



FINANCIAL REGULATOR
Rialtóir Airgeadais

Authorisation of
Qualifying Investor
Schemes – Amendments
to the application process



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Introduction

The Financial Regulator has agreed, in principle, that a collective investment scheme which markets solely to qualifying investors (QIF) may be authorised on receipt and without a detailed review of the application for authorisation, provided that the parties involved meet the necessary authorisation criteria, are approved in advance of the application and confirmation is received regarding compliance with the authorisation criteria.

In order that this decision can be implemented, it is necessary to introduce a revised application form for QIFs which will be designed *inter alia* to establish the parameters within which a QIF can operate. It is also intended to introduce a new Guidance Note to assist applicants in making formal applications for authorisation under the collective investment scheme legislation and to deal with issues which are not addressed in the application form.

The application form and Guidance Note form part of this consultation paper. It is intended that these will be dynamic documents which will be amended as necessary to reflect changes in authorisation policies or to bring certain matters to the attention of the investment funds industry as they arise.

The Financial Regulator has had discussions with the Irish Funds Industry Association in relation to the revised application process. On the basis of those discussions it is accepted that these proposals do not warrant a lengthy consultation period and that the revised regime should be introduced as soon as possible. Accordingly, the Financial Regulator invites all interested parties to provide comments or make a submission on this matter but requests that these be provided by Friday 2 February 2007.

Comments should be submitted to:

Michael Deasy
Head of Financial Institutions and Funds Authorisation
Financial Regulator
PO Box 9138
College Green
Dublin 2

Or via e-mail to fifapolicy@financialregulator.ie

It is intended that applications for authorisation of QIFs will be accepted under the amended application process from 14 February 2007. However in the event of significant issues arising from the consultation process this date may be delayed.

Financial Institutions and Funds Authorisation
26 January 2007

Guidance Note -/07

Authorisation of Qualifying Investor Schemes – Application process

Introduction

Notice NU 24 of the NU Series of Notices provides for the authorisation of collective investment schemes which market solely to qualifying investors (QIFs). Effective ... February 2007, the Financial Regulator will authorise a QIF on receipt of a complete application for authorisation provided that:

- the parties involved are approved in advance of the application and meet the necessary authorisation criteria; and
- appropriate confirmation is received in relation to the contents of the relevant documentation.

This Guidance Note provides information in relation to the authorisation procedure and guidance in relation to various matters relevant to the operations of QIFs.

Application Criteria

An application for authorisation as a QIF can only be made where the

- Promoter
- Management company
- Directors in the case of an investment company
- Trustee / custodian
- Other service providers (fund administrator, investment manager)

have been approved/cleared by the Financial Regulator in advance of the application.

An application for authorisation must be made in writing specifying the legislation under which authorisation is required. In the case of a unit

trust or common contractual fund, the application must be made jointly by the proposed management company and trustee /custodian. The letter of application must be accompanied by the standard application form, duly completed and all relevant documentation. Complete applications should be submitted to:

The Manager
Financial Institutions and Funds Authorisation
Financial Regulator
PO Box 9138
College Green
Dublin 2

Applications should be clearly identified as **QIF applications**, for the attention of **CIS Authorisation**.

The application form requires certification in relation to the contents of the form and the QIF documentation. In the case of a unit trust or common contractual fund, certification must be made by the management company and trustee / custodian. In the case of an investment company, certification is required from the board of directors. However the custodian of the investment company is also required to provide confirmation in relation to the provisions of the custodian contract.

Applications must be filed **no later than 3pm** on the day before the proposed date of authorisation. Where applications are not in full compliance with the Financial Regulator's requirements authorisation will not proceed. Late and incomplete applications will be returned in order that documents may be re-dated or otherwise amended as necessary.

Letters of authorisation will issue by close of business on the day of authorisation.

Pre-Clearance

All parties to the QIF must have been authorised or otherwise deemed acceptable to the Financial Regulator prior to the application for authorisation.

The Financial Regulator expects that the board of directors of management companies and investment companies will include directors who have experience in relation to the organisation of collective investment schemes. All directors, including new directors to existing management companies must be approved in advance of the application.

In the event of a name change of any of the previously approved / cleared parties to the QIF, notification of the change, together with evidence of change of name, must be provided to the Financial Regulator, prior to the application for authorisation. Changes of address can be notified by way of the application form.

Derogations

In the event that a QIF intends to seek derogations from provisions of the NU Series of Notices, or from general policies applicable to QIFs, requests for derogations must be made in good time to allow that these be addressed by the Financial Regulator in advance of applications for authorisation. Details of derogations provided must be included in the application form and set out in the prospectus.

