrangement made for the purpose, or having the effect, of providing facilities for the participation by "the public" (non-UCITS unit trusts).

There are certain other categories which are not widely used. For example, non-designated collective investor funds (which are available to life assurance companies, pension funds and other collective investors), are not required to facilitate direct or indirect public participation). These are not widely used due to the fact that their income and gains are taxable in Ireland.

2. What if any are the investor restrictions

UCITS must be offered in European Economic Area, but may also, but not alternatively, be offered elsewhere. UCITS and Non-UCITS established as common contractual funds may not be offered to natural person investors. Apart from that, and outside of normal matters of contractual capacity, there are no substantive Irish restrictions in relation to the nature or quality of UCITS investors.

There are no minimum investments imposed by the Central Bank in relation to Irish non-UCITS retail funds other than that non-UCITS retail funds which are authorised by the Central Bank as venture capital or private equity funds must impose a minimum initial subscription requirement of €12,500 on each investor. Non-UCITS Professional Investor Funds ("PIFs") are required to impose a minimum initial subscription requirement of €100,000 otherwise there are no Irish restrictions. Non-UCITS funds that can be offered solely to Qualifying Investors ("QIFs") are required to apply a minimum initial subscription requirement of €100,000 and may be sold only to investors who are professional clients within the meaning of Annex II of Directive 2004/39/EC (Markets in Financial Instruments Directive); or investors who receive an appraisal from an EU credit institution, a MiFID firm or a UCITS management company that the investor has the appropriate expertise, experience and knowledge to adequately understand the investment in the QIF; or investors who certify that they are an informed investor by providing either (i) a confirmation (in writing) that the investor has such knowledge of and experience in financial and business matters as would enable the investor to properly evaluate the merits and risks of the prospective investment; or (ii) a confirmation (in writing) that the investor's business involves, whether for its own account or the account of others, the management, acquisition or disposal of property of the same kind as the property of the QIF.

In relation to PIFs and QIFs, an exemption from the minimum initial subscription requirement and, in the case of QIFs, the investor criteria, is available to directors of the fund, the investment management company, directors of the investment management company, the fund promoter (i.e. sponsor) and its affiliates, and employees of the investment management company who are directly involved in the fund's management or are senior employees with experience in the provision of investment management services.

All QIF investors must certify in writing to the fund that they meet the minimum criteria listed above and that they are aware of the risk involved in the proposed investment and of the fact that inherent in such investments is the potential to lose the entire sum invested.

Please see "1" above in relation to non-designated collective investor funds.

3. Is there a requirement for an Irish fund's sponsor (promoter) to be approved by the Irish Regulator?

Before the Central Bank of Ireland (the "Central Bank") will accept an application for the authorisation of an Irish investment fund, the Central Bank must be satisfied regarding the promoter's expertise, integrity, adequacy of financial resources and that it or its key management have a relevant track-record in collective investment schemes. With limited exceptions, the promoter is required to be regulated by a supervisory authority recognised by the Central Bank and generally speaking any OECD member state national regulator will be acceptable. Promoters are required to have audited net shareholder funds or partners capital of not less than €635,000 on an ongoing basis. The requirements are essentially the same for all categories of Irish fund though for retail funds, experience in the distribution of

retail funds or access to a retail distribution network will be an additional consideration.

4. Is there a requirement for the investment manager of an Irish fund to be approved by the Irish Regulator?

Before the Central Bank will accept an application for the authorisation of an Irish investment fund, the proposed discretionary investment management company(ies) of the fund must be cleared in advance. Acceptable investment management firms include those which are regulated under the Markets in Financial Instruments Directive (MiFID) (Directive 2004/39/EC) and non-EU firms regulated by a supervisory authority recognised by the Central Bank.

In relation to Irish UCITS, the investment managers must be authorised or registered for the purpose of asset management and must be subject to prudential supervision. In addition, where a non-EU investment manager is proposed to be appointed, there must be a form of co-operation agreement in place between the Central Bank and the supervisory authority of the third country that regulated the investment manager.

5. What are the custodian/depositary bank requirements for an Irish fund?

The assets of Irish regulated funds must be entrusted to a depositary for safe-keeping. The depositary must be a credit institution authorised in Ireland, an Irish branch of an EU credit institution or an Irish incorporated company which is wholly owned by an EU credit institution (or equivalent from a non-EU jurisdiction) provided that the liabilities of the Irish company are guaranteed by its parent.

