



NEWSLETTER

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IRISH FUNDS MEMBER UPDATE

New members welcome for 2019

A warm welcome to our most recent new and upgraded members Acolin, Apex, Axioma, Baillie Gifford, Bain Capital, Credit Suisse, Deutsche Capital Management, Hermes, IFSL, Magellan, PGIM and Sullivan & Worcester. We now represent over 140 member companies from across the funds industry and appreciate your continuing support.

Irish Funds Annual Global Funds Conference – Thursday, 23 May 2019

Registration is open for the Irish Funds Annual Conference taking place on Thursday, 23 May at the Convention Centre Dublin. This event attracts a wide range of participants from across the international investment funds community and brings together prominent industry speakers to discuss current opportunities and challenges facing the industry. The theme this year is ***“The Future of Funds – Evolution or Revolution?”*** and will include thought-provoking and informative presentations, keynote talks and panel discussions. Topics will include:

- Address from the Irish Government
- ESG Investing
- Cybersecurity and the Funds Industry
- The Future of Fund Distribution
- Focus on Brexit
- Challenges and Opportunities with FinTech and Artificial Intelligence

- The Future of Work
- Business Leader's Discussion
- The Future of Regulation

Please visit www.irishfunds.ie/conference2019 for more information.

Irish Funds promotional opportunities

Irish Funds conferences and seminars provide significant opportunities for brand exposure and strategic networking among a key audience of decision makers.

There are key sponsorship opportunities available for the annual golf event (hole sponsorship, book a 4-ball) on 22 May and for the Annual Conference (exhibition space, coffee break sponsorship, event partner opportunities, advertising in conference programme) on 23 May.

Further information on sponsorship of Irish Funds events throughout the year is available on our website. Irish Funds member companies can avail of a 30% discount across all individual sponsorship items. For all enquiries, please email events@irishfunds.ie.

Spotlight On: Membership Engagement Working Group

The Membership Engagement Working Group has been created with the aim of gaining and maintaining greater Irish Funds engagement with

members. The group is composed with a particular emphasis on diversity and is focussing on:

- Employees at member firms other than those at the most senior levels
- Inclusion
- Younger Employees (sub-30)/Next Gen
- Returning workforce
- New Member firms
- International Members
- Students/individuals potentially considering a career in the funds world

The WG has been meeting once a month since late 2018. Over these sessions the group members have explored the focus areas above, gathered feedback from their own firms and determined the immediate focus – enhancing communications and organising targeted events.

The WG is currently working on the details of a new role of Communications Champion and will be asking each member firm to nominate someone to take on this role. This is a great opportunity for younger employees to get involved. We are also designing a Lunch & Learn session to educate employees in member firms on the resources available to them within IF and the benefits they can avail of through engagement with IF. Further updates on these and other initiatives will be provided in due course. If you would like to learn more in the meantime, contact Alison Manley at Alison.L.Manley@Goodbody.ie.

Upcoming technical briefing: Transfer Agency Seminar

Irish Funds is delighted to invite members to the Transfer Agency Seminar – ‘TA People, Innovation & Technology’ hosted by Citi in 1 N Wall Quay, North Dock, Dublin 1 on Thursday, 11 April 2019 at 17.00.

This event will be of particular interest to those working in operations, technology and innovation and is intended to be an inclusive forum to share ideas and potential solutions to the changing landscape and operational challenges facing the funds industry in Ireland. Please note that the capacity for this seminar is limited so it is advisable to book early to guarantee a place. Please register at www.irishfunds.ie/events.

New Steering / Working Group Structure

Irish Funds continues to be shaped by its members’ needs as part of a thriving funds and asset management ecosystem in Ireland, grounded in government support, clear regulation, product innovation and exceptional talent. This requires us to adapt our service model and resourcing in terms of our growing and changing membership base.

The current Irish Funds Working Groups, successfully operating since Q3 2017 has grown in stature, number

of groups, member firm participants and most significantly in terms of mandate. This working group structure has been an invaluable industry resource, successfully delivering on industry priorities and concerns.

We are in the process of re-constituting the structure, the groups and the associated participation for our members during Q1 2019 to allow it to best serve both ongoing industry initiatives and more recent strategic priorities underpinning our goals of influencing, promoting and servicing the needs of our diverse membership. (Expected live date in Q2 2019.)

Diversity and inclusivity are very important to Irish Funds, in enhancing the quality and rigour of the working group structure we strive to actively encourage higher diversity across the membership of our groups.

As an industry, we are also embracing sustainability, and this will feature to a greater extent in our work during 2019.

IRISH FUNDS MARKETING IN THE UK: DEAL OR NO-DEAL

Ann Shiels, Associate, Asset Management & Investment Funds, A&L Goodbody



The UK has historically been the largest market for the distribution of Irish investment funds. Figures from 2017 record 2764 Irish investment funds registered for sale in the United Kingdom. More than one third of all managers establishing funds in Ireland are based in the UK. Irish UCITS and AIFMs currently enjoy the benefits of their respective passports to market into the UK. One of the many Brexit related practicalities that Irish funds have been tackling is how to ensure continued marketing access to the UK if the passport falls away. At the time this article goes to press, a no-deal Brexit is still possible by 12 April 2019 despite the ongoing eleventh-hour political manoeuvres in the UK and Europe to extend the UK's exit day beyond 29 March 2019 to 22 May 2019 to give time to secure a deal. Stephen Carson, resident partner