The Financial Regulator expects that applicants will discuss proposals which will have novel or other unusual features in advance of the submission of formal applications.

Offer period

The offer period cannot commence prior to the authorisation of the QIF and should be for a period of no longer than six months. In the case of QIFs which are established as private equity or property schemes this period may extend up to one year.

These provisions are also applicable to the approval of additional sub-funds of umbrella QIFs.

Extensions of initial offer periods are permitted where subscriptions have not been received during the original offer period.

Applicable Guidance Notes

The requirements of the following Guidance Notes are, where appropriate, applicable to the operations of QIFs:

- Guidance Note 2/96 - Promoters of Collective Investment Schemes
- Guidance Note 1/97 - Multi-advisor Collective Investment Schemes: Disclosure in Respect of Investment Advisors
- Guidance Note 2/97 - Duration of Close-Ended Collective Investment Schemes
- Guidance Note 3/97 - Guaranteed Collective Investment Schemes
- Guidance Note 1/99 - Administrations Companies and The Investor Compensation Act, 1998
- Guidance Note 2/99 - Money Market Funds: European Central Bank Reporting Requirements
- Guidance Note 3/99 - Share Classes – Hedging Against Exchange Rate Movements
- Guidance Note 1/00 - Valuation of the Assets of Collective Investment Schemes
- Guidance Note 1/01 - Collective Investment Schemes other than UCITS - Feeder Schemes and Fund of Fund Schemes: Acceptable Investments and Related Issues
- Guidance Note 1/03 - Amalgamations of Irish authorised collective investment schemes with other collective investment schemes
- Draft Guidance Note -/04 – Appointment of Prime Brokers and Related Issues

The following policy papers are also relevant:

- Directed brokerage programmes and similar arrangements – 21 November 2002
- Trust Deeds/Custodian Agreements – November 2004
- Investment Managers and Investment Advisers to authorised collective investment schemes – approval and disclosure – November 2004

Investment Policy

Paragraph 6 of Notice NU 24 requires that a prospectus must describe the investment objectives and investment and borrowing policies of the QIF. These descriptions must be comprehensive and accurate, readily comprehensible to investors and be sufficient to enable investors make an informed judgement on the investment proposed to them.

The description should include comprehensive information in relation to proposed investments, where these are traded and the purpose behind the investment.

Paragraph 6 also requires that the prospectus contain quantitative parameters on the extent of leverage which will be engaged in by the QIF. A QIF which will not be subject to leverage limits should indicate the typical levels of leverage which will be employed.

Fund Specific Criteria

Appropriate Expertise

In the case of QIFs which will invest in private equity or property investments, the applicant must confirm that the entity / person(s) who will carry out investment management has appropriate expertise in relation to the particular area of investment.

Valuation of assets

All assets should be valued in accordance with Guidance Note 1/00. Where the QIF proposes to value assets under alternative provisions, these must be cleared with the Financial Regulator in advance. Guidance Note 1/00 does not currently refer to valuation of private equity or property type investments. In the case of these assets, it is acceptable to refer to the valuation standards established by recognised professional

bodies as appropriate, for example, the European Venture Capital Association or the Royal Institute of Chartered Surveyors.

QIFs with Limited Liquidity

In order to be authorised as open-ended funds, QIFs must provide redemption facilities on at least a quarterly basis.

QIFs that offer redemption facilities on a less than quarterly basis are classified as investment funds with limited liquidity. Such QIFs are not subject to any regulatory parameters in terms of dealing frequency and minimum redemption quotas. A QIF with limited liquidity is required to indicate this status on the cover of the prospectus.

Closed-ended schemes

A QIF established as a closed-ended scheme must comply with the approval requirements of the Prospectus Directive implementing legislation.

Miscellaneous Items

Dealing procedures

In the case of QIFs which propose to provide for the electronic or telephonic receipt of subscription and/or redemptions, the applicant must confirm that the management company or administrator has received approval from the Financial Regulator to provide such services.

Warehousing

Proposals to acquire assets pursuant to a warehousing arrangement must be fully disclosed, including details of any fee payable in relation to such

arrangements. Assets may only be acquired at the lower of cost or market value.

Share Classes

A QIF, or sub-funds in the case of an umbrella QIF, established with separate share classes must ensure that all share classes have the same dealing frequencies.

Post Authorisation Amendments

In the event of changes to the QIF documentation, a clean copy of the relevant document, dated and executed as appropriate, must be submitted to the Financial Regulator. This must be accompanied with either a narrative explanation of the changes made or marked up pages.

If these changes result in amendments to the information included in the original application form, the amended provisions of the application form should be submitted and the standard confirmations provided.