The prescribed role of the depositary is to ensure, as a general rule, legal separation of non-cash assets and to ensure that certain core aspects of the management of the fund are carried out in accordance with applicable legislation, Central Bank conditions and the fund's constitutive documents, for example, valuation, sale, issue, repurchase and cancellation of fund units. In addition, the depositary must enquire into the conduct of the management company, investment company or general partner in each annual accounting period and reporting thereon to the fund's unitholders.

6. What are the local Director requirements?

Both UCITS and non-UCITS investment companies are required to have a minimum of two Irish resident Directors on their boards. Common contractual funds and unit trusts are required to have an Irish management company and such management companies are required to have at least two Irish resident Directors on their boards. Investment limited partnerships are required to have an Irish General Partner and such entity is required to have at least two Irish resident Directors on its board. The board of Directors of a fund or its management company/general partner cannot have Directors in common with the depositary of the fund. All Directors appointed to such entities must be approved in advance by the Central Bank pursuant to a fitness and probity regime applicable to all regulated financial services sectors in Ireland on the basis that the Central Bank is satisfied that each has appropriate expertise and integrity and is of good repute. The names and biographies of the directors must appear in the fund's Prospectus. Resignations of Directors from the Boards of Irish funds or their management companies/general partners must be notified immediately to the Central Bank.

It is an Irish legislative requirement (Section 21 of the Central Bank Reform Act 2010) that each Irish fund and, if applicable, its management company satisfies itself on reasonable grounds that a person appointed to a so-called "pre approval controlled function" ("PCF") complies with the Central Bank's 2011 Fitness and Probity Standards (the "Standards"). Directors are considered to be PCFs. It is also a legislative requirement that the PCF agree to abide by the Standards. Where a PCF does not comply with the Standards, the Irish entity cannot permit that person to act as a PCF (this applies to new appointments and existing appointments). In complying with the Standards, the Central Bank expects the Irish entity to consider the specific competencies and level of probity that should be expected of a PCF of the relevant entity of the particular kind in question. The Standards set out specific minimum due diligence that the Central Bank expects would be undertaken by the Irish entity.

7. What are the Prospectus/offering document/ constitutive document requirements?

All UCITS and Non-UCITS must issue a prospectus, which must be dated, and the essential features of which must be kept up to date. Investors must be offered a copy of the Prospectus, free of charge, prior to subscribing for units in the relevant fund. Any changes to the Prospectus must be made by prior approval of the Central Bank or, in the case of Qualifying Investor Funds prior notification to the Central Bank. Any material changes to the Prospectus must be notified to investors in the fund's subsequent periodic reports. The overriding Central Bank consideration is that the Prospectus should contain sufficient information to enable investors to make an informed decision whether to invest in the fund. In particular, the investment objectives and policies of a fund must be clearly described in the Prospectus with sufficient information to enable investors to be fully aware of the risks they are entering into. Separate Prospectuses may be issued by funds established as umbrella funds in respect of each of their sub-funds, though the Central Bank discourages this

practice for UCITS. Separate prospectuses may not be issued in respect of separate share classes, except in the context of Qualifying Investor Funds provided that the Prospectuses are consistent with the other Prospectus(es) for the fund/sub-fund of an umbrella fund (except in relation to that information which is class specific). UCITS must also issue a "key investor information document" which contains the essential characteristics of the UCITS in concise and non-technical language.

8. Are Irish funds required to be licensed?

Broadly speaking, units of Irish investment funds that are available for public participation may not be sold or purchased nor may sales or purchases be solicited without the fund having sought and obtained authorisation of the Central Bank under the relevant Irish funds legislation.

9. What are the Central Bank requirements before an Irish fund can launch?

Before an Irish investment fund can launch, the fund must be in possession of a written authorisation from the Central Bank pursuant to the relevant Irish legislation. There are no minimum capitalisation requirements except in the case of UCITS investment companies which have not appointed Irish management companies, which must have a minimum capital of €300,000 prior to authorisation by the Central Bank.

10. What ongoing Central Bank requirements apply to Irish funds?

The ongoing core Central Bank requirements can be broken down into:

Disclosure

Please see "7" above in relation to the Prospectus.

Each fund must issue annual audited financial statements and (other than in the case of corporate Qualifying Investor Funds, which are exempt from this requirement) semi-annual unaudited financial statements, comprising a balance sheet, income statement (in the case of the annual audited financial statements only), a portfolio statement and statement of changes in the composition of the portfolio during the period and any significant information which will enable investors to make an informed judgement on the development of the fund and its results.