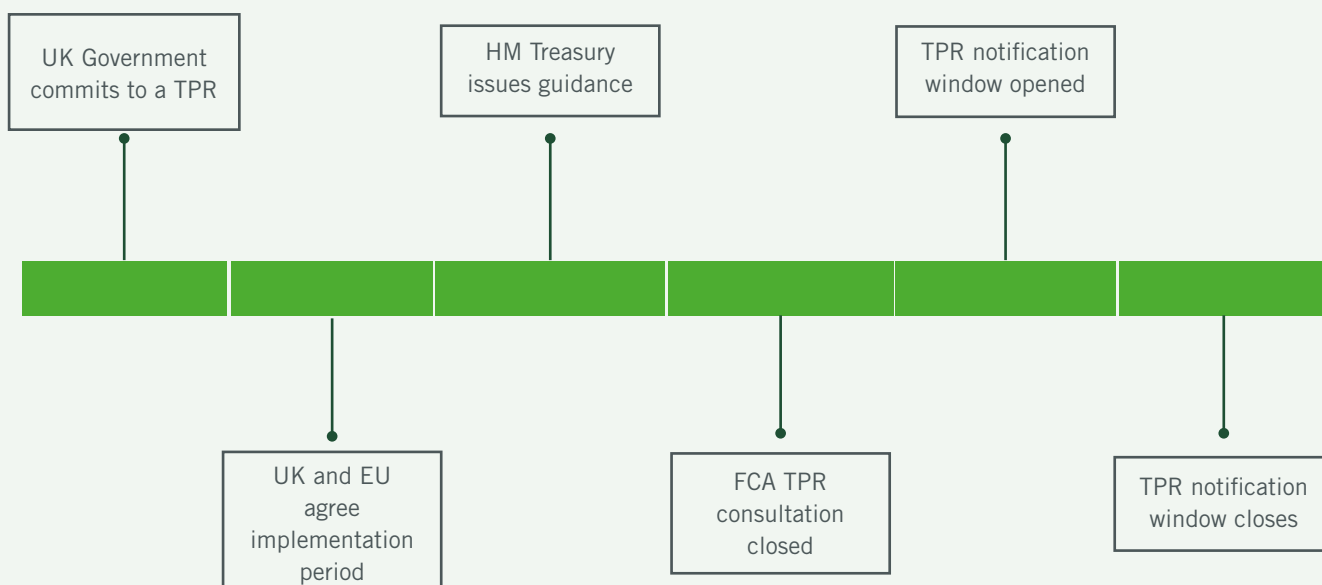
in A&L Goodbody's London office, commented "Following the announcement that MoUs will be in place, ensuring managers have access to the TPR for Irish funds registered in the UK became a priority for clients as part of their Brexit contingency planning. We have been working with a broad range of UCITS and alternative managers to ensure they have continued access to this vital market for asset raising."

Background

In December 2017 the UK Government confirmed it would legislate to establish a temporary permissions regime or TPR for inbound passported firms and funds. This would enable them to continue their activities in the UK for a limited period after withdrawal. Then, in March 2018, the UK and the EU reached an agreement

on the terms of an implementation period following the UK's withdrawal from the EU. Following approval of a withdrawal agreement, the implementation period would operate from 29 March 2019 until the end of December 2020. For Irish funds to continue marketing in the UK, this meant there would be two alternative routes: if there is a deal then the terms of the withdrawal agreement and implementation period would apply after 29 March 2019 and if there is no deal, then the TPR would apply.

HM Treasury published guidance and draft legislation in July 2018 enabling the Financial Conduct Authority in the UK (FCA) to provide a roadmap for funds to continue marketing into the UK after 29 March in a no deal scenario. The FCA issued a consultation in October 2018 and the practical application of the TPR continues to be an evolving process.



How the TPR works

If the UK leaves the EU without signing the withdrawal agreement and its corresponding implementation period, the TPR will allow Irish UCITS and AIFs to continue to access the UK market, for a limited time, while seeking recognition in the UK.

Fund managers need to notify the FCA if they wish to use the regime within the notification window which opened on 7 January 2019 and will close on 28 March 2019. The FCA has informed practitioners that there are some actions fund managers can take before the window closes which will smooth the way for an orderly entry into the TPR. This includes ensuring registration on the FCA's online application system Connect and that relevant fund details on record with the FCA are correct and up to date.

Mary McKenna, partner at A&L Goodbody commented "The A&L Goodbody Foreign Registrations team has been engaging closely with the FCA since the TPR consultation issued and as they refine the practical application of the TPR. The FCA has been helpful and responsive to queries raised."

Any funds which have been authorised or approved by the Central Bank and for which marketing in the UK is being considered should apply to be registered for marketing in the UK before 29 March to be able

to access the TPR. The CSSF has asked Luxembourg funds making use of the TPR to notify them. To date, the Central Bank of Ireland has not requested a similar notification in respect of Irish funds.

Once the notification window closes, fund managers that have not submitted a notification for a fund will be unable to use the TPR for this fund and will not be able to continue marketing the fund in the UK. More specifically, the FCA consultation states the fund manager would have to cease marketing the fund at 11 pm on 29 March.

At the time of going to print, there is no indication whether the FCA will extend the TPR deadline dates of 28 and 29 March to align with a date after 29 March, once agreed, on which the UK will leave the EU.

UCITS exception

The FCA has clarified that where an EEA authorised umbrella UCITS which has accessed the TPR prior to 29 March 2019 and establishes a new sub-fund after 29 March, that new sub-fund can access the TPR after 29 March.

AIFs

The position for AIFs is different. Whereas the UCITS passport is at the product level, the AIFMD passport is at the AIFM level. The FCA has

advised that new AIF sub-funds of an umbrella AIF that accesses the TPR prior to 29 March 2019 and establishes a new sub-fund after 29 March can market into the UK using the National Private Placement Regime (NPPR). While not the FCA's current position, there is an argument that the same exception could be permitted for new sub-funds of umbrella AIFs that have already accessed the TPR.

Exiting the TPR

While there has been a good degree of clarity around how funds can access the TPR, there is less certainty about the exit process. Once in the TPR, investment funds will be able to continue marketing to investors in the UK for up to three years. They will be given a 'landing slot' to submit an application/notification for recognition. Consequently, the period spent in the TPR will vary from fund to fund depending on the landing slot. Information on exiting has yet to be made available by HM Treasury or the FCA. The FCA said in the consultation paper that it will publish final versions of the TPR materials close to exit day, be fine-tuned as the TPR evolves. It is not critical to the success of the TPR that these elements of the process are finalised before exit day."

