



Matheson

Establishing an Exchange Traded Fund in Ireland

Best Alternative Investments Law Firm Europe 2016

Wealth and Finance International

Most Innovative European Fund Law Firm 2016

Global Fund Awards

European Law Firm of the Year 2015

The Hedge Fund Journal

Best AIFMD Law Firm in Europe 2014 & 2015

Wealth and Finance International

Financial Services (International) Investment Funds Deal of the Year 2014, 2015 and ICAV Deal of the Year 2016

Finance Dublin

Best Funds Lawyer Europe 2014, ETF.com

Financial Times 2012 - 2015, Matheson is the only Irish law firm commended by the Financial Times for innovation in corporate law, finance law and corporate strategy

About Matheson

Matheson's primary focus is serving the Irish legal needs of internationally focused companies and financial institutions doing business in and from Ireland. Our clients include the majority of the Fortune 100 companies. We also advise 7 of the top 10 global technology brands and over half of the world's 50 largest banks. We are headquartered in Dublin and have offices in London, New York and Palo Alto. More than 600 people work across our four offices, including 74 partners and tax principals and over 350 legal and tax professionals.

Our strength in depth is spread across more than 20 distinct practice areas within the firm, including asset management and investment funds, aviation and asset finance, banking and financial services, commercial litigation and dispute resolution, corporate, healthcare, insolvency and corporate restructuring, insurance, intellectual property, international business, structured finance and tax. This broad spread of expertise and legal know-how allows us to provide best-in-class advice to clients on all facets of the law.

Our dedication to client service and excellence has become our hallmark as a firm, and is acknowledged by both our clients themselves and the world's leading legal directories and publications.

The Asset Management and Investment Funds Group

Matheson is the number one ranked funds law practice in Ireland, acting for 28% of Irish domiciled investment funds by assets under management as at 30 June 2015. Led by 11 partners, the practice comprises 50 asset management and investment fund lawyers and professionals in total. The group's expertise in UCITS and alternative investment funds is reflected in its tier one ranking by Chambers Europe, the European Legal 500 and the IFLR1000, and the team is specifically recognised for its abilities with respect to complex mandates.

We are consistently involved in influencing developments in the asset management and investment funds industry in Ireland and Europe. Our partners and associates hold key industry appointments on various committees and taskforces of the Irish funds industry association (Irish Funds). The head of our team, Tara Doyle, is an elected member and Vice-Chair of the governing Council of Irish Funds. We also hold an appointment to the Irish Prime Minister's International Financial Services Centre Funds Working Group and, at European level, a Matheson partner sits on both the UCITS working group and the Benchmarks working group of the European Fund and Asset Management Association.

We have been named the Best Alternative Investments Law Firm Europe 2016 and Best AIFMD Law Firm in Europe 2015 and 2014 by Wealth & Finance International. We have also been awarded the Financial Services (International) ICAV Deal of the Year 2016 and Investment Funds Deal of the Year 2015 and 2014 by Finance Dublin. Matheson received the award of European Law Firm of the Year 2015 from the Hedge Fund Journal. This is the second time we have received this award, reflecting the international recognition of our contribution to the European hedge fund sector. We are the only Irish law firm ever to win the award of European Advisor of the Year from Funds Europe.

With our asset management legal and regulatory advisers working alongside Matheson taxation, banking, structured finance and commercial litigation departments, we offer a comprehensive service for clients. We are one of the few law firms in Ireland with a specialist derivatives practice, which enables us to provide combined asset management, tax and derivatives advice of the highest calibre to our clients.

Establishing an Exchange Traded Funds in Ireland

The purpose of this brochure is to provide an overview of exchange traded funds ("ETFs") and their establishment as undertakings for collective investment in transferable securities ("UCITS") in accordance with the UCITS Directive. The second category of regulated investment fund in Ireland comprises of alternative investment funds which are subject to the Alternative Investment Fund Managers Directive framework as an alternative to the UCITS regime. However, all Irish ETFs and most European ETFs are structured as UCITS vehicles. Therefore, this brochure focuses on the establishment of Irish domiciled UCITS ETFs. Finally, it outlines the key steps in establishing an ETF in Ireland and summarises the advantages of Ireland as a fund domicile.

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1 Introduction to Exchange Traded Funds

The continued growth of exchanged traded funds (“ETFs”) is one of the most significant trends in the investment fund industry. It is estimated that, globally, ETFs had assets of more than US\$3.177 trillion as at June 2016.¹ The global trend is reflected in the European investment fund industry. In Europe, it is estimated that investment in ETFs exceeded US\$529 billion by June 2016.² Ireland continues to be the domicile of choice for European ETF issuers. As it stands, European ETFs domiciled in Ireland represent 53% of the total assets of all European ETFs – approximately \$260 billion². The ETF industry, which celebrated its 25th anniversary in March 2015, is now seen as the “new normal”. In June 2015, the assets invested globally in the ETF industry surpassed the assets invested in the hedge fund industry, which has existed for 67 years.³

The increase in assets, both globally and in Europe, is mirrored by considerable growth in the numbers of new ETFs being listed. Against a background of general market uncertainty, the continued growth in the ETF market arguably reflects investor sentiment; passive, index-tracking funds may be more attractive to investors than actively managed funds. Index-tracking funds will typically have transparent investment policies, linked to a particular index and low operating costs. ETFs offer investors further enhancements on a traditional index-tracking fund. In particular, ETFs are listed and actively traded on various stock exchanges and, accordingly, may be bought and sold by investors whenever the relevant stock exchange is open for trading at intra-day prices; investors are no longer wholly reliant on the subscription and redemption mechanisms offered by traditional funds.

