

Legal Update

Central Bank Thematic Review of Irish ETFs

The Central Bank of Ireland (the “CBI”) has recently published a letter (the “Letter”) it circulated to the chairs of fund management companies (“FMCs”) following its review of the primary and secondary market trading arrangements of Irish authorised exchange traded funds (“ETFs”) (the “Review”). The Review also includes a list of specific action items to be completed by the end of quarter 2, 2025.

Background

Ireland is one of the principal domiciles for ETFs in the EU, representing around 70% of total AUM in the EU ETF sector. The Review largely focussed on the role of, and relationships with, Authorised Participants (“APs”) and Contracted Market Makers (“CMMs”) who provide a key service to ETFs but are typically not based in Ireland.

Findings

The CBI states in the Review that the governance practices of FMCs in relation to APs and CMMs fall short of its expectations for ETFs. It has accordingly issued a series of actions required.

Actions Required

The CBI requires that FMCs review the actions outlined below and incorporate any necessary changes to their policies and procedures by the end of Q2 2025:

- Assess current practices against Measure 4 of the IOSCO Good Practices and address gaps. Particular regard must be given to the ‘key findings’ outlined in the Letter in relation to weaknesses identified. The CBI considers that an oversight framework should be put in place.

- Reporting: an assessment of reporting received by FMCs regarding the activity of APs and CMMs should be conducted. Boards must ensure that relevant, risk-focused reporting is provided to them on a regular basis.
- FMCs must review current arrangements to ensure sufficient numbers of APs and, where relevant, CMM relationships are in place for the ETF in question. Substitutability risk must be demonstrated to have been considered and appropriate mitigants put in place. Arrangements with CMMs must be formalised and related contracts noted by their boards. FMCs should conduct effective contingency planning to address any impairment of the arbitrage mechanism.

How Clerkin Lynch Can Help

Clerkin Lynch’s regulatory team can assist with the preparation of policies and procedures to ensure compliance with the regulatory requirements in the Letter or provide an independent review of these as outside counsel for boards.

Contact us for more information.



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