ESTABLISHING IN IRELAND

Laura Wadding, Director, Regulatory Risk at Deloitte Ireland



In the last 12 to 18 months, there has been an upsurge in the number of applications for authorisation to the Central Bank of Ireland ('CBI'), primarily from UCITS Management Companies, AIFMs and MiFID Investment Firms. In fact, some firms have been successful in obtaining all three authorisations. The rationale is clear - these firms wish to retain their EU passporting capabilities post-Brexit.

Authorisation process requirements

The authorisation process requires, at a minimum:

- the completion of a Key Facts Document and supplementary information
- face-to-face time with the CBI
- responses to CBI queries and requests for additional information
- submission of a completed Application Form, including:
 - the business plan
 - certain policies
 - details of the operating model and governance framework
 - details of all outsourcing arrangements
 - details of the individuals who will be responsible for the day-to-day management of the firm

For those firms seeking authorisation, they have had to strike a balance between being 'operational' and being 'ready to operationalise'. This is not an easy balancing act when a firm must be authorised before it can operate, but in

order to get authorised, it must be able to demonstrate that it has sufficient substance in Ireland to be able to operate effectively.

A large part of the challenge with this is attracting the right people to fill the Pre-approved Control Functions of the firm, and allowing sufficient time to perform due diligence on those individuals, and obtain Board and CBI approval. Firms should assess which roles are required to be filled and located in Ireland. This is a risk based assessment, and reflects the business plan and proposed operating model of the firm seeking authorisation. It will also be guided by the CBI, their perception of the risk associated with the proposed firm and their ability to supervise the firm effectively. As a result, not every firm seeking to establish a presence in Ireland will be required to have the same level of substance.

For firms that have successfully obtained their authorisation, many have had to make some departure from their original plan in response to recommendations and/or direction from the CBI.

In addition to the regulatory authorisation required to operate in Ireland, other key areas of focus for firms establishing here have been their obligations with regard to tax, GDPR, resourcing, premises, technology, and for many, the logistics and costs associated with relocating individuals to Ireland. The coordination of all

of this has required skilled project management and flexibility to change plans as the goalposts have moved. Firms who have successfully established their business in Ireland should be commended for coming out on top of a very challenging process.

Key considerations for newly authorised firms

Looking forward, from a regulatory perspective, it will be key for newly authorised firms to operate in the manner in which they have advised the CBI. Within the CBI's PRISM framework, firms will be examined periodically to assess whether they are operating as they intended and in compliance with applicable regulatory requirements. They will be expected to notify and in some cases seek approval from the CBI for material changes to their operating model and/or governance structure, and to bring important matters to the attention of the CBI as they see fit, in particular issues related to Brexit which have yet to materialise.

Looking forward, from a market perspective, it is anticipated that these newly authorised firms will embed themselves in the sector and be welcomed into a well-established network of fund management and asset servicing professionals in Ireland which has been cultivated by Irish Funds. The growth in the sector is hugely positive from a local perspective, and new firms should be encouraged to reach into the market for support and insight as they settle in Ireland.

STARTING THE CONVERSATION: THE FINTECH WORKING GROUP SPEAKER SERIES

Dáire Lawlor, Chair of Irish Funds Fintech Working Group and Head of Consultancy Services Group for State Street Global Services in Ireland



My introduction to the world of technology was not a typical one; the year was 1990 and I had recently returned from a year living in Spain when a friend asked me if I would be interested using my rudimentary Spanish to test localised software. I leapt at the chance and found myself earning good money while learning how to use a mouse and acquiring basic computer skills by following the test scripts.

By 1996 I had moved to project management and the “browser”, which allowed users to interact with internet content across the World Wide Web, had begun to herald the beginning of a revolution. The “dot.com” boom followed quickly and web and ecommerce applications proliferated with fortunes being made, and lost, through harnessing, or failing to harness, the potential offered by these new technologies.

It was an exciting time with new emerging technologies transforming how we thought about managing people

and process to deliver the results our customers wanted. With the changed paradigm a brand new vernacular also emerged and those who could understand the concepts and translate them into action plans, for both their work environment and their personal careers, thrived.

The key to this success was for individuals and companies to establish a broad understanding of what emerging technologies could offer, how they might transform their operational world, and to acquire a shared vocabulary allowing them to usefully articulate how best to exploit these opportunities to become more efficient and productive. This lesson is pertinent to the funds industry today as a combination of exponential growth in processing power, the low relative cost of storage, and the emergence or coming of age of new technologies (such as Distributed Ledger Technology, Augmented Intelligence, Ontologies and Semantics, and Robotic Process Automation) reveal huge opportunities to bring the business into the 21st Century.

The Irish Funds Fintech Working Group Speaker Series

The Irish Funds Fintech Working Group Speaker Series aims to contribute to this journey by providing a forum where experts with knowledge of emerging technologies and their use cases impart knowledge of the basics in simple straightforward language to start the conversation about the possibilities they afford.

Three sessions have been held so far with very good turnouts. The successes of the Speaker Series Events to date are reflected in the positive survey responses from attendees and it would appear there is an big appetite from the industry for more of this kind of event.

It is planned to continue to hold sessions monthly with details of topics and venues being finalised for Dublin on the 2nd and 30th of May; a Q3 Cork event is also in planning.

Hopefully you can make it to one or all of these, I look forward to starting the conversation with you there.

ESG AND REGULATION – FACTORS IN THE INVESTMENT DECISION-MAKING PROCESS

Brian Dillon, Partner, Dillon Eustace



Regulation to become a factor for ESG investors alongside existing financial factors in the investment decision-making process.

Socially responsible investment (“SRI”) is certainly not a nascent phenomenon. However, if one were to consider the recent hive of activity from regulators you might think differently. SRI origins date back centuries to when early SRI principles were articulated by John Wesley. The asset management industry should be applauded for the development of the concept and it is arguable whether regulators need to become involved at all given that SRI has evolved from the industry. Some believe regulatory resources might be better deployed focusing on markets or liquidity risk.

SRI is today widely understood as the integration of environmental, social and governance (“ESG”) factors into the investment process. The term ESG was first used in 2005 and it is estimated that ESG currently accounts for almost one quarter of all professionally managed assets globally. Climatic change and the reaction to this critical issue from asset managers might mean that we are soon referring to “CESG”.