In order to support the activities of ETFs, investment firms, commonly known as authorised participants, will subscribe for large blocks of shares in an ETF, either in exchange for a deposit with the ETF of a basket of securities that generally matches the underlying holdings of the index that the ETF is designed to track or for a cash subscription. The authorised participant will then make those shares available to investors for purchase and sale on one or more stock exchanges. As with any other UCITS, ETFs may also use derivatives to track the relevant index rather than directly holding the securities which comprise the relevant index (known as “synthetic replication”). Some ETFs may use a combination of direct holdings in the securities comprised in a particular index and derivatives in order to minimise tracking error.

Interest is also growing in ETFs providing actively managed strategies, whereby the manager has discretionary control of asset allocation as opposed to passively tracking an index. Those considering active ETFs need to consider the impact of the Central Bank of Ireland (“Central Bank”) and European Securities and Markets Authority (“ESMA”) transparency requirements in assessing the suitability of an actively managed investment strategy for exchange trading. The Irish regulatory framework permits active and passive ETFs, synthetically and physically replicating ETFs and ETF and non-exchange traded sub-funds within the same umbrella. The creation of individual exchange traded share classes within an otherwise non-exchange traded fund is also under active consideration.

Ireland has long been the domicile of choice for most of the world’s leading ETF promoters. As the ETF market has grown, the number and range of ETFs in Ireland has expanded considerably. Since the launch of the first European ETF in 2000, Ireland has been the number one European domicile for ETF issuers. Ireland is host to ETFs that provide traditional long-only exposure to stock and bond indices, but has also authorised ETFs that reflect the wider variety in the ETF market globally, for example, ETFs that offer inverse exposure to specific indices and ETFs with leverage components. Accordingly, Ireland’s regulator, the Central Bank, is very familiar with the aims and objectives of ETF promoters and the current trends and concerns within the ETF market.

Ireland has played a significant part in the evolution of the European ETF market over the past fifteen years. As home to six of the top ten ETF issuers in Europe, it has been at the forefront of product, operational and infrastructure development. One recent innovation is the development of an International Central Securities Depository (ICSD) model to centralise the settlement of all ETF shares, regardless of listing location. This has been recognised as a significant step in the development of the ETF industry and addresses a number of fundamental issues within the European ETF market today. The result should bring further liquidity, better spreads for investors and has the potential to kick start the lending of shares in ETFs, which has been very difficult to achieve in what has been a fragmented market.

Ireland is the fastest growing fund servicing centre in the world, with extensive industry experience and expertise in the areas of fund management, administration, custody, legal and auditing. With over 13,000 professionals employed exclusively in the servicing of investment funds, the Irish funds industry has developed a centre of excellence, with expertise that spans a wide range of services including fund administration, transfer agency, custody, legal, tax and audit services, stock exchange listing, compliance and consultancy services.⁴



¹ ETFGI’s global ETF and ETP industry insights report, June 2016.

² PwC Press Release, Irish ETFs have potential to reach \$800 billion by 2021, 5 August 2016.

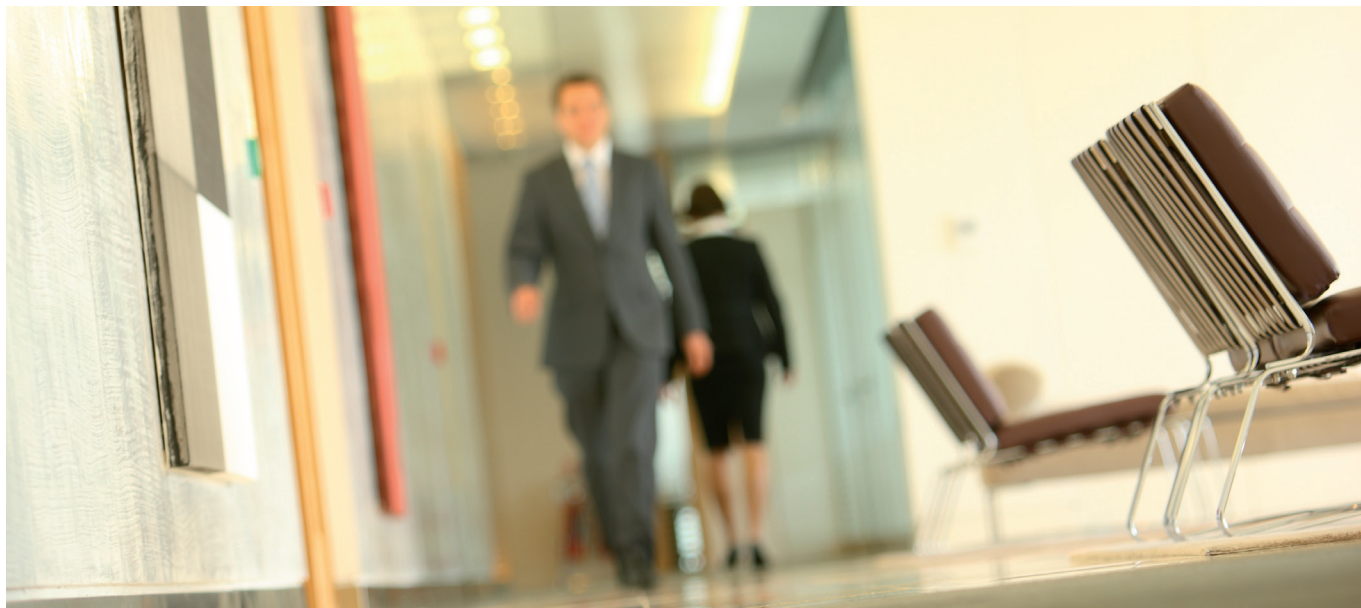
³ ETFGI Press Release, July 2015.

