

Questions and answers on the application of the AIFMD

New and revised Q&A in the 12 June 2015
version of the CBI's AIFMD Q&A



Question 1030:

Can a professional investor fund or a QIAIF have a non-EU AIFM?

Answer 1030:

Under the current transitional arrangements for AIFMD, a professional investor fund or a QIAIF can have a non-EU AIFM. However, in accordance with Article 67(1)(b) of the AIFMD, ESMA has to issue advice to the European Commission on inter alia the application of the AIFMD passport to non-EU AIFMs by 22 July 2015. If that advice is positive, the European Commission must, by 22 October 2015, adopt a delegated act specifying the date when the non-EU AIFM passport will be 'turned on'. This process is underway and the outcome is not yet known. Accordingly, professional investor funds and QIAIFs can continue to be managed by non-EU AIFMs under the existing transitional arrangements until at least 22 October 2015. At that time this position will be revisited and, if necessary, revised to align it with the European Commission's decision and any transitional arrangements provided.

Question 1058:

I am a professional investor fund. When will the NU Series of Notices cease to apply to me? What rules will apply instead?

Answer 1058:

A professional investor fund will continue to be subject to the NU Series of Notices until the date that its AIFM becomes registered or authorised. From that date, the professional investor fund will be subject to a number of conditions the cumulative effect of which will be to apply an equivalent regime to the professional investor fund regime as is currently set out in the NU Series of Notices. For example, it will be subject to a condition that it shall comply with the provisions of its prospectus and to conditions concerning the publication and content of financial statements.

If the professional investor fund has a registered AIFM, its depositary will also be subject to a condition that it shall comply with the AIFMD depositary regime, except in relation to depositary liability. The current non-UCITS depositary liability regime will apply instead unless the parties choose to apply the AIFMD depositary liability regime.

A professional investor fund may convert to become a RIAIF or a QIAIF in which case it must comply with all of the rules applicable to a RIAIF or QIAIF.

Question 1089:

What is an 'unauthorised AIF'?

Answer 1089:

An unauthorised AIF is one which is not authorised by the Central Bank under domestic investment fund legislation.

Question 1090:

Can an unauthorised AIF be marketed to appraised/self-certifying investors?

Answer 1090:

An unauthorised AIF may be marketed to appraised/self-certifying investors (as defined in the AIF Rulebook) in Ireland if it has an authorised AIFM and that AIFM ensures that the unauthorised AIF at all times meets all the requirements which would apply to the AIF if it was a QIAIF.

Question 1091:

Can an unauthorised AIF be marketed to retail investors in Ireland

Answer 1091:

An unauthorised AIF may be marketed to all retail investors if it has an authorised AIFM and that AIFM ensures that the unauthorised AIF at all times meets all the requirements which would apply to the AIF if it was a RIAIF. Real estate investment trusts (REITs) do not need to comply with the leverage conditions which apply to RIAIFs in order to be permitted to market to retail investors.

Question 1092:

Can retail investors trade on the secondary market in unauthorised AIF which are not permitted to market to retail investors? Do any restrictions/constraints apply?

Answer 1092:

Yes. Retail investors can trade, on the secondary market, in unauthorised AIF. Such secondary market trades will usually occur through investment intermediary firms and, therefore, the protections of the MIFID regime will apply.

Question 1093:

I am an unauthorised AIF with Irish retail investors due to secondary market trading in my units. I am proposing a rights issue and pursuant to Company law must provide relevant documentation to all existing shareholders. Does the circulation of this documentation come within the scope of marketing to retail investors?

Answer 1093:

The Central Bank does not consider the provision of documents, including rights issue and/or open offer documentation, to existing investors, as an actionable breach of the rules in relation to the marketing of AIF provided that the documentation is strictly confined to what is necessary to comply with applicable law obligations in relation to the treatment of shareholders.



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