Investors are increasingly more sophisticated in their understanding and approach to ESG and are demanding greater stewardship from

asset managers to ensure that their money is invested in a socially-responsible way. This places an onus on asset managers to better articulate how they integrate ESG factors into their investment process and this engagement is bringing about real change at investment companies. Investors are also not always prepared to sacrifice performance for their moral or ethical beliefs so the task of the asset manager to deliver is challenging. ESG is most successful and effective when the SRI principles and beliefs of the asset manager are core components to their investment strategy and not merely included to “green” a portfolio. ESG can no longer be seen as a niche investment strategy as it is relevant to all investment.

Regulators have taken a more active interest to ensure that this integration of ESG does not occur to the detriment of investors and it is useful to consider how this activity might impact on Irish regulated investment funds.

The Central Bank of Ireland (“CBI”), while identifying some key focus areas in the regulatory landscape at the end of 2018, flagged that regulators, such as the CBI, believe they will have a key role to play in ensuring asset managers consider risks associated with ESG investment and disclose these ESG risks and any associated costs to investors.

See the CBI comment below:

...“ESG is something that in the past has been seen as an area of interest but perhaps not something that was at the centre of concerns for the financial services industry. It is fair to say that that period is coming to an end. The initiatives of the European Commission in this space during 2018, building on previous work of the FSB and the High-Level Expert Group on Sustainable Finance mark a significant moment. It is perhaps not the initiatives themselves, important though they are, that is the most significant thing to note. But rather how they have been received and how quickly they have gained traction and been the locus of a quickly developing consensus amongst policy makers and market participants that ESG factors have moved centre stage with the debate being not about whether but how to give them best effect from a regulatory perspective and to what timescale.”

It came as no surprise shortly after this CBI statement that the European Securities Markets Association (“ESMA”) published their consultation paper outlining proposed amendments to the UCITS directive and AIFMD directive in order to integrate sustainability risks and sustainability factors in the internal processes and procedures of UCITS management

companies and AIFMs. The European Commission in its mandate to ESMA to prepare technical advices, had stated that its objective is to explicitly require the integration of sustainability in the investment decision process. The proposals put forward by ESMA intend to impose obligations on UCITS managers and AIFMs to:

- a) incorporate sustainability risks (being the risk of fluctuation in the value of positions in the value of positions in a fund's portfolio due to ESG factors) in their due diligence processes; and*
- b) assess and manage the sustainability risks stemming from their investments.*

It proposes changes to the following areas of both the UCITS and AIFMD frameworks to address the above:

- a) General organisational requirements;*
- b) Resources;*
- c) Senior management responsibilities;*
- d) Conflicts of interest;*
- e) Due diligence requirements; and*
- f) Risk management.*

A brief analysis of the responses received by the European Commission would suggest that respondents, while broadly supportive of the initiative, are mindful that the need for flexibility remains and a one size fits all approach

should be avoided. Not all asset managers claim to invest with ESG in mind and not all investors require it.

The International Organization of Securities Commissions ("IOSCO") recently published the IOSCO Statement setting out the importance for issuers of considering the inclusion of ESG matters when disclosing information material to investors' decisions.

The IOSCO statement does not supersede existing laws, regulations, guidance or standards or the relevant regulatory or supervisory frameworks in any specific jurisdictions, or any IOSCO Principles.

The IOSCO areas of focus are set out below.

- a) Developments in the disclosure of ESG Information;*
- b) Investor perspectives;*
- c) Issuer perspectives;*
- d) Voluntary disclosure frameworks; and*
- e) The role of securities regulation and existing obligations.*

IOSCO is encouraging asset managers to consider the materiality of ESG matters and when such matters are considered to be material, they should be disclosed to investors. IOSCO are

seeking clear disclosures in respect of methodologies and needs issues to ensure that plans of development in accordance with risk and also reflect opportunities in a balanced way.

IOSCO will monitor developments regarding the disclosure of ESG information, including private-sector initiatives that have promoted a voluntary framework. IOSCO will also continue to engage with different disclosure forums and task forces, issuers, and investor groups in order to be informed about the latest developments and their consequences, as well as to understand market participants' perspectives and expectations regarding disclosure of ESG information.

ESG is certain to become a landmark on the regulatory map and I expect that this will benefit investors' understanding of how ESG impacts their investments, but it is unlikely to have any impact either positive or negative on performance - that will remain the job of the asset manager.

UCITS OPPORTUNITIES IN LATIN AMERICA

Roberto Walker, President of Principal Financial Group Latin America, Matt Smith, CFO LatAm Region and Greg Thornton, Managing Director, International Funds at Principal



UCITS funds platforms have a unique growth opportunity in Latin America if they can capitalize on shifting investor demand, coupled with improving regulatory conditions in LatAm's largest markets for international investing. The Latin American mutual fund market is a large and attractive opportunity for global asset managers, with more than USD 1.2 trillion in assets under management (AUM). Cross-border allocations in LatAm mutual funds reached an estimated USD 26 billion in 2017.

Retail demand for off-shore product is increasing across the region as investors have improved access to tax-compliant vehicles through local advisory services in a single client offering. Demand is growing for global and increasingly complex products across the region, but particularly in Brazil where demand is finding a distribution outlet through boutique investment management firms with differentiated investment capabilities, and brokers with open-architecture models providing access to a broader array of off-shore options.

The LatAm pension market presents an equally relevant opportunity with total AUM around USD 1 trillion. Pension plan consumption of international product is increasing as well, with nearly 14% of AUM representing nearly USD 170 billion allocated to cross-border funds or ETFs. The pension allocation to cross-border investments varies across the region, with less than 1% in Brazil to over 40% in Chile.

Latin America pension and mutual fund AUM is expected to grow 9% in the coming years, with cross-border allocations expected to more than double 2017 levels by 2022. If that growth comes to fruition the combined LatAm cross-border market would represent over USD 400 billion in the next five years, a substantial opportunity for managers with a strong UCITS product suite.