⁴ Irish Funds Why Ireland March 2016



2 Exchange Traded Funds and UCITS

In Europe, ETFs are generally established as undertakings for collective investment in transferable securities (“**UCITS**”) in accordance with the UCITS Directive. The benefit of using UCITS in a European context is the availability of a passport that enables the ETF to be registered for public distribution throughout the EU. This greatly simplifies the process of listing the ETF on stock exchanges throughout the EU and marketing the ETF for sale to investors. The use of the UCITS structure also ensures that the fund will be managed in accordance with investment restrictions and operating conditions common to all member states of the EU.



Furthermore, the UCITS Directive has given specific recognition to index-tracking funds and provides for a specific relaxation of certain investment restrictions that apply to actively managed funds. This recognises the fact that index-tracking funds are generally designed to offer investors a lower risk, passive approach to investing. Accordingly, the normal rule that a UCITS must not invest more than 10% of its net assets in the securities of a single issuer and that the total value of securities in issuers in which the fund has invested more than 5% of its net assets must not exceed, in aggregate, 40% of its net assets (the “5/10/40 rule”) is dis-applied for index tracking funds. An index-tracking fund is permitted to invest:

- up to 20% of its net assets in shares and / or debt securities of any single issuer;
- up to 35% of its net assets in securities of one issuer where this is justified by exceptional market conditions.

The 35% limit may be used only for a single component of an index and it is generally relevant for index-tracking funds that are linked to an index for a market in which a single issuer may have a very dominant position.

UCITS ETF Identifier

An ETF which is authorised as a UCITS must use the identifier ‘UCITS ETF’ which identifies it as an exchange-traded fund. This identifier should be used in the fund’s name, fund rules or instrument of incorporation, prospectus, key investor information document and marketing communications and in all EU languages. In the case of umbrella ETFs, the ‘UCITS ETF’ identifier is required to be applied at sub-fund level, although it may also be used at the umbrella fund level if desired.

UCITS and Indices

The selection of the appropriate index is of key importance to any UCITS ETF. Indices used by UCITS must be:

- sufficiently diversified;
- represent an adequate benchmark for the market to which it refers;
- published in an appropriate manner, ie, accessible to the public; and
- provided by an index provider that is independent of the UCITS ETF.

In order to assist promoters of index-tracking funds and ETFs, the Central Bank has published guidance on the requirements for recognition of an index. According to this guidance, a specific submission to the Central Bank to have the relevant index recognised will be required if the UCITS ETF would not be permitted to purchase all of the underlying constituents of the proposed index in the proportions that they are represented in the index either because the index components themselves are not UCITS eligible assets (eg, indices based on commodities) or because to do so would break the 5/10/40 rule. However, submissions may also be required in other circumstances and Matheson can provide further advice on this point.

Index Assessment

Where a submission is made, the UCITS ETF will have to demonstrate that an index satisfies the index criteria in the UCITS Directive and the Eligible Assets Directive. To achieve this, the Central Bank requires an index to comply with the following key requirements:

Diversification

The index must be sufficiently diversified, taking any leverage inherent in the index into account. Generally, each individual component of the index may not have a weighting of greater than 20%. If it is necessary to use the higher 35% limit, the UCITS ETF must provide evidence of the exceptional market circumstances and / or market dominance which justify this concentration.

Additional diversification requirements apply to commodity indices, where sub-categories of the same commodity (for instance, from different regions or markets or derived from the same primary products by an industrialised process) are considered to be the same commodity for the calculation of the diversification limits. For example, WTI Crude Oil, Brent Crude Oil, Gasoline and Heating Oil contracts may be considered to be sub-categories of the same commodity - oil - and be aggregated as one index component for diversification purposes. Sub-categories of a commodity must be regarded as one index component and aggregated if their price movements exhibit a high degree of correlation with each other.

Adequate Benchmark

The index must be an adequate benchmark for the portfolio of assets that it purports to represent. Indices are required to publish in full the methodology which is used to construct them and the Central Bank should be provided with complete information on this methodology to ensure that the index provides a valid measure of the performance of the relevant market. For that purpose: (a) an index should have a clear, single objective; (b) the universe of the index components and the basis on which these components are selected should be clear to investors; and (c) if cash management is included as part of the index strategy, the UCITS ETF should be able to demonstrate that this does not affect the objective nature of the index calculation methodology. Further, UCITS may not use indices which have been created at the request of a small number of investors only.

