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Authorisation as an Investment Firm Under MiFID II in Ireland

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The Markets in Financial Instruments Directive II (MIFID II) is a significant overhaul of the regulatory regime for investment firms operating within the European Union. It will come into force on 3 January 2018.

The introduction of MiFID II seeks to reinforce the integrity of the financial system by improving investor protection and increasing levels of transparency and oversight.

The Central Bank of Ireland (the Central Bank) is the competent authority in Ireland responsible for the authorisation and supervision of investment firms. Authorisation in Ireland allows investment firms to passport the services covered by their authorisation throughout the European Economic Area without seeking further authorisations in other Member States.

The Central Bank will consider applications for authorisation under the MiFID II regime from 3 July 2017. Current and prospective applicants should be aware of the more in-depth requirements of the new authorisation process and the timelines for an application for authorisation in Ireland.

What's new under MiFID II?

Draft MiFID II applications forms and guidance are now available on the Central Bank's website. Although they are subject to change, the draft application forms provide some insight into the expectations of the Central Bank and indicate how the Central Bank might approach applications received from 3 July 2017 onwards.

A high level review of the draft MiFID II application form illustrates that applicant firms will now be obliged to provide more specific information regarding certain aspects of the business they are seeking authorisation for. Some key examples are set out below.

1. Applications must now include extensive information regarding how the applicant firm is funded, including information on any private resources that are to be used, borrowed funds and the ultimate source of all financial resources behind the applicant.
2. Applicant firms will now be required to provide regulatory capital calculations for the first three years of operation as opposed to the current requirement which demands regulatory capital calculations for the first year only.
3. As was the case under the original MiFID regime, the Central Bank requires that the “mind and management” of the applicant firm be located in Ireland. The renewed focus on this requirement is demonstrated by the requirement in the draft MiFID II application form for details of the monthly and annual time commitments of the members of the management body of the applicant firm. This point is of particular interest to those who may be considering Ireland as location for the establishment of a MiFID firm following the Brexit.
4. The Programme of Operations (previously called the Business Plan) must now give consideration to the independence of the board of the applicant firm and the induction and training of each member of the management body (the persons occupying Pre-approval Controlled Function (PCF) roles in the applicant firm).

5. The Central Bank has removed the distinction between Level 1 (low complexity) applications and Level 2 (high complexity) applications and has extended the time periods within which it will review applications and provide comments/decisions. Level 1 applicants were smaller firms which the Central Bank considered to have 'non-complex investment strategies'. These applicant firms were not permitted to hold client assets. Level 1 applications were previously dealt with within a shorter timeframe than Level 2 applications.

The Authorisation Process and Timetable

The below steps provide indicative timings involved in seeking authorisation under the new MiFID II regime.

1. The first step requires the applicant firm to submit a Key Facts Documents (KFD) to the Central Bank. The Central Bank will comment or seek clarification on the KFD within 20 working days.
2. Following receipt of the KFD, the Central Bank will then have a preliminary meeting with the applicant firm. At this stage in the authorisation process, the Central Bank will confirm which level, Level 1 or Level 2, the application will fall under and flag any significant issues the Central Bank feels will negatively impact on the application.
3. The next step is the submission of the MiFID II Application Form, Programme of Operations and any other related documentation. Within 10 working days, the Central Bank will acknowledge receipt of a complete application or contact the applicant firm notifying it that its application is incomplete.
4. The Central Bank will issue comments on a complete application within 40 working days. The applicant firm then has 20 working days to respond to these comments. The Central Bank will then issue second round comments which the applicant will respond to, both within 20 working days. The Central Bank will release third round comments within 10 working days of receipt of responses to second round comments. The applicant firm has 10 working days to respond to the third round comments of the Central Bank.
5. The Central Bank states that it will not review more than three submissions of an application before reaching a decision on an application. Under the new regime, it is anticipated that a determination will be made on applications for authorisation within six calendar months of receipt of a complete application. If the Central Bank does not approve the applicant firm's application following the third submission, the process will begin again.

What is needed for an Application for Authorisation?

The Central Bank's draft guidance for applicant firms seeking authorisation under MiFID II outlines the various documents which form part of a complete application which includes those listed below.

1. Application Form, which must be fully signed.
2. Programme of Operations, which must include information on business strategy, overview of any non-MiFID activity to be carried out by the applicant firm, organisation structure chart and corporate governance arrangements.
3. Individual Questionnaires (IQs) completed online for PCF holders (including directors) and hard-copy IQs submitted to the Central Bank for individual qualifying shareholders.
4. Shareholder information.
5. Financial projections for the first three years of operation.
6. Draft Internal Capital Adequacy Assessment Process.
7. Derogation requests under the Capital Requirements Regulations (if applicable).
8. Client Asset Documentation (if applicable).
9. Arrangements for both orderly and forced wind downs of the applicant firm in order to ensure the protection of client assets and fair treatment of clients.

It is important that those considering Ireland as a location for an investment firm are aware of the Central Bank requirements to ensure any application for authorisation is robust from the date of first submission to the Central Bank. This should lead to a smooth authorisation process.

If you would like further information on authorisation as a MiFID firm in Ireland under the new regime, please contact Trevor Dolan at tdolan@lkshields.ie.

About the Author