Brazil is the largest mutual fund market with more than USD 1 trillion AUM and represents a unique opportunity as economic forces and liberalization of regulation combine to increase

demand for off-shore allocations for both retail and institutional investors. The Brazilian mutual fund market is expected to grow 10% annually, faster than the industry average. Low interest rates in Brazil are encouraging investors to seek returns outside domestic markets, while regulation of local feeder funds has been relaxed which is likely to increase demand from private pension companies for international investments.

Mexico could also present a growth opportunity as the market works through regulatory procedures from the 2018 approval allowing mandatory pension providers to invest in international mutual funds.

UCITS funds are well positioned to capitalize on Latin American demand due to local recognition of the robust regulation and oversight structures in place across the industry. Fund providers should be able to offer a strong and diverse suite of funds, with multiple share class structures including the ability to provide classes denominated in, or hedged to, local



currency. Being able to accept trades through intermediary fund platforms including Pershing is also a key requirement.

There is a cautionary note in that while significant opportunities exist for UCITS funds, specific issues can sometimes arise. In 2016, Brazil placed Ireland on their tax black-list, resulting in higher withholding tax on income and gains for Irish-domiciled UCITS investing in Brazilian securities. This reduces demand for direct investment in Brazilian assets for Irish-domiciled funds, something Irish authorities are addressing with their Brazilian counterparts as it is necessary to restore an equal playing-field and improve competitiveness of their mutual fund offering.

HAPPY BIRTHDAY TO U...CITS: TURNING 30!

Aongus McCarthy, Associate, Pinsent Masons (Ireland)



It will be 30 years this year since Ireland first introduced the Undertakings for Collective Investment in Transferable Securities ("UCITS") regime¹. An Irish UCITS is collective investment schemes established and authorised within Ireland by the Central Bank of Ireland ("Central Bank"), pursuant to the Irish UCITS Regulations².

UCITS in Ireland – A Success Story

The introduction of the UCITS regime at a European level in 1985 was driven by the need for a highly regulated pooled investment fund product capable of being sold on a cross-border basis within the EU, without the requirement for further authorisation or gold plating.

Since its introduction into Ireland in 1989, the UCITS regime has developed into an internationally recognised, highly regulated brand and offers managers a highly liquid and diversified product, with a high level of investor protection and capable of being freely marketed.

Ireland has a transparent and well settled regulatory environment, a clear and certain taxation environment and an efficient regulatory authorisation process, which makes Ireland an attractive place for managers to domicile their UCITS products. Furthermore, Irish service providers have the necessary expertise and experience to deal with all types of UCITS products. EU and non-EU asset managers, including many UK based asset managers impacted by Brexit, have looked favourably upon

Ireland as an international hub from which to develop their EU business.

Although established as a retail product, Irish UCITS funds have developed broader appeal to institutions and pension funds and are now heavily marketed to a mixture of retail, professional and institutional clients, through the harmonised EU passporting process and also private placement mechanisms outside of the EU. Irish UCITS are capable of being marketed into EU and non-EU markets and are an important product for asset managers seeking to access European capital. Investors and foreign regulators are familiar with the UCITS product and the Irish regulatory environment. Ireland has become an international leader for cross-border distribution of investment funds.

As the leading jurisdiction for two of the main types of UCITS - Exchange Traded Funds and Money Market Funds, the UCITS product has been a success story for the Irish fund's industry. At the end of January 2019, there were 4,535 Irish domiciled UCITS funds (including sub-funds) authorised by the Central Bank, which accounted for assets of €1.8 trillion, under management³.

The UCITS product has continued to evolve over the past 30 years, with:

a) the broadening of the investment spectrum of UCITS funds and the introduction of more robust governance requirements and the permitted use of more sophisticated derivatives (known as UCITS III);

b) the introduction of the management company passport, the UCITS product marketing passport, a framework for cross border and domestic UCITS mergers, key investor information documents and master-feeder structures (UCITS IV); and

c) finally, the alignment of fund depositories' duties and responsibilities and fund managers' remuneration requirements with those of the Alternative Investment Fund Managers Directive (known as UCITS V).

Key changes to be expected once UCITS turns 30!

As to the future of UCITS in Ireland... over the next 24 months, we can expect to see a number of changes at European and national level.

In a recent speech to industry⁴, Michael Hodson, Director of Asset Management and Investment Banking at the Central Bank of Ireland, indicated that the Central Bank shall shortly publish amendments to the Central Bank UCITS Regulations⁵, representing a consolidation of all the regulations issued to date and taking into account regulatory and technical updates which the Central Bank consulted upon last year.

The European Commission's proposed regulation and directive⁶ on facilitating cross-border distribution of investment funds is a welcome development. The proposals aim to ensure that the

¹ The European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 1989 come into operation on 1 June, 1989.

² The European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011, as amended.

³ Source: Central Bank of Ireland, March 2019.

cross-border distribution of UCITS will become quicker and more cost effective, whilst ensure transparency of regulatory fees and charges (as well as calculation methodologies) and national marketing requirements.

Additional requirements relating to depositary safekeeping duties (i.e. asset segregation, delegation contracts and delegation to third country custodians) shall apply from April 2020, following on from ESMA's Opinion on Asset Segregation⁷.

In addition to regulatory legislative enhancements, managers of UCITS products should continue to monitor and keep abreast of thematic reviews to be carried out by the Central Bank of Ireland during the course of 2019.

Conclusion

Turning 30 isn't always as bad as it first seems!

Irish UCITS products are increasingly being used by managers for more complex and sophisticated strategies. In addition, forthcoming enhancements to the existing UCITS cross border distribution framework permitting quicker and cheaper access to capital will be welcomed by managers and distributors and it should be expected that total net sales of Irish UCITS will continue to increase proportionately over coming years. Whilst the rate of change to the UCITS regime over recent years has picked up pace, the enhancements have generally been welcomed by industry

stakeholders, be they changes at a European or national level. Ireland has always been among the first to implement enhancements to the UCITS regime into national law. We should expect and welcome that the trend continues so that the success story of the Irish UCITS product continues for another 30 years.