The index must be capable of being replicated by investors and therefore indices which rebalance on an intra-day or daily basis are not considered to be adequate benchmarks for their relative markets. Equally indices which operate on rules which are not pre-determined and objective, which allow backfilling by the index provider or which accept payment for inclusion in the index will not be permitted to be used by UCITS.

Publication

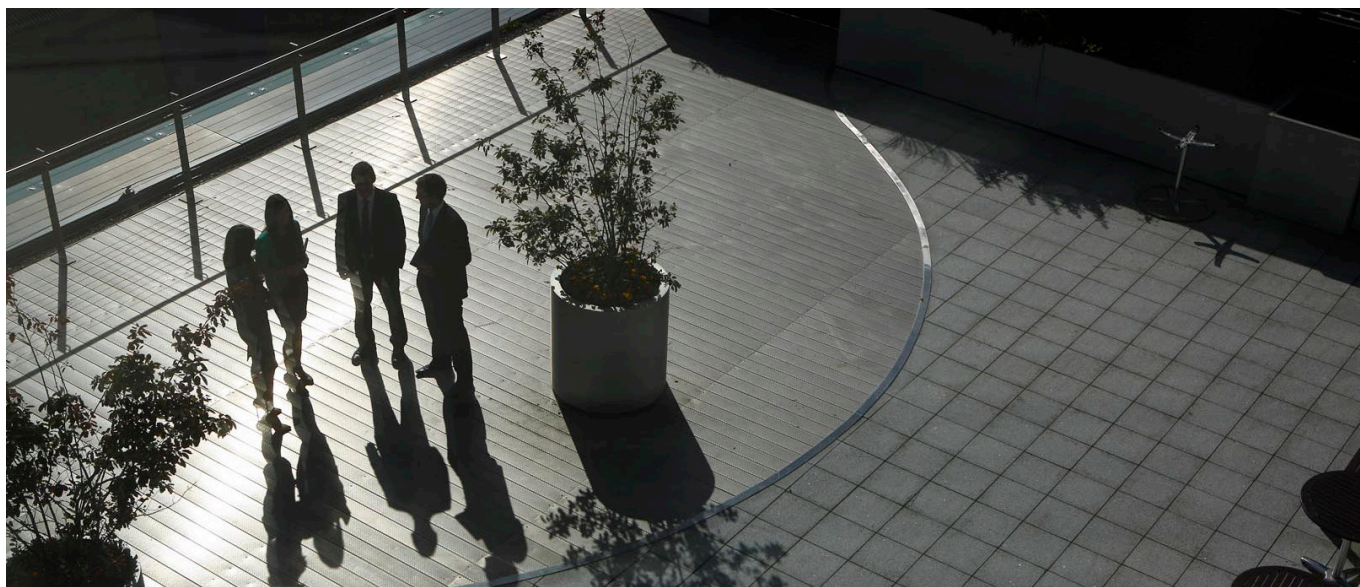
The index and certain information about it must be published in an appropriate manner. The index must publish its constituents together with their respective weightings and the performance of the index. Obviously, these requirements are particularly significant in the case of ETFs where transparency in respect of the components of the index and of the holdings of the relevant ETFs can be key for investors.

In addition, indices must disclose the full calculation methodology to, inter alia, enable investors to replicate the financial index. This includes providing detailed information on index constituents, index calculation (including the effect of any leverage within the index), re-balancing methodologies, index changes and information on any operational difficulties in providing timely or accurate information.

All information referred to above should be easily accessible, free of charge, by investors and prospective investors, for example, via the internet.

Independently Managed

The index must be independently managed. This does not preclude index providers and the management of the UCITS ETF forming part of the same economic group but it must be clear that the application of the methodology of the index and measurement of performance of the index is independent from the management of the ETF.



Disclosure Requirements

UCITS ETFs are required to disclose information on the indices that they track, how the tracking will be achieved (ie, physical or synthetic replication; full or sample replication) and on likely and realised levels of tracking error relative to the index. UCITS ETFs which use leverage or track leveraged indices must also disclose information on the leverage policies followed by the fund and the impact that they are likely to have on the fund, its risks and returns. UCITS ETFs must also disclose in their prospectus a clear description of the indices being tracked including information on their underlying components. In order to avoid the need to update the document frequently, the prospectus can direct investors to a website where the exact compositions of the indices are published. UCITS ETFs are also required to disclose a description of factors that are likely to affect their ability to track the performances of the indices, such as transaction costs, small illiquid components, dividend re-investment etc.

In addition, UCITS ETFs may wish to calculate and publish an indicative NAV intraday to give investors a good indication of the value of shares in the UCITS ETF at any given time during the trading day. UCITS ETFs are also required to disclose clearly in the prospectus, key investor information document and marketing communications their policy regarding portfolio transparency and where information on the portfolio may be obtained, including where the indicative NAV, if applicable, is published.

