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RECENT FINANCIAL REGULATOR RESPONSES TO LIQUIDITY ISSUES AFFECTING IRISH NON-UCITS FUNDS

The Financial Regulator has made certain changes to the regulatory regime for qualifying investor funds ("QIFs") and professional investor funds ("PIFs") to deal with the current market environment:

(a) Side-Pockets

Previously, the Financial Regulator had indicated that funds would generally be precluded from allocating assets representing more than 20% of NAV to side-pockets. The Financial Regulator has confirmed that it will not now limit the amount of assets which a fund may allocate to a side-pocket/partial suspension/partial redemption arrangement.

(b) Redemption Gates

To date, redemption gates were permitted for redemption amounts in excess of 10% of NAV for monthly dealing funds and 25% of NAV for quarterly dealing funds. The Financial Regulator has confirmed that redemption gates may now be imposed at lower levels.

(c) In Specie Redemptions

Previously, the consent of the individual investor was required before a fund could make an *in specie* redemption, except where that investor had requested a redemption of 5% or more of NAV. Funds are now permitted to disapply this limit on compulsory redemptions in specie.

The Financial Regulator has confirmed that, with one exception, non-UCITS retail funds may take action in the same manner as PIFs and QIFs as outlined above. However, *in specie* redemptions must comply with the Financial Regulator's existing policy for retail funds (i.e. individual investor consent for redemptions *in specie* representing less than 5% of NAV).

Notification Requirements

The Financial Regulator will not require prior notification of actions taken (e.g. creation of side-pockets) in accordance with this policy statement and notification after the event will be sufficient.

Board and Custodian Confirmations

The board of directors and the custodian or trustee must confirm in writing to the Financial Regulator that the proposed action is in accordance with the fund's constitutive documents and takes into account the interests of incoming, existing and outgoing investors.

Shareholder Approval

Shareholder approval will not be required for a proposed change in policy; however, investors must be informed of the action taken. If an amendment to the fund's constitutive documents (e.g. articles of association or trust deed) is necessary, the normal requirements for shareholder notice and approval will apply. Therefore, fund promoters are advised to review their funds' documentation to determine whether or not shareholder approval is required in any given case.

CHANGES TO UCITS AND NON-UCITS MONEY MARKET FUNDS' DISCLOSURE AND APPLICATION REQUIREMENTS

Prospectuses of money market funds are required to include a risk warning drawing attention to the difference between the nature of a deposit and the nature of an investment in a money market fund. The Financial Regulator now requires that this risk warning be highlighted and placed in a prominent position in the prospectus. It is likely that existing funds will be required to take account of this in the next update of their prospectuses.

In addition, promoters seeking approval of a money market fund are now required to confirm to the Financial Regulator, with reference to current market conditions, that the proposed fund will be able to operate normal dealing arrangements in these conditions and that the promoter does not envisage that the money market fund will require liquidity support.

UCITS - VAR LIMIT CLARIFICATION

The Financial Regulator has clarified its Guidance Note on the use of Value at Risk ("VaR") as applied in a UCITS financial derivative instruments ("FDI") risk management process ("RMP").

The Guidance Note had previously provided for an absolute VaR limit of 5% of NAV subject to the requirement to calculate it using a 99% confidence level and a holding period determined by the UCITS. The Guidance Note now applies an absolute VaR limit of 20% of NAV subject to a 99% confidence level and a holding period of 20 days.

UCITS may also use different quantitative limits and parameters provided that these are scaled and equated to the quantitative standards of a 99% confidence level and a 20-day holding period. If a UCITS wishes to avail itself of this flexibility it must include detailed scaling calculations in its RMP. In cases where a 1-day holding period is used with a 99% confidence level, the absolute VaR limit remains 5% of NAV.

FINANCIAL REGULATOR ESTABLISHES A DEDICATED SHARI'AH FUNDS' AUTHORISATION TEAM

In recent times there has been an increase in the number of Shari'ah compliant investment funds and financial products domiciled and administered in Ireland. In recognition of this, the Financial Regulator has established a specialist team within its Financial Institutions and Funds Authorisation department with primary responsibility for the authorisation of Shari'ah funds. The Financial Regulator has also indicated that it is engaging proactively with regulators in the Middle East and North Africa (MENA) in anticipation of managers in those countries seeking to use Ireland as a jurisdiction for their funds.

STATEMENT BY THE
FINANCIAL REGULATOR
IN RELATION TO THE
“MINIMUM ACTIVITIES”
REGIME AND ASIAN
FUNDS

In response to the challenges faced by Irish service providers of funds trading in the Asian

markets (in particular, the demand to produce NAVs in the Asian time zone), the Financial Regulator has indicated that it is prepared to consider submissions for a derogation from its requirement that certain “minimum activities” of funds (e.g. valuations) be carried out in Ireland. Each submission will be considered on its own merits. Any derogation granted will be specific to named funds and will be subject to conditions imposed by the Financial Regulator, including a timely subsequent check of the NAVs in Ireland.

KEY CONTACTS

Should you wish to receive further information on these changes, please contact one of the following partners:

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