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■ CHANGES TO THE FINANCIAL REGULATOR'S QUALIFYING INVESTOR FUND RULES

On 9 July 2008, the Financial Regulator made the following changes to the QIF regime:

Removal of requirement to publish half-yearly reports

- QIFs established as investment companies or investment limited partnerships will no longer be required to publish half-yearly reports. The Irish Stock Exchange has removed the corresponding requirement for listed QIFs established in these forms. Before it can take advantage of this change in requirements, an existing QIF will need to change its articles of association or deed of partnership and prospectus to remove references to the publication of half-yearly reports. Separately, a legislative amendment is being sought to remove this requirement for unit trusts and common contractual funds.

Introduction of ability to issue separate prospectuses for shares classes

- QIFs are now permitted to issue a separate prospectus in relation to a share class within a QIF or within a sub-fund of an umbrella QIF, provided that the existence of other share classes is known to investors.

Changes affecting QIFs investing in other funds and QIF feeder funds

- QIFs will now be able to invest up to 50% of NAV in any one unregulated collective investment scheme (CIS). The previous limit was 40%.
- An investment by a QIF in another CIS will not now be considered as a feeder-type investment provided that the investment is less than 50% of NAV. The previous limit was 40%.
- A QIF, which does not have as its principal objective investment in a single CIS, will not now be required to comply with the feeder fund disclosure requirements; this applies even where the QIF has the ability to invest more than 50% of NAV in another CIS.
- Further detail has been given on the process for QIF feeders investing in unregulated CIS and seeking a derogation from the requirement that the unregulated CIS provide an equivalent level of investor protection to that provided under Irish law and regulation. This includes a fast track procedure where the parties involved have previously been granted a derogation on the same basis as the current request.

Change to disclosure requirements for limited liquidity funds

- Limited liquidity QIFs will no longer be required to disclose their status as such on the prospectus cover; they may include a reference to “open-ended with limited liquidity” on the prospectus cover if they provide redemption facilities, at the request of shareholders, at least annually.

Clarification regarding the requirement for QIF investment companies to spread risk

- It has been clarified that the legislative requirement for QIF investment companies to spread risk (Part XIII of the Companies Act 1990) is the responsibility of the directors of the QIF and consequently the Financial Regulator does not impose risk diversification requirements in that regard. Previously, the Financial Regulator expected QIFs to demonstrate this by reference to percentage limitations. Now, it may be possible to take a more flexible approach provided that the legislative requirement is met in practice.

Clarification of the ability of QIFs to issue debt to lending institutions

- It has been clarified that a QIF may provide

for a private issue of debt to a lending institution to facilitate financing arrangements, provided that details of the note issue are clearly disclosed in the prospectus.

Conversion of professional investor funds to QIFs

- A professional investor fund (PIF) may now convert to a QIF with the approval of a majority of 75% of shareholder votes cast (the previous requirement had been 100% shareholder approval).

Conclusion

The changes introduced are welcome. Promoters and boards of existing QIFs should consider what steps will be required in terms of prospectus changes and shareholder approval and/or notification to take advantage of the additional flexibility introduced.

However, a number of proposed changes have not been introduced at this stage. In particular, pending fuller submissions by industry to the Financial Regulator, the qualifying investor criteria and prohibition on investment companies raising debt capital from the public remain unchanged.

Key Contacts

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