1985	1989	1998	December 2001	2007	January 2009	June 2011
Original UCITS Directive Published	UCITS I Directive enacted into Irish law.	UCITS II abandoned following failure to agree its scope and purpose	UCITS III - Directives 2001/107/EC (Management Directive and 2001/108/EC (Product Directive) Published	Management Directive and Product Directive took effect	UCITS IV Published (effective from 1 July 2011)	UCITS IV Directive enacted into Irish law.

October 2015	August 2014	March 2016	March 2017	Q2-Q3 2019	April 2020	TBC
Central Bank UCITS Regulations published in October 2015 and effective from 1 November, 2015 (replaced UCITS notices)	UCITS V Directive Published	UCITS V Directive enacted into Irish law on 25 March 2016.	Proposed regulation and directive on facilitating cross-border distribution (shall apply 24 months after entry into force)	Revised set of Central Bank UCITS Regulations to be enacted in 2019	Amending regulation on depositary safekeeping to apply from 1 April 2020 having entered into force on 19 November 2018	UCITS VI

⁴ Source: "Asset Management after Brexit: Responding to the New Reality - Michael Hodson, Director of Asset Management and Investment Banking"; speech delivered to the British Irish Chamber of Commerce: Financial Services Seminar on 24 January 2019, available at <https://www.centralbank.ie/news/article/asset-management-after-brex-it-michael-hodson>.

⁵ The Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015.

⁶ Proposal for a Directive of the European Parliament and of the Council amending Directive 2009/65/EC of the European Parliament and of the Council and Directive 2011/61/EU of the

European Parliament and of the Council with regard to cross-border distribution of collective investment funds (2018/0041 (COD)).

⁷ ESMA Opinion on Asset Segregation and Custody Services (ESMA34-45-277).

SCANNING THE EU REGULATORY HORIZON

Sean Tuffy, Head of Market and Regulatory Intelligence, Custody and Fund Services, Citi



The EU is on course to enter a new phase of regulatory change.

This year will be a game of two halves for European policymakers. In the first half of the year, their focus will be on finalizing a number of open proposals. While in the second half of the year, the focus will change to considering new regulatory proposals. In both cases, any changes will become challenges for the industry in the future and it is important that asset managers understand what issues are on the horizon.

The Race to the Finish Line

European policymakers face a tight deadline to get all open legislative proposals approved ahead of the European Parliamentary elections in May. Any proposals that are not approved in time will have to go back to square one after the new Parliament is formed. A similar situation occurred in 2014 and led to the so-called Super Tuesday where a slew of financial regulations were approved all at once. These regulations had wide-ranging implications for the asset management industry that are still being felt today.

Asset managers are not facing nearly the same scale of new regulations this time around but there are some key issues they should be tracking. These include updates to the Undertakings for Collective Investment in Transferable Securities Directive (UCITS) and Alternative Investment Fund Managers Directive (AIFMD) frameworks, a proposed Environmental, Social, and Governance (ESG) framework, the creation of a Pan-European Personal Pension Product, and changes to the European Market Infrastructure Regulation.

In the push to finalize the proposals ahead of the deadline, there will be a number of parallel conversations happening among the European Commission, Parliament, and Council. The drive to the deadline could also lead to hasty compromises, which usually manifest as implementation challenges down the line. Arguably, the issues with the Packaged Retail Investment and Insurance-based Products (PRIIPs) and Markets in Financial Instruments Directive (MiFID) 2 transaction cost calculations are a result of imperfect decisions made in the run up to Super Tuesday. The industry should pay close attention to the developments because decisions made today will become implementation challenges tomorrow.

Here We Go Again

Once the new Parliament is formed this summer, European policymakers will shift gears from finalizing rules to considering new regulatory changes. It is likely that we will see the revival of UCITS 6, which was originally proposed in 2012. While a number of the elements from the original proposal, such as the money market fund rules, have been handled in separate regulations, asset managers should expect UCITS 6 to be quite broad. Possible elements include enhanced liquidity management rules, the creation of specific third-country delegation provisions, and restrictions on performance fees. It is also possible that some policymakers will try to revive the bonus cap for asset managers, which was abandoned with UCITS 5.

UCITS 6 is not the only potential regulatory sequel in the pipeline. There

could also be consultations on AIFMD 2, PRIIPs 2, and even MiFID 3. These regulations are at the core of the asset management industry and, depending on their scope, could have substantial long-term global implications.

This will be the first major wave of EU regulation of the post-Brexit era, where the UK may no longer have a direct say in EU policymaking. The UK has historically been a major contributor to EU policy and its absence should noticeably change the dynamic. For example, the UK was instrumental in shutting down the UCITS 5 bonus cap. With the UK no longer at the table, the industry is losing what has often been an important ally. Industry should be more vigilant in the consultation process and will need to recalibrate their lobbying efforts to focus on building new alliances in Brussels. The sooner asset management adjusts to the new reality of the post-Brexit era, the better positioned it will be.

Preparing for the Next Phase

Despite being a relatively calm period for regulatory changes, there are signs that activity will pick up in the near future. Asset managers should keep their focus on tracking evolving debates and continue to engage with policymakers during the consultation periods. Firms should also ensure their operations are ready for the next round of regulatory change to take advantage of potential opportunities for new products and solutions.

Read Citi's 2019 FinReg Outlook: The Calm Before the Storm, for more detail on the key developments, regulations, and trends that asset managers should be tracking for the year ahead.

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TRANSFER PRICING – THE ROAD AHEAD FOR FUND MANAGERS

Neil Casey, Director, and Emmet Madden,
Associate Director, Transfer Pricing at
KPMG Ireland



The backdrop

The financial services industry faces potentially the single biggest impact on its operations in a generation – Brexit. The potential harmful effects of Brexit on the UK Funds Management Industry are well publicised. Many UK Fund Managers have obtained a license /are in the process of obtaining a license to establish a UCITS management company and / or an Alternative Investment Fund Manager (“ManCo”) in Ireland in order to maintain EU passporting.

So why is Transfer Pricing important?

The establishment of a new Irish ManCo gives rise to the question of what profit the Irish ManCo should earn on an arm's length basis for the role it will perform. Transfer pricing provides the basis for determining the arm's length reward for the Irish ManCo by applying principles agreed by the OECD.