Treatment of Secondary Market Investors of UCITS ETFs

If the stock exchange value of the shares of a UCITS ETF significantly varies from the fund's net asset value, the UCITS ETF is obliged to provide investors who have acquired their shares on the secondary market with the ability to sell their shares directly back to the ETF at their net asset value, rather than only having the option of selling them on the secondary market. This may apply in cases of market disruption, such as the absence of a market maker in respect of the shares. In such situations, information should be communicated to the regulated markets on which the shares are traded, indicating that the UCITS ETF is open for direct redemptions at the level of the UCITS ETF.

While permitting direct redemptions by secondary market investors may well pose operational difficulties (for example for investors trying to demonstrate their title to the shares and compliance with the AML requirements to which the UCITS ETF is subject to), UCITS ETFs must disclose the process to be followed by investors in such circumstances, as well as the potential costs involved in its prospectus. The costs may not be excessive or punitive and should reflect the actual costs to the UCITS ETF of providing this service.





3 Structuring an Exchange Traded Fund in Ireland

As mentioned above, in a European context, ETFs will normally be established as UCITS. The UCITS regulatory regime relates to open ended retail investment vehicles investing in transferable securities and other liquid financial assets. The advantage of establishing a fund as a UCITS is that it can generally be sold without any material restriction to any category or number of investors in any EU member state, subject to filing appropriate documentation with the Central Bank. There are restrictions on the investment and borrowing policies of UCITS and on the use by UCITS of leverage and financial derivative instruments. The UCITS product offers fund promoters the ability to structure a variety of index-tracking funds.

The authorisation process in Ireland for an ETF will generally follow that of any other UCITS, whether an actively managed or a traditional index-tracking fund. The key issue for initial consideration is the target index of the particular ETF, in order to determine whether or not any prior submission must be made to the Central Bank for approval of the relevant index. Any such submission may accompany the initial application for authorisation of the fund but it is better practice to file any such submission as early as possible in the process in order to determine whether there are likely to be any material issues arising from the particular characteristics of the relevant index. Following identification of the index and, if necessary, clearance of the relevant index by the Central Bank, it is then possible to follow the normal process as described in Section 4. Although it is possible to form UCITS either as Irish Collective Asset-management Vehicles (“ICAVs”), investment companies, unit trusts or common contractual funds in Ireland, the ICAV or investment company models are the most commonly used by ETFs and are described further below.

Taxation of Funds

UCITS (referred to in the Irish Taxes Acts as investment undertakings) are not subject to any income tax, subscription tax, redemption tax, corporation tax and Irish funds are exempt from Irish tax on their income or gains, irrespective of where investors are located. Ireland does not impose any annual tax comparable to the “tax d’abonnement” in Luxembourg, which is charged annually to the net asset value of a fund in Luxembourg.

Treaty Access

With a continuously expanding tax treaty network, including over 70 countries, Ireland has one of the most developed and favourable tax treaty networks in the world. There are no provisions under Irish law which preclude investment undertakings from accessing Ireland’s extensive and expanding tax treaty network. However, availability of treaty benefits will depend on the relevant treaty and the tax authorities in the treaty countries. Treaty access should be reviewed on a case by case basis. The availability of treaty benefits in a particular case will ultimately depend on the relevant tax treaty and the approach of the tax authorities in the treaty country. The Irish / US double taxation treaty, in particular, works very well for Irish regulated funds with structural advantages over other jurisdictions. For example, treaty relief under the Ireland / US tax treaty may be available to a ETF depending on the circumstances of the ETF, resulting in a net withholding tax rate of 15% on US dividend income.

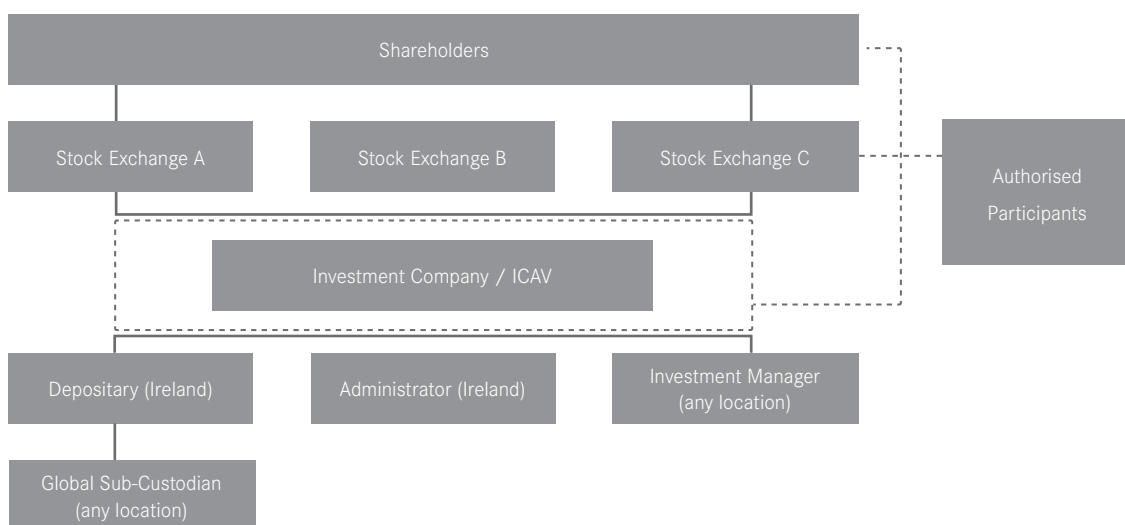
Listing of Irish Stock Exchange

The Irish Stock Exchange (“ISE”) offers a fast and cost efficient primary listing which allows ETF issuers access the London Stock Exchange’s (“LSE”) main market. This is possible via an alternative admission route. The advisory costs for an ISE listing are significantly lower than those incurred for the equivalent UKLA (UK Listing Authority) approval.

