

Central Bank of Ireland confirms that ETF share classes may be established within non-ETF UCITS

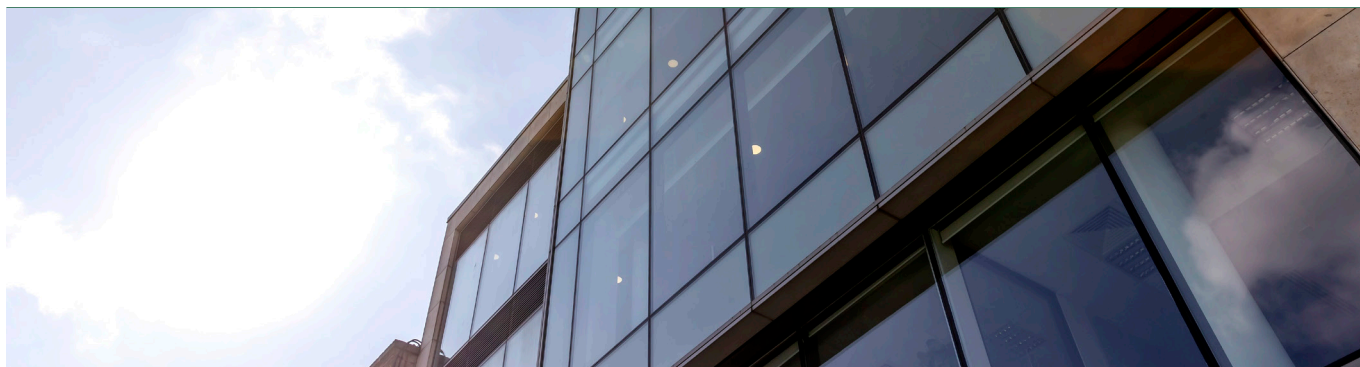
November 2024

In welcome news for fund promoters and investors, the Central Bank of Ireland (the **Central Bank**) has confirmed that it is now possible to have listed share classes within a UCITS fund without the requirement to redesignate as a “UCITS ETF”.

Since 2018, the Central Bank has permitted unlisted share classes to be established within UCITS exchange traded funds (**ETF**) subject to certain conditions, including clear disclosure on the key differences between the listed and unlisted share classes. The Central Bank’s updated [UCITS Q&A](#) now clarifies that similar disclosure requirements shall apply to non-ETF UCITS funds with listed share class(es). The Central Bank has also indicated that where a UCITS has both listed and unlisted share classes, it will permit the use of the “UCITS ETF” identifier at the level of the sub-fund or listed share class.

This positive development enables existing non-ETF UCITS to establish a listed share class, without the requirement to redesignate as a “UCITS ETF”, with the benefit of the fund’s track record and economies of scale. It also widens the potential distribution channels for such existing funds (with the possibility of building further scale).





In the event that a fund promoter is contemplating establishing a listed share class within a non-ETF UCITS fund, it would need to consider the operational and other changes which would need to be put in place before it proceeds to establish such listed share class. The fund promoter would need to determine which additional distribution channels are being targeted and on which stock exchanges any listed share class is to be listed. In addition, it would be necessary to consider updates to the fund documentation (including the prospectus and relevant agreements) as well as the appointment of authorised participants and market makers, as outlined below.

Fund Documentation	<p>The fund’s documentation would need to be reviewed and updated. This would include an update to the prospectus to provide for the ETF share class including (a) an overview of the differences between listed and unlisted share classes; and (b) an outline of the procedures around dealing on the primary and secondary market.</p>
Portfolio Holding Disclosure	<p>Consideration would need to be given to any additional regulatory or exchange requirements regarding the manner in which portfolio holdings may need to be disclosed.</p>
ETF-specific Contracts	<p>Authorised participants and market makers would need to be appointed. This would include ensuring that initial and ongoing due diligence is carried out on these entities. In this regard, the requisite resources and procedures would need to be in place to ensure that such due diligence is carried out effectively and that the relationships operate efficiently on an ongoing basis.</p>
Operational Considerations	<p>Certain operational matters would need to be discussed with the fund’s service providers. For example, the production of a portfolio composition file (PCF) and potentially the application of swing pricing in respect of unlisted share classes in the fund.</p>
Other Considerations	<p>If the fund promoter is seeking to access the US-Ireland double taxation treaty, this is a matter which would need to be considered before proceeding with an ETF share class.</p>

Further Information

Should you have any queries in relation to this matter, please get in touch with any of the below contacts or your usual contact in Dillon Eustace for assistance.

CONTACT US

Our Offices

Dublin

33 Sir John Rogerson's Quay
Dublin 2
Ireland
Tel: +353 1 667 0022

Cayman Islands

Landmark Square
West Bay Road, PO Box 775
Grand Cayman KY1-9006
Cayman Islands
Tel: +1 345 949 0022

New York

33 Irving Place
New York
NY 10003
United States
Tel: +1 646 770 6080

Tokyo

12th Floor,
Yurakucho Itocia Building
2-7-1 Yurakucho, Chiyoda-ku
Tokyo 100-0006,
Japan
Tel: +813 6860 4885

CONTACT POINTS



Brian Higgins
Partner | Dublin

E brian.higgins@dilloneustace.ie
T + 353 1 667 0022



Brian Kelliher
Partner | Dublin

E brian.kelliher@dilloneustace.ie
T + 353 1 667 0022



David Walsh
Partner | New York

E david.walsh@dilloneustace.ie
T + 1 646 770 6080



Shane Coveney
Partner | Dublin

E shane.coveney@dilloneustace.ie
T + 353 1 667 0022



Tara O'Callaghan
Head of Fund Registrations
and Listings | Dublin

E tara.ocallaghan@dilloneustace.ie
T + 353 1 667 0022

DISCLAIMER:

This document is for information purposes only and does not purport to represent legal advice. If you have any queries or would like further information relating to any of the above matters, please refer to the contacts above or your usual contact in Dillon Eustace.

Copyright Notice:

© 2024 Dillon Eustace. All rights reserved.