Tax authorities require arm's length pricing to be applied on intra-group transactions. The large number of applications for a new Irish license will result in greater attention from the Irish and UK tax authorities. Therefore, increased awareness on transfer pricing arrangements is not just a consideration for firms setting up operations in Ireland but also for Fund Managers which already have a presence here.

Transfer Pricing – Recent Developments

In July 2017, the OECD published revised OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (“OECD Guidelines”). Whilst these have not yet been formally adopted into Irish domestic law, they already apply under the provisions of the Irish and UK double taxation agreement. It is expected that the 2017 OECD Guidelines will come into force in January 2020 and the Irish Government are currently engaged in a public consultation process on the matter.

The revised OECD Guidelines have sought to clarify several aspects of the previous 2010 version and essentially facilitate tax authorities applying greater rigour in determining an arm's length reward for parties to an intra-group transaction. The main principles of relevance for Fund Managers from the new OECD Guidelines are as follows:

1. Distinguish control of risk functions from risk mitigation functions;
2. Provision of a clear mechanism for identifying where control of risk occurs;
3. Emphasising the primacy of the actual conduct of the parties in determining the attribution of profits – not merely relying on the legal contractual arrangement; and
4. Ensuring an appropriate return to risk control functions by reference to the economic relevance of the functions.



Conclusion

The large increase in license applications to the Central Bank from UK Fund Managers has highlighted an ability to attribute profits to Ireland consistent with the level of control of risk functions performed here, particularly as the Irish regulatory requirements around control of risk functions becomes more significant. These profits would be taxable at the standard rate of corporation tax of 12.5% which applies in Ireland. It is important that Fund Managers consider if their policies for rewarding Irish operations on intra-group transactions provides for an arm's length result, taking into account the new OECD Guidance. This is not only an opportunity to create value but is also a risk that must be managed.

IRISH FUNDS ASIA ROADSHOW RECAP

James McKnight, Managing Associate,
Simmons & Simmons



Irish Funds headed East for its first roadshow of 2019 in January stopping in Hong Kong, Beijing and Shanghai.

Hong Kong

The Irish Funds Asian roadshow started in Hong Kong with the Hong Kong Exchange (HKEx) hosting Irish Funds on 15 January. David Costello, Consul General of Ireland to Hong Kong and Macau had the honour of ringing the ceremonial “closing gong” to close the day’s trading and kick off the first seminar of the Asia roadshow.

The Hong Kong seminar included speakers from Irish Funds, HKEx, the Hong Kong Securities and Futures Commission, Jefferies Global, HSBC, BBH, Standard Chartered, FTSE Russell, Maples, Eversheds Sutherland and ICI Global and covered a broad range of topics including the China Connect programmes, Blockchain and the future of custody and the where, what and why of fund domiciles.

Beijing

Beijing was the next stop, with seminars taking place on 16 January in conjunction with the Asset Management Association of China (AMAC) and on 17 January in conjunction with the Insurance Asset Management Association of China (IAMAC) respectively.

Simmons & Simmons Irish office head Fionán Breathnach spoke at the IAMAC seminar, providing the local managers in attendance with an insight into Irish fund structures and regulatory regimes.

Brexit, its impact on distribution and investment opportunities and trends in Europe were also popular presentations and conversation pieces.

Jinghan Zhang of GF Fund Management presented on the international business of Chinese asset management institutions and Shane O’Donovan of Merian Global Investors provided a unique insight into what is required to manage an asset management business with operations in both Ireland and China. Bernard Hanratty of Tivus covered the hot topic of the application of financial technology to the asset management industry with H.E. Eoin O’Leary, Ambassador of Ireland to the People’s Republic of China delivering a closing address on Ireland-China relations at each of the seminars in Beijing.

Shanghai

On then to Shanghai, where the Shanghai Asset Management Association and China Universal Asset Management (CUAM) were next to kindly host Irish Funds on 18 January in the heart of Lujiazui Financial District, home to many of the international managers with operations in China, as well as nearly all of the main domestic players, with Shanghai being the traditional home of asset management in mainland China.

A presentation on the development and internationalization of the mutual funds industry in China from David Dong Liqing of CUAM provided some very valuable insights to those in attendance. Alan O’Sullivan of

BBH presented on developments in distribution and investor demands, with Paul Heffernan of HSBC providing a global regulatory update with a particular focus on Brexit.

The Irish Contingent

Many of those travelling from Ireland for the seminars had flown with Cathay Pacific direct from Dublin to Hong Kong, including myself, Simmons & Simmons Irish office head Fionán Breathnach and Pat Lardner from Irish Funds.

It was notable to see how full our flight was and it has since been reported that Minister Michael D’Arcy is currently seeking an expansion of this service from the current 4 flights per week to 6 flights per week. Following the announcement by Cathay Pacific of the direct Dublin/Hong Kong route last year, Hainan Airlines quickly followed suit with a direct flight from Beijing to Dublin. In January 2019, shortly after the Irish Funds roadshow, Hainan Airlines announced another direct flight to Dublin, this time from Shenzhen, a city just north of Hong Kong and known as the “Silicon Valley of China”.

With no direct flights one year ago, there are now three direct flights between Ireland and Asia, with additional routes expected soon. The growing trade links between Ireland and Asia are now unparalleled in terms of pace of development and importance, with the number and quality of attendees at each of the Irish Funds seminars standing testament to this.