Valuation and pricing

Fund assets must be valued on the basis of market prices where available or, where unavailable, generally at probable realisation value calculated by the Directors of the fund/management company/general partner or by a competent third party appointed by the Directors of the fund/management company/general partner, the appointment of which is approved by the depositary. The valuation rules must be set out in the fund's Prospectus and must be set out, or referred to, in the fund's constitutive document. The final checking of the fund's net asset value must be carried out in Ireland by staff located in Ireland, in the absence of a derogation from the Central Bank. Valuation rules must be applied consistently throughout the life of a fund. The valuation policy is ultimately the responsibility of the board of Directors of the fund/management company/general partner.

Client asset protection: independent custody of assets

The applicable rules are outlined in "5" above.

Depositary as fiduciary of investors

The applicable rules are outlined in "5" above.

Portfolio regulation

The Central Bank imposes diversification requirement and concentration requirements on Irish UCITS, non-UCITS retail funds and Professional Investor Funds.

UCITS are permitted to invest principally in transferable securities which are listed or traded on a regulated exchange or other market, money market instruments, other UCITS and UCITS equivalent funds, cash deposits, listed or OTC derivatives which are sufficiently liquid (and the underlying assets of which are eligible for direct investment by the UCITS or are permitted financial indices, interest rates or exchange rates). UCITS are subject to significant diversification, concentration, counterparty and global exposure requirements including a 10% of net asset value per issuer restriction (subject to a 40% limit on issuers making up more than 5% of net asset value counterparty restriction (which is raised to 10% for credit institution counterparties).

A retail Non-UCITS' general investment restrictions prohibit it from investing more than 10% of its net asset value in securities which are not listed or traded on a recognised and regulated market, more than 10% of net asset value in the securities of any one issuer and more than 10% of its net asset value in any class of security issued by a single issuer. The net maximum potential exposure that the fund can achieve through efficient portfolio management techniques and borrowings cannot exceed 25% of net asset value.

There are exceptions and specific restrictions for retail Non-UCITS funds of funds including funds of unregulated funds, feeder funds, real estate funds, private equity funds and managed futures funds.

In the case of Professional Investor Funds, the standard investment and borrowing restrictions applicable to retail Non-UCITS can be disapplied to the extent agreed with the Central Bank. As a general rule of thumb, the quantitative limits are doubled.

The Central Bank disapplies all but a small number of policy driven investment restrictions in relation to Qualifying Investor Funds.

Duty to act in investors' best interest and to avoid conflicts of interest

The fund's prospectus must contain a description of the potential conflicts of interest which could arise between the management of the fund and the fund, with details, where applicable, of how these are going to be resolved.

Any transaction carried out with a fund by a promoter, manager, depositary, investment adviser and/or associated or group companies of these must be carried out as if effected on normal commercial terms negotiated at arms length and transactions must be in the best interests of the investors.

Regulatory reporting

The fund/management company/general partner must submit a monthly report within ten days of its effective date, setting out the fund's net asset value, net asset value per unit and net subscription and redemptions in the fund's units during the month. The annual audited financial statements of the fund and semi-annual unaudited financial statements of the fund (where required) must be submitted to the Central Bank within four and two months respectively of the balance sheet date. The fund/management company/general partner must submit monthly returns to the statistics department of the Central Bank.

Reporting to investors

The annual audited financial statements and semi-annual unaudited financial statements (where required) must be made available to investors free of charge upon request and must be available for inspection at a specified location. Qualifying Investor Funds in the form of investment companies are not required to produce semi-annual unaudited financial statements.

Changes to the fund

Any change to the Prospectus or any material service agreement of the fund is subject to prior approval by, or, in the case of Qualifying Investor Funds, prior notification to, the Central Bank. Material changes to the investment policy of the fund of the fund as disclosed in the Prospectus or any change to the fund's investment objective are subject to prior investor approval. Any such changes must be notified in advance to investors enabling them to redeem their units in the fund prior to the implementation of the change.

Enforcement

The Central Bank has independent statutory powers of enforcement that are not dependant on judicial action. The Central Bank employs a risk based supervisory approach known as PRISM (Probability Risk Impact SysteM). This focuses the most resources on firms considered to have a potentially high systemic impact on the financial system and a high risk to the consumer. The Central Bank enforces on the basis of periodic reporting requirements, a requirement for the Directors/ management company/general partner and depositary to deal with the Central Bank in an open and co-operative manner and inspections, the frequency of which is based on risk assessment or on complaint. While PRISM is intended to result in a common basic approach to regulation across all financial sectors, it is also intended to identify where risk is concentrated most highly within the financial system. Furthermore it differentiates between types and degrees of risk in different financial sectors and so avoids an investment fund being regulated to the same degree as a bank or insurance company for example. The Central Bank's enforcement strategy is to engage in "pre-defined enforcement" which concentrates on high impact areas such as market conduct, consumer protection and financial crime, focussing on firms with significant market share, and "reactive enforcement" which is event or report based, and to operate in a proportionate, consistent, targeted and transparent manner.