The listing regime is a straightforward process as it recognises existing regulation applicable to the ETF issuer. It is a well-established process used by many large ETF providers. 124 ETFs currently have their primary listing on the ISE.⁶

Typical Structure of an Exchange Traded Fund

An exchange-traded fund is typically established as an investment company or an ICAV. A typical exchange fund structure is illustrated below.



⁶ Source: Irish Stock Exchange February 2015



4 Key Steps in Establishing a UCITS Exchange Traded Fund in Ireland

As with any other investment fund authorised by the Central Bank, the authorisation of an ETF is a standardised process and we have outlined the essential elements of this below.

UCITS Structures Available in Ireland

At present, a UCITS may be established in Ireland as: (i) an ICAV; (ii) an investment company or public limited company (“**plc**”); (iii) a unit trust; or (iv) a common contractual fund (“**CCF**”).

In March 2015, legislation introducing a new corporate vehicle specifically designed for Irish investment funds, the ICAV, was implemented. The ICAV sits alongside the plc, which was the most successful and popular of the existing Irish collective investment fund vehicles prior to the introduction of the ICAV. An ICAV is registered and authorised by the Central Bank and provides a tailor-made corporate fund vehicle for both UCITS and alternative investment funds. As a bespoke corporate investment fund vehicle, a fund established as an ICAV has the advantage that it will not be impacted by amendments to certain pieces of European and domestic company legislation that are targeted at trading companies rather than investment funds. It also has several operational benefits that should produce significant cost savings for ICAV investors. Matheson partners were to the fore in designing the concept for and implementing the ICAV.

Incorporation / Registration of the Fund and Approval of the Directors

If the UCITS ETF is structured as an investment company or an ICAV, it will need to be either incorporated in the Companies Registration Office; or registered with the Central Bank. The company secretary would generally prepare the relevant documentation and arrange the necessary filings. Incorporation as an investment company or registration as an ICAV is generally obtained within one week of the relevant filing.

Each of the directors of the fund must be approved by the Central Bank as part of its fitness and probity regime. The directors are required to demonstrate, via an on-line application form and the submission of supporting documents that they are competent and capable; honest, ethical and able to act with integrity; and financially sound. In addition, the board is itself obliged to conduct a fitness and probity due diligence assessment of each of the directors. A fund is required to have two Irish resident directors. Matheson would be happy to provide details for potential candidates to promoters looking to establish an ETF in Ireland if necessary.

UCITS Management Company Approval

A UCITS investment company or ICAV may opt to be “self-managed” or alternatively can appoint an external management company. With a unit trust or CCF, the appointment of a management company is mandatory.

Irish UCITS management companies are regulated under the UCITS Regulations⁷ and the Central Bank UCITS Regulations.⁸ An Irish management company applying to the Central Bank to manage a UCITS must file a business plan, which is essentially a governance document or a regulatory compliance plan which demonstrates how the company will comply with the Central Bank’s requirements in relation to certain key managerial functions.

A management company will generally delegate its day-to-day functions to third parties (investment manager, administrator, distributor etc,) and have no employees, but it must hold periodic board meetings in Ireland and be tax resident in Ireland, and it retains ultimate responsibility for overall management and control of the functions for which it is appointed by the fund(s). Similar to the approval of the directors of the fund, each of the directors of the management company must be approved by the Central Bank as part of its fitness and probity regime. While the authorisation of a management company is relatively straightforward, a promoter may also choose to avail of pre-existing management companies set up by service providers in the Irish market.

The Central Bank has published a Consultation Paper on Fund Management Company Effectiveness – CP86 – in which it sets out a number of proposed initiatives to further enhance and promote fund management companies’ (and self-managed investment companies’) substantive control over the activities of their delegates. One of the proposals which is currently being consulted upon is to allow for the first time the possibility of appointing a designated person outside Ireland, who is not also a director of the fund management company, to carry out managerial functions in respect of the management company, which would represent a positive development.

Minimum Capital

A UCITS management company must have a minimum level of financial resources equivalent to one quarter of its preceding year’s total expenditure (as set out in its most recent audited accounts) or €125,000 plus an “additional amount”, whichever is greater. The additional amount of capital must be equal to 0.02% of the amount by which the net asset value of the funds under management exceeds €250,000,000. The required total of the €125,000 and the additional amount shall not, however, exceed €10,000,000.

Where an investment company opts to be self-managed, it must comply with many of the same authorisation requirements as management companies and will be required to prepare a business plan. In addition, it must comply with a minimum capital requirement of €300,000. This initial capital may be removed from the fund once it has received subscriptions from investors of at least €300,000.