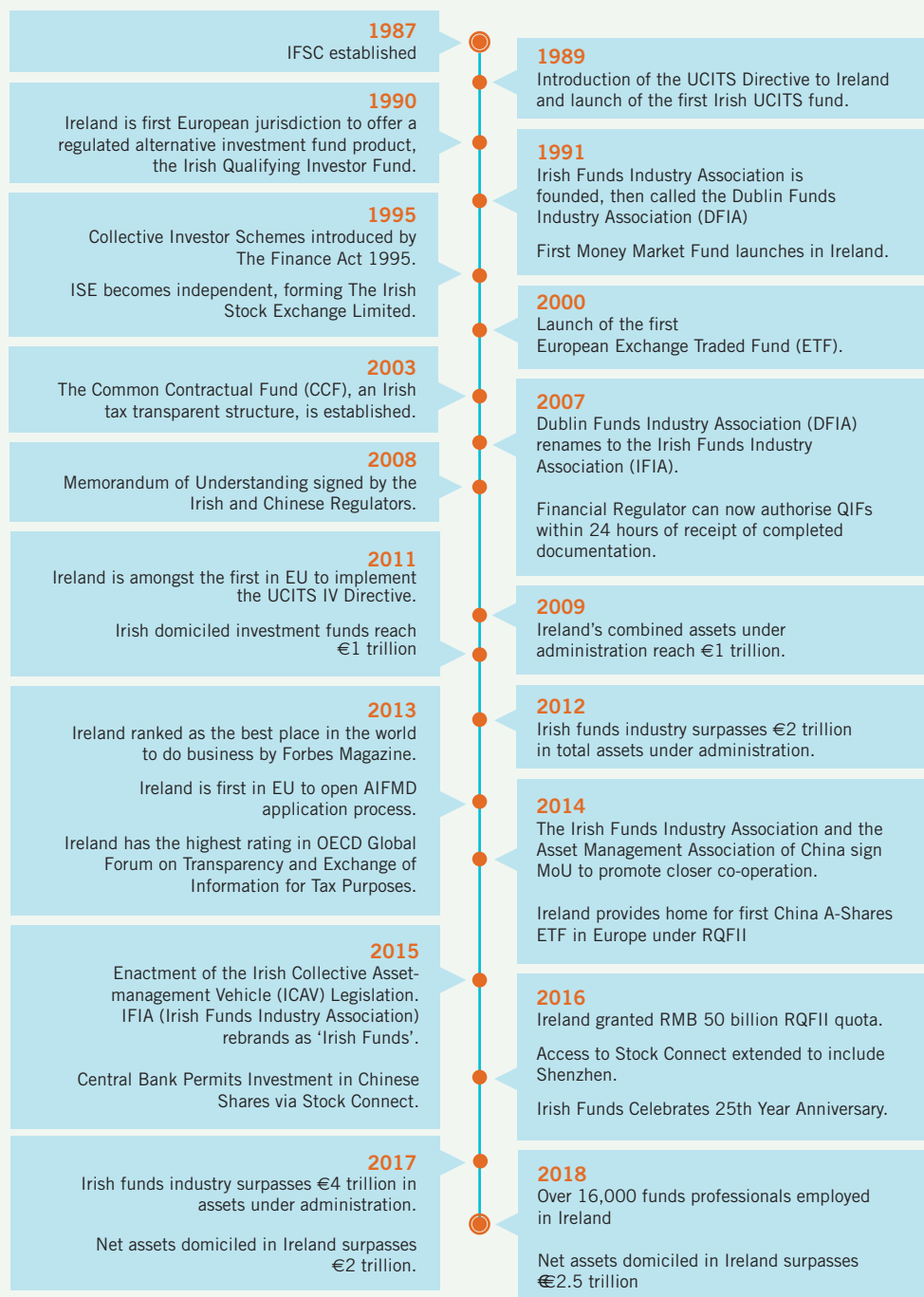
Irish Funds Industry Milestones

Established in 1991 the Irish Funds Industry Association (Irish Funds) is the representative body of the international investment fund community in Ireland.

We represent the fund promoters / managers, administrators, depositaries, transfer agents and professional advisory firms involved in the international funds industry in Ireland, with nearly 14,000 funds and net assets of more than €4.2 trillion.

The objective of Irish Funds is to support and complement the development of the international funds industry in Ireland, ensuring it continues to be the location of choice for the domiciling and servicing of investment funds.

Through its work with governmental and industry committees and working groups, Irish Funds contributes to and influences the development of Ireland's regulatory and legislative framework. Irish Funds is also involved in defining market practice through the development of policy and guidance papers and the promotion of industry-specific training.



SOURCE: Central Bank of Ireland, Monterey Insight Ireland Survey 2018 and Irish Funds (Net assets and number of funds valid as of Dec 2018)

986 Fund Promoters
(532 promoters of Irish Domiciled Funds)

Irish Investment Funds Industry

€4.2

TRILLION TOTAL AUA

€2.4

TRILLION DOMICILED AUA

DISTRIBUTION TO OVER

90 COUNTRIES

13,914 TOTAL FUNDS

7,290 IRISH DOMICILED

6,624 NONDOMICILED

LAWYERS
ACCOUNTANTS
LISTING BROKERS

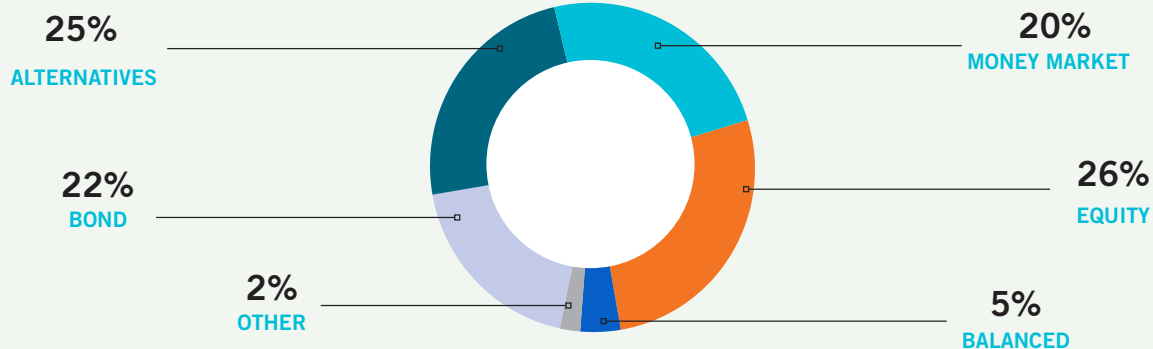
ADMINISTRATORS
DESPOSITARIES

ASSETS
MANAGERS

OVER
16,000
EMPLOYED

SOURCE: Central Bank of Ireland, Dec, 2018

Irish Domiciled Funds Breakdown by type





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