11. What are the Regulatory requirements applicable to service providers to Irish funds?

All Irish investment funds are required to appoint an Irish fund administrator (or a suitably licensed Irish management company) which will perform certain minimum activities in Ireland such as the final checking of the net asset value of the fund prior to its release and the maintenance of the fund's shareholder register. Irish fund administrators are subject to regulation under the Irish Investment Intermediaries Act, 1995, the European Communities (Markets in Financial Instruments) Regulations, 2007 or the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 2011 (in the case of UCITS management companies providing fund administration services).

Irish investment funds are also required to appoint a depositary. The depositary must have its registered office within Ireland or have established a place of business in Ireland if its registered office is in another Member State of the European Union. The depositary fiduciary duties may not be delegated to a third party and must be performed by the depositary appointed in Ireland. The custody functions may however be delegated to a custodian located inside or outside of Ireland. Irish depositaries are subject either to the requirements of Irish banking law (in the case of domestic banks), foreign

banking law and certain Irish conduct of business rules (in the case of the Irish branches of foreign banks) or the European Communities (Markets in Financial Instruments) Regulations, 2007 (in the case of wholly owned Irish non-banking subsidiaries of foreign banks).

All Irish funds are required to appoint an investment manager (or Irish management company) that will be responsible for the investment management of the Irish fund's assets. The conditions applicable such companies' clearance to act by the Central Bank as described in "4" above.

Irish Professional Investor Funds and Qualifying Investor Funds are entitled to appoint prime brokers. Prime brokers must be regulated to provide prime brokerage services and each prime broker or its parent company must have financial resources of not less than €200 million and a short term credit rating of not less than A1 or equivalent.

12. What is the Regulatory procedure in getting an Irish fund licensed?

All fund authorisations must be obtained pre-launch. Post-authorisation changes to fund documentation require the approval of the Central Bank or, in the case of Qualifying Investor Funds, prior notification to the Central Bank.

To obtain this authorisation, the fund, or in the case of a unit trust, its management company and depositary or in the case of a common contractual fund or limited partnership, its management company or general partner, must apply to the Central Bank in writing. In the case of UCITS and Non-UCITS retail and Professional Investor Funds, this application is initially made in draft form. In the case of Qualifying Investor Funds, a formal application is made on the business day prior to the proposed date of authorisation, with accompanying final, executed documentation and no formal review of the documentation is undertaken by the Central Bank.

In all cases, before making an application, the proposed promoter of the fund must have been cleared by the Central Bank, as must the proposed investment manager. Non-discretionary investment advisers are not required to be cleared by the Central Bank. The Directors of the proposed fund/management company/general partner must be approved in advance by the Central Bank. Any management company or general partner being appointed must be approved in advance by the Central Bank. In the case of a UCITS, the policies and procedures regarding the overall management and governance of the UCITS (whether by the Board of the UCITS or a separate Irish management company (in the case of common contractual funds and unit trusts a management company is compulsory) must be pre-approved by the Central Bank prior to the submission of the UCITS application for authorisation. The proposed Administrator and depositary of the Fund must be in possession of the relevant license from the Central Bank. Any derogations from the Central Bank's requirements that a fund requires must be obtained in advance of submitting the formal application for authorisation.

13. What is the role of the service providers in authorisation/ongoing regulation?

Authorisation:

UCITS, retail Non-UCITS and Professional Investor Funds are authorised by application from the fund, or in the case of a unit trust, its management company and depositary or in the case of a common contractual fund or limited partnership, its management company or general partner as appropriate. The depositary and fund administrator will be required to make certain certifications to the Central Bank as part of the authorisation process.

In the case of Qualifying Investor Funds, which are authorised by means of a self-certification process, the fund/management company/general partner and, in the case of unit trusts, the depositary, makes the formal application, which is undertaken by its Irish legal advisers and the depositary certifies that the information contained in the application, as it relates to the depositary, is accurate.

Ongoing:

The Irish Administrator/management company will be generally be responsible for carrying out the minimum activities referred to in "11" above and for preparing the regulatory reporting and financial statements referred to at "10" above.

The Custodian will prepare the report referred to in "5" above for inclusion in the fund's annual audited financial statements.

The Administrator, Custodian and management company are each expected to deal in an open and co-operative manner with the Central Bank and to participate in such meetings as the Central Bank considers necessary to review the fund's operations and its business developments.

