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ASSET MANAGEMENT AND INVESTMENT FUNDS

COVID-19: Practical Considerations for Irish Fund Management Companies

23 March 2020

We thought it might be useful to provide some general information on how the COVID-19 pandemic may affect the operation of your Irish fund management company. Please do not hesitate to contact us if you need our support on any of these matters.

REGULATORY MATTERS

Common Supervisory Action ("CSA") liquidity questionnaire – Central Bank deadline – 25 March 2020

The deadline for completion of the Central Bank's CSA UCITS liquidity risk management questionnaire is 16.00 hrs (Irish time) on 25 March 2020. As this is an ESMA-driven CSA, the Central Bank has not indicated that any extension to this deadline is currently envisaged.

Various queries on the completion of the forms have been discussed with the Central Bank. If you need any assistance in answering any of the questions we can share these answers with you.

PRISM filings

The Central Bank also requested new metrics be provided to it by Irish fund management companies to support the implementation of new PRISM impact models. The first of these deadlines is 26 March 2020 and, as with the deadline for the liquidity questionnaire CSA referred to above, this deadline is also currently unchanged.

Business continuity plans

On 4 March 2020 the Central Bank requested all Irish fund management companies to review their business continuity arrangements to ensure the continuity of their business activities. Any significant matters arising in respect of the BCP arrangements must be reported to the Central Bank.

The board of an Irish fund management company should seek confirmations on a regular basis from their service providers during this time about the implementation of their BCP plans and should require that any service provider highlight to the board any failings or gaps in their functionality that may impact the continuity of the business of the Irish fund management company. The DP responsible for the operational risk managerial function should provide regular reporting to the board of an Irish fund management company about the continuity of the operations of the various service providers. Fund management companies should also plan for the contingency of one or more of their directors, senior management and/or DPs becoming unavailable due to contracting COVID-19. If such a contingency occurs, this may necessitate a notification to, and approval by, the Central Bank.

ESMA recommendations

On 11 March 2020 ESMA issued the following recommendations to financial market participants which include certain Irish fund management companies:

- Business continuity planning - All fund management companies should be ready to apply their contingency plans, including deployment of business continuity measures, to ensure operational continuity in line with regulatory obligations;
- Market disclosure – fund management companies should disclose as soon as possible any relevant significant information concerning the impacts of COVID-19 on their fundamentals, prospects or financial situation in accordance with their transparency obligations under the Market Abuse Regulation;
- Financial reporting – fund management companies should provide transparency on the actual and potential impacts of COVID-19, to the extent possible based on both a qualitative and quantitative assessment on their business activities, financial situation and economic performance in their 2019 year-end financial report if these have not yet been finalised or otherwise in their interim financial reporting disclosures; and
- Fund management - asset managers should continue to apply the requirements on risk management and react accordingly.

ESMA position on short selling – Belgium, France, Italy, Spain

ESMA issued various opinions in and around 18 March 2020 agreeing to certain emergency short selling prohibitions in various EU countries for certain periods of time on all transactions which might constitute an increase in net short positions on shares admitted to trading on various trading venues or over the counter.

Securities Financing Transactions Regulation

On 18 March ESMA issued a public statement acknowledging the limited time ahead for the start date in October 2020 of the new SFT reporting obligations and that firms may face severe resource restrictions in implementing this reporting as a result of COVID-19. ESMA expects regulatory authorities not to prioritise their supervisory activities towards firms in respect of these reporting obligations that apply in April 2020 and to apply a risk-based approach in the exercise of their supervisory powers in their enforcement of the legislation in this area in a proportionate manner.

PRACTICAL MATTERS

UCITS KIIDs

The SRRI volatility indicator disclosed in the UCITS KIIDs may need to be amended as a consequence of current market volatility. Any amended KIID can be filed with the Central Bank as it is accepting filings in the usual manner.

VaR calculations

UCITS funds may use VaR to measure the maximum potential loss due to market risk at a given confidence level over a specific period of time in normal market conditions. The VaR calculations may have experienced a significant increase as a result of the recent market volatility and Irish fund management companies should monitor compliance with the absolute VaR limit of 20% of NAV to the extent it is applicable to UCITS under management.

Applications to, and filings with, the Central Bank

On 16 March the Central Bank confirmed to the industry body Irish Funds that its business continuity plans are in place to ensure that it will continue to fulfil its public interest mandate during this period. We are receiving comments from the Central Bank on filings already made and are continuing to make fresh applications. However, any hard copy filings of documents can now be filed in soft copy.

AGMs/EGMs

Irish fund management companies that have scheduled AGMs or EGMs over the coming weeks or months are advised to consider alternative solutions to the convening of the meetings in order to reduce COVID-19 transmission. This can be done by enclosing a notice by setting out the measures to reduce COVID-19 transmission in the meeting notice or by way of a follow-up communication if the notice has already issued.

Board meeting attendance

Directors are required where possible to attend board meetings of an Irish fund management company in person in Ireland in order to ensure that the place of effective management is Ireland and that the Irish fund management company remains Irish tax resident. The risk of COVID-19 transmission and international travel disruption generally is likely to mean that the upcoming board meetings are to be held via telephone conference call or video conference. Tax advice should be sought, as appropriate, on the extent to which non-Irish directors may participate (e.g. count towards a quorum (or vote)) in order to avoid running the risk of the entity being regarded as tax resident in a jurisdiction other than Ireland. The board minutes should then reflect, for example, the non-Irish resident directors' participation as attendees and record that they did not vote on any resolutions considered at the meeting.

Financial statements

Many Irish fund management companies are soon to approve their financial statements for the year ended 31 December and should consider including a disclosure on the financial and other impacts of COVID-19 on the fund management company under the note headed "post year end events" and should cross refer to this note in the directors' and investment manager's reports.

Liquidity – practical issues

Irish fund management companies may need to consider how significant redemptions are dealt with. Subject to the relevant fund documents, it may be possible to redeem a holding of 5% or more in kind/in specie without shareholder approval in the current environment but how this might impact client relationships needs to be taken into account. It may be preferable to obtain shareholder consent to do an in kind/in specie redemption where possible. The depositary must be involved in approving any in kind/in specie payments to ensure that a pro rata slice of a portfolio is paid out rather than the more liquid assets being distributed.

Any redemption requests over the applicable redemption gate (if any) (e.g. 10% or more) can be the subject of a deferral to subsequent dealing days. Not much extra time is bought here for a daily dealing fund as the redemption gate operates until the next dealing day on a pro rata basis.

A temporary suspension of dealings is typically a tool of the last resort. An Irish fund may fall within a number of the circumstances that permit the trigger of a suspension specified in the constitution (and prospectus). The Central Bank must be informed of any decision to suspend dealings on the day it occurs (and notification must also be made to any stock exchange for a listed fund) as well as any lifting of the suspension.

Consideration may need to be given to reducing the dealing days for a daily dealing UCITS fund to twice a month (every 2 weeks) which is the minimum UCITS dealing frequency in the short term to reduce issues arising on valuations and dealing. This decision could be taken by way of a written resolution of the board and notice to shareholders. It is always open for a fund to agree a redemption timetable with a client to manage redemptions if that is a feasible option.

The DPs for operational risk, fund risk and regulatory compliance should be kept informed of any liquidity issues and the board of the fund and/or the fund management company, where applicable, should take any necessary decision in relation to the exercise of the liquidity management tools referred to above.

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