⁷ European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations 2011 SI 352 of 2011

⁸ Central Bank (Supervision and Enforcement) Act 2013 (Section 48(1)) (Undertakings for Collective Investment in Transferable Securities) Regulations 2015 SI 420 of 2015

Investment Manager Approval

It will also be necessary to identify the entity or entities which will act as investment manager(s). If an investment manager has been previously approved to act in respect of Irish collective investment schemes, no further authorisations will be required other than the filing of a form with the Central Bank. In the case of an investment manager holding an authorisation under MiFID or which is a credit institution regulated within the European Economic Area, the applicant would avail of a same day fast-track approval process. In other cases, the approval process generally takes approximately three to five weeks (the timing depends significantly on the speed with which responses to the Central Bank's queries are provided). Where a UCITS management company or an AIFM will also act as investment manager, there is no need for a separate investment manager application process; this is included as part of the UCITS / AIFM approval process.

Index Approval

As described above, where relevant, it will be necessary to apply to the Central Bank for approval of any index which the ETF proposes to track which does not meet the Central Bank's criteria for automatic use and which has not previously been approved by the Central Bank.

Selection of Depositary and Administrator

It will be necessary to appoint a Central Bank-approved depositary for the safe-keeping of assets and a Central Bank-approved administrator which is responsible for maintaining the books and records of the fund, calculating the net asset value of the fund and maintaining the shareholder register. In each case the entity must be located in Ireland and the relevant service contracts will form part of the filing with the Central Bank. All major fund service providers have a presence in Ireland and a number of service providers have developed expertise in the provision of services to exchange traded funds.

We have worked with all of the service providers in the Irish marketplace and we are well placed to advise promoters looking to establish an ETF in Ireland in relation to the appointment of the relevant service providers and to arrange introductory meetings.

Approval of Documentation by the Central Bank

In the case of a UCITS ETF, the prospectus and depositary agreement are filed with the Central Bank for prior approval. Once these documents have been cleared of comment by the Central Bank, they may be dated and submitted in final form. The review process will typically take four to six weeks to complete from first submission.

Irish Stock Exchange Listing / Matheson Listing Department

The listing process for the sub-fund(s) of an ETF can normally be commenced in tandem with the authorisation process with the Central Bank. The specific requirements of the individual listing stock exchange will need to be satisfied and, accordingly, the documentation required and the application process will differ from stock exchange to stock exchange. In general, however, the listing process can be managed efficiently in conjunction with the regulatory approval process in Ireland. From the ETF's perspective, it will be necessary to ensure that the additional contractual arrangements are in place with, for example, authorised participants, market makers and registrars and transfer agents.

Matheson Listing Department

Matheson offers the full range of ISE listing services, including investment funds and debt securities listing. As a full service law firm, Matheson offers clients the convenience of having their legal and listing requirements dealt with seamlessly within one firm. As an ISE approved listing agent, Matheson enables clients to enhance their investment fund or debt offering's potential by listing on the ISE.