14. What leverage restrictions apply to Irish funds?

UCITS: UCITS may not borrow except for temporary purposes subject to a limit of 10% of net asset value and have a "global exposure" limit that is applicable to the UCITS' use of derivatives. In calculating their global exposure, UCITS currently have the choice whether to use the so-called commitment approach, a simple but conservative method of calculating global exposure which calculates exposure based on the marked to market value of the underlying assets to which the derivative

contracts refer, or an advanced risk measurement methodology such as Value-at-Risk ("VaR"). VaR measures maximum expected loss at a given confidence level over a specific time period. VaR may be calculated using an acceptable proprietary or commercially available model. The commitment approach methodology is normally used by UCITS that use a limited number of non-complex derivatives and the latter by more sophisticated users of derivatives. It is the responsibility of the UCITS to ensure that the method selected is appropriate, taking into account the investment strategy of the UCITS, the types and complexities of the derivatives used and the proportion of the UCITS portfolio which comprises derivatives. A UCITS must use an advanced risk measurement methodology such as the VaR approach to calculate global exposure where: (i) the UCITS engages in complex investment strategies which represent more than a negligible part of the UCITS investment policy; and/or (ii) the UCITS has more than a negligible exposure to exotic derivatives; and/or (iii) the commitment approach does not adequately capture the market risk of the UCITS portfolio. The UCITS' global exposure as measured using the commitment approach may not represent more than 100% of the net asset value of the UCITS (in other words, a UCITS total exposure may be 210% of the net asset value of the UCITS (including temporary borrowing)). If VaR is used, the UCITS may not have an exposure greater than 20% of the net asset value (known as "absolute VaR") based on a confidence level of 99% and a holding period of twenty days, all of which limits may be scaled down proportionately, or the UCITS may not have a VaR greater than twice the VaR of a relevant benchmark or a corresponding, derivative-free portfolio (known as "relative VaR"). The degree of exposure that a UCITS has may be reduced by the use of allowable position netting and hedging positions.

Retail Non-UCITS: such a fund's net maximum potential exposure is limited to 25% of net asset value and includes borrowing and exposures arising through the use of derivatives. In the case of leveraged managed futures funds, there is no such leverage limit though such funds effectively have a margin to equity ratio restriction of 50%.

Professional Investor Funds: such a fund's net maximum potential exposure is limited to 100% of net asset value including borrowing and derivatives exposures.

Qualifying Investor Funds: unlimited leverage, subject to only to Prospectus disclosure.

15. What is the tax status of Irish funds in Ireland?

A fund that is authorised in Ireland is not subject to Irish tax on its income (profits) or gains. While dividends, interest and capital gains that a fund receives with respect to its investments may be subject to taxes, including withholding taxes, in the countries in which the issuers of investments are located, these foreign withholding taxes may, nevertheless, be reduced or eliminated under Ireland's network of tax treaties to the extent applicable (see "Treaty Access" below).

Furthermore, there are no Irish withholding taxes on distributions to investors provided the investors have made the appropriate tax declaration of non-Irish residence to the fund or the fund has satisfied and availed of certain prescribed equivalent measures. Furthermore, there are no Irish withholding taxes on distributions made to certain categories of Irish investors (which would include approved pension schemes, charities, other investment funds, etc). There is no stamp duty or subscription tax is payable in Ireland on the issue, transfer, repurchase or redemption of units in a fund. Many of the key services provided to Irish funds (fund administration, investment management, etc) are exempt from Irish VAT.

Treaty access

Where treaty access is important, non-UCITS funds may use wholly owned trading vehicles for treat access whereby the fund finances the trading vehicle in return for the issuance to the fund of a taxable profit stripping participating debt instrument by the vehicle. Irish trading vehicles are fully taxable in Ireland which typically removes one of the obstacles to tax-exempt regulated funds obtaining treaty benefits, namely the requirement to be "liable to tax". Through this profit stripping mechanism, such vehicles' taxable profits can be managed to a desired level which can be zero if so desired.

Ireland has signed comprehensive double taxation treaties with 66 countries, 59 are currently in effect with negotiations at various stages on 7 other.

16. What tax applies to Irish investment managers?

Generally 12.5% on fee income derived from investment management services.

The Irish tax authorities impose a 20% withholding tax on dividends and other profit distributions. However there are significant exemptions under domestic law from this withholding tax in relation to (i) payments made to persons resident in EU Member States and tax treaty countries and (ii) payments made to companies resident outside the EU or a non-tax treaty country provided more than 50% of the recipient company is ultimately controlled by persons resident in a treaty country or EU member state (other than Ireland), once certain declarations are put in place.

17. What are the asset valuation rules applicable to Irish funds?

These are described in "10" above. ■

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