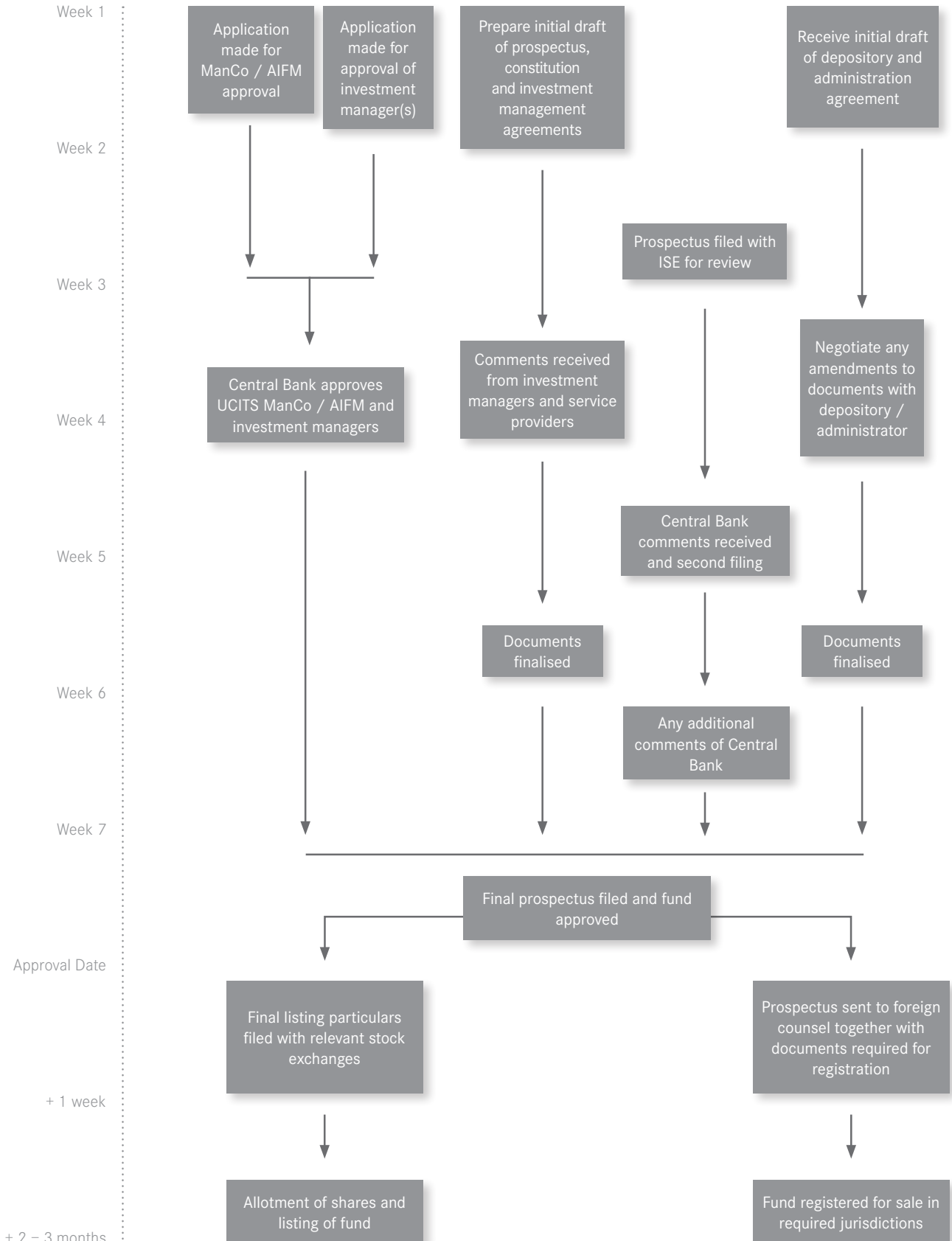
Role of Legal Advisors

The role of the legal advisors to an ETF would generally include the following:

- incorporation of the investment company / registration of the ICAV;
- obtaining Central Bank approval of the proposed UCITS Management Company of the ETF if applicable;
- obtaining Central Bank approval of the proposed investment manager(s) to be appointed to individual sub-funds;
- obtaining approval of any indices for which approval is required;
- drafting and finalising the prospectus, key investor information documents, constitutional documents and material contracts;
- preparing documentation in relation to listing on the ISE and obtaining ISE approval of the prospectus and other relevant documentation;
- negotiating the depositary, administration and other service provider agreements including drafting authorised participant agreements;
- liaising with our listing team or the applicable listing agents to ensure shares are listed following initial subscription by the authorised participant(s);
- preparing all ancillary documentation for approval of the fund by the Central Bank;
- co-ordinating the launch board meeting and providing legal advice on any other issues relevant to the establishment of the ETF; and
- assisting with the registration of ETFs for sale in various jurisdictions.

Time-frame to Approval

The chart below sets out an indicative time-frame showing key steps to be achieved in order to obtain Central Bank approval of a UCITS ETF. The exact time-frame will vary from case to case depending on existing approvals of service providers and other factors. However, we would generally expect initial authorisation to take no longer than six to eight weeks and the addition of a new sub-fund to take three to five weeks depending on the complexity of the new sub-fund. In the example below, we have referred to the ISE as the initial listing stock exchange.





5 Advantages of Ireland as a Fund Domicile

Ireland is internationally recognised as a leading fund domicile of choice because:

- Ireland has a pragmatic regulatory environment governed by an approachable Central Bank which is sensitive to the needs of international fund managers and service providers and is willing to discuss and, where possible, work through any issues.
- Ireland is a member state of the EU, an OECD member state, a member of the Economic and Monetary Union and was the only international funds centre to appear on the original OECD white list of countries that are in compliance with internationally agreed tax standards. Following the June 2016 vote in the United Kingdom to withdraw from the EU, Ireland has reaffirmed its commitment to its membership of the EU and retains its important position as an English speaking gateway to one of the world's largest markets.
- Ireland has a range of fund vehicles which can be tailored to suit investor requirements and which can be used to access our continuously expanding tax treaty network (which at present includes over 70 countries).
- Ireland has unrivalled speed to market: the vast majority of alternative investment funds can avail of the Central Bank's 24 hour authorisation process.
- Ireland provides the most favourable and effective tax environment for investment funds: unlike other jurisdictions, no fund tax is payable, no Irish taxes are imposed on income or gains made by non-Irish resident / ordinarily resident investors, no stamp duty is levied on fund units and there is no annual subscription tax for funds.
- The ISE is widely regarded as one of the leading exchanges in the world for the listing of investment funds.
- Having been the first regulated jurisdiction to provide a regulatory framework specifically for the alternative investment fund industry, Ireland is at the forefront of product innovation, providing opportunities and solutions for this sector.

Ireland's position as a leading funds domicile is demonstrated by the fact that:

- 71% of global investment managers surveyed chose Ireland as a top 3 European domicile – over 25% more than its closest rivals (Economist Intelligence Unit Survey on Choosing a European Fund Domicile 2014).
- 841 fund promoters and 463 fund managers from over 50 countries use Ireland to distribute UCITS and other funds to over 70 countries across the globe.
- Ireland is home to almost 53% of European ETF assets, significantly more than its nearest rival domicile at 18%.
- 40% of the world's alternative investments fund assets are administered in Ireland.
- Ireland has the largest number of stock exchange listed investment funds in the world.
- Ireland provides unrivalled experience and expertise and Irish service providers are recognised for their professionalism, responsiveness and flexibility.



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